

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

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

C.A./WRT- 0354/19

1. H. M. W. Udaya Kumara.
Authorized Officer,
59/4, Gonagampola Road,
Pilapitiya,
Kelaniya.

PETITIONER

Vs.

1. Administrative Appeals Tribunal
Administrative Appeals Tribunal
No. 35, Silva Lane,
Rajagiriya.

2. Chairman,
Administrative Appeals Tribunal
No. 35, Silva Lane,
Rajagiriya.

3. A. Gnanathanan
Member,
Administrative Appeals Tribunal
No. 35, Silva Lane,
Rajagiriya.

4. G. P. Abeykeerthi
Member,
Administrative Appeals Tribunal
No. 35, Silva Lane,
Rajagiriya.
5. Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.
6. Dharmasena Dissanayake
Chairman,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.
- 6A. Justice Jagath Balapatabendi
Chairman,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.
7. Prof. Hussain Ismail
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.
- 7A. Indrani Sugathadasa
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

8. Dr. Prathap Ramanujam
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

- 8A. V. Shivagnanasothy
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

9. V. Jegarasasingam
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

- 9A. Dr. T. R. C. Ruberu
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

10. S. Ranugge
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

10A. Ahamod Lebbe
Mohamed Salam
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

11. D. Laksiri Mendis
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

11A. Leelasena Liyanagama
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

12. Sarath Jayathilake
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

12A. Dian Gomes
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

13. Sudharma Karunaratne
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

13A. Dilith Jayaweera
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

14. G. S. A. De Silva, PC
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

14A. W. H. Piyadasa
Member,
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

15. Secretary
Public Service Commission
No. 1200/9, Rajamalwatta,
Battaramulla.

16. Controller General
Department of Immigration and
Emigration
Suhurupaya'
Srivibuthipura Road,
Battaramulla.

RESPONDENTS

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

COUNSEL : Bhagya Gunawardhana instructed by Senior Counsel
R. Chula Bandara for the Petitioner.
Sumathi Dharmawardena ASG, PC and Shemanthi
Dunuwila SC for the 16th Respondent.

ARGUED ON : 16.05.2023

DECIDED ON : 20.06.2023

WICKUM A. KALUARACHCHI, J.

The petitioner filed the instant application seeking mandates in the nature of writs of certiorari to quash the orders marked P-14, P-10, and P-8.

There was a disciplinary inquiry against the petitioner for his conduct while engaging in duties as an Authorized Officer at the arrival terminal of the Bandaranaike International Airport. P-8 is the order of the disciplinary inquiry dated 30.12.2015 issued by the Controller General of the Department of Immigration and Emigration informing the petitioner that he was acquitted of charges I, II, and III and convicted of

charges IV, V, and VI. It was directed by the disciplinary order;

- I. To defer one salary increment that fell after 24.04.2014.
- II. To charge Rs.30,000/- from the petitioner to be paid in 24 installments.

Being aggrieved by the said disciplinary order, the petitioner preferred an appeal to the Public Service Commission (PSC). P-10 is the decision of the Public Service Commission conveyed to the Controller General with a copy to the petitioner. By the said decision, it was directed to incorporate into the order of the disciplinary authority regarding the payment of back wages withheld during the period of interdiction in accordance with the provisions of the Establishment Code. In addition, it was directed to revoke the order of the disciplinary authority to pay Rs. 30,000/- by the petitioner. Accordingly, the only disciplinary order remaining against the petitioner was to defer one salary increment that fell after 24.04.2014.

Being aggrieved by the order of the Public Service Commission, the petitioner appealed to the Administrative Appeals Tribunal (AAT). After an inquiry, the AAT dismissed the petitioner's appeal. P-14 is the order of the AAT.

At the commencement of the hearing, the learned Additional Solicitor General appeared for the 16th respondent had raised an objection regarding the maintainability of this application, and had submitted that the decision of the Public Service Commission cannot be challenged or reviewed by the Court of Appeal in terms of Article 61A of the Constitution. As such, the learned Additional Solicitor General contended that the relief sought by the petitioner is futile and cannot be granted by this court.

The learned Counsel for the petitioner contended that this application could be maintained because the main relief sought by the petitioner is to quash the order made by the Administrative Appeals Tribunal.

The learned Counsel for both parties have requested to dispose the matter by way of written submissions. Application has been allowed and accordingly, written submissions have been tendered on behalf of both parties.

In the written submissions tendered on behalf of the 16th respondent, the facts relating to the application have not been dealt with and only the matters pertaining to the aforesaid objection have been stated. It is stated in the written submission that the decision of the AAT may be challenged at the Court of Appeal but the decision of the PSC cannot be challenged or reviewed by the Court of Appeal in view of Article 61A of the Constitution. In addition, while submitting the relevant judicial authorities, it is stated in the said written submission that the petitioner has not come before this court with clean hands and has violated the principle of *uberrima fides*. The violation has not been clearly specified but it is stated in 16th respondent's written submission that "...the petitioner has been promoted to Grade 1 of the authorized officer with effect from 21.12.2019. Hence, the petitioner's unreasonable, baseless request has been made on the basis of this untruth."

The petitioner has stated in his petition that he is an Authorized Officer. I am of the view that non-disclosure of the fact that he has been promoted to Grade 1 of the Authorized Officer does not tantamount to deceiving or misleading of this Court. Therefore, this application need not be dismissed in *limine* for violation of the principle of *uberrima fides*.

In reply to the aforesaid first argument, the learned counsel for the petitioner submitted relevant judicial authorities and contended that it

is settled law that a decision of the Administrative Appeals Tribunal on a Public Service Commission decision can be impugned under Article 140 of the Constitution.

It was admitted by the 16th respondent that a decision of the AAT may be challenged at the Court of Appeal. The main argument on behalf of the 16th respondent was that a decision of the Public Service Commission cannot be challenged or reviewed by the Court of Appeal in terms of Article 61A of the Constitution. At the same time, citing a judicial authority, it was stated in the written submissions tendered on behalf of the 16th respondent that it is an established rule of interpretation that a court cannot do indirectly what is prohibited from doing directly. It has been held in the case of ***Bandaranaike v. Weeraratne and Others- (1981) 1 SLR 10 at 16*** that “There is a general rule in the construction of Statutes that what a Court or person is prohibited from doing directly, it may not do indirectly or in a circuitous manner.”

Article 61A of the Constitution reads as follows;

“[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.”

(What is mentioned in Article 61A as “Commission” is the “Public Service Commission”)

Therefore, it is apparent that an order of the Public Service Commission cannot be challenged or reviewed by this Court. Hence, the order of the Public Service Commission marked P-10 cannot be challenged by way of a writ of certiorari. The only thing done by the PSC by its order P-10,

was to affirm (subject to certain amendments) the order P-8 issued by the 16th respondent. If the PSC order cannot be challenged in terms of the Articles of the Constitution, the order P-8 also could not be allowed to challenge because the Court should not do indirectly what it is prohibited from doing directly.

Now, only the relief prayed for by the petitioner that the decision of the Administrative Appeals Tribunal be quashed by way of writ of certiorari remains to be considered. In the Supreme Court case of ***Ratnayake v. Administrative Appeals Tribunal and Others*** -(2013) 1 Sri. L.R 331, it was held as follows; “The Court of Appeal did possess jurisdiction to hear and determine the application filed before it. AAT is not a body exercising any power delegated to it by PSC, and is an appellate tribunal constituted in terms of Article 59(1) of the Constitution having the power, where appropriate, to alter, vary or rescind any order or decision of the PSC.” Therefore, this court has jurisdiction under Article 140 of the Constitution to review an order made by the AAT.

As previously stated, the Administrative Appeals Tribunal, in its order marked P-14, affirmed the petitioner's convictions on charges IV, V, and VI of the charge sheet, as well as the disciplinary order deferring one salary increment that fell after 29.04.2014. In perusing the order P-14, it appears that evidence presented at the disciplinary inquiry has been narrated and the contents of the appellant’s written statement have also been narrated in the said order. Then, it is stated in the order, without reasons, that based on the aforesaid evidence of the prosecution witnesses, the appellant had been rightly found guilty of charges IV, V, and VI. Accordingly, the appeal of the appellant has been dismissed by the AAT.

If it is a judgment of a lower court, without reasons for the findings of the learned judge, the said judgment is liable to be set aside. However, the situation here is different. The AAT is an appellate body and it only

considers whether sufficient evidence had been presented at the inquiry for the PSC to arrive at its conclusion. Therefore, only for the reason of not stating reasons by the AAT for its order, a writ of certiorari need not be issued to quash the said order. This Court must see whether there are any grounds to issue a writ of certiorari in order to quash the order of the AAT.

The charges for which the petitioner was convicted were as follows;

- IV. On 24.04.2014, whilst engaging in duties assigned during the night shift at the arrival terminal of the Bandaranaike International Airport, committed an offence under Section 13 of Schedule 1 of Chapter XLVIII of the Establishment Code by acting in a manner which interrupted the official duties of Senior Authorized Officers Mr. P. D. U. R. de Alwis and Mr. P. Keerthisena by having a verbal altercation and behaving in an indecent manner towards Senior Authorized Officer Mr. P. D. U. R. de Alwis.
- V. At the same time and place, disregarding the order of Senior Authorized Officer Mr. P.D.U.R. de Alwis, stepping down and going away from the service counter while large numbers of passengers were waiting in the counter to obtain clearance and thereby committed an offence under Section 14 of Schedule 1 of Chapter XLVIII of the Establishment Code.
- VI. Committed the offence of bring the Public Service into disrepute by committing one or more of the offences contained in charges I to V.”

In paragraph 10 of the petition, the petitioner has admitted that on the day in question around 00.30 hours, he has stepped down from his counter to have a snack and a cup of tea before taking his scheduled interval. So, it is clear that the petitioner had stepped down from his

counter without obtaining permission from any higher officer disregarding the order of Senior Authorized Officer Mr. G.D.U.R de Alwis. It has been revealed from the evidence of the disciplinary inquiry that it was a very busy day with a lot of passengers in the airport. In addition, the petitioner admits in paragraph 11 of his petition that after becoming aware that Senior Authorized Officer G.D.U.R de Alwis had abused him, the petitioner asked Mr. Alwis why he was abusing him. The aforementioned incident of Mr. Alwis being asked why he was abusing the petitioner appears to be the beginning of the dispute.

According to the way that the incident has been described in the petition by the petitioner, Mr. Alwis had done various things during this dispute but the petitioner had done nothing. Although, the petitioner's position was that, it is abundantly clear from the evidence of the disciplinary inquiry that there was a heated argument between the petitioner and Mr. Alwis. Also, there is evidence that there was a big clamor and there was an imminent danger of physical assault. The petitioner admitted in paragraph 12 of his petition that the Assistant Controller, C.H. Gamage ordered the petitioner to leave the room immediately.

The situation at the time of the incident has been explained in the disciplinary inquiry by the Assistant Controller, C.H. Gamage in the following way.

As there is a large crowd at the arrival terminal during these clearance operations, the officials were asked to come to the counters quickly to carry out the clearing operations. Although the officials came to the counters, Mr. Udaya Kumara came to the counter too late. Mr. Alwis said that he came and cleared the people in his counter but did not assist the people in other counters. While doing so, Mr. Udaya Kumara stepped away from the counter where he was working, Mr. Alwis said.

In this way, the argument between Mr. Upul Alwis and Mr. Udaya Kumara continued clamorously.

Even after coming to the room, the heated argument between Mr. Upul Alwis and Mr. Udaya Kumara took place for about five minutes in an impassioned tone. At that time, I observed how both of them tried to hit each other. At this time, the few foreigners in the room and the few local passengers went out immediately as if in panic. At this time, the other authorized officers who were there, senior authorized officer, Mr. Keerthisena, and I tried to calm the situation by placing the two on opposite sides. Here, I stopped this quarrel about three times and strongly told Mr. Udaya Kumara to leave immediately. Mr. Upul Alwis was also told strongly.

Mr. Alwis may have displayed aggressive behavior at that time. However, if the petitioner had not been quarrelsome and only Mr. Alwis had been disruptive, there would have been no need for the other officers to ask the petitioner to leave that place. It should be noted that this dispute arose as a result of the petitioner stepping down from his counter to have a snack and a cup of tea without permission. As a senior officer, Mr. Alwis had the right to question the petitioner about why he had left his counter before his scheduled break. However, before Mr. Alwis, the petitioner asked Mr. Alwis why he was abusing the petitioner, which resulted in the discord between the petitioner and the Senior Authorized Officer, Mr. Alwis. Such behavior in a place like an airport create a bad image regarding the standard of discipline of the officers in our country even to foreigners.

In considering the entirety of the evidence and the statement of the petitioner presented in the disciplinary inquiry, the order of convicting the petitioner for charges IV, V, and VI is reasonable, lawful and the order is substantiated by the evidence adduced in the disciplinary inquiry. The disciplinary order that should be imposed on the petitioner is to defer one salary increment and that is a just and equitable order

considering the nature of the charges on which the petitioner was convicted. Therefore, I hold that the conclusion of the AAT to dismiss the appeal preferred against the order of the PSC is correct.

Accordingly, the application is dismissed with costs fixed at Rs. 30,000/-.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL