

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

*In the matter of an application for mandates in
the nature of a Writ of Certiorari in terms of
Article 140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

CA/WRIT/57/2022

C. D. Aluwihare
Deltota Estate,
Galaha.

Petitioner

Vs.

1. Janatha Estates Development Board
No. 55/75, Vauxhall Lane,
Colombo 02.
2. Mr. Wg. Cmdr. Buwanaka D.
Abey Suriya
Chairman,
Janatha Estates Development Board,
No. 55/75, Vauxhall Lane,
Colombo 02.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Uditha Egalahewa PC with Thilini Payagala Bandara for the Petitioner.
Dr. Sunil Cooray with Nilanga Perera for the 1st and 2nd Respondents.

Argued on : 01.06.2022, 22.07.2022 and 03.08.2022

Written Submissions: Petitioner - 04.05.2022 and 30.08.2022
1st to 2nd Respondents - 06.09.2022

Decided on : 06.10.2022

Sobhitha Rajakaruna J.

The Petitioner is currently serving as a Superintendent at the 1st Respondent, Janatha Estate Development Board ('JEDB') and is in-charge of the Deltota Estate situated at Galaha. The Petitioner's date of birth according to the available documents is 17.11.1964 and accordingly, he reached the age of 57 on 17.11.2021. The Board of Directors of the JEDB has taken a decision to extend the services of the Petitioner by 6 months beyond the age of 57 and send him on retirement by 16.05.2022. This decision of the JEDB was communicated to the Petitioner by letter dated 10.12.2021, marked 'P3'.

The Petitioner is seeking, inter alia, for a writ of Certiorari to quash the decision reflected in the letter dated 10.12.2021, marked 'P3'.

The Petitioner's primary argument is that by the Public Enterprise Circular No. 01/2013 dated 15.01.2013, marked 'P4', the employees of the Public Enterprises have been granted an option to serve up to the compulsory age of retirement, i.e., 60 years of age, without seeking extensions. The Petitioner further asserts that he is now entitled to serve up to the compulsory age of retirement, i.e., 62 years, without applying for an extension of service as the above Circular was revoked by the Public Enterprise Circular 02/2021 dated 14.12.2021, marked 'P5'.

As opposed to such argument, the Respondents raise the following arguments;

- (i) the contract of employment between the Petitioner and the JEDB deals with matters relating to the retirement age of the Petitioner,
- (ii) the appointment and the termination of the Petitioner are purely governed by the contract of employment and it has no statutory avail; thus, a writ of certiorari does not lie upon the impugned decision 'P3' to retire the Petitioner at the age of 57 years after giving an extension for a period of 6 months;

- (iii) the PE Circular 02/2021 is not a statute and has not been issued under any statutory provision or authority; thus, any act or omission under the said Circular would not attract the remedy of a writ of Certiorari.
- (iv) Even in pursuant to the new Circular marked 'P5', the JEDB is empowered under Clause III therein to send the Petitioner on retirement upon the Petitioner completing 57 years of age, with 6 months notice.

At the hearing stage of this application both parties conceded that the questions to be determined in this application are identical to the questions in CA/Writ/04/2022. The judgement in the said application in CA/Writ/04/2022 has been already delivered on the same date of this judgement.

Based on the reasons given in CA/Writ/04/2022 and also considering all the circumstances of this case, I apply the same conclusions arrived in the said CA/Writ/04/2022 in this application as well. Accordingly, I hold that;

1. the PE Circular 01/2013 and PE Circular 02/2021 have the statutory flavour and are issued under due authority to disseminate directions or the policy to which certain Statutes give legal force.
2. the PE Circular 01/2013 and PE Circular 02/2021 should be applicable to JEDB as it is a State-Owned Public Enterprise/ Statutory Board.
3. the reason that the JEDB has selectively and expressly adopted and/or applied PE Circular 01/2013 in the said 'P3' is itself sufficient to reject the argument of the Respondents that the PE Circular No. 02/2021 has not been issued under any statutory provision.
4. the Respondents' assertions that the appointment and the termination of the Petitioner are purely governed by the contract of employment and it has no statutory avail, should be rejected.
5. any act or omission, under the said PE Circular 01/2013 and/or PE Circular 02/2021, committed by the Respondents in pursuant to the terms of the contract of employment are certainly reviewable by a Court exercising the jurisdiction of Judicial Review.
6. in reference to Clause III of PE Circular 01/2013 and Clause III of PE Circular 02/2021, the Respondents have failed to demonstrate that they have conducted a

reasonable inquiry and also carried out a proper assessment on the efficiency & the performance of the Petitioner.

7. the impugned letter 'P3' which is based on PE Circular 01/2013 has become null and void due to the mere reason that the said PE Circular 01/2013 has been revoked before the decision reflected in 'P3' has been fully accomplished.
8. the said PE Circular 02/2021 is deemed to be the current 'law' regulating the retirement age of employees of Public Corporations, Boards etc.

Based on my above findings and also taking in to consideration all the circumstances of this case, I proceed to issue a writ of certiorari as prayed for in paragraph (e) of the prayer of the Petition.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal