

**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 Certiorari and  
Mandamus under Article 140 of the  
Constitution.

R.S.W. Godage,  
Quarters No:HO/GR/02/04,  
Coconut Research Institute,  
Bandirippuwa Estate,  
Lunuwila.

**Petitioner**

**C.A. Writ No.0265/2023**

**Vs**

1. Coconut Research Board,  
Bandirippuwa Estate,  
Lunuwila.
2. Coconut Research Institute,  
Bandirippuwa Estate,  
Lunuwila.
3. Dr. Sanathanie Ranasinghe,  
Director,  
Member of the Board of Management,  
Coconut Research Institute,  
Bandirippuwa Estate,  
Lunuwila.
4. T.M.T. Malraj Peris  
Chairman,  
Coconut Research Institute,  
Lunuwila.
5. Lionel Fonseka,  
No. 823, Colombo Road,  
3<sup>rd</sup> Kurana,  
Negombo.

6. J.M.S.N Jayasinghe,  
Additional Director General,  
Department of Public Enterprise  
Ministry of Finance  
The Secretariat,  
Colombo 01.
7. A.V.K.M. Herath,  
Chairperson,  
Coconut Cultivation Board,  
No. 9/428, Denzil Kobbekaduwa,  
Mawatha,  
Battaramulla.
8. Keerthisri Weerasinghe,  
Chairman,  
Coconut Development Authority,  
No. 54, Nawala Road,  
Narahenpita.
9. Mrs S.N. Attanayake,  
Director (Policy and Operation Division)  
Ministry of Plantation Industries,  
11<sup>th</sup> Floor, Sethsiripaya,  
2<sup>nd</sup> Stage,  
Battaramulla.
10. Bandula Egodage,  
VP Corporate Affairs &  
Communications,  
Nestle Lanka PLC  
440, T.B Jaya Mawatha,  
Colombo 10.
11. Prabath Wimal Kumara,  
Secretary /Director  
Sri Lanka Council for Agricultural  
Research Policy,  
114/9, Wijerama Mawatha,  
Colombo 07.

12. Chitral Jayawarna,  
Communications and Public Relations,  
Sri Lanka Port Authority,  
P O Box 595, No. 09, Chaithya Road,  
Colombo 01.
13. Mrs H.M.J. Illankoon Menike,  
Director General  
Department of Agriculture,  
Old Galaha Road, Peradeniya.
14. A. J. Karunarathna  
SLAS Class 1 (Retired),  
Individual Tribunal  
No. 154/1, Kotagedara Road,  
Madapatha,  
Piliyandala.
15. Dr. C. S. Herath,  
Head of Technology Transfer Division,  
Coconut Research Institute,  
Bandirippuwa Estate,  
Lunuwila.
16. Hon. Attorney General,  
Attorney General's Department,  
Hulftsdorp,  
Colombo 2.

### **Respondents**

Before : **Hon. N. Bandula Karunarathna, J.(P/CA)**  
**Hon. M. Ashan R. Marikar, J.**

Counsel : P. K. Prince Perera for the Petitioner  
M.Amerasinghe Senior State Counsel for the  
Respondents

Argued on : 26.07.2023

Decided on : 03.08.2023

**M. Ahsan R. Marikar, J.**

**Introduction**

1) The Petitioner had instituted this action and sought interim reliefsprayed for in the petition dated 22<sup>nd</sup> May 2023. The instant application pertinent to the aforesaid petition is to consider issuance of notice and interim relief prayed for in prayer **e**).

2) The said interim relief prayed for is as follows;

**e)** (i) the Order of Dismissal by subjecting her to conditions (i) – (v) such as;

- වැඩ තහනම් කල දිනයේ සිට අනිමි කල වැටුප් හෝ දීමනා කිසිවක් හිමි නොවේ.
- දැනට වෙන් කර ඇති නිලනිවස සේවයෙන් පහකිරීමේ දැන්වීමේ ලිපියේ දින සිට මාසයක් ඇතුලත නිසි පරිදි ආපසු බාරදිය යුතු ය.
- ආයතනය වෙත අයවීමට යම් මුදලක් තිබේ නම් එම මුදල් ආයතනට නිසිපරිදි ගෙවිය යුතු අතර, මුදල් නොගෙවනු ලැබුවොත් එම මුදල් ආයතන අයකර ගැනීම සඳහා වන නීතිමය ක්රියාමර්ග වලට යටත් විය යුතු ය.
- ඔබට හිමි සේවය අර්ථසාදක අරමුදල් සහ හිමි පාරිතෝෂිත නිසිපරිදි ගෙවනු ලැබේ.
- පූර්ව ලිඛිත අනුමැතියකින් තොරව ආයතන පාර්ශයට ඇතුල්වීමට තහනම් වනු ඇත. මෙම නියෝගය දැනට වෙන්කර ඇති නිවස නැවත බාරදීමට නියම කරනු ලබන දින සිට ක්රියාත්මක වනු ඇත.

(ii) her salaries and other entitlements from 24.11.2021 until the final determination of this Application

(iii) the Board of Management decision dated 27.04.2023

### **Facts of the case**

- 3) The Petitioner has contended that she was appointed to the post of Technology Transfer Officer on 1<sup>st</sup> December 2011 in the Technology Transfer Division. In the said Division the Petitioner has worked for over 10 years without any incumbrances. She has discharged her duties with the utmost good faith and won the good will of her subordinates.
- 4) The Petitioner had sought a transfer in 2017 to the Genetics and Plant Breeding Division which had been refused by the Director General of the Department of Management Services.
- 5) Subsequently, by letter dated 4<sup>th</sup> January 2021 the Petitioner was transferred to a different Division of the 1<sup>st</sup> Respondent Institute. As the Petitioner is a Technology Transfer Officer, she cannot be placed as a Research Officer, even though the recruiting processes are the same, the duties of the posts are different.
- 6) Subsequently, the Petitioner had reported for duty on 19<sup>th</sup> January 2021 at the Crop Protection Division and signed the attendance register in the Technology Transfer Division. After reporting to work for 2 weeks, the 15<sup>th</sup> Respondent had disallowed the Petitioner to report to work. The Petitioner had made complaints to the Human Rights Commission and filed a Fundamental Rights case.
- 7) After filing the Fundamental Rights case the Board of Directors of the 1<sup>st</sup> Respondent had interdicted the Petitioner without an inquiry. Upon the Petitioner withdrawing the Fundamental Rights case, the Petitioner was issued a charge sheet by the 1<sup>st</sup> Respondent. The Petitioner was not given the opportunity for a fair and formal inquiry and was convicted for all charges.
- 8) On that, the Petitioner has filed this case to invoke the Writ Jurisdiction of this Court.

- 9) The Limited Objections filed by the 3<sup>rd</sup> Respondent has denied the facts stated by the Petitioner and has contended by the Letter of Appointment R1 that the Petitioner's service is transferable.
- 10) As the Petitioner had sought a transfer in 2017, the Petitioner was transferred to the Research Division giving an attachment to the said Division for 3 years.
- 11) Subsequently, the Petitioner had complained to the Human Rights Commission and had not reported to assume duties. On that, she had been interdicted as she had not attended to duties which is evinced by the attendance record marked as P7.
- 12) Later, the Petitioner had refused to follow the instructions given by the superior officers which prompted to issue a charge sheet and to interdict the Petitioner. Thereafter, an inquiry had been held where initially the Petitioner had participated and later the Petitioner was absent during the inquiry proceedings.
- 13) On that the Petitioner was convicted for the charges on the charge sheet and the Respondents had contended that this Court has no jurisdiction to hear and determine this application as the Petitioner had failed to resort to alternative remedies and had not established her case to get any reliefs under *Writ of Mandamus* or *Certiorari*.

**Disputes between the Petitioner and the Respondents to be considered on the issuance of notice and interim order**

- 14) Considering the facts pertinent to the application made by the Petitioner and on perusal of the documents and the argument raised by the Counsel for the Petitioner, Attorney-at-Law P. K. Prince Perera and for the Respondents, S.S.C. M.Amarasinghe argued the case. To decide the issuance of notice and interim reliefs, the following disputed facts can be considered.

- I. Was the Petitioner employed by the 1<sup>st</sup> Respondent?
- II. Has the 1<sup>st</sup> Respondent interdicted and terminated the Petitioner's service arbitrarily and/or illegally?
- III. If so, can this Court invoke Writ Jurisdiction to grant reliefs sought by the Petitioner in the petition dated 22<sup>nd</sup> May 2023?

**I. Was the Petitioner employed by the 1<sup>st</sup> Respondent?**

- 15) On perusal of the documents marked as P3 and P4, the Petitioner had been employed by the 1<sup>st</sup> Respondent the Coconut Research Board. That fact had not been challenged.
- 16) The Senior State Counsel who appeared for the Respondents had admitted that the Petitioner was an employee of the 1<sup>st</sup> Respondent. The 3<sup>rd</sup> Respondent had confirmed the said fact by filing the Letter of Appointment marked as R1.
- 17) In the said circumstances, it is an admitted fact that the Petitioner was an employee of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

**II. Has the 1<sup>st</sup> Respondent interdicted and terminated the Petitioner's service arbitrarily and/or illegally?**

- 18) The crux of this case is based on the interdiction and the termination of the service of the Petitioner. The Counsel appearing for the Petitioner Attorney-at-Law Prince Perera argued that the Petitioner was interdicted without any valid reason and thereafter, served a charge sheet and held a disciplinary inquiry arbitrarily and terminated the service of the Petitioner.
- 19) The Senior State Counsel vehemently denied the aforesaid position taken by the Petitioner and reiterated the position taken by the Respondents by the Letter of Appointment R1 that the Petitioner's service is a transferable service.
- 20) The Petitioner had requested by the letter dated 16<sup>th</sup> January 2017 which is marked as P5 to grant permission for a Divisional Transfer. By

letter marked as R2 the said application made by the Petitioner was allowed. The said fact is supported by document R4 and the annexure to R4.

- 21) Subsequently, the Petitioner had been transferred to a separate Division by letter R6 dated 4<sup>th</sup> January 2021. The dispute had arisen after the Petitioner had been transferred to the Division referred to in letter R6.
- 22) The Counsel for the Petitioner argued that the Petitioner was transferred to a separate Division which is completely different from the basis on which she was recruited. However, the Petitioner had reported to work in the said Division and later she was restrained from reporting to work by the 15<sup>th</sup> Respondent.
- 23) However, the Senior State Counsel denied the said facts and brought the notice of attendance registers R7 and R8 that the Petitioner had failed to report to work after she was transferred.
- 24) Later, by document R10 the Respondents had held a preliminary inquiry subject to the complaints made by the Petitioner and had decided to issue a charge sheet against the Petitioner.
- 25) After serving the charge sheet at the inquiry, initially the Petitioner had participated and later on the Petitioner had failed to attend the said inquiry. The proceedings of the inquiry marked as R12 had supported that position.
- 26) Based on Inquiry R12 the Petitioner's service had been terminated. Those facts had been supported by the documents R12 to R18. Position taken by the Counsel for the Petitioner is that the proceedings conducted at the inquiry and terminating the Petitioner's service is arbitrary and illegal. On that ground the Petitioner has proceeded to invoke the Writ Jurisdiction of this Court.
- 27) When the Court questioned from the Counsel for the Petitioner whether the Petitioner had not sought the alternative reliefs, his answer was 'Petitioner could come to the Labour Tribunal or seek Writ Jurisdiction'.



**III. If so, can this Court invoke Writ Jurisdiction to grant reliefs sought by the Petitioner in the petition dated 22<sup>nd</sup> May 2023?**

- 28) In the instant application considering the facts, documents and the arguments raised by the Counsel for the Petitioner, the dispute between the Petitioner and the Respondents are, interdicting the Petitioner and terminating the Petitioner's service arbitrarily and illegally and the inquiry conducted by the Respondents had denied a fair and formal disciplinary inquiry of the Petitioner.
- 29) In the said circumstances, on the face of it, the Petitioner should have sought reliefs from the Labour Tribunal as it is a dispute between the Servant and the Master.
- 30) The Industrial Disputes Act No. 43 of 1950<sup>1</sup> defines what sort of disputes should be instituted before them. Further, "Industrial Dispute" is defined as;

*"Any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in service, of any person, and for the purposes of this definition "workmen" includes a trade union consisting of workmen".*

When the statutory power is provided to resolve the nature of disputes between the Master and the Servant, I do not see that the Petitioner has any right to invoke the jurisdiction of this court.

- 31) In ***Ranaweera V Mahaweli Authority of Sri Lanka and Another***<sup>2</sup> Justice Marsoof (P/CA) has decided as follows;

*"I have come to the conclusion that the Petitioner is not entitled to the reliefs prayed for by him. The Petitioner has sought a*

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<sup>1</sup> Hereinafter referred to as Industrial Disputes Act.

<sup>2</sup> [2004] 2 Sri L.R 346.

*writ of mandamus with a view of enforcing the order of the Labour Tribunal as modified by the order of the Provincial High Court. Mandamus simply does not lie to enforce an order of the Labour Tribunal or an order made on appeal by the Provincial High Court... The writ of mandamus would not be available where there is an effective alternative remedy.”*

- 32) In considering the said decision it is clear that the Industrial Disputes Act has provided an effective procedure to consider the nature of the dispute arisen in this application. The Petitioner has failed to seek the reliefs from the Labour Tribunal which is the relevant authority to decide her grievances as provided by the statute.

### **CONCLUSION**

- 33) In relation to the aforesaid facts and documents we are of the view that as the Petitioner has alternative reliefs provided by the statute, the Petitioner cannot invoke the Writ Jurisdiction of this Court. On that we dismiss the petition dated 22<sup>nd</sup> May 2023 subject to the payment of Tax cost to the Respondents.

**Judge of the Court of Appeal**

**N. Bandula Karunaratna, J. (P/CA)**

I agree

**President of the Court of Appeal**