

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

In the matter of an Appeal under and in terms of Article 138 read with Article 154 P(6) of the Constitution of the Democratic Socialist Republic of Sri Lanka against the Judgment dated 25.04.2016 of the Provincial High Court of the North-Western Province Holden at Kuliypitiya in the case bearing No. H.C.W. 09/2013.

No.CA (PHC)93/2016

Provincial High Court (Kuliypitiya)

Case No.HCW/09/2013

Hewa Peramunage Dinesh Premaratne,
No.47, Nugawela, Alawwa.

Petitioner

Vs.

1. Hon. Tissa R. Balalle,
Former Governor of the North-Western Province,
C/o. Hon. Governor of the North-Western Provinces, Governor's Office, Maligawa, Kurunegala.

And 09 Others

Respondents

AND BETWEEN

Hewa Peramunage Dinesh Premaratne
No.47, Nugawela, Alawwa.

Petitioner-Appellant

Vs.

1. Hon. Tissa R. Balalle,
Former Governor of the North-
Western Province,
C/o. Hon. Governor of the North-Western
Provinces, Governor's Office,
Maligawa, Kurunegala.

And 15 Others

Respondent-Respondents

Before: **PRASANTHA DE SILVA, J.**
K.K.A.V. SWARNADHIPATHI, J.

Counsel: Shayamal A Collure with Prabath S. Amarasinghe
For the Petitioner-Appellant

Sabrina Ahamad
For the 1st to 7th Respondent-Respondents

Date of argument: 21.02.2022 and by Written submissions.

Date of Judgment: 20.10.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The Petitioner-Appellant, who will be referred to as the “Appellant”, filed this Petition against the Judgment delivered on 25.04.2016 by the learned High Court Judge of Kuliypitiya in case No. H.C.W. 09/2013.

The Appellant served Mayurapada Junior School, Narammala, Giriulla, from January 2007 to July 2009. By a letter marked as **P21**, he was transferred to Ingaradarula Madya Maha Vidyalaya in Girulla. While serving in the new school, he was interdicted on charges of abusing female students

at the previous school. A charge sheet was served on him, and an inquiry was held. After the conclusion of the disciplinary inquiry, an order was pronounced finding the Appellant guilty on all four counts, thereby dismissing him from service (document annexed as **P34**).

The Appellant appealed to the 1st Respondent. The 1st Respondent had informed his officers about taking necessary steps, and after considering the appeal, it was dismissed by the officers of the first Respondent. Aggrieved by the said decision, the Appellant moved the jurisdiction of the High Court, praying, among other relives, a Writ of Certiorari quashing the decision of the 1st Respondent by dismissing the Appellant from the service.

After inquiry, the learned High Court Judge pronounced the Judgment with reasons dismissing the Petition on the grounds of delay and futile. Aggrieved by the said Judgment, the Appellant moved to this Court to set aside the Judgment of the learned High Court Judge and further pleaded relives from the Court of Appeal.

Both parties filed Written submissions, and the Appellant's counsel was heard. This Court will have to decide whether there is enough ground to set aside the Judgment of the High Court.

I have considered all materials before this Court and the Judgment of the High Court. The learned High Court Judge had observed that the order dated 19.03.2012 [document marked as P37] was challenged a year later on 04.04.2013.

The learned Judge had considered that the Appellant had consumed time by applying to the Human Rights Commission and had to wait for certified copies, which had ended by August 2012. There was no clear explanation for the delay after 31.08.2012.

In *Issadeen Vs. Commissioner of National Housing and Others*¹ observed that “there should be proper justification given and explained in the delay in filing such belated application”.

This shows that Sri Lankan Courts consider unexplained delay fatal when considering writ jurisdiction. The learned High Court Judge correctly analyzed that loss of income or employment cannot be considered justifiable when the essence of praying for the writ itself is losing employment. The second legal ground considered by the learned High Court Judge is futility.

According to the Judgment, **P37** was challenged in the High Court based on **P34**, which is the order of finding the Appellant guilty and ordering suspension of the service since **P34** remains unchallenged even if the Appellant succeeds in proving his case based on **P37**, that order will be an academic exercise only.

The learned High Court Judge had analyzed this position referring to the dicta of *M.M. Shamsudeen Vs the Minister of Defence and External Affairs* (63 NLR 430). “The issue of a Writ of mandamus is within the discretion of the court and will not be issued if it will futile to do so”.

¹ (2003 (2) S.L.R. 10)

The learned High Court Judge cannot by law grant relief to enclose the order of letter **P34**. His Judgment will in no way affect the order of **P34**. The Appellant had pointed out that there had been instances where delays of seven months and sometimes even six years were considered reasonable reasons to proceed.

When considering the cases mentioned above, there were reasonable reasons which the Court can accept. In the instant case, the only reason was lack of money and loss of employment. The learned Judge considered the reasons mentioned in the High Court Petition and was ready to excuse up to 31.08.2012. The Appellant had failed to give acceptable reasons from 31.08.2012 up to 04.04.2013. When considering the learned Judge's discretion which should be affected very carefully and in a manner which will not help those who sleep on their rights, eight months cannot be considered a reasonable delay.

The Appellant should have moved the High Court regarding the first letter, **P34**, which informed the Appellant of the decision of the disciplinary Committee, finding him guilty on all counts and pronouncing the termination of service.

This shows negligence on the part of the Appellant. The Court can help only the vigilant. Therefore, I see no reasons to set aside the Judgment entered by the learned High Court Judge of Kuliyaipitiya on 25.04.2016. Since that Judgment stands, other factors mentioned cannot be considered by this Court.

Therefore, I affirm the learned High Court Judge's order and dismiss the present application of the Appellant. I make no order in respect of costs.

The appeal is dismissed.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal