

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 Certiorari and in the nature of Writs of Mandamus in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. S. D. A. U. Dasanayaka
Galaudawaththa
Kudagammana
Divlapitiya.

Petitioner

CA/WRIT/176/2022

Vs.

1. Flying Officer G. P. Amarasiri
Bomb Disposal Unit
Sri Lanka Air Force.
2. Air Vice Marshal R. S. Biyanwala
Director of Admin
Air Force Head Quarters,
P. O Box. 594,
Colombo-02.
3. Flight Lieutenant D. H. S. Wijesinghe
Assistant Staff Officer II
Air Force Head Quarters,
Colombo-02.
4. Group Captain N Sapugasthanna
Staff Officer III
Air Force Head Quarters,
Colombo-02.
5. Air Mashal Sudarshana Pathirana
Commander of Sri Lanka Air Force,
Air Force Head Quarters,

P. O Box. 594,
Colombo-02.

6. General Kamal Gunaratne
Secretary, Ministry of Defense,
15/5, Baladaksha Mawatha,
Colombo-03.
7. Gotabaya Rajapakshe
Minister of Defense,
15/5, Baladaksha Mawatha,
Colombo-03.
8. Hon. Attorney General
Attorney General's Department,
Colombo-12.

Respondents

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

Counsel : Maneesha Kumarasinghe instructed by Dayani
Panditharatne appearing for the Petitioner.
S. Wimalasena, DSG for the Respondents.

Argued On : 02.03.2023

Written Submission : Petitioner : 20.04.2023
tendered On Respondents : 12.05.2023

Decided On : 17.05.2023

Dhammika Ganepola, J.

The Petitioner in this application is seeking a Writ of Certiorari to quash the letter of discharge from the service under the clause 'service no longer required' dated 06.02.2020 marked P9 and letter dated 16.06.2020 refusing the Petitioner's request for the pension marked P11 and a Writ of Mandamus requiring the Respondents to reinstate the Petitioner and then dismiss the Petitioner from service subject to the relevant medical pension schemes and gratuity. The factual matrix of the case is as follows.

The Petitioner joined the Sri Lanka Air Force in 2008 and was appointed to Air Force Presidential Security Unit. The Petitioner states that while he was following a Course at Palali Air Force Base on a day in February 2014, he was suddenly admitted to the Palali Base Hospital and later taken to the Katunayake Air Force Hospital on the following day. It is submitted that the reason for such admission to the aforesaid hospitals was unknown to the Petitioner. The Petitioner had been kept at the Katunayake Air Force Hospital for over one week and was referred to a psychiatrist. Since the Petitioner was not allowed to meet or contact anyone and had no way out of the said situation, Petitioner claims that he was depressed. The Petitioner further states that subsequently he has been sent back to the Palali Camp stating that he was not suffering from any ailment.

Thereafter, the Petitioner was transferred again to the Presidential Security Unit. Again, on or about 20.10.2014 the Petitioner met with an accident and had to take treatment in the Ratmalana Air Force Camp Hospital for over two months. The fact that the Petitioner was forced to stay away from work had mentally affected him and was treated for depression. The Petitioner sought permission to resign from the Sri Lanka Air Force on medical grounds on or about 19.12.2017 and the same had been rejected by the Sri Lanka Air Force stating that the Petitioner was absent without leave. Thereafter the Petitioner had been dismissed from service under the clause 'service no longer required' by the letter dated 06.02.2020 marked P9. By the letter marked P11, the Petitioner has also been informed that his request for a pension cannot be accommodated in terms of the existing Air Force Law. The Petitioner submits that his dismissal from the Air Force without a pension is unfair, unreasonable, arbitrary and against the rules of natural justice.

In the Statement of Objections, the Respondents state that the Petitioner was referred to the Palali medical section on 21.01.2014 as the Petitioner was not in a mentally fit position to follow the training. Later the Petitioner was transferred to Katunayake Base Hospital on 24.01.2014 and referred to a psychiatrist as there was no suitable medical officer available at Palali. As proof of the same, the relevant In-Patient Case Sheet and the Clinical Notes marked as R1 and R2 maintained on behalf of the Petitioner have been submitted by the Respondents. According to the Clinical notes marked R3 the Petitioner had been discharged from the hospital after concluding that no symptoms of psychiatric illness were found. However, the patient was said to be suffering from personal problems. The Respondents conceded to the fact that the Petitioner suffered a serious injury while being on duty in 2014 and received continuous treatment for the said injury and also drifted to a state of depression at a later stage. Later, the Petitioner had been

absent without leave from 22.11.2017 and reported back to work on 18.12.2017. However, the Petitioner had taken off from the hospital on the very same day without obtaining necessary permission. Although the Petitioner has requested permission to resign from service by 19.12.2017, his request was not administratively processed as he was absent from service without leave. The Petitioner was discharged from service on 30.09.2020 under the clause of 'service no longer required'.

It is common ground that the Petitioner has been suffering from depression during the period of his service in the Sri Lanka Air Force. The Petitioner has requested to resign from Sri Lanka Air Force by way of a letter dated 08.11.2017 on medical grounds. However, the Petitioner was absent from service without leave from 22.11.2017. Petitioner's absence from service without obtaining leave had caused his request for resignation to not be administratively processed. These circumstances are reflected in the letter dated 05.01.2018 marked R5. Therefore, it is apparent such a request for resignation could not be considered in respect of a person who is absent from the service of the Sri Lanka Air Force without leave.

Although the Petitioner had taken off from the hospital on 18.12.2017 without permission, once again on 19.12.2017, immediately afterwards the Petitioner had made another request to resign from the service on medical grounds. Consequently, the Petitioner was informed by the Sri Lanka Air Force that no measure could be taken in respect of the application made by the Petitioner seeking medical pension as he has been considered absent from service without leave by the letter dated 05.01.2018 marked R5. Furthermore, the Petitioner was advised to report to the Sri Lanka Air Force immediately for any further steps to be taken to discharge the Petitioner in accordance with the Air Force Law and Regulations by the said letter R5.

It is pertinent to note that if specific criteria are laid down in the statute, authorities are bound to follow such criteria. It is further observed that the Petitioner has not acted or complied with the instructions given by the said letter marked R5 which he had a duty to comply with. The Petitioner's failure to comply with such instructions had caused the Respondents to discharge the Petitioner under the clause of 'service no longer required' on 06.02.2020 by letter marked P9 in terms of the applicable laws and regulations. Since the Petitioner has not complied with the instructions given in the letter R5 and owing to his failure to inform his inability to report to service to the relevant authorities, if in fact he was incapable of reporting, it is observed that the Petitioner has not come before this court with clean hands. Writ Jurisdiction being a discretionary remedy, the conduct of the applicant is also relevant, and his conduct may disentitle him to the remedy.¹

Hence it is clear that the Sri Lanka Air Force has acted in response to the request made by the Petitioner in a fair and reasonable manner considering the health condition of the Petitioner and giving due attention to the applicable laws and regulations of the Sri Lanka Air Force by its letter marked R5. In the instant application, it must be acknowledged that the authorities are under an

¹ Perera V. National Housing Development Authority (2001) 3 SLR 50 at 55.

obligation to act fairly. However, such obligation must not conflict with its statutory obligations. Since the Petitioner has not reported to duty in compliance with the laws and regulations applicable to the Sri Lanka Air Force, the blame could not be placed on the Respondents for the resulting repercussions.

The Petitioner's request for a medical pension was disallowed by the letter dated 05.01.2018 marked R5. Since then, there has been a fairly long silence on the part of the Petitioner without taking any constructive action in respect of the same until the Petitioner was discharged from service by letter dated 06.02.2020 marked P9. The said inordinate and unexplained delay also would lead to the refusal of the Petitioner's Application.

The Petitioner was discharged from service under the clause 'service no longer required' by letter marked P9 in view of the general amnesty granted by the Government to the Airmen who were absent without leave from service. It is apparent that at the time of issuance of the letter of discharge, the Petitioner was absent from service without proper leave being frauded.

In the circumstances and based on the above reasons this court is not inclined to grant any relief prayed for in the prayer of the Petition. Accordingly, the application is dismissed. I order no cost.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal