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

In the matter of an Application for Orders in the nature of Writs of Mandamus and in the nature of Writs of Certiorari in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. I. B. A. R. M. Rathnayke,
   Ingurugamuwa, Wamane Gedara,
   Awulegama.

PETITIONER

CA No. CA/Writ/0263/2019

v.

1. Hon. Justice N. Dissanayake**,**
   Chairman,
   Administrative Appeals Tribunal,
   35, Silva Lane,
   Dharmapala Place,
   Rajagiriya.

2. Hon. Mr. A. Gnanathasan, PC,
   Member,
   Administrative Appeals Tribunal,
   35, Silva Lane,
   Dharmapala Place,
   Rajagiriya.

3. Hon. G. P. Abeykeerthi
   Member,

Administrative Appeals Tribunal,
35, Silva Lane,
Dharmapala Place,
Rajagiriya.

4. K. B. D. M. P. B. Dissanayake,
   Secretary,
   Administrative Appeals Tribunal,
   35, Silva Lane,
   Dharmapala Place,
   Rajagiriya.

5. Dharmasena Dissanayake
   Chairman.

6. (Proof) Hussain Ismail
   Member.

7. (Ms) D. Shirantha Wijayathilaka
   Member.

8. (Dr) Prathap Ramanujam
   Member.

9. (Mrs) V. Jegarasasigam
   Member.

10. Santi Nihal Seneviratne
    Member.

11. S. Raugge
    Member.

12. D. L. Mendis
    Member.

13. Sarath Jayathilaka
    Member.

14. M. A. B. Daya Senarath
Secretary

6th – 14th Respondents, all of the public Service Commission No. 177, Nawala Road, Narahenpita,
Colombo 05.

RESPONDENTS

BEFORE : M. Sampath K. B. Wijeratne J. &
Wickum A. Kaluarachchi J.

COUNSEL : Lakshan Dias for the Petitioner.

S.Wimalasena, DSG for 1st – 6th Respondents.

ARGUED ON : 20.02.2023

DECIDED ON : 12.05.2023

M. Sampath K. B. Wijeratne J.

Introduction

The Petitioner commenced his career in the public service on 18th July 1994 as a casual Prison Guard[1] and was subsequently appointed to the permanent carder. He served in Negombo, Pallansena, Kurunegala and Wariyapola prisons during his tenure. On the 9th of June 2005, the Ministry of Justice and Judicial Reforms called for applications from internal and external candidates for the post of Community Corrections Officer[2]. The Petitioner applied for the

[1] P 2.
[2] P 7 & P 8.

post as an internal candidate and was called for an interview. The required qualifications for an internal candidate are as follows[3];

a) ten years experience as a supervisor in the community corrections project; ***or***

b) five years experience as a supervisor in the community corrections project with a degree obtained from a recognized university; ***or***

c) five years experience as a prisons officer with a degree obtained from a recognized university;

and

should have passed the required efficiency bars in the current position and should have a satisfactory service period of the preceding five years.

Satisfactory service is defined as obtaining all salary increments and not being subject to more severe disciplinary action than a warning within the preceding five years.

Consequently, the Petitioner was appointed to the post of Community Corrections Officer with effect from 1st January 2007[4]. The Petitioner presented to the Court the certificate of service submitted to the Ministry of Justice by the Prison Department marked 'P11'.

It was subsequently revealed that the Petitioner was a subject of a disciplinary reprimand on the 31st August 2001[5]. Therefore, the Petitioner does not have a *satisfactory service period* of five years immediately preceding the five-year period from the date of the application of which all salary increments have been earned and devoid of any punishment more than a warning. According to the Respondents, the Petitioner's appointment to the aforesaid post had been made due to an oversight.

The disciplinary action of reprimand (තරවටු කිරීම)[6] is a minor penalty under Clause 24:2:1 of Chapter XLVIII of Volume II of the Establishment Code. The punishments are set out in Clause 24 and the minor punishments are set

[3] P 7 / R1.
[4] P 16.
[5] P 20.
[6] *Supra* note 5.

out in Clause 24:2. According to Clause 24:2:1, reprimand (තරවටු කිරීම) is a minor punishment. It is also stated that a warning or even a severe warning is not a punishment. Hence, it is clear that the Petitioner had been subject to punishment.

Accordingly, the Public Service Commission (hereinafter referred to as 'PSC') called for observations from the Ministry of Justice which recommended the cancellation of the appointment. Consequently, PSC cancelled the appointment. By letter dated 25th January 2015, under the hand of the 14th Respondent, PSC informed the Petitioner that his appointment is cancelled with immediate effect since he does not possess the minimum qualifications to have been appointed to the post of Community Corrections Officer[7]. Thereafter, Secretary to the PSC by letter dated 11th February 2014, informed the Ministry of Justice that the PSC sanctioned the release of the Petitioner to his previous post, Prison Guard[8]. Consequently, the Commissioner of Community Corrections, by letter dated 23rd March 2015, released the Petitioner from the post of Community Corrections Officer to the post of Prison Guard[9]. According to the Petitioner, he was placed at the first step of the salary scale of the post of Prison Guard having deferred twenty-two salary increments. According to the Respondents, when the Petitioner applied to the post of Community Corrections Officer as an internal candidate, he had suppressed material information pertaining to his satisfactory service record immediately preceding the five years period from the date of the application.

The Petitioner aggrieved by the decision of the PSC appealed to the Administrative Appeals Tribunal (hereinafter referred to as the 'AAT')[10]. Having called for observations from the PSC, counter observations from the Petitioner, and written submissions from both parties, the AAT proceeded to hear the appeal[11]. Thereafter, both parties were allowed to file their final written submission.

[7] P 21.
[8] P 22.
[9] P 23 (a).
[10] At p. 24.
[11] At paragraph 44 of the Petition.

The AAT delivered its order on the 2nd August 2018 ('X 1') dismissing the appeal of the Petitioner. The Petitioner alleged that the 1st to 3rd Respondents have failed and/or neglected to consider or appreciate the following facts[12].

a) The specimen application did not have a question on satisfactory service and even the advertisement did not refer to the immediately preceding (අණතිරි පූර්වගාමී) service.

b) Petitioner should not have been called for the interview if the Petitioner has not satisfied the pre-requisites.

c) Petitioner was never given a hearing prior to the decision of the PSC.

d) PSC disregarded the Petitioner's experience and his services as in the permanent cadre are not different to his duties before.

e) PSC did not resort to Rule 56 since there was no fraud, mischief or misrepresentation on the part of the Petitioner.

f) PSC dismissed the appeal without setting out any reasons.

g) Petitioner has been demoted and/or punished for no fault of the Petitioner.

The Petitioner stated that in the application form, there was no question regarding the Petitioner's satisfactory service and if such a question was there or at least if it was posed to the Petitioner at the interview, he would have honestly disclosed[13]. However, I am not in favour of the Petitioner's contention. The notice calling for the applications categorically states *inter alia* that the internal candidates should have a satisfactory period of service of immediately preceding five years without any punishment.

Further, the Petitioner stated that the notice calling for applications had a clause that *'only candidates who meet the minimum qualifications will be*

[12] At paragraph 50 of the Petition.
[13] At paragraph 28 of the Petition.

called for an interview and after examining the qualifications, the candidates who obtain the highest marks will be selected for the position'. Accordingly, it was argued that if the Petitioner did not possess the required qualifications, he should not have been called for the interview and his application should have been rejected *in limine*. The Petitioner stated that had the Petitioner's application been rejected at the inception, he could have applied at a subsequent stage or even applied for other advertised positions. In my view, when the notice sets out the minimum qualifications, it is understood that only those applicants who meet the required qualifications may apply. I agree that the interview board should also have reviewed the petitioner's qualifications at the interview. Yet, in the first place, the Petitioner should not have applied for the position, as he does not meet a criterion enabling him to apply for the position.

Has the petitioner's appointment given rise to a legitimate expectation?

The petitioner claimed that his appointment should not have been rescinded nearly eight years after he held that position, which gave rise to a legitimate expectation. Nevertheless, for the Petitioner to make a claim under legitimate expectation, the mere expectation is insufficient. The expectation must be legitimate.

A person who has breached the conditions cannot claim to have a legitimate expectation[14].

In the case of *Ginigathgala Mohandiramlage Nimalsiri v. Colonel T.T.J. Fernando, Commanding Officer and others*[15] it was observed that *'... An expectation the fulfilment of which results in the decision maker making an unlawful decision cannot be treated task of legitimate expectation. Therefore, an expectation must be within the power of the decision maker for it could be treated as a legitimate expectation…*'

A similar view was expressed in the case of *Vasana v. Incorporated Council of Legal Education and others*[16] wherein it was observed that the law cannot

[14] *Galappaththy v. Secretary to the Treasury and Two others* (1996) 2 SLR 109.
[15] SC FR Application No. 256/2010.
[16] (2004) 1 SLR 154.

consider it as a legitimate expectation when the basic ingredients necessary for the formation of a legitimate expectation are lacking.

Therefore, although the Petitioner asserted that his experience and his services in the permanent cadre are not different from his previous duties, this cannot be considered for the appointment to the post if the Petitioner lacks the basic qualifications to apply for the position.

The Petitioner's claims against the PSC.

The petitioner stated that the PSC had not given him a hearing before the decision to revoke his appointment was made. The petitioner testified that his letter of appointment does not give the employer discretion or the right to terminate his services without due process. Furthermore, the PSC did not rely on Rule 56 of Procedural Rules, Volume I, Appointment, Promotions and Transfer of Public Officers, issued by the Public Service Commission in terms of Article 61B and 58 (1) of the Constitution and published in Extra Ordinary Gazette Notification No. 1589/30 dated February 20, 2009, the only provision on which the PSC could have relied had the petitioner in fact been guilty of providing false and erroneous information or documents. The Petitioner argued that even if the decision is based on Rule 56, it expressly provides that a right to be heard should be granted. The petitioner stated that the PSC did not invoke Rule 56 as there was no fraud, mischief or misrepresentation on the part of the Petitioner. It was also stated that the PSC disregarded the Petitioner's experience and his services. Finally, the Petitioner stated that he has been demoted and/or punished for no fault of the Petitioner[17].

The Respondent contended that the jurisdiction of this Court to inquire into, pronounce upon or in any manner call in question any order or a decision made by the PSC is ousted by Article 61 A of the Constitution which reads as follows;

'61A. Subject to the provision 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

[17] Paragraph 53 of the Petition.

or duty conferred or imposed on such Commission, or delegated to a committee or public officer, under this Chapter or under any other law'

Nevertheless, the Petitioner argued that the above ouster clause in the Constitution has no application to the case at hand since the Petitioner is only challenging the order marked 'X1' made by the 1st to 3rd Respondents, the members of the AAT.

However, as I have already stated above, although the reliefs sought by the Petitioner are in respect of the AAT, the Petitioner has also made allegations against the PSC that the PSC failed to offer a hearing before the decision is made, the PSC disregarded the Petitioner's experience and his services and the PSC did not refer to the Rule 56 etc.

In the case of *Katugampala v. Commissioner General of Excise and others*[18] citing *Atapattu v. People's Bank*[19] and *Bandaranayake v. Weeraratne*[20] it was stated that '*the ouster clause contained in the Constitution would bar jurisdiction that has been granted within the constitution and would therefore such ouster clause adverted to above would be a bar to the entertaining of writ applications to invoke the writ jurisdiction by this Court'.*

The above position has been reiterated by our Courts in a number of other subsequent decisions.

However, in the case of in the aforementioned case of *Katugampala v. Commissioner General of Excise and other*[21] Shiranee Thilakawardane J., PCA (as she was then) expressly stated that writ jurisdiction could be invoked where the decision maker has no legal authority to make the impugned decision. However, in the case at hand, the Petitioner did not challenge the authority of the PSC to make the impugned decision.

In light of the above, I am of the view that the Court of Appeal shall have no jurisdiction to inquire into the matters raised by the Petitioner pertaining to the order and/or decision made by the PSC. However, Article 61 A of the Constitution is subject to the provisions of Articles 59 and 126 of the

[18] (2003)3 SLR 207 at p. 210.
[19](1997)1 SLR 208.
[20] (1981) 1 SLR 10 at p. 16.
[21] Ibid.

Constitution. Therefore, the Petitioner could have sought his remedy under the fundamental rights jurisdiction of the Supreme Court.

Conclusion

In the circumstances, this Court has only to consider whether the AAT erred in its decision. In terms of Article 59 of the Constitution, the AAT has the power to vary, alter or rescind any order or decision made by the PSC. The AAT in its order 'X1', has extensively considered the facts presented to the PSC and arrived at the conclusion that the decision of the PSC is correct.

In light of the above analysis of facts pertaining to the instant application, I am of the view that the Petitioner is not entitled to the reliefs claimed in paragraphs (c), (d), and (e) of the prayer of the Petition.

Accordingly, I dismiss this application. No costs.

JUDGE OF THE COURT OF APPEAL

Wickum A. Kaluarachchi J.

I Agree.

JUDGE OF THE COURT OF APPEAL