

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

In the matter of an application in the nature of Writs of Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Kasim Abdul Jabbar Mohamed
Yasim,

No. 53, New Hospital Road,

Galaha.

C.A.(Writ) WRT - 0156/20

PETITIONER

Vs.

1. Chulani Weeraratne.
Superintendent of Police,
Senior Superintendent Office,
Hatton.
2. D.R.L. Ranaweera.
Senior Deputy Inspector
General of Police,
Office of the Senior Deputy
Inspector General of Police,
Pushpadana Mawatha,
Kandy.
3. C. D. Wickremaratne.
Acting Inspector General of
Police,
Police Head Quarters,
Colombo 01.
4. Hon. Attorney General.
Attorney General's
Department,
Hulftsdrop, Colombo 12.

RESPONDENTS

BEFORE : **M. SAMPATH K. B. WIJERATNE, J**
WICKUM A. KALUARACHCHI, J

COUNSEL : P. K. Prince Perera with S. Panchadsaram
 for the Petitioner.
 R. Aluwihare SC, for the Respondents.

ARGUED ON : 10.05.2023

DECIDED ON : 08.06.2023

WICKUM A. KALUARACHCHI, J.

The petitioner in this application was a Reserve Police Constable attached to the Department of Police. While he was serving in the Matale Police station, his services were suspended by letter P-2 dated 20.06.2000 (P-2). The respondents submitted that the petitioner was suspended from service for preparing fraudulent documents for the settlement of certain persons within the Mathale Police District (R-1).

Thereafter, the petitioner has requested from the Minister of Parliament, Mr. Rauf Hakeem that the suspension be lifted. However, the petitioner was informed that his request could not be granted (R-2). Subsequently, by letter dated 01.02.2011, marked R-3, the petitioner was informed that there was no possibility of reinstating the petitioner in service and that his services would be terminated permanently. It is specifically stated in the said letter that due to the gravity of the charges leveled against him, as well as the fact that the reserve police force had been abolished on 01.02.2006, the petitioner could not be reinstated to the service. In response, the petitioner preferred an appeal to the Public Service Commission. After considering the appeal, the Public Service Commission dismissed the appeal and informed the petitioner of its decision by letter dated 10.04.2015, marked R-4.

The petitioner was served with a charge sheet dated 09.02.2016 containing three charges, and consequently, a disciplinary inquiry was conducted. The petitioner stated that the inquiry was concluded on 19.11.2016, but no order has been issued against him.

The acting Inspector General of Police informed the petitioner by the letter dated 19.03.2014, marked R-5 (The date mentioned in the letter, as seen in R-5, is 2014.03.19, but the signature was placed in 2013.12.16, prior to the date of the letter) that his services were terminated and his name was struck off from the officers' registry.

Six years after the said termination, the petitioner filed the instant application on 7th July 2020 seeking a writ of mandamus against the 1st to 3rd respondents directing them to issue the petitioner's disciplinary order. If the petitioner is acquitted of the charges, the petitioner sought a writ of mandamus against the 1st to 3rd respondents directing them to mobilize the petitioner in the post of Reserve Police Constable with effect from 20.06.2000, absorb the petitioner into the post of Regular Police Constable and pay all his salaries and entitlements from 20.06.2000.

At the hearing of the application, the learned Counsel for the petitioner and the learned State Counsel for the respondents made oral submissions.

The main contention of the learned counsel for the petitioner was that since a disciplinary inquiry was held against the petitioner, an order should be delivered and the petitioner is entitled to obtain the said order. The learned Counsel contended further that in terms of Section 22.4 of Chapter 48, Volume II of the Establishment Code, the disciplinary order should be issued immediately after the conclusion of the inquiry and the 1st to 3rd respondents had breached the legal and public duty by not issuing the disciplinary order.

The learned State Counsel appeared for the respondents contended that the orders contained in R-4 and R-7 should be quashed to grant the relief of reinstatement prayed for by the petitioner, but according to Article 61A of the Constitution, this court has no jurisdiction to quash an order made by the Public Service Commission. In addition, the learned State Counsel contended that the petitioner has suppressed material facts by not disclosing the letter R-5, wherein it is clearly mentioned the reason for terminating his service.

Apart from the aforesaid two contentions, the learned State Counsel advanced a straightforward argument as to why the reliefs prayed for by the petitioner could not be granted. His argument was that when the petitioner's service was terminated by letter R-5 in 2014, without making an application to quash the said order of termination, the petitioner could not maintain this application for writs seeking reinstatement and a direction to issue the disciplinary order. Furthermore, the learned State Counsel contended that a disciplinary inquiry had been held against the petitioner inadvertently; however, an inquiry is not required to terminate the service of a reserve police officer.

In determining this application, I am of the view that it is not necessary to consider whether holding a disciplinary inquiry against the petitioner is required by law. It is precisely clear that the petitioner was informed by letter R-5 that his service is terminated and his name is struck off from the officers' registry. As per letter R-6, it is also clear that the petitioner was well aware of the termination of his service although the contents of R-5 have not been disclosed by the petitioner as pointed out by the learned State Counsel.

Apart from preferring an appeal to the Public Service Commission, the petitioner had not instituted any legal proceedings to quash the order of termination of service. The said order has not been challenged by the petitioner. The disciplinary inquiry has been commenced on

09.05.2016. That means the disciplinary inquiry was commenced after two years of the termination of his service. Therefore, it is clear that the provisions of the Establishment Code do not apply to a person who is not in public service. In addition, there is no purpose in holding an inquiry against a person whose services have already been terminated because whatever the outcome of the inquiry, his services have already been terminated. In the circumstances, the petitioner is not entitled to get the disciplinary order. What was informed by letter R-7 by the Public Service Commission is also the same. At the same time, it is to be noted that the reason for terminating the service of the petitioner has been informed to him by the unchallenged decision contained in R-5.

For the foregoing reasons, I hold that the reliefs prayed for in the petition cannot be granted. Accordingly, the application for writs is dismissed. No costs.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL