

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
Mandamus under and in terms of article 140
read with Article 126 of the constitution of the
Democratic Republic of Sri Lanka.*

CA Writ Application No.153/2021

A.J.R. Seneviratne
16/9, St. Jude Road
Enderamulla, Wattala.

Petitioner

Vs.

1. Ravindra Hevawitharana
Secretary,
Ministry of Plantations,
Sethsiripaya, Battaramulla.
2. Abeygunawardana
Secretary, Ministry of Labour (former)

2(a) Mapa Pathirana

Secretary, Ministry of labour,
Mehewara piyasa,
Labour Department, Narahenpita.

3. A. Wimalaweera

Commissioner General of Labour (former)

3(a) B.K.Prabath Chandrasiri

Commissioner General of Labour
Labour Department,
Narahenpita.

4. Attorney General

Attorney General's Department.
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : The Petitioner appears in person.
Madubashini Sri Meththa, SSC for the 3rd and 4th
Respondents.

Supported On : 20.07.2022

Decided on : 01.09.2022

Dhammika Ganepola, J.

The facts of the instant application are as follows. The service of the Petitioner, in this case, had been terminated with effect from 25.01.2016 while he was serving under the Tea Shakthi Fund. Consequently, the Petitioner has filed an application before the Labour Tribunal, Kaduwela under Case No. LT 30/1661/2016 and has prayed for reinstatement with back wages. Pending the inquiry before the Labour Tribunal, the parties on several occasions have negotiated a settlement. Eventually, on 04.01.2018 the parties entered the relevant terms of the settlement before the Labour Tribunal. In view of the said terms of the settlement, the parties have agreed that the Petitioner shall be issued a certificate of service and Rs. 1,235,290/- by a cash cheque as compensation in lieu of reinstatement. As per the proceedings dated 04.01.2018, it is observed that the Petitioner additionally wishes to reserve his right to ask for a comprehensive certificate of service from the employer and has requested the Employer, if possible, to make an effort to provide for an alternative employment.

The Petitioner states that his request to the State Plantation Corporation for alternative employment has not been met positively. Thus, he claims that without providing alternative employment, the settlement entered into before the Labour Tribunal could not be considered complete. The Petitioner seeks *inter-alia* a *Writ of Certiorari* quashing the final order of the learned President of the Labour Tribunal, Kaduwela in the case bearing no. LT 30/1661/2016 and a *Writ of Mandamus* directing the Respondents to comply with the request of the Petitioner for alternative employment.

Heard the Petitioner in support of the application and the Learned State Counsel opposing the application. When it comes to the proceedings of the said case before the Labour Tribunal, it is evident that the proceedings have come to an end in view of the terms of settlement entered before the Tribunal with the consent of the parties and also placing their respective signatures on record. Furthermore, it is

recorded that a cash cheque to the value of Rs.1,235,290/= and a certificate of service have been handed over to the Petitioner by the Respondent on the same day in open courts. Acceptance of said cheque and the certificate of service has not been denied by the Petitioner. The said acceptance also demonstrates the Petitioner's inclination for him to be bound by the settlement referred to above. Under such circumstances, on the face of the record, it is evident that the Petitioner has consented to the above settlement.

However, in the instant application, the Petitioner has submitted that he had not consented to the said settlement. If the Petitioner claims that he has not consented to the said settlement then the pivotal facts which are in dispute cannot be resolved without going into the facts involved in the said case. The procedure applicable to an application for a prerogative writ may not provide for such endeavour. In the case of **Reg. Vs. Lord Chancellor, Ex p. Maxwell (DC) (1997) 1 W.L.R. 104 at 109**, the court has observed that those courts (which exercise the jurisdiction of judicial review) are not concerned with the merits of such decisions, but only with the legality of them.

However, even a decree which gives effect to an agreement between parties may be set aside on any ground which would invalidate an agreement such as fraud, misrepresentation or mistake etc. [see **Swaris v. Perera 41 NLR562**]. Nevertheless, it seems that the Petitioner has not impeached the said settlement on any of the said grounds or even by way of an Appeal or Revision. A writ court is not a court with having an ample power to scrutinize an order as in appellate or revisionary jurisdiction. *In any event, where such a party has failed to invoke and pursue the appellate jurisdiction of the proper court, the extraordinary writ jurisdiction by way of review will only be exercised in exceptional circumstances.* **S.N. Silva J.** (as he was then) held in the case of **Halwan V. Kaeelul Rahuman (2000) 3 SLR 50 @ p61** that,

"When such party seeks judicial review by way of an application for Writ as provided in Article 140 of the Constitution, he has to establish an excuse for his failure to invoke and pursue the appellate jurisdiction. Such exercise should be pleaded in the petition seeking judicial review and be supported by

affidavits and necessary documents. In any event, where such a party has failed to invoke and pursue the appellate jurisdiction the extraordinary jurisdiction by way of review will be exercised only in exceptional circumstances such as, where the court, tribunal or other institution has acted without jurisdiction or contrary to the principles of natural justice resulting in an order that is void. The same principle is in my view applicable to the instances where the law provides for a right of appeal from a decision or order of an institution or an officer to a statutory tribunal. The reason is that such appellate procedure as established by law being the order procedure should be availed of before recourse is had to the extraordinary jurisdiction by way of judicial review as provided in Article 140 of the constitution. The remedy by way of judicial review should not be allowed to supplant the normal statutory appeal procedure and should be available only in exceptional circumstances as noted above."

In the instant case, Petitioner has failed to satisfy this court on the existence of *any exceptional circumstances*.

Another argument of the Petitioner is that the request for alternative employment made by the Petitioner has not been positively responded by the Ministry of Plantation and therefore the Petitioner is entitled for a Writ of Mandamus directing the Respondents to comply with the request for the alternative employment. Upon perusal of the terms of settlement dated 04.01.2018 recorded before the Labour Tribunal, it does not appear that there was an agreement between the parties of the said case, to provide alternative employment to the Petitioner. It is observed that the Petitioner has merely requested the Employer, if possible, to consider providing him with alternative employment and that there had not been any conclusion on the same. Consequently, no legal duty lies upon the Respondents to act accordingly. Writ of Mandamus will be granted only if there is exist a duty on the Respondent to perform the alleged act or if the Petitioner has an existing right to have it performed.

The Court in the exercise of its jurisdiction in applications for judicial review needs to be satisfied that there is a proper basis for claiming judicial review, and it is wrong to issue formal notice on the Respondents without identifying an appropriate

question on which the case can be properly proceeded. [see **Millaniyage Duminda Perera Vs. S M Chandrasena, MP and Others CA/WRIT/637/2021 decided on 19.07.2022**]. In the circumstances, I am of the view that the Petitioner has failed to submit a prima facie case which warrants this Court to issue formal notice of this application to the Respondents. Therefore, I proceed to refuse the application.



Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.



Judge of the Court of Appal