

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

CA Writ Application No:

160/2019

In the matter of an Application in the nature of a Writ of Certiorari under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Priyantha Waniga Chinthamani Mohotti
and 22 others

Petitioners

Vs.

Mahaweli Authority of Sri Lanka and 4 others

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Saliya Peris, PC with Sanjeewa Dasanayaka for the Petitioners

Sumathi Dharmawardena, ASG with Ms. S. Ahammed, SC for all the

Respondents

Written submissions tendered on:

19.01.2022 by the Petitioners

02.08.2021 and 08.11.2021 by the Respondents

Order delivered on: 03.03.2022

S.U.B. Karalliyadde, J.

This Order is pertaining to two preliminary legal objections raised on behalf of the Respondents about the maintainability of the Writ Application. By this Writ Application, the 1st to 23rd Petitioners are seeking reliefs, *inter alia*, to issue a mandate in the nature of a writ of Certiorari to quash the decision of the 3rd to 5th Respondents embodied in the documents marked A17(i) to A17(xvii) and a mandate in the nature of a writ of Mandamus directing the 2nd to 5th Respondents to regularize and reinstate the salaries and increments of the Petitioners and/or pay all the arrears as if the decision contained in those documents had never taken place.

When the matter was taken up for support on 27.07.2021, on behalf of the Respondents two preliminary legal objections were raised about the maintainability of the Application and the parties consented to abide by any Order delivered on their written submissions.

The preliminary legal objections raised were based on the facts that,

1. Since the relationship between the Petitioners and the Mahaweli Authority, the 1st Respondent regarding the employment of the Petitioners is a contractual

relationship based on the law of Contract and therefore, the impugned decision of the 3rd and 4th Respondents is not amenable to the writ jurisdiction.

2. Since the Petitioners had an alternative remedy under the Labour Laws, they are not entitled to invoke writ jurisdiction.

The facts of the case briefly are that the Petitioners were recruited to the Mahaweli Authority, the 1st Respondent (the Authority) in the years 2007/2008 as ‘Agriculture Officers’ by the letters of appointment marked A2(i) to A2(xvii). According to the letters of appointment, they had been placed in the basic salary scale of Rs. 25 640/= . Thereafter, in 2013 the scheme of recruitment and the procedure of granting promotions of the employees of the Authority were amended and changed. Accordingly, the designations of the Petitioners were changed to “Agronomists” and placed them in a starting salary scale of Rs. 20 490/= . That decision of the Authority has been communicated to the Petitioners by the impugned documents marked A17(i) to A17(xvii). The Petitioners allege that after the new scheme of recruitment was introduced, the positions held by them in the Authority have been lowered and their salaries and other remunerations have been reduced.

The Authority is a statutory body established under the Mahaweli Authority of Sri Lanka Act, No. 23 of 1979 (as amended) (the Act). Section 13 (32) of the Act states that the Authority has the power to appoint such employees and agents, as are necessary for carrying out the functions of the Authority. The appointment of staff of the Authority is provided in section 17 of the Act, which reads that;

“17. (1) There may be appointed to the Staff of the Authority such employees as the Authority may deem necessary.

(2) The Authority may appoint, dismiss and exercise disciplinary control over the staff of the Authority and fix the salary, wages or other remuneration of such staff and determine the terms and conditions of service of such staff.”

Therefore, in terms of section 17 of the Act, the power of making appointments, termination of service, determination of salaries, wages, other remuneration and deciding the terms and conditions of service of the employees are vested with the Authority. It has been stated in the letters of appointment of the Petitioners (A2(i) to A2(xvii)) about the Grade to which they were recruited, their salary, salary step, increments, probation period, whether the appointments are temporary or permanent, conditions and requirements to be fulfilled to make the appointments permanent, promotions, transfers, EPF contributions, security which should give under the Public Officers (Security) Ordinance for the faithful discharge of their duties, oath/affirmation which they should administer under the Constitution when joining the service, resignation from the service, termination of employment etc., the matters pertaining to their employment. It has been especially stated in their letters of appointment that they should be subject to the rules and regulations of the Authority already imposed and will be imposed.

The facts and the decision in *K.G.M. Jayathilake and 499 others vs. The Director General of Mahaweli Authority*¹ has a relevance to the case in hand. In that case the Petitioners sought from the Court a writ of Mandamus to compel the Respondent to follow two

¹ CAM 01.04.2008.

Circulars issued by the Ministry of Public Administration regarding an incentive allowance given to the public officers. However, the Court has held that the provisions in section 17 of the Act clearly indicates that the salaries, wages or other remuneration of the staff of the Authority and the terms and conditions of the service of such staff are determined by the Authority when the appointments are made and they will be incorporated in the contract of appointment and therefore, the Public Administration Circulars are not directly applicable to the staff of the Authority. Accordingly, the Application was dismissed.

The learned President's Counsel appearing for the Petitioner has cited *Ridge Vs. Baldwin*² in his written submissions to convince the Court that if the principles of natural justice are violated, the Court could invoke writ jurisdiction respect of the disputes arising out of the contracts. In that case the Court has considered the application of principles of natural justice in an event of a dismissal of an employee. Nevertheless, the Petitioners in the instant action do not allege about a violation of the principles of natural justice. Hence, that decision has no relevance to the case in hand.

The learned President's Counsel for the Petitioners has cited *Nanayakkara Vs. The Institute of Chartered Accountants of Sri Lanka and Others*³ to satisfy the Court that if the contract of employment has a statutory flavour, an employee is entitled to seek judicial review, even in the context of a contract of employment. In that case the Court has considered the terms and conditions stipulated in the letter of appointment of the petitioner who was an employee of the Chartered Institute and the effect of the regulations on the contract of employment of the petitioner. The regulations about the contract of employment were

² [1963] 2 All ER 66, [1964] AC 40, [1963] 2 All ER 935.

³ (1981) 2 SLR 52.

stipulated in the 'Manual of Procedure' (the 'Manual') and they were made by the Council by virtue of the statutory powers given to it by section 12 of the Chartered Accountants Act, No. 23 of 1959. The Court had observed that the letter of appointment of the petitioner requires him to comply with the rules, regulations, by-laws of the Institute already in force and which will issue from time to time and the regulations contained in the 'Manual'. The 'Manual' is a comprehensive one, which consists of regulations regarding the salaries, allowances, service conditions, probation, confirmation, increments, promotions, termination of employment, hours of work etc. of the employees. Therefore, the view of the Court was that the regulations stipulated in the 'Manual' are part of the Act under which they were made. In that context the Court has held that the contract of employment between the petitioner and the Institute has a statutory flavour.

In the instant case, in terms of section 55 of the Act, the Authority has the power to make rules in respect of all matters for which rules are required or authorized to be made. Nevertheless, there is no material before the Court that the Authority has made any rules under that section which relates to the employment of the employees of the Authority. Therefore, the Court cannot be satisfied that the contract of employment of the Petitioners with the Authority has a statutory flavour. The Petitioners were recruited to the Authority under and virtue of the powers vested in the Authority under sections 13 (32) and 17 of the Act to serve according to the terms and conditions stipulated in their letters of appointment.

Considering all the above facts and circumstances, I hold that the relationship between the Petitioners and the Respondents regarding the employment of the Petitioners is a contractual relationship and therefore, the impugned decision of the 3rd and 4th Respondents containing in the documents marked A 17 (i) to A 17 (xvii) is not amenable to the writ

jurisdiction of this Court. Hence, I hold that the Petitioners are not entitled to maintain this writ Application.

Since this Court has no jurisdiction to proceed with the Application, I do not wish to consider whether the writ Application should be dismissed on the ground that the Petitioners have alternative remedies under the Labour Laws.

Thus, I dismiss the writ Application without costs.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL