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

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

Indikatiya Hewage Jagath Nishantha,
"Nadi Uyana", Sudugagawatta,
Kaludewala, Matale.

PETITIONER

Vs.

C.A. (Writ) Application No: 467/2019

1. National Police Commission,
   Building No. 9,
   Bandaranayake Memorial International Conference Hall, Bauddhaloka Mawatha, Colombo 07.

2. P.H. Manathunga,
   Chairman, National Police Commission,
   Building No.9,
   Bandaranayake Memorial International Conference Hall, Bauddhaloka Mawatha, Colombo 07.

3. Professor S.T. Hettige

4. Savithri D. Wijesekare

5. Anton Jeyanathan

6. Y.L.M. Zawahir

7. Thilak Collure

8. Dr. Frank de Silva
   (3rd to 8th Respondents are the members of National Police Commission)
   Building No. 9,
   Bandaranayake Memorial International Conference Hall, Bauddhaloka Mawatha, Colombo 07.

9. D.M. Samansiri, Secretary,
   National Police Commission, Building No. 9, Bandaranayake Memorial International Conference Hall,
   Bauddhaloka Mawatha, Colombo 07.

10. Hon. Justice N.E. Dissanayake,
    Chairman, Administrative Appeals Tribunal, No. 35, Silva Lane, Dharmapala Place, Rajagiriya.

11. A. Gnanathasan P.C. Member,
    Administrative Appeals Tribunal, No. 35, Silva Lane, Dharmapala Place, Rajagiriya.

12. G.P. Abeykeerthi,
    Member, Administrative Appeals tribunal, No. 35, Silva Le Place, Rajagiriya.
    Dharmapala Place, Rajagiriya.

13. C.D. Wickramarathna,
    Acting Inspector General of Police
    Department of Police, Police Head Quarters, Colombo 01.

14. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp, Colombo 12.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

P.K. Prince Perera with N.H.S. Fonseka for the Petitioner.

Ms. Sabrina Ahamad S.C. for the 1st, 10th and 14th Respondents.

Written submissions tendered on:

05.10.2022 by the Petitioner.

20.10.2022 by the 1st, 10th and 14th Respondents.

Argued on: 13.09.2022

Decided on: 16.03.2023

S.U.B. Karalliyadde, J.

By this Writ Application, the Petitioner is seeking to quash the Orders of the Administrative Appeals Tribunal dated 22.07.2019, the National Police Commission dated 23.08.2017, and the Disciplinary Order dated 18.10.2007 imposed on him. The facts pertaining to this Writ Application are as briefly as follows;

The Petitioner joined the Department of Police as a Sub-Inspector of Police on 13.06.1999 and on 08.02.2010 he was promoted to the Post of Inspector of Police. While serving in the Alawathugoda Police Station, on 15.03.2006 he was assigned to

perform the duties of the Investigating Officer with regard to a death of an infant girl who was 2 ½ months old. After performing the Post-Mortem, the Judicial Medical Officer (the JMO) decided to send some parts of the dead body to the Government Analyst for examination and requested the Petitioner several times till 27.03.2006 to take the body parts to the Government Analyst Department. But the Petitioner failed to act according to the directions of the JMO. Therefore, the JMO reported it to the Senior Superintendent of Police. The Senior Superintendent of Police decided to conduct a Disciplinary Inquiry against the Petitioner. Accordingly, a charge sheet dated 26.11.2006 was issued on the Petitioner alleging that he had neglected his official duties and thereby committed two offences punishable under Section 4(A) of Appendix 'B' of the Departmental Orders marked A7. After the Inquiry, the Petitioner was found guilty to both charges, and by the Disciplinary Order dated 18.10.2007 his one salary increment was suspended as the punishment. Against that Disciplinary Order, the Petitioner appealed to the National Police Commission (the NPC) on 10.12.2007. Since the NPC was defunct from 09.04.2009 to 12.05.2011, the appeal was referred to the Secretary, of the Ministry of Defence. The reason for referring the appeal to the Secretary, Ministry of Defence was that during the period, the powers of the NPC and the Public Service Commission (the PSC) had been vested with the Cabinet of Ministers. During that period, the PSC was also defunct. The Cabinet of Ministers being the appellate authority decided to affirm the Disciplinary Order and dismiss the appeal and intimidated that decision by the Secretary, Ministry of Defence by the letter dated 12.03.2010 marked R3 to the Petitioner. After the re-establishment of the NPC and the PSC, the Petitioner preferred an appeal to the PSC on 25.09.2011 (annexure marked A4) requesting to reconsider his appeal dated 10.12.2007 to the NPC. In the letter sent by the NPC to the Petitioner on 23.08.2017 marked A5, it has been stated that the PSC has referred the appeal of the Petitioner back to the NPC to reconsider his appeal to the NPC dated 10.12.2007. After reconsidering the appeal, by the letter marked A5 the NPS informed the Petitioner that since the Cabinet of Ministers being the appellate authority

had already decided to affirm the Disciplinary Order and dismiss the appeal, the NPC could not interfere with that decision of the Cabinet. Then the Petitioner challenged that letter before the AAT by appeal dated 20.09.2017 marked X. The AAT by the Order dated 22.07.2019 dismissed that appeal. By this Writ Application, the Petitioner challenges the dismissal of the appeal by the AAT.

The AAT dismissed the appeal and affirmed the decision intimidated to the Petitioner by the letter dated 22.07.2019 marked A5 on the basis that the Appeal of the Petitioner to the PSC does not fulfill the requirements mentioned in the PSC Circular No. 03/2012 dated 24.12.2012 marked R4. By that Circular the Government Officers were granted a right of appeal from the date of the Circular to the 28th February 2013 to the PSC against the decisions of the Cabinet of Ministers if they were aggrieved by the Orders made by the Cabinet on the following three grounds.

1. In respect of facts that ought to have been considered at the Formal Disciplinary Inquiry or by the Cabinet of Ministers and which facts have not been considered.
2. In respect of some procedural irregularity that had occurred from the commencement of the Formal Disciplinary Inquiry to the issue of the Disciplinary Order.
3. An appeal from a Disciplinary Order issued by the Cabinet of Ministers in performing their function of the Disciplinary Authority that the punishment/the Disciplinary Order had exceeded a punishment imposed on a similar offence, in the past.

The Petitioner preferred the appeal against the decision of the Cabinet of Ministers to the PSC on 25.09.2011 by A4. Therefore, it is evident that the appeal of the Petitioner to the PSC was before the time period stipulated in the PSC Circular marked R4 and there is no material before the Court to be satisfied that the Petitioner has appealed within that period. The argument of the learned Counsel for the Petitioner is that since the Petitioner preferred the appeal to the PSC within the time stipulated in the PSC Circular No. 04/2011 dated 04.08.2011 (on page 47 of the brief) the conclusion of the

AAT that the Petitioner failed to lodge an appeal within time is erroneous. By that Circular permission has been granted till 30.09.2011 to the Government Officers who could not prefer appeals under Articles 58(1) and 155A, of the Constitution for the reason of the nun-functioning of the PSC and NPC. The PSC Circular No. 04/2011 applies to the Government Officers who could not appeal as the NPC and the PSC were defunct. But in the instant Writ Application, the appeals had been made by the Petitioner against the Disciplinary Order to the NPC on 10.12.2007 and against the decision of the Cabinet of Ministers to the PSC on 25.09.2011. Therefore, the Circular which should be applied to the Petitioner is Circular No. 03/2012 and not Circular No. 04/2011. Under the said circumstances, the Court cannot accept the argument of the learned Counsel for the Petitioner.

After the Cabinet of Ministers decided to dismiss the appeal, the Petitioner made an appeal to the PSC by annexure A4 requesting to reconsider the decision of the Cabinet. The PSC referred that appeal to the NPC and by the letter dated 23.08.2017 marked A5 which the Petitioner sought to quash by this Writ Application, the NPC informed the Petitioner that since the Cabinet of Ministers being the appellate authority already had dismissed his appeal, it could not interfere with the decision of the Cabinet. Therefore, it is evident that in A5, no decision has been intimated to the Petitioner taken by the NPC about the appeal referred to it by the PSC other than informing him that it cannot interfere with the decision of the Cabinet. It is important to mention that the appeal of the Petitioner to the AAT which this Writ Application relates emanates from A5. In addition to that, there is no decision taken by the PSC for the Petitioner to appeal against to the AAT. Under the above-stated circumstances, since the PSC has not taken any decision and the NPC has not intimidated any of its decisions on A5 to the Petitioner, he has no right to prefer an appeal from the PSC to the AAT and the NPC to the AAT respectively.

Article 61A of the Constitution provides that;

" *[Subject to the provisions of Article 59 and of Article 126], no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law."*

In the case of *Dr. M.D. W. Lokuge vs. Vidyajothi Dr. Dayasiri Fernando, Chairman, of the Public Service Commission and 11 Others*[1], Justice A.H.M.D. NAWAZ, J, held as follows;

"*The exercise of writ jurisdiction in terms of Article 140 of the Constitution is subject to the provisions of the Constitution in that Article 61A of the Constitution would preclude judicial review of decisions of the PSC. When the jurisdiction of this Court to judicially review PSC decisions by certiorari is shut out at a threshold stage, a revisit of that decision in the guise of mandamus or certiorari will be beyond the pale of our jurisdiction and on that score, we are inclined to hold with the submissions of the learned Deputy Solicitor General that mandamus will not lie in the instant case before us*."

In the case of *Locomotive Operators Engineers Union and 2 Others Vs. Justice N.E. Dissanayake (Chairman of the Administrative Appeals Tribunal) and 29 Others*[2], Sobhitha Rajakaruna, J. held as follows;

"*Firstly, I observe that it is now settled law that a decision of the AAT on a PSC decision can be impugned under Article 140 of the Constitution. The AAT is not a body exercising any power delegated to it by the PSC but is an appellate tribunal constituted in terms of Article 59(1) of the Constitution (See* ***Rathanayake v Administrative***

[1] C.A. (Writ) Application No. 160/2013 at page 19.

[2] C.A. (Writ) Application No. 339/2019 at page 12.

***Appeals Tribunal & others**, (2013) 1 Sri LR 331; **Lakmini Delapola v Justice SI Imam & others**, CA Writ Application, 263/2013, CA minutes 26.07.2019; and **K.N. Mankotte v Justice SI Imam & others**, CA Writ 249/2015, CA Minutes 06.03.2019). However, the jurisdiction of the Court of Appeal under Article 140 would be limited to a review of the decision of the AAT, and would not extend to quashing decisions of the PSC or of a committee or public official to whom the powers of the PSC have been delegated. (See **W.A.G. Weerasinghe v P.M.K. Malalasekara & others**, CA Writ Application No. 256/2018, CA Minutes 19.03.2021)*"

In the case of *Mohamed Ismail Wahabdeen Vs His Lordship Jayantha Jayasuriya, Chairman, Judicial Service Commission*[3], Sobhitha Rajakaruna, J. held as follows;

"*On a careful perusal of the provisions of the said Article 61A, it is apparent that a wider spectrum of indemnity has been conferred to the PSC precluding even the issuance of prerogative writs against the PSC by the Court of Appeal in as much the said article specifically spell out the words "no court or tribunal". Therefore, it appears that the legislature has made a clear distinction between Article 111K and 61A. However, in terms of the said Article 61A, the jurisdiction of the Supreme Court under Article 126 (along with the jurisdiction of AAT) has not been precluded. Identical provisions can be seen in Article 155C of the Constitution which deals with immunity in reference to NPC, which was introduced by the same 17th Amendment to the Constitution*."

On the other hand, therefore, in terms of the said Constitutional provisions and the Court decisions, the Petitioner has no right to invoke Writ jurisdiction of this Court against the decision of the PSC.

[3] C.A. (Writ) Application No. 468/2021 at page 8.

The learned Counsel appearing for the Petitioner argued that taking the body parts of the infant to the Government Analyst was not his responsibility but the sole responsibility of the Officer-In-Charge of the Police Station. He further argued that a necessity arises to send body parts to the Government Analyst if the cause of death could not be determined or ascertained, but here since the JMO, after conducting the Post-Mortem Examination, on the very first day had decided the cause of death as blunt force trauma to the head and neck of the infant, a necessity did not arise to send the remains to the Government Analyst and therefore, the directions given by the JMO to take them to the Government Analyst was not legal and correct and that fact has not been considered by the AAT when making its decision. In the case at hand, since this Court is supposed to exercise the powers vested under and in terms of Article 140 of the Constitution for judicial review, it is not concerned about the correctness or the merits of the decision of the AAT but concerned about the legality of the decision.

In their work Administrative *Law* H.W.R. Wade & C. F. Forsyth has stated as follows;

"*Where appeal lies only on a point of law, an appeal against an exercise of discretion by a tribunal should succeed, in theory at least, only where the decision is vitiated by unreasonableness, self-misdirection, irrelevant considerations or some other legal error. For otherwise no point of law arises. But in fact, the court may allow such an appeal if it appears that the tribunal's decision produces manifest injustice or is 'plainly wrong' In any case, unreasonableness, self-misdirection, and so forth are grounds which are 'so many and so various that it virtually means that an erroneous exercise of discretion is nearly always due to an error in point of law*"[4]

Accordingly, the AAT has not either acted unreasonably or taken irrelevant considerations when arriving at their decision. Hence, the Order of the AAT has not caused any injustice and is legally valid. Since the Court can be satisfied that the

[4] H.W.R. Wade & C. F. Forsyth, *Administrative Law* (first published 2014, Oxford University Press) at page 792.

procedure followed by the AAT is correct and its Order is not illegal or irrational, a necessity does not arise for this Court to interfere with that Order.

The learned Counsel appearing for the Petitioner also argued that the suspension of one increment as the punishment is against the provisions of section 24.2.4 of Chapter 48 of the Establishment Code for the reason that the period to which the suspension applies is not specifically mentioned in the Disciplinary Order. Government Servants are entitled to salary increments annually. According to section 24.2.4. of the Establishment Code, a salary increment for a period not exceeding one year could be suspended as a punishment. It has been described in the Disciplinary Order marked R2 as the punishment imposed on the Petitioner in the following manner.

"වැටුප් වර්ධකයක් අත්හිටුවීම."

Therefore, it is understood that the punishment imposed on the Petitioner was the suspension of salary increment for a year.

The learned Counsel for the Petitioner further argued that even though, the burden of proof of a charge at a disciplinary inquiry is on the balance of probability, the Inquiring Officer has decided that the charges were proved beyond reasonable doubt and therefore, due to that error the Order of the inquiring officer is *per se* misconceived. That argument is based on the fact that in the report prepared by the Inquiring Officer dated 03.10.2007 (page 90), it has been stated that the charges against the Petitioner have proven without a doubt (සැකයෙන් තොරව ඔප්පුවී ඇති බව). The Court cannot accept that the words 'without doubt' means 'without a reasonable doubt'. After perusing the report, it is clear that the Inquiring Officer when analyzing the evidence had considered whether the charges were proved on the balance of probability and not on beyond reasonable doubt. Therefore, the Court cannot accept the above-mentioned argument of the learned Counsel for the Petitioner.

After considering all the above-stated facts and circumstances, I hold that the Application of the Petitioner for Writs of Certiorari is without merits and it should be dismissed. Therefore, I dismiss the Writ Application. No costs were ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL