

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Writs of Certiorari, Mandamus and Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 225/2012

A.J. Mallawaarachchi,
No. 7/22, Devala Road,
Katuwana, Homagama.

PETITIONER

Vs.

1. Tower Hall Theatre Foundation.
2. D.M. Jayaratne Esqr.,
Prime Minister, Chairman,
Tower Hall Theatre Foundation.
3. T.B. Ekanayake Esqr.,
Minister of Cultural Affairs and the Arts.
4. Geethanjana Gunawardena Esqr.,
Deputy Minister of Finance & Planning.
5. A.L.M. Athaullah Esqr.,
Minister of Local Government and
Provincial Councils.
6. Sirisena Amarasekera Esqr,
Secretary to the Prime Minister.
7. Wimal Rubesinghe Esqr.,
Secretary to the Minister of Cultural
Affairs and the Arts.
8. Gotabaya Jayaratne Esqr.,
Secretary to the Minister of Education.
9. Vijitha Kanugala Esqr.,
Director of Cultural Affairs and the Arts.

10. A.J.M. Musammil Esqr.,
Mayor, Municipal Council, Colombo.

11. Mrs. Badrani Jayawardena,
Commissioner,
Municipal Council, Colombo.

12. U.J.P.A. Kirindigoda Esqr.,
Attorney-at-Law.

13. Mahinda Abeysundera Esqr.,

14. G.R. Perera Esqr.,

15. Chandana Wickremasinghe Esqr.,

16. Jayantha Warakagoda Esqr.,

All members of the Board of Trustees,
Tower Hall Theater Foundation.

17. Douglas Siriwardena Esqr.,
Director General,
Tower Hall Theater Foundation.

18. K.C. Jayaratne Esqr.,
Retired Sri Lanka Administrative Service,
78/2, Old Kesbewa Road,
Nugegoda.

19. U.L. Ariyapala Esqr.,
Retired Accountant,
C/o. Tower Hall Theater Foundation,
Sausiripaya, No. 123, Wijerama Mawatha,
Colombo 7.

20. Ranil Wickremasinghe Esqr.,
Chairman/Hon. Prime Minister.

20A. Mahinda Rajapaksa,
Chairman/Hon. Prime Minister.

21. S.D. Navinna Esqr.,
Hon. Minister of Internal Affairs,
Wayamba Development and Cultural Affairs.

21A. Dr. Wijedasa Rajapaksha Esqr.,

Hon. Minister of Higher Education
and Cultural Affairs.

- 21AA. Mahinda Rajapaksha Esqr.,
Hon. Minister of Buddha Sasana
Cultural and Religious Affairs.
22. Ravi Karunanayake Esqr.,
Hon. Minister of Finance.
- 22A. Mangala Samaraweera Esqr.,
Hon. Minister of Finance.
- 22AA. Mahinda Rajapaksa Esqr.,
Hon. Minister of Finance.
23. Faiszer Musthapha Esqr.,
Hon. Minister of Local Government
and Provincial Council.
- 23A. Janaka Bandara Tennakoon Esqr.,
Hon. Minister of Public Administration
Home Affairs, Provincial Council
and Local Government.
24. Saman Ekanayake Esqr.,
Secretary to the Hon. Prime Minister.
- 24A. Gamini Senerath Esqr.,
Secretary to the Hon. Prime Minister.
25. W.M. Bandusena Esqr.,
Secretary to the Ministry of Education
- 25A. Sunil Hettiarachchi Esqr.,
Secretary to the Ministry of Education.
- 25AA N.H.M. Chithrananda
Secretary to the Ministry of Education.
26. D. Swarnapala Esqr.,
Secretary to the Ministry of Internal Affairs,
Wayamba Development and Cultural Affairs.

- 26A. J.J. Rathnasiri Esqr.,
Secretary to the Minister of Higher
Education and Cultural Affairs.
- 26AA. K.M. Bandula Harischandra,
Secretary to the Ministry of Buddha
Sasana, Cultural and Religious Affairs.
27. V.K.A. Anura Esqr.,
Municipal Commissioner,
Colombo Municipal Council.
- 27A. Eng. Lalith Wickramaratne Esqr.,
Municipal Commissioner,
Colombo Municipal Council.
- 27AA. Palitha Nanayakkara,
Municipal Commissioner,
Colombo Municipal Council.
28. Ms. Anusha Gokula Esqr.,
Director of Cultural Affairs.,
29. Lucian Bulathsinghala Esqr.,
30. Dharmasiri Bandaranayake Esqr.,
31. Jerome De Silva Esqr.,
32. Prem Dissanayake Esqr.,
33. M. Adhikari,
Attorney-at-Law.
34. Lionel Fernando,
Director General.
- 34A. Thissa Hewavithana,
Director General.
35. Mrs. Rosy Senanayake,
Mayor of the Colombo Municipal Council

All members of the Board of Trustees.
Tower Hall Theatre Foundation
Sausiripaya
No. 123, Wijerama Mawatha,
Colombo 7.

RESPONDENTS

Before: Arjuna Obeyesekere, J / President of the Court of Appeal

Counsel: Jacob Joseph with J.G. Sadini Rameshika for the Petitioner
Milinda Gunatilake, Additional Solicitor General for the Respondents

Argued on: 16th July 2020

Written Submissions Tendered on behalf of the Petitioner on 25th November 2019 and 3rd September 2020
Tendered on behalf of the Respondents on 21st June 2019 and 16th November 2020

Decided on: 3rd June 2021

Arjuna Obeyesekere, J., P/CA

The Petitioner, an employee of the 1st Respondent, the Tower Hall Theatre Foundation has filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the letter dated 24th March 2011 marked 'P23' by which the Petitioner was placed on compulsory leave;
- b) A Writ of Certiorari to quash the letter dated 13th June 2012 marked 'P34' by which the Petitioner had been placed under interdiction with effect from 7th June 2012;
- c) A Writ of Certiorari to quash the charge sheet dated 27th June 2012 marked 'P35' served on the Petitioner;
- d) A Writ of Mandamus to reinstate the Petitioner in the post of Director (Finance);
- e) A Writ of Prohibition preventing the 1st – 17th Respondents from conducting a domestic inquiry against the Petitioner.

On 22nd October 2012, this Court has issued an *ex-parte* interim order restraining the Respondents from holding a domestic inquiry pending the final determination of this application. When this matter was taken up for argument on 16th July 2020, the learned Counsel for the Petitioner informed this Court that the Petitioner would not be pursuing the aforementioned Writs of Mandamus and Prohibition as the Petitioner had reached the age of retirement – 60 years – in 2019, leaving this Court to only consider the Writs of Certiorari to quash 'P23', 'P34' and 'P35'.

The facts of this matter very briefly are as follows.

The Petitioner states that he was employed at the Building Materials Corporation as an Accounts Assistant from 1st October 1985. By letter dated 8th January 1987 marked 'R2', the Petitioner had been released by the Building Materials Corporation to the 1st Respondent to work as its Accountant. The Petitioner claims that the Building Materials Corporation promoted him as Accountant - Grade IV in 1987 and as Accountant – Grade III in 1991, but that he continued to work for the 1st Respondent.

By letter dated 29th January 1993, marked 'R3', the Petitioner was informed that he had been absorbed to the National Housing Development Authority as Accountant – Grade V. The Petitioner admits that he consented to the said absorption. The Respondents submit that by its decision dated 11th January 1995 marked 'R7', the Cabinet of Ministers had approved the absorption of the Petitioner to the permanent staff of the 1st Respondent. This decision however had been reversed by the Cabinet of Ministers, as borne out by the decision of the Cabinet of Ministers dated 26th July 1995 marked 'R8'. In terms of 'R8', the six persons named therein, including the Petitioner, were to be released to their previous places of employment. Thus, in terms of the decision of the Cabinet of Ministers, the Petitioner was required to report to the National Housing Development Authority.

By letter dated 24th August 1995 marked 'R11' the 1st Respondent had directed the Petitioner to report to the Ministry of Housing on 1st September 1995. Even though the Petitioner had handed over his duties at the 1st Respondent on 1st September 1995 –

vide 'R12' and 'R13'- the Petitioner had informed the 1st Respondent that he would not report for duty at the Ministry of Housing in view of an appeal filed by him. The Petitioner had been repeatedly advised by the 1st Respondent as well as the National Housing Development Authority to report for duty – vide letters marked 'R14', 'R15' and 'R16'. The Petitioner however had failed to do so, prompting the National Housing Development Authority to treat the Petitioner as having vacated his post on 23rd December 1995 – vide 'R17'.

Prior to 'R17' – i.e. on 25th September 1995 - the Petitioner had filed an application in the Labour Tribunal alleging that the 1st Respondent had terminated his services with effect from 1st September 1995. It is clear that the 1st Respondent was only complying with a decision of the Cabinet of Ministers when it directed the Petitioner to report to the Ministry of Housing. In spite of the 1st Respondent not having issued the Petitioner with a letter of appointment as at that date and the 1st Respondent taking up the position that the Petitioner was not an employee, the Labour Tribunal, by its order delivered on 5th March 1999 marked 'P3a', had held with the Petitioner and directed that the Petitioner be reinstated in the same post that he held at the 1st Respondent with back wages, or in the alternative to pay the Petitioner a sum of Rs. 651,106 as compensation. Although the 1st Respondent had filed an appeal against the said Order in the High Court of the Western Province holden at Colombo, the said appeal had been withdrawn.

The Petitioner had accordingly resumed duties at the 1st Respondent on 5th April 2002. This would perhaps be an appropriate stage to discuss the specific designation of the post held by the Petitioner in the 1st Respondent, as this issue seems to have soured the relationship between the parties, and given rise to the issuance of the letter 'P23'.

As noted earlier, the Petitioner had not been issued with a letter of appointment by the 1st Respondent. It is not disputed that the Petitioner assumed duties at the 1st Respondent in 1987 in the post of Accountant. The Respondents state that on 1st February 1995, Mr. Ranjith Dharmakeerthi assumed duties as the Director General of the 1st Respondent (vide 'R4'). The Respondents state further that the Petitioner, by a

letter written on the same date marked 'R5', had represented himself to the new Director General that his designation is *Director (Finance)* and had thereafter continued to refer to himself as *Director (Finance)* of the 1st Respondent.

The Respondents however state that the proper designation of the Petitioner is not Director (Finance) but Accountant, as borne out by the following:

- Letter dated 8th February 1995, marked 'R5A';
- Letter dated 8th March 1995, marked 'R6';¹
- Board paper dated 19th September 1995, marked 'R9';
- Letter dated 24th August 1995, marked 'R11'; and
- Letter dated 11th January 1996, marked 'R17'.

By its decision taken on 7th August 1996 marked 'R21', the Cabinet of Ministers had changed the designation of *Director (Finance)* in the 1st Respondent to *Accountant*. While the above change in designation took place during the period the Petitioner's application was pending in the Labour Tribunal, by the time the Petitioner assumed duties at the 1st Respondent, there was no such post by the designation of *Director (Finance)*. Be that as it may, having resumed duties at the 1st Respondent, at the request of the Petitioner – vide 'P8'- the Petitioner had been issued with a letter of appointment in the post of Director (Finance) – vide 'P11a' and 'P11b'.

The issue that culminated in the Petitioner being sent on compulsory leave in March 2011 arose in June 2007, when the Petitioner, by his letter dated 19th June 2007 marked 'R23' sought the payment of four salary increments arising from the absorption of the Petitioner to the 1st Respondent in January 1995. Although the Senior Manager (Administration) of the 1st Respondent had rejected 'R23', at the request of the Petitioner, the matter had been submitted to the Director General of the 1st Respondent. The Director General had placed this issue before the Board of Trustees of the 1st Respondent, which in turn had decided to refer the issue to the Internal Audit Division of the Ministry of Cultural Affairs.

¹ 'R6' has been issued by the NHDA when the Petitioner was released to the 1st Respondent.

The Internal Audit Division, while holding that the Petitioner is not entitled to any increments, had pointed out the above discrepancy relating to the designation of the post held by the Petitioner – vide reports marked 'R26' and 'R26a'. The Board of Trustees of the 1st Respondent, having considered the said reports, had arrived at a decision dated 16th June 2009 – marked 'R27' – to implement the decision of the Cabinet of Ministers – 'R21' – to re-designate the post of Director (Finance) as Accountant. The Board of Trustees had decided further to appoint the Petitioner to the post of Accountant and to continue to pay him the salary and other allowances that were being paid as at that date. This decision had been communicated to the Petitioner by letter dated 23rd June 2009, marked 'P15'. The Petitioner is not challenging this letter in this application.

The Petitioner, being dissatisfied by 'P15' had appealed against the said decision, on the basis that the order of the Labour Tribunal was to reinstate him in the post of Director (Finance) and that any re-designation is illegal. I must state that in its award, the Labour Tribunal did not specify the designation in which the Petitioner should be reinstated, except to state that the Petitioner should be reinstated in the same post he held prior to 1st September 1995. As I have observed, even as at 1st September 1995, there was ambiguity as to the nomenclature of the post held by the Petitioner. This was however laid to rest with the aforementioned decision 'R21' of the Cabinet of Ministers. Thus, by the time the Petitioner assumed duties in 2002, there was no post by the name of *Director (Finance)* and the Petitioner should therefore have been reinstated in the post of Accountant. I therefore do not see any illegality in the decision reflected in 'P15'. I must reiterate that the terms of employment of the Petitioner and the emoluments paid to the Petitioner were not affected by 'P15'.

In addition to the appeal to the Board of Trustees, the Petitioner had lodged an appeal with the Secretary to the Prime Minister – vide 'R30', probably for the reason that the Prime Minister is the Chairman of the Board of Trustees of the 1st Respondent, and the

Secretary to the Prime Minister is a member of the Board of Trustees.² This appeal culminated in:

- a) The Director General of the 1st Respondent tendering a report dated 16th November 2010, marked 'R32' to the Secretary to the Prime Minister;
- b) The Secretary to the Prime Minister appointing Mr. Mahinda Bandusena, a retired Additional Secretary to the Prime Minister, to consider 'R32';
- c) The Board of Trustees considering 'R32' and arriving at a decision on 24th March 2011, marked 'R34' to place the Petitioner on compulsory leave as 'R32' had disclosed several breaches of discipline by the Petitioner;
- d) A decision by the Board of Trustees that a preliminary investigation must be conducted into the said incidents of misconduct;
- e) The Petitioner being informed of the said decision by 'P23' dated 24th March 2011.

The Director General of the 1st Respondent had appointed Mr. U.H. Liyanage to conduct a preliminary investigation. However, as a result of Mr. Mahinda Bandusena expressing the view in his report dated 20th April 2011 marked 'R37', that the post of Director (Finance) had been abolished by the Cabinet of Ministers in 1996 and is therefore a non-existent position, the Secretary, Ministry of Culture and the Arts too had appointed a three member Committee to conduct a preliminary investigation against the Petitioner. For this reason, the Board of Trustees of the 1st Respondent had discontinued with the preliminary investigation of Mr. U.H. Liyanage and decided to proceed with the above three committee.

By its report dated 22nd August 2011 marked 'R45', the three member committee had pointed out several irregularities relating to the activities of the Petitioner, and had recommended that a more detailed investigation be carried out by a person with a legal background. The Board of Trustees of the 1st Respondent had thereafter directed the

² Vide Section 3(1)(a) and (e), respectively.

Director General to comply with the said recommendation. Even though the Director General had requested Mr. U.H. Liyanage to conduct the inquiry, due to objections raised by the Petitioner, the Board of Trustees had decided not to proceed with Mr. Liyanage, and had requested the Secretary to the Prime Minister to appoint a suitable officer to conduct the preliminary investigation. The Board of Trustees having approved the appointment of the 18th Respondent (K.C. Jayaratne) – vide ‘R49’ – the 18th Respondent had conducted the investigation together with U.L. Ariyapala, in the course of which a statement from the Petitioner had been recorded. By his report marked ‘R52’, the 18th Respondent had recommended as follows:

“මෙම නිලධාරියා රජයේ මුදල් වංචා සහගතව ලබාගෙන ඇත. උසස් නිලධාරීන් වෙත අසත්‍ය තොරතුරු සපයා එම නිලධාරීන්ගෙන් අයුතු වාසි ලබාගැනීමට කටයුතු කර ඇත. කුඩා ලේඛණ සකස් කර උසස් නිලධාරීන් නොමග යවා ඇත. මෙම නිලධාරියාගේ විෂමචාරයන් සම්බන්ධයෙන් විනයානුකූලව කටයුතු කිරීම සුදුසුය.”

The 18th Respondent had also submitted a draft charge sheet for the consideration of the 1st Respondent.

The Board of Trustees of the 1st Respondent, having considered ‘R52’ had arrived at the following decision on 7th June 2012 – vide ‘R53’:

“ගණකාධිකාරී ඒ ජේ මලවරආරච්චි මහතා සම්බන්ධයෙන් මූලික විමර්ශන වාර්තාව සහ චෝදනා පත්‍ර කෙටුම්පත

ටවර් හෝල් රහභල පදනමේ ගණකාධිකාරී ඒ ජේ මලවරආරච්චි මහතා සම්බන්ධයෙන් මූලික විමර්ශනයක් පැවැත්වීමට පත්කළ මූලික විමර්ශන නිලධාරී කේ සී පයරත්න මහතා සහ යූ එල් ආරියපාල යන මහත්වරුන් විසින් එම පරීක්ෂණ නිමකර ලබාදෙන ලද මූලික විමර්ශන වාර්තාව සහ චෝදනා පත්‍රය මෙම පත්‍රිකාවෙන් ඉදිරිපත් කර තිබුණි.

02 උක්ත විමර්ශන වාර්තාවේ නිර්දේශයන් සලකා බැලූ භාරකාර මණ්ඩලය ඒ ජේ මලවරආරච්චි මහතාගේ සේවය පුති මස 07 වැනි දින සිට අත්හිටුවා චෝදනා පත්‍රය නිකුත් කර විධිමත් විනය පරීක්ෂණයක් පැවැත්වීමට කටයුතු කරන ලෙස උපදෙස් දෙමින් ඒ සඳහා අනුමැතිය ලබාදෙන ලදී.”

The 1st Respondent had thereafter interdicted the Petitioner and served the charge sheet ‘P35’.

Aggrieved by the decision to serve a charge sheet, the Petitioner filed this application, seeking *inter alia* Writs of Certiorari to quash the Charge Sheet (**'P35'**), as well as the letter by which the Petitioner had been sent on compulsory leave (**'P23'**) and the letter by which the Petitioner had been placed under interdiction (**'P34'**).

In considering the relief sought by the Petitioner, I must bear in mind the three grounds identified by Lord Diplock in **Council of Civil Service Unions vs Minister for the Civil Service**³ as being the grounds upon which administrative action is subject to control by judicial review. The first is 'illegality', the second is 'irrationality' and the third is 'procedural impropriety'.

The learned Counsel for the Petitioner submitted that the issue relating to his designation has already been decided by the Labour Tribunal and that the same matter is being raised by the Respondents through the various charges in **'P35'**. This is a defence that must be presented by the Petitioner to the Inquiry Officer and it is not the function of this Court to decide on such issues.

The Petitioner is not complaining that the actions of the Respondents are irrational. The complaint of the Petitioner is that the 1st Respondent acted illegally and did not follow the proper procedure when it issued the aforementioned three letters.

Illegality and *Procedural Impropriety* have been described by Lord Diplock in the following manner:

“By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it.

I have described the third head as 'procedural impropriety' rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because

³ 1985 AC 374

susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice."

The 1st Respondent has been established by the Tower Hall Theatre Foundation Act No. 1 of 1978. The powers of the 1st Respondent are set out in Section 7. In terms of Section 7(2)(e), the 1st Respondent has the power *'to appoint, employ and remunerate officers and servants of the Foundation and to make rules regarding the appointment, promotion, remuneration and disciplinary control of its employees and the grant of leave and other benefits to them'*.

The Petitioner has produced marked 'P1', the Manual of the 1st Respondent issued in 1997. The disciplinary procedure relating to employees is set out in Parts 2 and 3 of Chapter 2 and can be summarised as follows:

- a) An employee can be interdicted or sent on compulsory leave where a preliminary investigation reveals that he/she has been involved in any wrongdoing or where such a course of action is in the best interests of the 1st Respondent– vide paragraph 11(a);
- b) The proper authority who shall take the decision to interdict or send on compulsory leave an employee of the 1st Respondent is its Director General – vide paragraph 11(b)(i);
- c) Where the employee concerned is in an Executive Grade, the Board of Trustees shall be informed of such decision – vide paragraph 11(a);
- d) The power to appoint a suitable person to carry out a preliminary investigation in order to ascertain the veracity of the breach of discipline is with the Director General – vide paragraph 18(a);

- e) Where the Director General is of the view that a disciplinary inquiry must be held against an employee who is holding an executive position, he shall in the first instance report such fact to the Board of Trustees – vide paragraph 17;
- f) A disciplinary inquiry can be held only where the Board of Trustees is of the view that such an inquiry must be held – vide paragraph 17;
- g) While the Director (Administration) or a person nominated by him has been entrusted with the task of preparing the charge sheet, the charge sheet should be approved by the Director General – vide paragraph 21.

Having identified the procedure laid down in the Manual 'P1', I shall now consider whether the decision to (a) send the Petitioner on compulsory leave, (b) appoint an officer to conduct a preliminary investigation, (c) interdict the Petitioner, and (d) issue a charge sheet has been taken in accordance with the above provisions.

I have already observed that the entire process that culminated in the Petitioner being issued a charge sheet commenced with the appeal made by the Petitioner himself to the Secretary to the Prime Minister – vide 'R30'. What followed were a report by the Director General ('R32') and a report by a retired Additional Secretary to the Prime Minister. 'R32' was considered by the Board of Trustees on 24th March 2011 and the decision to place the Petitioner on compulsory leave was taken by the Board of Trustees – vide 'R34'. It is therefore clear that the decision to send the Petitioner on compulsory leave is in substantial compliance with the requirements of 'P1'. The decision to conduct a preliminary investigation has also been taken by the Board of Trustees – vide 'R34'. I therefore do not see any illegality in the appointment of an Officer to conduct a preliminary investigation.

As noted earlier, the preliminary investigation was conducted by a three member committee, as well as by the 18th Respondent, who was appointed with the approval of the Board of Trustees.

The decision to interdict the Petitioner has been taken by the Board of Trustees – vide '**R53**'. Furthermore, in terms of the Manual '**P1**', the decision to conduct a disciplinary inquiry must be taken by the Board of Trustees. This too has been complied with – vide the decision of the Board of Trustees marked '**R53**'.

The learned Counsel for the Petitioner submitted that the draft charge sheet has been prepared by the 18th Respondent who conducted the preliminary investigation, and not by the Director (Administration). This position is correct. The learned Counsel for the Petitioner has drawn the attention of this Court to the judgment of the Supreme Court in **University of Ruhuna and others vs Dr. Dharshana Wickremasinghe**⁴ it was held that in terms of the Universities Act, the duty to prepare the charge sheet is with the Council of the University itself and that it would not suffice if the charge sheet is merely approved by the Council.

However, in this instance, the failure on the part of the Director (Administration) to prepare the charge sheet is not fatal, for two reasons. The first is that the preparation of the charge sheet can also be done by a person nominated by the Director (Administration), which therefore shows that it is not mandatory that the charge sheet should be prepared by the Director (Administration). The second and the more important reason is that while the requirement is that the charge sheet must be approved by the Director General, in this instance, the charge sheet has been approved not only by the Director General but by the Board of Trustees. I therefore do not see any merit in the submission of the learned Counsel for the Petitioner.

In these circumstances, I am satisfied that there has been no illegality or procedural impropriety in the process that culminated in the interdiction of the Petitioner and the issuance of the charge sheet. Therefore, I do not see any legal basis to grant the Petitioner the relief prayed for.

The necessary consequence of the above decision is that the disciplinary inquiry must proceed against the Petitioner. However, such a course of action is not possible in view

⁴ SC Appeal No. 111/2020; SC minutes of 9th December 2016.

of the Petitioner having reached the age of retirement in 2019. To deprive the Petitioner the retirement benefits that the Petitioner would be entitled to, in the absence of an inquiry and a determination with regard to the charges, would not be fair. Hence, if employees of the 1st Respondent are entitled to the payment of gratuity under and in terms of the Payment of Gratuity Act No. 12 of 1983, I direct that the 1st Respondent pay the Petitioner the gratuity that the Petitioner would be entitled to under the said Act, calculated at the salary drawn by the Petitioner at the time of his interdiction, for the period that the Petitioner served with the 1st Respondent until his interdiction.

Subject to the above, this application is dismissed, without costs.

President of the Court of Appeal