

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

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

Court of Appeal Case No.
CA/WRT/62/19

1. K.G.A.Gamlath
Weerambu Gedara
Kalugamuwa
Kurunegala.

Petitioner

VS

1. Administrative Appeals Tribunal
No.35. Silva Lane,
Dharmapala Place, Rajagiriya.
2. Hon.N.E.Dissanayake, Chairman
3. A.Gnanathan, P.C., Member
4. G.P.Abeykeerthi, Member,

All of Administrative Appeals Tribunal,
No.35. Silva Lane,
Dharmapala Place, Rajagiriya.

5. Public Service Commission,
6. The Secretary, Public Service
Commission,

5th & 6th are of No. 1200/9,
Rajamalwatta, Battaramulla.

7. The Commissioner General,
The Department of Motor Traffic,
No.341, Elvitigala Mawatha,

Colombo 05.

8. The Secretary,
Ministry of Transport,
No.01, D.R.Wijewardana Mawatha,
Colombo 10.

Respondents

Before: M. T. MOHAMMED LAFFAR, J.

Counsel: L. Amarasinghe with N. Malkumara for the Petitioner.
Navodi de Zoysa, SC for the Respondents

Argued on: 17.01.2023

Written Submissions on:

20.03.2023 (by the Petitioner)

09.06.2023 (by the Respondents)

Decided on: 06.07.2023

MOHAMMED LAFFAR, J.

The Petitioner instituted the instant Application seeking several Orders in the nature of Writs of *Certiorari*. However, when the matter was taken up for argument the Petitioner confined his reliefs sought from this Court only to the following prayers of the Petition:

“(a) Issue notice on the Respondents;

(b) Grant and issue a mandate in the nature of Writ of *Certiorari* quashing only the decision of dismissal of Appeal of the Petitioner under the item number (a) of the Administrative Appeals Tribunals as reflected in P-12;

(c) Grant and issue a mandate in the nature of Writ of *Certiorari* quashing only the irrational, unreasonable, limitations and conditions of the order of Administrative Appeals Tribunals as follows:

(a) By quashing phrase under the item number (a) of the Administrative Appeals Tribunals as reflected in P-12; from a future date treating the period of absence as no pay leave; of Reinstate the Appellant in service from a future date treating the period of absence as no pay leave;

(b) By quashing the Order of Reduce his salary by 02 increments;

(c) By quashing the Order Severely reprimand him to be extremely vigilant in performing his duties in future; and

(d) By quashing the Order Transfer him out of the Department of Motor Traffic to another Department, where a vacancy exists.

(d) Grant and issue a mandate in the nature of Writ of certiorari quashing the irrational, unreasonable interdiction and dismissal of the services of the Petitioner by the 7 and 8th Respondents,

(h) Make order calling for the record in the AAT appeals bearing No. AAT/56/2013(PSC);

(k) Grant such other and further relief as Your Lordship's Court may deem necessary.”

The Respondents filed their Statement of Objections followed by the Counter Objections of the Petitioner. The matter was argued on 17.01.2023 and at the conclusion of the oral submissions, parties were permitted to file Written Submissions.

The Petitioner has been an employee serving at the Department of Motor Traffic and has been attached to the Motor Car Transfer Branch of the said Department. The Petitioner has been performing functions relating to transfer of ownership of vehicles.

The crux of this Application relates to the developments and inquiry following the transfer of ownership of the vehicle bearing registration no. 32-2362 at the Motor Car Transfer Branch of the Department of Motor Traffic. On or about 03.10.2008, the Commissioner General of Motor Traffic had received a complaint to hold an inquiry with regard to the alleged transfer of ownership of the said vehicle. The complaint was to the effect that such vehicle has been transferred using forged documents. In accordance with the matter at hand, a preliminary investigation was conducted, leading to the interdiction of the Petitioner from his duties. Subsequently, the Petitioner received a charge

sheet comprising of six charges. A formal disciplinary inquiry was conducted following the issuance of the aforementioned charge sheet. The Petitioner was found guilty of five out of the six charges.

Upon the conclusion of the disciplinary inquiry, the Commissioner General of Motor Traffic, with the approval of the Secretary to the Ministry of Transport (documented as 'R1'), terminated the Petitioner's services with effect from 23.11.2009.

Following this, the Petitioner filed an appeal (documented as 'R2') with the Public Service Commission against the aforementioned Order of the Commissioner General of Motor Traffic, which upheld the decision to terminate the Petitioner's services.

At this juncture, the Petitioner had also sought relief from the Supreme Court in this regard in case no. SC/FR/109/2012, to no avail whatsoever as the Court had observed that the Petitioner was able to suitably seek other remedies available.

The Petitioner being aggrieved by the Order of the Public Service Commission, made an appeal to the Administrative Appeals Tribunal (AAT) which by order dated 11.09.2018 (marked 'P12') decided to reinstate the Petitioner along with the imposition of certain other conditions. The order reads as follows:

"Therefore, I mitigate the punishment of dismissing the Appellant from service imposed by the Commissioner General of Motor Traffic and confirmed by the PSC by letter dated 12.02.2013 as follows;

- a. Reinstate the Appellant in service from a future date treating the period of absence as no pay leave*
- b. Reduce his salary by 2 increments*
- c. Severely reprimand him to be extremely vigilant in performing his duties in future; and*
- d. Transfer him out of the Department on Motor Traffic to another Department, where a vacancy exists."*

It is the view of this Court that the Administrative Appeals Tribunal (AAT) has heard the appeal and observed the Petitioner to be guilty. However, opted to mitigate the severity of the dismissal penalty initially imposed by both the Commissioner General of Motor Traffic and the Public Service Commission (PSC). However, this mitigation is contingent upon the specific conditions outlined in points (a) to (d). It is important to acknowledge that the transformation of the dismissal into reinstatement for the Petitioner is

intricately linked to these subsequent conditions and cannot be examined in isolation.

While the Petitioner accepts part of the Order which reinstates him, seeks the aid of this Court to quash only the other portion of the said Order which lays down the conditions applicable thereto.

In CA (Writ) Application 614/21 (CA Minuies dated 26.05.2022], Sobhitha Rajakaruna J. observed as follows:

“Having considered the jurisdiction of the AAT, now, it is important to take into consideration the parameters of the jurisdiction of this Court in regard to an order of AAT. In Kalamazoo Industries Limited vs. Ministry of Labour and Vocational Training (1998) 1 Sri. L.R. 235, which was an application for judicial review against an award made by an Industrial Arbitrator. Although, the instant application deals with an order made by the AAT, I am of the view that the findings of the said judgement which distinguishes an “Appeal” and “Judicial Review” should be followed here as the present task of this Court is to review an order of AAT. F.N.D. Jayasuriya J. in the said judgement has held that at p.249;

“This court must keep prominently in forefront that it is exercising in this instance a very limited jurisdiction quite distinct from the exercise of appellate jurisdiction. Relief by way of certiorari in relation to an award made by an arbitrator will be forthcoming to quash such an award only if the arbitrator wholly or in part assumes a jurisdiction which he does not have or exceeds that which he has or acts contrary to principles of natural justice or pronounces an award which is eminently irrational or unreasonable or is guilty of an illegality. The remedy by way of certiorari cannot be made use of to correct errors or to substitute a correct order for a wrong order and if the arbitrator's award was not set aside in whole or in part, it had to be allowed to stand unreversed.”

“It is pertinent to refer to the principles laid down by Prof. H. W. R. Wade on “Administrative Law” 12th edition at pages 34 to 35 wherein the learned author states: “Judicial review is radically different from the system of appeals. When hearing an appeal, the court is concerned with the merits of the decision under appeal. But in judicial review, the court is concerned with its legality. On appeal, the question is right or wrong. On review, the question is lawful or unlawful . . . judicial review is a fundamentally different operation. Instead of substituting its own decision for that of some other body, as happens when an appeal is allowed, a court, on review, is concerned only with whether the act or

order under attack should be allowed to stand or not". In the circumstances the objective of this court upon judicial review in this application is to strictly consider whether the whole or part of the award of the arbitrator is lawful or unlawful. This court ought not to exercise its appellate powers and jurisdiction when engaged in the exercise of supervisory jurisdiction and judicial review of an award of an arbitrator."

The instant Application is not an appeal and is instituted primarily seeking Writs, a discretionary remedy available to be granted by Court, to quash segments of the Order of the AAT. In the said context, this Court is mindful that it is pertinent to judicially review whether the order made by AAT is *ultra vires* and amenable to be quashed by a Writ of *Certiorari* i.e., whether it was lawful or unlawful.

After a thorough examination of the AAT's Order, I am of the view that the Order duly assessed all relevant facts pertaining to the matter and appropriately determined the reinstatement of the Petitioner with specific conditions, following the process of mitigation being a reasonable relief. The said Order does not exhibit any unlawfulness, illegality, or *ultra vires* conduct. Consequently, I find no justifiable grounds to grant or issue a Writ in relation to this case.

For the above reasons, I refuse to grant any relief prayed for by the Petitioner. I dismiss the Application of the Petitioner and make no Order as to the costs of this Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL