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 Writs of Certiorari, Prohibition and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRIT/215/2022

W. G. Chamila
No. 701/1, First Lane,
Kaduwela Road,
Thalangama North,
Battaramulla.

Petitioner

Vs.

1. Urban Development Authority
   "Sethsiripaya",
   Battaramulla.

2. Major General (Retd.) Udaya Nanayakkara
   Chairman,
   Urban Development Authority,
   "Sethsiripaya",
   Battaramulla.

3. N. P. K. Ranaweera
   Director General,
   Urban Development Authority,
   "Sethsiripaya",
   Battaramulla.

4. W. A. S. Sumanasooriya
   Deputy Director General (Human Resources and Administration),
   Urban Development Authority,
   "Sethsiripaya",
   Battaramulla.

5. K. M. P. G. D. K. Kekulandara
   Director (Human Resources and Administration),
   Urban Development Authority,
   "Sethsiripaya",
   Battaramulla.

6. R. N. D. Withanage
   Inquiry Officer,
   Urban Development Authority,
   "Sethsiripaya",
   Battaramulla.

7. Prasanna Ranatunga
   Minister of Urban Development and Housing,
   17th and 18th Floors,
   "Suhurupaya",
   Subhutipura Road,
   Battaramulla.

8. P. H. C. Rathnayake
   Secretary,
   Ministry of Urban Development and Housing,
   17th and 18th Floors,
   "Suhurupaya",
   Subhutipura Road,
   Battaramulla.

Respondents

Before **:** Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel **:** Faizer Musthapha PC with Pulasthi Rupasinghe for the Petitioner.

Manoli Jinadasa with Lasantha Thiranagama for the 1st to 6th Respondents.

Argued on **:** 06.09.2022

Written Submissions : Petitioner - 06.10.2022

1st to 6th Respondents - 29.09.2022

Decided on : 26.10.2022

Sobhitha Rajakaruna J.

The Petitioner is seeking, inter alia, to quash the decision ('P5') of the 3rd Respondent to interdict the Petitioner and to commence a preliminary investigation. The Petitioner is also challenging the contents of the charge sheet ('P10a') issued against her.

The Petitioner was serving as an Assistant Director (Planning) at the Urban Development Authority, the 1st Respondent ('UDA') during the time the Petitioner was interdicted. The Petitioner's services has been suspended by letter dated 09.03.2022, marked 'P5', on the pretext of an allegation that the Petitioner had unduly accepted a sum of Rs.25,000.00 from two persons, namely Mrs. M.P. Sonali Peiris ('Mrs. Peiris') and Mr. H. K. Nilusha Padmendra (the husband of Mrs. Peiris) during office hours, within the office premises, upon a matter which doesn't come within the purview of the Petitioner.

The defense taken up by the Petitioner in regard to such allegation is that she has never requested such money and she has only given some tips to Mrs. Peiris who had come to UDA with her husband to collect the preliminary planning clearance which had been approved by UDA in respect of the property of Mrs. Peiris.

Preliminary objections.

The 1st to 6th Respondents ('Respondents') assert that the application of the Petitioner should be dismissed in limine solely on the following preliminary objections;

i. the Petitioner is guilty of laches;
ii. the reliefs sought by the Petitioner do not warrant this Court to exercise writ jurisdiction as there are alternate and effective legal remedy available to the Petitioner under the Industrial Disputes Act in respect of the alleged grievance;
iii. the relationship between the parties of this case is purely contractual and thus, no writ of Certiorari/ Mandamus/ Prohibition would lie;

iv. the relief sought by the Petitioner by way of a writ of Prohibition to prohibit the Respondents conducting a preliminary investigation is futile as such preliminary investigation has already been concluded. Based on the same grounds, no writ of Certiorari can be issued to quash the decision to commence a preliminary investigation.

Laches.

The Respondents assert that the Petitioner is guilty of laches. The Respondents relied on the judgements of ***Rajakaruna vs. Minister of Finance, CA/Writ/2045/80 decided on 11.02.1985; Ratnayake vs. Jayasinghe (1975) 78 NLR 35; Issadeen vs. The Commissioner of National Housing (2003) 2 Sri. L.R. 10; Gunasekara vs. Weerakoon 73 NLR 262; Sarath Hulangamuwa vs. Siriwardane, Principal of Vishaka Vidyalaya and 5 others (1986) 1 Sri. L.R. 272 (at p. 273); Shums vs. People's Bank (1983) Sri. L.R. 197; President-Malalgoda Co-operative Society vs. Arbitrator of Co-operative Society 51 NLR 167; Bisomenika vs. C. R. de Alwis* (*1982) 1 SLR 368; Seneviratne vs. Tissa Dias Bandaranayake and another (1999) 2 Sri. L.R. 341.***

When examining the dicta of all above cases, the principle well established is that the Court in Judicial Review has the discretion to assess whether there is an undue delay and also the Court can grant discretionary remedy if the impugned order or decision is manifestly erroneous and issued without jurisdiction. I need to draw my attention to the following paragraph in the case of ***Biso Menika vs. Cyril de Alwis and Others (1982) 1 SLR 368 (p. 379,380)***, a Judgement which was among those referred to by the learned Counsel for the Respondents. Sharvananda J. has observed in that case**;**

> "*…When the Court has examined the record and is satisfied the Order complained of is manifestly erroneous or without jurisdiction the Court would be loathe to allow the mischief of the Order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection…*
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> *…Unlike in English Law or in our Law there is no statutory time limit within which a petition for the issue of a Writ must be filed. But a rule of practice, has grown which insists upon such petition being made without undue delay. When no time limit is specified for*

seekiing such remedy, the Court has ample power to condone delays, where denial of Writ to the petitioner is likely to cause great injustice. "

The Petitioner has been interdicted on 09.03.2022 ('P5') and the Petitioner has filed the instant application on 15.06.2022. The Petitioner has come to this Court within 98 days from the impugned interdiction. The Respondents themselves state that the Petitioner has decided to invoke the jurisdiction of this Court after viewing the video footage and also listening to the recordings of telephone conversations relating to the complaints against the Petitioner. Hence, I use my discretion to arrive at a conclusion that there is no undue delay on the part of the Petitioner to come to this Court and I overrule the preliminary objection of the Respondents on laches.

Writ Jurisdiction vis-a-vis disputes arising out of Contract of Employment.

The Respondents strongly argue that this Court cannot exercise its Writ Jurisdiction as the nature of the dispute in the instant application is based on a contract of employment between the UDA and the Petitioner.

The Respondents heavily relied on the cases of ***Ranjith Upali Kumara Dissanayake vs. The People's Bank and 15 others, CA/Writ/241/2018 decided on 12.11.2018; Jayawickrema vs. NSB, CA/Writ/112/2016 decided on 18.11.2020; Gawarammana vs. Tea Research Board and others (2003) 3 Sri. L.R. 120 (at p.122); U. L. Karunawathie vs. People's Bank and others, CA/Writ/893/2010 decided on 11.05.2015; Piyasiri vs. People's Bank (1989) 2 Sri. L.R. 47; A. R. A. Sathar vs. People's Bank, CA/Writ 195/2008 decided on 12.12.2012; K. S. De Silva vs. National Water Supply and Drainage Board (1989) 2 Sri. L.R. 1; Rodrigo vs. The Municipal Council, Galle & another 49 NLR 89; Premaratne vs. People's Bank and others (2004) 3 Sri. L. R. 156; De Alwis vs. Silva 71 NLR 108; Galle Flour Milling (Pvt) Limited vs. Board of Investment of Sri Lanka and another (2002) BLR 10; Jayaweera vs. Wijeratne (1985) 2 Sri. L.R. 413; Weligama Multi Co-operative Society vs. Daluwatte (1984) 1 Sri. L.R. 195 (at p.199); Lanka Marine Services (Pvt) Ltd. vs. Sri Lanka Ports Authority (2010) BLR 187***

I have already dealt with this question in ***Devendra Budalge Sudesh Lalitha Perera vs. Janatha Estates Development Board and others, CA/WRIT/004/2022 decided on 06.10.2022.*** In line with the precedent laid down by several related judgements, the approach taken by me with the concurrence of my brother judge in the said case was that this Court has the discretionary power to exercise its writ jurisdiction even on a question arising out of a

contract of employment if the disciplinary order of a public authority was in breach of statutory restrictions/provisions and also if the employer has taken a decision assuming a jurisdiction which he does not have or exceeding his jurisdiction by violating a statutory requirement which eventually comes under any of the established grounds of judicial review. In the said ***Devendra Budalge*** case this Court held;

> "The general perception is that the contractual and commercial obligations are enforceable by ordinary actions and not by judicial review. However, with the judicial activism within the realm of judicial review, our Courts as well as English courts have deviated in many occasions from the above general rule. As such many Judges have shown a tendency to favour the inclusion of contractual obligations in judicial review in order to disallow administrative power to be escaped from judicial control. The below mentioned passage in ***Kumudini Madugalle vs. National Housing Development Authority, CA/Writ/540/2019 decided on 16.06.2020*** is very much apt here;
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> > "I must make clear this Judgement shall not be taken to mean that violations based on contracts by public bodies are totally outside writ jurisdiction. There is no such blanket prohibition. Each case shall be treated separately. De Smith in his treatise[1] at page 148 states "The existence of a possibility of a private law claim does not by itself however, make judicial review inappropriate.""
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> Moreover, it has been decided in ***R vs. British Coal Corporation ex parte Vardy (1993) ICR 720*** that if the dismissal was in breach of statutory restrictions, a quashing order will lie to quash it. (Also see-***Administrative Law by Wade and Forsyth, (11th Edition) Oxford*** **at page 537**)."

The pivotal argument of the Petitioner in the instant application is that the Respondents have acted in contrary to the provisions of the Establishment Code ('E-Code'). It is observed as per the decision ('R1') of the Board of Management of UDA that the Volume II of E-Code regarding the disciplinary action in respect of its employees have been adopted by the UDA.

[1] De Smith's Judicial Review (8th Edition)

I take the view that the said E-Code is deemed to be the current 'law' regulating the appointment, transfer, dismissal or disciplinary control of public officers. Similar pronouncement has been made by the Supreme Court in ***Elmore Perera v. Major Montagu Jayawickrema, Minister of Public Administration and Plantation Industries and Others 1985 1 Sri. L.R. 285 (at p. 335)***. The following dicta of the said case has been followed by the Court of Appeal in ***Pathirana vs. Victor Perera, DIG-Personal Training Police (2006) 2 Sri. L.R. 281;***

> *"The Establishments Code is the basic document relating to procedures of disciplinary action against public officers. It has been formulated by the Cabinet of Ministers under Article 55(4) of the Constitution in whom such a power is reposed. This formulation has the characteristics of a policy decision as it deals with the broad principles and procedures governing disciplinary action against officers of practically the entire public service in this country……"*
>
> *"……The administration of the public service is now an internal matter of the Executive. It would however appear that the Cabinet, after due deliberation, has sought to formulate a Code of regulations containing fair procedures and safeguards balancing the requirements and interests of the Government with the rights of public officers, and the legal protection now provided by the law to public officers is contained in this Code. These procedures are therefore mandatory and cannot be superseded or disregarded without due legal authority."*

Therefore, I take the view that this Court need to examine whether the Respondents have violated any statutory provisions when making a disciplinary order in reference to the contract of employment. In light of the above, I reject the preliminary objection raised by the Respondents on the jurisdiction of this Court.

Alternative Remedy.

The Respondents contend that the Petitioner has not exercised the effective and alternative remedy available to her under the Industrial Disputes Act. However, it is observed that the Respondents have failed to identify a particular remedy under the said Industrial Disputes Act which would be available to the Petitioner at this juncture.

The Respondents have cited the below mentioned cases in view of establishing the fact that this Court should refrain from granting reliefs in the nature of a Writ of Certiorari or

a Writ of Prohibition when an effective and alternative remedy is available to the Petitioner.

> ***Obeysekera vs. Albert and others (1978-79) 2 Sri. L.R. 220; Ranaweera vs. Chairman Ceylon Petroleum Corporation and others (2005) 2 Sri. L.R. 192; Rodrigo vs. The Municipal Council, Galle 49 NLR 89; Bhambra vs. Director of Customs and others (2002) 3 Sri. L.R. 240; Rev. Maussagolle Dharmarakkitha Thero and another vs. Registrar of Lands & others (2005) 3 Sri. L.R. 113; Hendrick Appuhamy vs. John Appuhamy 69 NLR 32; Baldwin and Francis Ltd. vs. Patents Appeal Tribunal and others (1958) 2 All ER 368 (CA)***

I agree to a great extent on principle with the Respondents' said argument based on the dicta of the above judgements. But I am mindful of the fact that the Petitioner's services have not been formally terminated up to date for her to recourse to the Labour Tribunal under section 31(B)(1) of the said Industrial Disputes Act. Perhaps, the Petitioner may formulate a case in the Labour Tribunal on constructive termination and however, this Court is unable to consider at this stage such option as an adequate and efficacious alternative remedy available to the Petitioner based on the circumstances of this case.

The well-established principle is that the Judicial Review is available if the alternative remedy is not adequate and efficacious. In ***E.S. Fernando vs. United Workers Union and another 1989 2 Sri. L.R. 199***, the Supreme Court has held that it is wrong to regard Section 20(1) of the Industrial Disputes Act, which deals with the termination of an Arbitrator's award, as an alternative remedy in relation to proceedings for a writ of certiorari.

Taking all the circumstances of this case, I am not inclined to dismiss the instant application of the Petitioner solely on the issue of the availability or non-availability of an adequate and efficacious remedy for the Petitioner.

Interdiction– E-Code.

The Petitioner's argument is that in terms of the Clause 31:5:1 of the E-Code there is a precondition which requires the UDA to consider evidence to the effect that the continuance of Petitioner in service is detrimental to the holding of the preliminary investigation against her.

In terms of Clause 31:5:1 of Chapter XLVIII of the E- Code, the UDA may interdict an officer even before holding a preliminary investigation where it is evident that the continuance of the officer in service is detrimental to the holding of a preliminary investigation.

The Clause 31 of the said chapter of the E-Code deals with 'Interdiction and Compulsory Leave'. The Clause 31:1 of the E-Code provides that where it is disclosed, prima facie, that a public officer has committed either one or some or all of the acts of misconduct mentioned in the said Clause, the relevant disciplinary authority may **forthwith** interdict the officer concerned. Even a Head of the Department not holding disciplinary authority also may forthwith interdict subject to the covering approval of the disciplinary authority.

It is important here to assess the strength of the word "forthwith" embodied in the said Clause 31:1. In the case of ***Queen vs. The Justices of Berkshire [(1878-79) 4 Q.B.D. 469 (471)],*** the meaning of "**forthwith**" has been discussed and the following passage therein, in my view, is very much pertinent;

> *"The question is substantially one of fact. It is impossible to lay down any hard and fast rule as to what is the meaning of the word 'immediately', in all cases. The words 'forthwith' and 'immediately' have the same meaning. They are stronger than the expression 'within a reasonable time', and imply prompt, vigorous action, without any delay, and whether there has been such action is question of fact, having regard to the circumstances of the particular case".*

In ***Soysa vs. Anglo-Ceylon and General Estates Co. (1916) 19 N. L. R. 374***, Wood Renton C.J. has held;

> *"In my opinion the word " forthwith in the enactment in question should be construed as meaning, not within a period reasonable in the circumstances, " but " without any delay that can possibly be avoided. "*

The provisions of Clause 31:4 of the E-Code disclose that a public officer should be interdicted after a preliminary investigation but that is under normal circumstances. The said Cluse 31:4 and also Clause 31:5 implies that an officer can be interdicted even before a preliminary investigation. When analyzing the provisions in Clause 31:1:5, it appears

that such provisions relate only to instances where the relevant authority interdict a public officer before holding a preliminary investigation.

It is clear that when an officer is interdicted before a preliminary investigation, not only the requirement in Clause 31:5:1 may be considered. The relevant authority may interdict an officer without a preliminary investigation even considering the circumstances stipulated in Clauses 31:5:2 and 31:5:3. Accordingly, if the relevant authority is of the view that the first information itself on the suspected acts of misconduct committed by the officer is sufficient to establish the relevant matters, then such officer can be interdicted before a preliminary investigation.

The contention of the Respondents in this regard is that during the preliminary investigations, the original 3rd party complainants have informed the officials of UDA that the Police had visited their premises and warned them against participating in the ongoing preliminary investigation. The Respondents highlight the fact that the Petitioner's husband is a Headquarters Inspector of Police and several other related aspersions are contained in their Statement of Objections.

As per the contention of the Respondents, it is observed that they have considered the video footage and recordings of telephone conversations at the time of taking the decision to interdict the Petitioner. Moreover, it appears that the preliminary investigation against the Petitioner has been concluded by the time of filing of this application and several witnesses have also testified at the investigation.

Therefore, based on the above statutory regime established in the E-Code, I cannot agree with the Petitioner's arguments that there exists a pre-condition and also that the Petitioner has been interdicted by the Respondents without fulfilling the requirements set out in Clause 31:5:1 of the E-Code.

Charge Sheet – E-Code.

The other main argument of the Petitioner is that the interdiction and the charge sheet is bad in law as much as the said Mrs. Peiris is not a listed witness in the said charge sheet and not even a statement of Mrs. Peiris has been listed therein. The Petitioner contends that no formal complaint has been made by Mrs. Peiris or her husband against the Petitioner.

As opposed to such arguments, the 1st to 6th Respondents ('Respondents') assert that the decision to interdict the Portioner has been taken after assessing several evidence including the video footage and the recordings of telephone conversations, which were viewed & listened to by the Petitioner in the presence of the 6th Respondent. The UDA upon the complaint made on 09.03.2022 by Mrs. Peiris and her husband in reference to the above incident, has written a letter dated 15.03.2022 ('P6a') to Mrs. Peiris to which Mrs. Peiris has responded by way of a letter dated 22.03.2022 ('P6b').

The Clauses 14:1 and 14:4 are important to be considered in regard to the point of view of the Petitioner that Mrs. Pieris has not been listed as a witness in the Charge Sheet. In terms of Clause 14:1, the charge need not take a legalistic form and however, it should be a clear and simple statement or statements of any acts of misconduct or lapses committed or believed to have been committed by the accused officer that call for a formal disciplinary inquiry against him. A Disciplinary Authority, by virtue of Clause 14:4, may amend a charge sheet at any time between its hand-over to the accused officer and the commencement of the formal disciplinary inquiry.

I take the view that the effect of the above provisions of the E-Code vitiates the Petitioner's aforesaid argument and also such argument is premature.

Malice.

Additionally, the Petitioner has pleaded mala fides of the Respondents. Sripavan J. in ***Bandaranayake vs. Judicial Service Commission (2003) 3 Sri. L.R. 101*** has followed the following contents in '***Principles of Administrative Law' by Jain & Jain, 4th Edition 1988 (at p. 564);***

> *"The plea of mala fides is raised often but it is only rarely it can be substantiated to the satisfaction of Court. Merely raising doubt is not enough. There should be something specific, direct and precise to sustain the plea of mala fides. The burden of proving mala fides is on the individual making allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for the public benefit."*

The alleged ill-treatment after the Petitioner filing a Fundamental Rights application and also the purported allegations against the Respondents on bias cannot be considered, in

my view, to sustain the plea of mala fides as those assertions in the Petition are limited only to raising a doubt.

Whether the Respondents have taken a decision arbitrarily.

The Petitioners complain that the Respondents have taken a decision to interdict her arbitrarily, unreasonably and without cause. Based on my conclusions arrived earlier on the legal provisions of the E-Code in reference to the interdiction, I am of the view that the Petitioner has failed to submit any decision taken by the Respondent which is arbitrary, unreasonable and unjust as claimed by the Petitioner.

The Petitioner still has ample opportunity to challenge any decision of the Respondents after the investigations (including the domestic inquiry) are over. The interdiction will not be a presumption of guilt and it cannot be considered as a punishment. The interdiction is one of the foremost processes used to initiate investigations in to allege misconducts.

In ***Jayaweera vs. Assistant Commissioner of Agrarian Services Ratnapura and Another (1996) 2 Sri. L.R. 70,*** in which F.N.D. Jayasuriya J. held***;***

> *"A Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him having regard to his conduct, delay, laches, waiver, submission to jurisdiction- are all valid impediments which stand against the grant of relief"*

The following passage in ***Kalamazoo Industries Ltd vs. Minister of Labour and Vocational Training and Others (1998) 1 Sri. L.R. 235*** is apt here. F.N.D. Jayasuriya J. in that case has held;

> *"Relief by way of certiorari in relation to an award made by an arbitrator will be forthcoming to quash such an award only if the arbitrator wholly or in part assumes a jurisdiction which he does not have or exceeds that which he has or acts contrary to principles of natural justice or pronounces an award which is* ***eminently irrational*** *or* ***unreasonable*** *or* ***is guilty of an illegality.****"* (Emphasis added).

Conclusion.

For these reasons, I hold that the impugned decision ('P5') of the 3rd Respondent to interdict the Petitioner is not eminently irrational or unreasonable or is guilty of an illegality. As to the impugned charge sheet ('P10a'), the Petitioner has failed to submit a viable ground for review. It is ex-facie not apparent on the application of the Petitioner that the Respondents who made the decision to interdict the Petitioner and to issue the charge sheet have acted ultra vires or acted contrary to the rules of Natural Justice or have not complied with mandatory provisions of law.

In the circumstances, I am of the view that the Petitioner is not entitled to any of the reliefs prayed for in the prayer of the Petition.

Application is dismissed. I order no costs.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal