

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

In the matter of an Application for Writs of *Certiorari*, *Mandamus* and *Prohibition* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.**

**CA/WRT/0299/2019**

Ediri Munige Kumari Sudharma Senarath  
C 24/2/1, Soyzapura,  
Soyza Flats,  
Moratuwa.

**Petitioner**

**Vs**

1. National Water Supply and Drainage Board,  
P. O. Box 14, Galle Road,  
Rathmalana.
  
2. D. U. Sumanasekera  
General Manager  
National Water Supply and Drainage Board,  
P. O. Box 14, Galle Road,  
Rathmalana.

3. G. K. Iddamalgoda  
Additional General Manager Human  
Resources,  
National Water Supply and Drainage  
Board,  
P. O. Box 14, Galle Road,  
Rathmalana.

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Thusitha Wijekoon for the Petitioner.

Ruwantha Cooray with E. Abeywardena, instructed by K.  
Siriwardena for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

Ms. Y. Fernando, DSG, with M. Fernando, SC, for the 3<sup>rd</sup>  
Respondent.

Argued on: 17.01.2023

Written Submissions on: 08.03.2022 by the Respondents.  
Not tendered by the Petitioner.

Decided on: 30.05.2023

**MOHAMMED LAFFAR, J.**

The main reliefs sought by the Petitioner in this instant Application, *inter alia*, are as follows

- a) A Writ of Prohibition preventing the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents from holding the interviews and appointing to the post of Chief Accountant in violation of rules and laws in contravention of Act marked 'X1'
- b) A Mandate in the nature of Writ of Certiorari to quash the interview taking place for the post of Chief Accountant and filling of the vacancy by 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents and their agents and/or servants and/or representatives from acting in any manner which would be prejudicial and contrary to board rules and requirements;
- c) A Mandate in the nature of Writ of Certiorari quashing the appointment and declaring it null and void if the vacancy has been filled;
- d) A Mandate in the nature of Writ of Mandamus compelling the 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents and their agents and/or servants and/or representatives by granting an opportunity to the Petitioner to face the interview in a reasonable manner

The sequence of facts to the instant Application pursued are as follows.

The Petitioner is currently in employment of the 1<sup>st</sup> Respondent, National Water Supply and Drainage Board, as a Senior Internal Auditor. It is

averred by the Petitioner that she tendered an application with regard to a vacancy for the post of Chief Accountant which was advertised by the 1<sup>st</sup> Respondent board (X10, X11, X12). It is further stated by the Petitioner that despite tendering her application, she was not invited to partake in the said interview and purportedly, the majority of the candidates invited for the interview are less qualified than the Petitioner, and do not meet the threshold of the requisite criteria in order to partake in such an interview. Thus, it is contended by the Petitioner that the Respondents in failing to give reasons for not inviting the Petitioner for the conducting of the interview has gravely prejudiced her, as it is the view of the Petitioner that she suffices all the necessitated pre requisites in order to partake in the interview.

In response to the above aggrievement by the Petitioner, it is contended by the 1<sup>st</sup> Respondent that the Petitioner was not invited for the interview as she was not qualified to apply for the post on the basis that, due to various disciplinary misconducts of the Petitioner during her tenure of employment at the 1<sup>st</sup> Respondent Board, she was subjected to a Disciplinary Inquiry, upon interdiction which concluded with her being found guilty for 5 of the 8 charges against her (R8). Pursuant to the findings and recommendations of the Disciplinary Inquirer, she was meted out with a punishment which precluded the Petitioner from receiving any

promotions for 5 years from the date of the decision of the Inquiry (R9). The implementation of such a punishment was taken in alignment with the provisions of the National Water & Drainage Board Disciplinary Code which specifies under 24:3:12, which reads;

“නිශ්චිත කාල පරිච්ඡේදයක් ගතවන තුරු කිසිම උසස් කිරීමේ පරීක්ෂණයකට පෙනී සිටීමට නුසුදුස්සෙකු කිරීම.”

Thus, it is posited by the Respondent board that the Petitioner was not called for the interview in view of the punishment meted out to her, which was in force at the time of the vacancy for the post of Chief Accountant being published.

However, be that as it may, it is averred by the Petitioner that she has filed an appeal against the decision of the Disciplinary Inquirer dated 15.06.2018 (Y7). It is further admitted by the Petitioner that the said appeal is still in its pendency, with no conclusion reached as of yet. In lieu of the appeal in pendency, it is the view of the Petitioner that findings of the Disciplinary Committee, and the punishment cannot be implemented as there is an appeal in pendency. I find this view to be misconstrued for the reasons that I have set out below.

The position that the original decision falls into abrogation when there is a pending appeal is erroneous. The more apt position is that the original

decision of the Inquirer is in full effect, and stands until the verdict of the appeal is derived. One cannot say that the original decision is invalid on the mere basis of a pending appeal that has been preferred.

Thus, in the instant Application, it is clear for the reasons set out above, the original decision of the Inquirer and the punishments derived from such a decision does not go into abeyance on the mere basis that an appeal has been preferred by the Petitioner. The punishment of a restriction on promotions for a period of 5 years as per the Disciplinary Code is still in force. On that basis, the decision of not calling the Petitioner for the interview is justifiable on the part of the Respondent Board.

On the foregoing reasons, I dismiss the Application without cost.

No cost.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**