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

Abedeera Parabendige Ruwan Pushpa Kumara
Thala Bogahawatta,
Pattiyagama South, Kottegoda,
Matara.

CA/WRIT/169/2015

PETITIONER

Vs.

1. Air Marshal Harsha Abewickrama
   Commander of the Sri Lanka Air Force,
   Air Force Headquarters,
   Colombo 02.

1A. Air Marshal Gagan Pulasthi Bulathsinhala
   Commander of the Sri Lanka Air Force,
   Air Force Headquarters, Colombo 02.

1B. Air Marshal Kapila Veedhiya Bandara Jayampathy
Commander of the Sri Lanka Air Force,
Air Force Headquarters,
Colombo 02.

1C. Air Marshal Sumangala Dias
Commander of the Sri Lanka Air Force,
Air Force Headquarters,
Colombo 02.

1D. Air Marshal Sudharshana Pathirana
Commander of the Sri Lanka Air Force,
Air Force Headquarters,
Colombo 02.

2. Wing Commander A. D. M. Koralage
Officer
Director of Administration
Air Force Headquarters
Colombo 02.

3. Group Captain M. D. J. Wasage
Commanding Officer Sri Lanka Air Force,
Weerawila.

And now

Sri Lanka Air Force Rathmalana

4. Hon. Attorney General
   Attorney General's Department
   Colombo 02.

RESPONDENTS

Before:	C.P Kirtisinghe, J Mayadunne Corea, J
Counsel:	Chathura Weththasinghe for the Petitioner A Gajadeera SC for the Respondnet
Argued on:	14.10.2022
Written Submissions:	Tendered by the Respondent on 25.10.2022 Tendered by the Petitioner on 02.11.2022
Decided on:	29.11.2022

Mayadunne Corea J

The facts of the case are briefly as follows, the Petitioner was recruited to Sri Lanka Airforce in 1993 and at the time he received the impugned document A8, the Petitioner was serving as a Warrant Officer attached to the Weerawila Camp. The Petitioner states that he was assigned to duties of frontline logistics at the said camp. The Petitioner further states that he was then directed to assist in the supply section of the camp. The Petitioner states it was discovered that an airwoman had forged internal exchange vouchers to conceal irregularities in the supply unit of the camp and an inquiry was conducted to ascertain the personnel involved in the deficiency of stock. Following an inquiry, the Petitioner was charged with wrongful conduct and was reprimanded in addition to the Petitioner and the other soldiers involved in the misconduct, being subject to the recommendations issued by the inquiring committee.

The Petitioner states that on or about 22/12/2014, he received a letter from the 3rd Respondent stating that his services were no longer required under and in terms of Regulation 126 (1), Fifth Schedule, Table B, Section XIII, (a) of the Sri Lankan Air Force (Regular & Regular Reserve)

Regulations, 1949. The Petitioner states that by sending the said letter the 1st, 2nd, and 3rd Respondents have acted contrary to the provisions of the Air Force Act and the said letter is bad in law. Hence this application.

The Petitioners complaint

The Petitioner's main grounds of argument are threefold, namely;

- Subsequent to the Petitioner being reprimanded, the decision of the Air Force Commander to discharge the Petitioner on the premise that his services are no longer required is in violation of the principle of double jeopardy.

- The procedure followed especially subjecting the Petitioner to a summary trial and the subsequent decision by the Air Force Commander to discharge the Petitioner is bad in law as the Air Force Regulations, Table B of the Fifth Schedule , Regulation 13 does not permit the discharge of a Warrant officer.

- The Petitioner cannot be discharged under section 129 (1) read with section 42 of the Air Force Act, as for a discharge under the said section, there should be a conviction upon a court martial.

The Petitioner has prayed for the following reliefs among other things,

(b) Grant a mandate in the nature of a Writ of Certiorari quashing the decision of the Respondent to discharge the Petitioner from Sri Lanka Air Force in relation to the alleged incident as contained in the document marked as A-8.

(c) Grant a mandate in the nature of a Writ of Prohibition preventing the Respondents from discharging the Petitioner from Sri Lanka Air Force in relation to the alleged incident as contained in document marked as A-8.

(d) Order to reinstate the Petitioner with back wages and other benefits.

The Respondents took several objections pertaining to the maintainability of this application. They are as follows;

- The Petitioner is guilty of suppression and misrepresentation of material facts,
- Petitioner's application is misconceived in law,
- Petitioner is guilty of laches and is not entitled to seek discretionary remedy by way of a writ,
- Futility,
- There are no grounds to grant a writ of Certiorari or Prohibition.

This Court will consider the said objections after considering the grounds urged by the Petitioner.

As per the submissions of the learned Counsel of the Petitioner, his main contention was, for the Petitioner to be discharged from the Air Force, the Petitioner should have been charged at a court martial and convicted under section 129(1). The thirst of this argument was that there was no court martial held and as there is no conviction under section 129(1) by court-martial, the decision to discharge him is ultra vires. His second argument was that when he was found guilty of the alleged offence at the Weerawila camp, subsequent to an inquiry, the Petitioner was reprimanded as punishment. Thus, he argues that after he was reprimanded, the Respondents cannot utilize the Regulations and discharge him from services for the same offence as it would amount to double jeopardy, thereby being subjected to punishment twice for the same offence.

It is common ground that the Petitioner was a Warrant Officer at the Weerawila camp when the fraud pertaining to raising false vouchers took place. As it was alleged that the Petitioner too was involved in the said fraud, there was an inquiry and as per the recommendations of the inquiring officer, the Petitioner has been reprimanded. According to the inquiring officer's recommendation (P1), the Commanding Officer had recommended to charge sheet all involved, which included the Petitioner (R3). There is no dispute between the parties that the Petitioner has been subjected to a

summary trial and upon its findings, had been severely reprimanded. This incident occurred in the year 2014. In 2014 December, the Petitioner had been issued with a letter stating that his services are no longer required (P4) which is marked as A8, which the Petitioner is seeking to quash by way of a writ of certiorari.

Does the Petitioner fall in to the category of an airman?

The Petitioner contended that he being a warrant officer cannot fall under the category of an airman. However, the Petitioner did not strenuously pursue this contention at the argument stage. Nevertheless, this Court will now consider the ground whether the Petitioner falls in the category of an airman. Parties are not at variance on the ground that the Petitioner's last held post was Warrant Officer. At the argument stage, the Petitioner contended that a 'Warrant Officer' does not fall under the category of an airman. The answer to this can be found in the interpretation section of the Airforce Act. Section 161 of the Act defines an airman as, ***"airman" does not include an officer as defined by this Act, but, subject to the special provisions in this Act contained in relation to warrant officers and non-commissioned officers, does include a warrant officer and a non-commissioned officer…"***

Also, it is pertinent to note that the Petitioner himself in his amended petition in paragraph 16 has acknowledged that the rank of a warrant officer is categorized as an airman.

Accordingly, the argument by the Petitioner that he does not fall under the category of an airman has to fail.

Can the Petitioner be tried in a summary trial?

The Respondents submitted the proceedings of the summary trial marked R3. As per the said document, the Petitioner has been charged under section 129(1) and the Respondents had

proceeded with a summary trial under section 40(1)(b) (II) and section 42 of the Air Force Act. It is the contention of the Petitioner, that the Petitioner being a Warrant Officer cannot be charged under section 42 in a summary trial and his punishment under Regulations 13B of the Fifth Schedule, Table B is bad in law as the said Regulation applies only to an airman.

This Court observes that section 40 (1) empowers the Commanding Officer to investigate a charge and the Commanding officer has the discretion to decide whether the person in custody should be charged by proceeding with a court martial or whether he can be summarily tried. Section 40 (b) (ii) reads as follows,

"…….. (b) if he in his discretion decides that the charge should be proceeded with, shall...

(ii) where that person is an officer of a rank below that of Wing Commander or is a warrant officer, refer the case to be dealt with summarily by the Commander of the Air Force or by such officer not below the rank of Group Captain as may thereto be authorized by the Commander of the Air Force, or…."

The said section in our view, clearly empowers the Commanding Officer to decide whether a person should stand trial at a court martial or by way of a summary trial and the said section captures the post of a Warrant Officer. Thus, referring the Petitioner to stand a summary trial is provided for by the Air Force Act. The short title of Section 42 states as follows,

"Summary trial of accused who is an officer of a rank below that of Wing Commander or is a warrant officer".

Accordingly, we uphold the Respondents submission that the decision to hold a summary trial as well as proceeding with the summary trial against the Petitioner has not violated the provisions of the Air Force Act.

The Petitioner cannot be discharged under section 129 (1) read with section 42 of the Air Force Act, as for a discharge under the said section, there should be a conviction consequent to a court martial.

The Petitioner argues that if he was charged under section 42, the punishment that can be meted out is also given in the said section. As per the said punishments, he cannot be discharged from the service. He also contends that he has also been charged under section 129(1). The said section broadly deals with conduct prejudicial to air force discipline. The first part of the said section which describes the offence states as follows,

Section 129(1) subject to the provisions of subsection (2) of this section every person subject to this act who, by any act, conduct, disorder, or neglect, prejudices good order and air force discipline shall be guilty of an air force offence and shall……

As submitted by the Respondents, this Court observes that section 42 does not describe an offence, but section 129 (1) describes the offence. In this instance, it was submitted that the Petitioner's offence is described under section 129 (1). However, as discussed earlier, section 42 permits a Warrant officer to be charged with any offence to be dealt with summarily. It is also pertinent to note as submitted that section 129 (1) does not contemplate of a situation where a person charged under the said section should be necessarily tried by a court martial. It was further submitted that the punishment that can be meted under section 129 is stipulated under section 133.

It is the contention of the Petitioner that for the Petitioner to be convicted under section 129 (1) and punished, he should have been found guilty by a court martial. If he was found guilty of a court martial then under section 133 (1), depending on the severity of the offence he could have been dismissed from the air force or meted out punishment as stipulated under section 133. However, it is his contention that since he had not been convicted by a court-martial, he cannot be discharged from the air force in pursuance of section 129(1).

However, this Court observes that the multiple disorderly acts laid down in section 129(1) broadly entail all offences that could be prejudicial to good air force discipline and acceptable air force conduct. Thus, personnel who are found guilty of such conduct under the said section do not necessarily need to be tried by a court martial but can also be dealt with according to other relevant provisions of the Act, to both reprimand the wrongdoer and inculcate good conduct within the members of the air force, as the offences under section 129(1) are applicable to the air force as a whole.

The petitioner further contends that as per Regulation 126 (1) Fifth Schedule, Table B section XIII (a), the Respondents have decided to discharge him from the air force under the clause "service no longer required". He argues that this does not apply to him. It is further argued that for the Respondents to discharge him from the air force, it should be done in accordance with the provisions of section 133 of the Air Force Act.

It is the contention of the Petitioner that for this, the Petitioner should have committed an offence set out in section 129 (1) and there should have been a court martial. However, since he had been summarily tried under section 42, he cannot be discharged from the air force utilizing the provisions contained in section 129 (1). He further contends that anyway under section 42 of the Air Force Act there are no provisions for him to be discharged from the air force. Thus, his contention is that his discharge under section 129 (1) is bad in law.

In response, it was submitted that the Petitioner being a warrant officer had been involved in a wrongful act of raising false vouchers to hide a deficit that has arisen in the clothing stocks of the equipment section at the Weerawila Air force base. Subsequent to an inquiry/summary trial, he was charged under section 40 (1) (B) (II) and section 42 of the Act. The entire proceedings of the summary trial are marked as R3.

It was the contention of the Respondents that by the said act of aiding and abetting, the Petitioner's acts fall broadly within the provisions contained in section 129 (1) of the Air Force Act namely, **conduct prejudicial to air force discipline**. It was the contention of the Respondents that there had been two previous occasions where the Petitioner has been convicted and given a strict warning that he would be discharged from the air force in the event he commits any other offence. It was further contended that as per the charge sheet marked (R3), a decision had been taken to proceed under section 40 (1) (B) (II) and section 42 of the Air Force Act read with section 129 (1) of the Air Force Act. However, it was contended that without resorting to section 133, the Respondents acted under section 42 and subjected him to the punishment of a reprimand. The Respondents submitted that they have taken this decision to mitigate the severity of section 133.

In our view, there is no bar for the Sri Lankan Ari Force to charge the petitioner under section 42 read with section 129 (1). However, if a person is subject to the scale of punishments as stipulated under section 133, then he should have been convicted by a court martial. However, to negate this argument the Respondents submitted that the act of the Respondents issuing the impugned letter A8 is not a punishment but an administrative decision taken to maintain discipline therefore it is the contention of the Respondent, that the argument of the Petitioner namely, to discharge him under section 129 (1) without him facing a court martial is bad in law has to fail. The learned Counsel for the Respondents further contended that the said administrative act is not a punishment *per se*, therefore the need for a conviction from a court martial does not arise. This argument also brings us to the next ground which is the main ground urged by the Petitioner at the argument stage, namely that the decision to discharge him is bad in law under the principle of double jeopardy.

Defense of double jeopardy

The Petitioner contends that he had been charged and reprimanded under summary trial, therefore when the Respondents issued him with a letter stating his services were no longer required, it amounts to him being punished twice for the same offence as he has already been punished. The

Petitioner's main argument is that when he was tried under section 42, he was given a punishment for his wrongdoing, that is, being reprimanded. However, it was his contention that subsequently when he was served with A8, where he has been informed that his services are no longer required, he has been punished twice for the same offense under section 42. At this stage, it would be pertinent to consider document A8. It states as follows,

1. **ඉහත සේවා අංකය. නිළය. නම් සඳහන් වන** 1994 **නොවැම්බර් මස** 28 **වන දින සිට දින** 105 **ක් අනුමත නිවාඩු නොලබා සේවයට වාර්තා නොකිරීම හේතුවෙන් දින** 28**ක වැටුප් රහිත සිර දඬුවමක්ද,** 1997 **ජුනි මස** 30 **වන දින සිට දින** 174 **ක් අනුමත නිවාඩු නොලබා සේවයට වාර්තා නොකිරීම හේතුවෙන් දින** 35**ක වැටුප් රහිත සිර දඬුවමක්ද ලබා දී ඇත.**

2. **තවද** 2014 **ජුලි** 15 **වන දින දක්වා ශ්‍රී ලංකා ගුවන් හමුදාව වීරවිල කඳවුරේ සැපයුම් අංශයේ සිදු වූ රෙදි පිලි හා උපකරණ අස්ථානගත වීමේ සිදුවීම සම්බන්ධයක් ගුවන් හමුදා නීතියට අවනත නොවීම හේතුවෙන් ගුවන් හමුදා පනතේ අංක** 129 (1) **දරණ වගන්ති උල්ලංඝනය කරමින් බරපතල වැරදි සිදුකර ඇති අතර එමගින් චෝදනාව විභාග කිරීමෙන් අනතුරුව ඔබ හට දඬුවම වශයෙන් තරවටු කිරීමක්ද එය ගුවන් හමුධාපතිතුමා විසින් අනුමත කොට ඇත. ඔබ ශ්‍රී ලංකා ගුවන් හමුදාව සම්පූර්ණයෙන්ම නිශ්කාෂණය කිරීමෙන් පසු** 2014 **දෙසැම්බර් මස** 22 **දින සිට "සේවය තව දුරටත් අවශ්‍ය නොවේ" යන වගන්තිය යටතේ සේවයෙන් ඉවත් කිරීමට ඉහත යොමුගත ලිපිය මගින් ගුවන් හමුදා මූලස්ථානය විසින් අනුමැතිය දී ඇත.**

As per the document, it is clear that the reasons given for him being served with A8 are that, on two previous occasions in 1994 and 1997, he had failed to report to work without obtaining prior

permission for 105 days and 174 days respectively and for the fraud that took place in 2014. It refers to the punishment meted out on all occasions and states that by his conduct he has violated section 129 (1). In this instance, we find that it was not one single incident that caused the Respondents to issue A8. They have referred to three incidents whereby they come to the conclusion that the cumulative effect of the behavior of the Petitioner violates section 129 (1).

In response, the Respondents submitted that issuance of a letter on the basis of "service no longer required" under Air Force Regulations is merely an administrative step the Respondents take to maintain good discipline within the air force. Thus, the imposition of a punishment prior to a discharge does not amount to double jeopardy. They have relied on the judgment of this Court in **J. H. M. L. S. Jayaweera v Air Marshall Gagana Bulathsinhala and others (CA WRIT 88/2015 decided on 7th October 2020), Weerathilake v Commander Sri Lanka Air Force (CA WRIT 107/2016 CA minutes of 05.03.2019)** and **Wasantha Kumara v Commander Sri Lanka Air Force (CA WRIT 171/2015, CA Minutes of 01.07.2020).** We find that the facts of the referred cases especially **J. H. M. L. S. Jayaweera v Air Marshall Gagana Bulathsinhala and others (CA WRIT 88/2015 decided on 7th October 2020),** are identical to the facts of the case before us.

In the said case making a distinction between punishment meted out soon after conviction and subsequent discharge under the clause "service no longer required" Samayawardhena J held as follows, ***"It may be relevant to note that item (xiii) (a) inter alia states: "The application for discharge will be made on special form, on which full particulars of the case will be recorded, and to which the conduct sheets will be attached". This makes it clear that the said item is not meant to be used as a punishment for any specific offence committed under the Air Force Act but, rather, serves as an administrative measure to be exercised by the Commander, at his discretion, upon taking into consideration the overall conduct and circumstances of the airman concerned. Hence, the argument that discharge under the clause "services no longer required" amounts to punishing twice over for the same offence in violation of the doctrine of double jeopardy cannot be readily accepted. Such discharge is not a punishment per se but largely an administrative decision for the greater benefit of the institution, which can only be challenged***

on the same grounds any other administrative decision can be challenged under judicial review. If the presence of any airman is inimical to maintain the discipline and good order of the Air Force, the Commander of the Air Force, as the head of the institution, shall have the power to discharge such airman from service. It is no secret that discretion is inherent in power as opposed to duty. It is true in this instance as well. But there is no unfettered, untrammeled or unreviewable administrative discretion in modern administrative law. Discretion is subject to judicial review"

It was further held by Samayawardana J that in the case of **Air Marshal G. D. Perera v K. H. M. S. Bandara (SC Appeal 104/2008, SC Minutes of 29.09.2014)** which the Petitioner heavily relied on, the intimation to the doctrine of double jeopardy in the said Supreme Court Judgement is obiter dicta and not part of ratio decidendi. This Court is inclined to follow the reasoning of Samayawardana J.

Samayawardhena J refereeing to the case of **Dissanayake v D. C. J. Weerakoon, Air Commodore (CA Minutes of 11.09.2017)** held that the discharge is an administrative decision. It was submitted to us that the said judgment **Dissanayake v D. C. J. Weerakoon, Air Commodore (CA Minutes of 11.09.2017)** had further been appealed to the Supreme Court and the Supreme Court had refused special leave to appeal, thus settling the law that the discharge under Air Force Regulations is not a punishment but an administrative decision.

It is also pertinent to note that as per the Regulations, the said Regulations clearly state, that it "applies only to an airman who cannot be discharged under any other item". The plain reading of the said column under special instructions, it is evident that the discharge is effected despite the offender being punished. Thus, it is clear that the discharge is not considered a punishment as it is contemplated subsequent to the wrongdoer being punished. Thus, in line with the judicial decisions on this issue, it is our view that the Petitioner's argument that the said discharge amounts to the doctrine of double jeopardy has to fail.

Air Force Regulations depicted in Table B XIII of the Fifth Schedule, do not allow the discharge of a Warrant Officer.

Petitioner contends that he being a warrant officer, cannot be subject to Table B of the Fifth Schedule of the Regulations as it does not permit the discharge of a warrant officer but applies only to an airman. However, this contention was not pursued by the Counsel at the argument. As submitted by the Respondents, it is pertinent to note that item 13A of the Regulations applies to an airman. As held above this Court elsewhere in this judgment has referred to the definition under section 161, and held that a Warrant officer falls within the definition of an airman. It is also pertinent to note that Regulation item 13B under 'Special instructions' stipulates that it applies to an airman other than a warrant officer class 1 with less than 14 years of service. The plain reading of item 13A and 13 B clearly distinguish that even though in item 13B a warrant officer is excluded, under 13A it is not so. It only refers to an airman as stated earlier which encompasses a warrant officer. Thus, the Petitioner's argument that he will not be captured under item 13A of Table B has to fail.

Now we will consider the objections raised by the Respondents.

Suppression of material facts

It is pertinent to note that the Petitioner subsequent to him being punished for being absent without official leave in the years 1994 and 1997 (R7 and R8) had been issued with a warning letter (R9). The caption to the said letter states as follows, **ගුවන් හමුදා ප්‍රමිතීන්ට අනුකූල නොවන හටයෙකුට දෙනු ලබන අවවාද** and he has been warned as follows,

ආ. ඉහත දැක්වෙන පරිදි ඔබගේ විනය ගුවන් භටයෙකුට නොමනා පරිදි ඉතාමත් පහත් මට්ටමකින් ඔබ විසින් පවත්වාගෙන විත් ඇත

ඇ. ගුවන් හමුදා නීති රීති වලට එරෙහිව කටයුතු කිරීම සහ ගුවන් හමුදා විනය කඩකිරීම ඔබ විසින් පුරුද්දක් බවට පවත්වාගෙන විත් ඇති බවක් පෙනෙනා අතර, එය වහාම නවත්වන ලෙසත් ගුවන් හමුදා විනය කඩකිරීමෙන් සම්පූර්ණයෙන්ම වැලකී සිටින ලෙසත්, ඔබට මෙයින් ඉතාමත් තදින් අවවාදකර සිටිමි.

ඈ. මෙම අවවාදයෙන් ඵල විපාක වශයෙන් අඩුම තරමින් අද සිට එක් වසරකට කාලසීමාවක් සඳහා බලපාන පරිදි ඔබට හිටි උසස්වීම නොලැබෙනු ඇත.

ඉ. තවද මෙම අවවාදය නොසලකා මෙම අවවාදයට පටහැනිව නැවත වරක් ක්‍රියාකලහොත් පහත සඳහන් බව නියත වශයෙන්ම දන්වා සිටිමි.

I. වෙනත් කදවුරකට ස්ථාන මාරුවීමක්

II. තමන්ගේ නිළයක් පනත් කිරීමත්

III. නැවත වර්ගකිරීමක්

Iv. ගුවන් හමුදාවෙන් නෙරපා දැමීම.

The Petitioner after understanding the contents of the said letter, had accepted the letter. However, the Petitioner failed to disclose that he was issued with such a letter which warned him that he could be discharged from the Air Force if he is in violation of the advice. In our view, since the

impugned decision reflected in A8 refers to the two offences, that he has been warned about as per R9, the Petitioner should have disclosed to this Court the existence of the said warning letter R9. Even though the Petitioner under paragraph 32 of the petition has just pleaded that he was punished for minor charges he has never mentioned that he had been issued with a final warning letter as depicted in R9.

In our view, the Petitioner who has come to this Court seeking remedy by way of writ jurisdiction should have disclosed the existence of R9. His disclosure in paragraph 32 refers to the charges against him, but he does not disclose that pursuant to the punishment meted he had been issued with a warning letter R9. Hence, this Court is of the view that his failure to disclose document R9 amounts to willful suppression.

In **Collettes Ltd Vs. Commissioner of Labour and others (1989) 2 SLR** it was held *"that it is essential, that when a party invokes the writ jurisdiction or applies for an injunction, all facts must be clearly, fairly and fully pleaded before the court so that the court would be made aware of all the relevant matters."*

In **Moosajees Limited v Eksath Engineru Saha Samanya Kamkaru Samithiya 79 (1) NLR 1285** at 288 the court held that suppression of material facts is fatal to an application and observed: *'The pleadings in their petition and affidavit do not contain a full disclosure of the real facts of the case and to say the least the petitioner has not observed the utmost good faith and has been guilty of a lack of uberrima fides by suppression of material facts in the pleadings. It was neither fair by this court nor by his counsel that there was no full disclosure of material facts."*

Similarly in **Blanca Diamonds (Pvt) Ltd v Wilfred Van Else and others (1997) 1 SLR 360 at 362** Jayasuriya J emphasized the duty a party owes to Court for a full disclosure when initiating writ proceedings in the following manner- ***"In filing the present application for discretionary relief in the Court of Appeal Registry, the petitioner company was under a duty to disclose uberrima fides and disclose all material facts to this Court for the purpose of this Court arriving***

at a correct adjudication of the issues arising upon this application. In the decision in Alphonoso Appuhamy v Hettiarachchi, Justice Pathirana in an erudite judgement, considered the landmark decisions on this province in English law, and cited the decision which laid down the principle that when a party seeking discretionary relief from the Court upon an application for a writ of certiorari he enters into a contractual obligation with the Court he files an application in the Registry and in terms of that contractual obligation he is required to disclose uberrima fides and disclose all material facts fully and frankly to his Court."

Thus, the Respondent's submission on suppression of material facts succeeds and the Petitioner by his own conduct has disentitled himself from seeking relief he has prayed.

Laches

The learned Counsel for the Respondents also took up an objection on laches on the part of the Petitioner. We find the impugned decision A8 bears the dates of 22/12/2014. It has been conveyed and accepted by the Petitioner on 23rd December 2014. However, the Petitioner has waited till 31st March 2015 to institute legal action challenging the said decision. In the said petition, the Petitioner failed to disclose his delay of more than 3 months. Subsequently, he had amended the Petitioner in the year 2017 whereby he had sought to obtain a writ of prohibition preventing the Respondents from discharging the Petitioner and for reinstatement with back wages. Thus, the Respondents contentions of laches.

Are there any grounds to grant writs of Certiorari or Prohibition?

It is pertinent to note that the decision reflected in A8, cannot be an arbitrary or unfettered decision. When we consider the contents of A8 and subsequently when the Respondents brought the attention of this Court to the existence of document R9, we find that the Petitioner has at all times

been afforded a fair trial pertaining to all offenses, which the Petitioner has not denied. Further, he has not challenged the punishments given to him pursuant to the respective inquiries.

We do find that discipline, especially in the tri forces has to be maintained at its best. We have also considered the long line of judgments of this court on the question that the issuance of the letter "services no longer required" is not a punishment but an administrative step in order for the Respondents to maintain strict discipline among its officers.

After considering all the facts submitted by both parties, and the circumstances that led to the final issuance of A8, this Court is not inclined to come to the conclusion that the decision reflected in A8 is unreasonable or bad in law.

Accordingly, for the aforesaid reasons stated in this judgment, we do not see any reason to interfere with the decision contained in the impugned document A8. Therefore, we refuse to grant the reliefs prayed, and this application is dismissed without costs.

Judge of the Court of Appeal

C.P Kirtisinghe, J

I agree

Judge of the Court of Appeal