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 Writs of Certiorari, Mandamus and prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CASE NO :- CA Writ 413/2020

M.S.M. Fouzer
No. 183/1, Kahatapitiya,
Gampola.

PETITIONER

-Vs-

1. **Major General (Retired) D.M.S. Dissanayaka**
   Chairman
   Consumer Affairs Authority
   1st & 2nd Floor,
   C.W.E. Secretariat Building,
   No.27, Vauxhall Street,
   Colombo 02.

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7A. **Ms. W K D Danstan**
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12. **Hon. Lasantha Alagiyawanna**
State Minister of Cooperative Services, Marketing Development and Consumer Protection, Ministry of Cooperative Services, Marketing Development and Consumer Protection
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12A. **Hon. S. Viyalendran**
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13. **Mr. K.D.S. Ruwanchandra**

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14. **Hon. Bandula Gunawardhana**
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14A. **Hon. Nalin Fernando**
Minister of Trade, Commerce and Food Security,
Ministry of Trade, Commerce and Food Security
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15. **Mr. Sudarshan Dissanayake**
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15A. **Ms. K Gunawardana**
Acting Director General/
Chief Executive Officer
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RESPONDENTS

Before: Hon. D.N. Samarakoon, J.

Hon. Sasi Mahendran, J.

Counsel: Mr. Ruwantha Cooray instructed with Mr. Naamiq Nafath for the Petitioner.

Mr. Manohara Jayasinghe, D. S. G., for the Respondents.

Argued on: 01.02.2023

Written Submissions: 17.03.2023 by the Petitioner

09.08.2023 by the Respondents

Decided on: 06.10.2023

JUDGMENT

D.N. Samarakoon, J

The respondents' statement of objections dated 27th May 2022 in paragraph 19 draws the attention of the Court to the fastness of the appointment of the petitioner on 14.09.2018 as the Director General of the Consumer Affairs Authority. This is accepted in paragraph 05 of the petition dated 21.10.2020. On 14.09.2018 the Minister gave his concurrence under section 52 of the Consumer Affairs Authority Act No. 09 of 2003. On that day the 01st respondent, the Chairman of the said Authority informed that to the petitioner. The petitioner was appointed by letter of appointment dated 23.11.2018, with effect from 14.09.2018.

The same quickness was there, in terminating the services of the petitioner, on 14.02.2020 too. He was informed about the termination by letter dated that day. It referred to a letter, a copy of which the petitioner was not given, dated 13.02.2020 (previous day) by which the Secretary to the Ministry of Internal Trade, Food Security and Consumer Welfare informed the 1st respondent, that the Minister had taken a decision to terminate the services of the petitioner. [Paragraph 08 of the petition]

The statement of objections does not address paragraph 08 to 13 of the petition. This is except its 01st paragraph which contains the general denial of all

paragraphs in the petition. Paragraph 08 refers to petitioner's termination. As already said, neither the petitioner, not the respondents, produced the Ministry Secretary's letter dated 13.02.2020. But the letter of termination (A.04 of petitioner's documents] dated 14.02.2020 says,

> "I have been informed by the letter of the Secretary, to the Ministry of Internal Trade, Food Security and Consumer Welfare dated 13.02.2020 that the Minister has instructed to terminate your services with immediate effect and to inform him of the same". [English version of Sinhalese original]

Section 52(1) of the Consumer Affairs Authority Act says,

> "52(1) The Authority may with the approval in writing of the Minister, appoint a Director General to the Authority…"

In paragraph 04 of the petition the petitioner states that in 2018 the 11th respondent, Consumer Affairs Authority fell within the purview of the Ministry of Industry and Commerce. Paragraph 05 of the petition, as already said, is regarding his appointment. Paragraph 06 is that he served as the Director General from 14.09.2018.

Paragraphs 04,05 and 06 above are replied in paragraph 08 of the statement of objections. However the reply has not accepted what the petitioner averred.

In paragraph 07 of the petition, the petitioner states, that, as a result of the change of the Cabinet of Ministers in August 2020, the 11th respondent Consumer Affairs Authority was brought under the Ministry of Internal Trade, Food Security and Consumer Welfare. The petitioner has attached copies of the relevant pages of Extra Ordinary Gazette bearing No. 2187/27 dated 09.08.2020. Paragraph 07 further state that as a result the Consumer Affairs Authority was brought under the State Minister of Cooperative Services, Marketing Development and Consumer Protection.

In paragraph 09 of the statement of objections the respondents only admits the said Gazette. Copy of the said Gazette marked as A.03 (page 27) shows that Consumer Affairs Authority was brought under the State Minister of Cooperative Services, Marketing Development and Consumer Protection.

Paragraphs 08 to 13 of the petition narrates the receiving of the letter of termination, the fact that there was no reason adduced (as far as the work of the petitioner is concerned) or a disciplinary inquiry, there was no preliminary investigation, the letter of appointment specifies Volume II of the Establishments Code in respect of disciplinary inquiries, the petitioner by his letter dated same day, i. e., 14.02.2020, requested to know the reasons for termination also requesting an appointment to meet the Minister, he lodged a complaint to the Human Rights Commission on 05.03.2020, he wrote to His Excellency the President on 14.06.2020, he did not receive any response to those letters and was not granted any opportunity to meet relevant officials and finally by letter dated 25.09.2020 he requested the respondents to withdraw the letter dated 14.02.2020 to which he received a reply dated 08.10.2020 from an Attorney at Law acting on the instructions of the 1st respondent, confirming that petitioner's services were terminated.

As already said, there is no response by the respondents to paragraphs 08 to 13 of the petition. The statement of objections answering to paragraph 07 (of the petition) in paragraph 09 responds to paragraph 14 (of the petition) by paragraph 10. The above paragraphs of the petition have not been specifically addressed in any other paragraph of statement of objections too except for the general denial in paragraph 01. But the fact of termination cannot be denied. In fact it is also the version of the respondents. Hence on pleadings there is no response to averments in paragraph 08 to 13 of the petition.

The response to the petitioner's case by the respondents is found in paragraph 18 of the statement of objections. It says,

> "The respondents submit that the purported appointment of the petitioner to the post of Director General was irregular and unlawful. However, the respondents state that external compulsions made it impossible to object to the appointment of the petitioner. However, no sooner the circumstances changed, immediate steps were taken to redress the irregularity by removing the petitioner from a post he had no right and had no qualification and experience, to hold".

In paragraph 08 of the Statement of Objections, by which the respondents responded to paragraph 05 of the petition [which averred the appointment of the petitioner as Director General] too, it has been stated that the petitioner's appointment was irregular, improper and illegal and no validity in the eyes of the law.

Yet, the Consumer Affairs Authority, the 11th respondent, acting through its officials appointed the petitioner as the Director General with effect from 14.09.2018. They found it impossible to object to it, despite their averment now that the petitioner possessed no qualification or experience for same, according to their own words, due to "external compulsions".

Averring in paragraphs 36 to 38 of the Written Submissions of the petitioner filed after the argument, it is submitted, that, submissions were made on behalf of the respondents inviting this Court to "read in between lines".

If there was such a request, I do not think it could be acceded to, because, a Court has to decide on pleadings, documents and submissions. What the respondents say, in a nutshell, is that,

(i) They appointed the petitioner
(ii) The petitioner did not have required qualifications
(iii) Still they could not objected to the appointment
(iv) They removed the petitioner when the circumstances changed

What this Court can and should do is to find the law, as decided in several authoritative cases, to find out, as to what should be done in such circumstances.

In **Ratnesh Kumar Choudhary vs Indira Gandhi Inst. Of M.S. Patna[1] & ... on 15 October, 2015,** the Supreme Court of India, (**Dipak Misra, (later Chief Justice) Prafulla C. Pant JJ.)** in a judgment written by Dipak Misra J., considered the situation of the petitioner who applied for a post of Physiotherapist but was recruited as a Chest Therapist, on the wrong basis that "the post of Physiotherapist and Chest Therapist are of similar nature and hence, the post of Chest Therapist may be considered from the applications received for the post of Physiotherapist".

> "When the appellant was continuing on the post of Chest Therapist, a complaint was received by the Vigilance Department, Government of Bihar on 03.11.2004 relating to the illegal appointment of the appellant on the post of Chest Therapist. The complaint contained that the advertisement for Physiotherapist and Chest Therapist were different because streams are different and the appointment of the appellant was absolutely illegal".
>
> "Taking exception to the aforesaid order of termination the appellant invoked the writ jurisdiction of the High Court of Judicature at Patna in CWJC No. 8069 of 2006. The learned Single Judge vide order dated 04.11.2009 quashed the order of termination and directed that appellant should be treated in service with all consequential benefits".
>
> "Being dissatisfied with the order of the learned Single Judge, the Institute and its Board of Governors preferred LPA No. 38 of 2010", to the Division Bench.

[1] All Indian judgments cited are available in the internet

> "…the Division Bench allowed the appeal and unsettled the decision rendered by the learned Single Judge".

In the case under consideration, the appellant, employee came before the Supreme Court of India.

> "Though various contentions were raised by the learned counsel for both the parties, yet ultimately the controversy centered around the issues whether the order of termination passed by the authority is stigmatic or not; and whether there had been violation of principles of natural justice, for no regular enquiry was conducted".

The Supreme Court said,

> "It is submitted by the learned counsel for the appellant that on a perusal of the report along with allegations made in the counter affidavit, it is graphically clear that the termination of the appellant is not a termination simpliciter. The report comments on his behaviour, knowledge of working, his conduct, his mis-behaviour, imposition of earlier punishment and disobedience shown by him to his seniors. It is urged by the learned counsel that though the appellant was a probationer and his appointment has been styled as illegal on the ground that he did not possess the requisite qualification for the post of Chest Therapist, yet under the guise of passing an order of termination simpliciter, the authorities have, in many a way, attached stigma which makes the order absolutely stigmatic. It is canvassed by him that even if the order demonstrably appears to be an innocuous order, the court in the in the obtaining factual score should lift the veil or peep through the veil to perceive its true character".

It must be observed, that, in the case at hand, according to the statement of objections of 15 respondents, there were no allegations of behaviour, knowledge of working, conduct or mis behaviour of the petitioner. But in Choudhary's case

there were such allegations too, though, the reason for his sudden termination was the irregularity or illegality of his appointment.

The Supreme Court then considered several decided cases about temporary servants and probationers, which need not be considered here as the petitioner was not a probationer. In fact and in law, that is, one distinction between that case and the case at hand. The Supreme Court finally said,

> "In the case at hand, it is clear as crystal that on the basis of a complaint made by a member of the Legislative Assembly, an enquiry was directed to be held. It has been innocuously stated that the complaint was relating to illegal selection on the ground that the appellant did not possess the requisite qualification and was appointed to the post of Chest Therapist. The report that was submitted by the Cabinet (Vigilance) Department eloquently states about the conduct and character of the appellant. The stand taken in the counter affidavit indicates about the behaviour of the appellant. It is also noticeable that the authorities after issuing the notice to show cause and obtaining a reply from the delinquent employee did not supply the documents. Be that as it may, no regular enquiry was held and he was visited with the punishment of dismissal. It is well settled in law, if an ex parte enquiry is held behind the back of the delinquent employee and there are stigmatic remarks that would constitute foundation and not the motive. Therefore, when the enquiry commenced and thereafter without framing of charges or without holding an enquiry the delinquent employee was dismissed, definitely, there is clear violation of principles of natural justice. It cannot be equated with a situation of dropping of the disciplinary proceedings and passing an order of termination simpliciter. In that event it would have been motive and could not have travelled to the realm of the foundation. We may hasten to add that had the appellant would have been visited with minor punishment, the matter possibly would have been totally different. That is not the case. It is also not the

case that he was terminated solely on the ground of earlier punishment. In fact, he continued in service thereafter. As the report would reflect that there are many an allegation subsequent to the imposition of punishment relating to his conduct, misbehaviour and disobedience. The Vigilance Department, in fact, had conducted an enquiry behind the back of the appellant. The stigma has been cast in view of the report received by the Central Vigilance Commission which was ex parte and when that was put to the delinquent employee, holding of a regular enquiry was imperative. It was not an enquiry only to find out that he did not possess the requisite qualification. Had that been so, the matter would have been altogether different. The allegations in the report of the Vigilance Department pertain to his misbehaviour, conduct and his dealing with the officers and the same also gets accentuated by the stand taken in the counter affidavit. **Thus, by no stretch of imagination it can be accepted that it is termination simpliciter.** The Division Bench has expressed the view that no departmental enquiry was required to be held as it was only an enquiry to find out the necessary qualification for the post of Chest Therapist. Had the factual score been so, the said analysis would have been treated as correct, but unfortunately the exposition of factual matrix is absolutely different. Under such circumstances, it is extremely difficult to concur with the view expressed by the Division Bench".

The last said thing about the non essentiality of a departmental inquiry if the qualifications were the only question will not arise in this case since the petitioner is not a probationer.

The Supreme Court concluded,

"Consequently, the appeal is allowed and the judgment and order passed by the Division Bench of the High Court is set aside and that of the learned Single Judge is upheld, though on different grounds. Accordingly, it is directed that the appellant be reinstated in service within a period of six

weeks and he shall be entitled to 50% towards his salary which shall be paid to him within the said period. In the facts and circumstances, there shall be no order as to costs".

The Supreme Court of India in **H. L. Trehan and others Etc., vs. Union of India and others on 22nd November 1988** (M. M. Dutt, S. Natarajan and N. D. Ojha JJ., written by Dutt J.) considered the applicability of the rule audi alteram partem in a case where a decision is taken to the detriment of employees.

> "The Chairman of the Board of Directors of CORIL issued the impugned circular dated March 8, 1978, inter alia, stating therein that consequent upon the take over of the Caltex (India) Ltd. by the Government, the question of rationalisation of the perquisites and allowances admissible to Management Staff had been under consideration of the Board for sometime, and that as an interim measure, the Board had decided that the perquisites admissible to the Management Staff should be rationalised in the manner stated in the said circular…
>
> …Besides the above contentions, another contention was advanced on behalf of the respondents Nos. 1 and 4, namely, that the employees not having been given an opportunity of being heard before altering to their prejudice the terms and conditions of service, the impugned circular should be struck down as void being opposed to the principles of natural justice…
>
> …All the contentions except the last contention of the respondents Nos. 1 to 4 were rejected by the High Court. **The High Court, however, took the view that as no opportunity was given to the employees of CORIL before the impugned circular was issued, the Board of Directors of CORIL acted illegally and in violation of the principles of natural justice**…

> …It is now well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government servant without complying with the rules of natural justice by giving the Government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Article of the Constitution Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular was therefore, be sustained as it Offends against the rules of natural justice".

In **D.K. Yadav vs J.M.A. Industries Ltd on 7 May, 1993,** the Supreme Court of India comprised of K. Ramaswamy J., Kuldip Singh J. and V. Ramaswamy J., (written by K. Ramaswamy J) where an employee's services were terminated for violating a regulation being absent for eight days, the Court said,

> "The law must therefore be now taken to be well-settled that procedure prescribed for depriving a person of livelihood must meet the challenge of Art. 14.
>
> and such law would be liable to be tested on the anvil of Art. 14 and the procedure prescribed by a statute or statutory rule or rules or orders effecting the civil rights or result in civil consequences would have to answer the requirement of Art. 14. So it must be right,just and fair and not arbitrary, fanciful or oppressive. There can be no distinction between a quasi-judicial function and an administrative function for the purpose of principles of natural justice. The aim of both administrative inquiry as well as the quasi-.judicial enquiry is to arrive at a just decision and if a rule of natural justice is calculated to secure justice or to put it negatively, to prevent miscarriage of justice, it is difficult to see why it should be applicable only to quasi-judicial enquiry and not to administrative enquiry.

It must logically apply to both. Therefore, fair play in action requires that the procedure adopted must be just, fair and reasonable. The manner of exercise of the power and its impact on the rights of the person affected would be in conformity with the principles of natural justice. Art. 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence. When it is interpreted that the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Art. 14 has a pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness. It is, thereby, conclusively held by this Court that the principles of natural justice are part of Art. 14 and the procedure prescribed by law must be just, fair and reasonable".

Article 14 of the Indian Constitution appears in the Sub Chapter "Right to Equality". Its side note says "Equality before law". It says,

> "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

The said Article is similar in import to Article 12 of the Sri Lankan Constitution which says,

> "12. (1) All persons are equal before the law and are entitled to the equal protection of the law".

Its side note too, like in the Indian Code's sub chapter heading, is "Right to Equality".

Therefore what was said in the case of **D. K. Yadev vs. J. M. S. Industries** is applicable in Sri Lankan setting too.

The Indian Supreme Court further said,

> "In Delhi Transport Corpn. v. D. T. C. Mazdoor Congress and Ors, [1991] Suppl. 1 SCC 600 this court held that right to public employment and its concomitant right to livelihood received protective umbrella under the canopy of Arts. 14 and 21 etc. All matters relating to employment includes the right to continue in service till the employee reaches superannuation or until his service is duly terminated in accordance with just fair and reasonable procedure prescribed under the provisions of the constitution and the rules made under the provisions of the constitution and the rules made under proviso to Art. 309 of the Constitution or the statutory provisions or the rules, regulations or instructions having statutory flavour. They must be conformable to the rights guaranteed in Part III and IV of the Constitution. Art. 21 guarantees right to life which includes right to livelihood, the deprivation thereof must be in accordance with just and fair procedure prescribed by law conformable to Arts. 14 and 21 so as to be just, fair and reasonable and not fanciful, oppressive or at vagary. The principles of natural justice is an integral part of the Guarantee of equality assured by Art. 14. Any law made or action taken by an employer must be fair,just and reasonable. **The power to terminate the service of an employee/workman in accordance with just, fair and reasonable procedure is an essential inbuilt of' natural justice.** Arts. 14 strikes at arbitrary action. It is not the form of the action but the substance of the order that is to be looked into. It is open to the court to lift the veil and gauge the effect of the impugned action to find whether it is the foundation to impose punishment or is only a motive. Fair play is to secure justice, procedural as well as substantive. The substance of the order is the soul and the affect thereof is the end result".

In **Sriyani Silva v. Iddamalgoda, Officer-in-Charge, Police Station Paiyagala and Others** [2003] 2 Sri LR 6 at page 76 - 77, it was held that

> "Article 11 (read with Article 13(4)), recognises a right not to deprive life whether by way of punishment or otherwise and by necessary implication, recognises a right to life. That right must be interpreted broadly, and the jurisdiction conferred by the Constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonably necessary for this Court to protect those rights effectively."

Hence in that case the Supreme Court of Sri Lanka recognized an implied (unenumerated) right to life, which is there in Article 21 of Indian Constitution.

This was followed in **Rathnayake Tharanga Lakmali v Niroshan Abeykoon**, SCFR 577/2010.

The Preamble to the Constitution further says,

> "...and assuring to all Peoples FREEDOM, EQUALITY, JUSTICE, FUNDAMENTAL HUMAN RIGHTS..."

Therefore there must be freedom from arbitrary action which is the very basis of natural justice.

In **D. K. Yadev vs. J. M. S. Industries**, the Indian Supreme Court concluded,

> "It is thus well settled law that right to life enshrined under Art. 21 of the Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequences of jeopardising not only his/her livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of an employee/workman fair play requires that a reasonable opportunity to put forth his case is given and domestic enquiry conducted complying with the principles of natural justice. In D. 7. C. v. D. T.C. Mazdoor Congress and Ors. (supra) the constitution bench, per majority, held that termination of the service of a workman giving one month's notice or pay in lieu thereof without enquiry offended Art. 14. The order

terminating the service of the employees was set aside. In this case admittedly no opportunity was given to the appellant and no enquiry was held. The appellant's plea put forth at the earliest was that despite his reporting to duty on December 3, 1980 and on all subsequent days and readiness to join duty he was prevented to report to duty, nor he be permitted to sign the attendance register. The Tribunal did not record any conclusive finding in this behalf. It concluded that the management had power under Cl. 13 of the certified Standing Orders to terminate with the service of the appellant. Therefore, we hold that the principles of natural justice must be read into the standing order No. 13 (2) (iv). Otherwise it would become arbitrary unjust and unfair violating Arts. 14. When so read the impugned action is violative of the principles of natural justice. This conclusion leads us to the question as to what relief the appellant is entitled to. The management did not conduct any domestic enquiry nor given the appellant any opportunity to put forth his case. Equally the appellant is to blame himself for the impugned action. Under those circumstances 50 per cent of the back wages would meet the ends of justice. The appeal is accordingly allowed. The award of the Labour Court is set aside and the letter dated December 12, 1980 of the management is quashed. There shall be a direction to the respondent to reinstate the appellant forthwith and pay him back wages within a period of three months from the date of the receipt of this order. The appeal is allowed accordingly. The parties would bear their own costs".

The petitioner's Written Submissions allege that respondents have sought to resile from the document marked "A.04". It is also submitted, that, "no logical or lawful reasoning could have been forward by the respondents to justify the reasons for termination as contained in document marked "A.04". There is truth in this proposition, because, the stance of the respondents is to attack the appointment of the petitioner, not to justify his termination.

In this regard, i.e., the absence of justification of "A.04" except for attacking the appointment made by the respondents themselves (and allowed the petitioner to hold it for about 515 days, that is, from 14.09.2018 to 13.02.2020) the petitioner cites the case of **Sooriyapperuma Arachchilage Amarasiri Sooriyapperuma vs. Registrar General and others** C. A. Writ 81/2020, where the Court has quoted the following from Fernando J., in Jayawardena,

> "Respect of the Rule of Law requires the observance of minimum standards of openness, fairness and accountability in administration; and this means – in relation to appointments to and removal from offices involving powers, functions and duties which are public in nature – that the process of making a decision should not be shrouded in secrecy and that there should be no obscurity as to what the decision is and who is responsible for making it".

The petitioner also cites the case of **R (Nadezda Anufrijeva) vs. Secretary of State for Home Department** [2004] 1 A. C. 604, where Lord Steyn has said, "In our system of law surprise is regarded as the enemy of justice. Fairness is the guiding principle of our public law".

This Court has considered the judgment of the Indian Supreme court in **Union Of India vs Raghuwar Pal Singh** on 13 March, 2018, where the question was, that,

> "The central questions posed in this appeal are: (i) whether the appointment of the respondent to the post of Veterinary Compounder, made by the Director Incharge at the relevant point of time **without approval of the Competent Authority**, **was a nullity or a mere irregularity**, which could be glossed over by the department to avert disruption of his services and; (ii) in any case, whether his services could be disrupted without giving him an opportunity of hearing"

and the decision was that his services could be terminated without being heard, because, in that case it was clear that the appointment was void ab initio, for the approval of the Competent Authority was not there.

But in the present case, section 52 of the Consumer Affairs Authority Act provides that, "The Authority may with the approval in writing of the Minister, appoint a Director General to the Authority…" and on 14.09.2018 the petitioner's appointment had the approval of the then Minister. Therefore, the appointment is not void. If the petitioner did not have required qualification it could be voidable. But unless a Competent Court makes it void it is valid and the Act nowhere confers power to the Minister to summarily terminate services of the petitioner. Furthermore as per R.1 one of the required qualifications is a Bachelor's degree in Management and although the respondents, who themselves appointed the petitioner in 2018 now denies, he has a Master of Business Administration from University of Wolverhampton, United Kingdom and BA (Hons) in Business Management from Middlesex University, London. In any event as his appointment was duly made under section 52 it is not void and cannot be terminated without being heard. The action of the respondents on 13.02.2020 is ultra vires the Act. For the same reason, this court is not in agreement with the judgment of C. A. Writ 100/2020 dated 07.06.2023 of another division of this court, in which there is no consideration of the above Indian cases also.

The above authorities and Constitutional Provisions show, that, when a person is appointed to a post in accordance with the applicable provisions of a statute, he cannot be terminated, upon a procedure not provided by the statute, without being heard and if so terminated the rules of natural justice and fairness demands that the decision be set aside.

Therefore this Court grants writs of certiorari,

(i) Quashing the purported underlying decision contained in "A.04", (prayer ii)

(ii) Quashing the letter of the Secretary to the Ministry of Internal Trade, Food Security and Consumer Welfare dated 13.02.2020, referred to in "A.04", (prayer iii)

(iii) Quashing the purported decision said to have been taken by the Minister of Internal Trade, Food Security and Consumer Welfare referred to in "A.04", (prayer iv) and

(iv) Quashing the purported decision said to have been taken by the 01st to 11th respondents or any one or more of them terminating the services of the petitioner (prayer v)

Considering paragraph 72 of the Written Submissions of the petitioner, this Court instead of issuing a writ of mandamus as per paragraph (vi) of the prayer, acting under the same prayer directs that the petitioner be paid 50% of back wages and allowances due to the post he held from 14.02.2020 up to the date of this judgment.

The petitioner is entitled to the costs of this application.

Judge of the Court of Appeal

Hon. Sasi Mahendran

I agree.

Judge of the Court of Appeal.