

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

In the matter of an Application for a mandate/order in the nature of writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No.  
331/2019**

Ajith Kumara Ekanayake (deceased)  
C. Ekanayake Mawatha  
Walauwa Watte  
Ganegama South  
Baddegama

**PETITIONER**

1. Anusha Kumari Ranasinghe
2. Chagi Awera Ekanayake (minor)  
(Appearing by her mother Anusha Kumari Ranasinghe)  
Both of,  
Cyril Ekanayake Mawatha,  
Walauwa Watte,  
Ganegama South,  
Baddegama.

**SUBSTITUTED PETITIONERS**

**Vs.**

1. National Police Commission  
Block No. 9  
BMICH Premises  
Buddhaloka Mawatha  
Colombo 07.

2. K. W. E. Karaliyadda (Chairman)
3. Savithri D. Wijesekara (Member)
4. Y. L. M. Savaheer (Member)
5. D. T. Kollure (Member)
6. Gamini Nawarthne (Member)
7. Ashoka Wijethilaka (Member)
8. G. Jayakumar (Member)
9. Nishantha A. Weerasinghe (Secretary)  
All of  
Block No 9  
BMICH Premises  
Buddhaloka Mawatha  
Colombo 07.  
(The members of the National Police  
Commission)
10. Inspector General of Police  
Police Headquarters  
Colombo 01
11. The Administrative Appeals Tribunal  
No 35, Silva Lane  
Rajagiriya
12. N. E. Dissanayake (Chairman)
13. A. Gnanathan, PC. (Member)
14. G. P. Abeykeerthi (Member)  
All of  
No. 35, Silva Lane,  
Rajagiriya.  
(The members of the Administrative Appeal  
Tribunal)
15. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:**

**M. T. Mohammed Laffar, J.**

**S. U. B. Karalliyadde, J.**

**Counsel:**

Mahinda Nanayakkara with Manoj Sanjeewa for the Substituted-Petitioners.

N. De Zoysa, SC for the Respondents.

**Written submissions tendered on:**

06.11.2019 by the Petitioner.

13.11.2019 by the Respondents.

**Argued on:**

20.09.2022

**Order delivered on:**

16.03.2023

**S.U.B. Karalliyadde, J.**

This Order is pertaining to the issuance of formal Notices on the Respondents. The Court heard the oral submissions of the learned Counsel appearing for the Petitioner and the learned State Counsel appearing for the 1<sup>st</sup> to 10<sup>th</sup> and 15<sup>th</sup> Respondents. It had the opportunity of going through the written submissions tendered by both parties as well.

Before this Application was supported, the Petitioner died and thereafter, the Court allowed the Application of his widow and the daughter to be substituted as Substituted-Petitioners. By this Writ Application the original Petitioner sought to quash the portion marked as P-20(A) in the Order dated 28.01.2019 marked as P20 of the Administrative

Appeal Tribunal (the AAT), the 11<sup>th</sup> Respondent. The AAT, by that Order directed the Inspector General of Police, the 10<sup>th</sup> Respondent to reinstate the Petitioner in the Police service prospectively and without back wages. By this Application, the Petitioner sought to reinstate him with a retrospective effect from 01.10.2003 and declare that he is entitled to all back wages, salary increments, increases and due promotions with effect from that date onwards.

The Petitioner joined the Police service as a probationary Sub-Inspector of Police in 1990 and later promoted to the post of Sub-Inspector. When he was serving as the Officer-In-Charge of Wanduramba Police Station, he was bitten by a poisonous snake and therefore, unable to report to work. While taking native treatment for the snake bite at home, he was orally informed that he is transferred to Tangalle Police Station. Even though, he sent the medical certificates to the Wanduramba Police Station and the Tangalle Superintendent of Police to justify his absence from work, he received the vacation of post letter dated 01.10.2003 marked as P13. By the letter dated 05.11.2003 he preferred an appeal against the decision mentioned in P-13 to the 10<sup>th</sup> Respondent who is his disciplinary authority. Since, the 10<sup>th</sup> Respondent neither responded nor taken any step regarding the appeal, the Petitioner preferred an appeal to the National Police Commission (NPC) also against the P-13. The NPC, by letter dated 18.07.2017 marked as P-18 rejected his appeal on the basis that his appeal to the 10<sup>th</sup> Respondent had been preferred after one year and the appeal to the PSC had been preferred after twelve years and 6 months from the date of the decision in P-13. In terms of section

37:1 of Chapter XLVIII of the Establishment Code, an officer who has been served with vacation of post under the provisions of Chapter V of the Establishment Code intends to tender an appeal against such notice, such appeal should be tendered to the appropriate authority before the expiry of three months from the date on which the notice of vacation of post was served on him.

Being aggrieved by the decision of the NPC, the Petitioner preferred the appeal dated 04.08.2017 marked P-19 to the AAT. The AAT by its Order dated 28.01.2019 marked as P20, allowed the appeal and accordingly, the decision of the NPC was set aside. The AAT ordered to reinstate the Petitioner in the service on a prospective date and consider the period which the Petitioner failed to report for duty as a no-pay period.

By this Writ Application, the Petitioner is seeking reliefs, *inter alia*, a Writ of Certiorari to quash the decision of the AAT that the period which he did not report for duty to be considered as a no-pay period, a Writ of Mandamus to direct the 10<sup>th</sup> to 14<sup>th</sup> Respondents (the AAT and its members) to allow the appeal with retrospective effect from 02.07.2003 and a declaration that the Petitioner is entitled to all back-wages salary increments, increases and due promotions with retrospective effect from 02.07.2003.

In the appeal to the AAT marked as P-19 the Petitioner has not sought any particular relief. He has asked only to dispense justice to him. Considering the facts and circumstances of the appeal, the AAT has decided to set aside the Order of the NPC and reinstate the Petitioner on a prospective date. Therefore, since the Petitioner had not sought any particular relief from the AAT and sought only to dispense justice to

him, when considering the facts and circumstances of this Writ Application, this Court is of the view that the reliefs granted by the AAT were just and reasonable. The Petitioner has stated in the paragraph 31 of the Petition to this Application the reasons as to why he argues that the reliefs granted by the AAT to him were not just. Those reasons are, that the AAT has failed to consider, *inter alia*, that the Petitioner had a genuine grievance and excuse, that the AAT had been of the view that the NPC had erred in rejecting the appeal of the Petitioner, that the 10<sup>th</sup> Respondent and the NPC have not considered the request of the Petitioner to be reinstated which was supported by medical evidence. Further, the Petitioner has stated in that paragraph that, although, the AAT has taken into consideration that the Order of the NPC is *per se* erroneous and unreasonable, the AAT has recommended that the Petitioner be reinstated in service on a prospective date and the period he was out of the service to be treated as a period of no pay and that hence, not only the Petitioner will lose his uninterrupted service, he will lose his due promotions, salary increments and salary increases as well for a no fault of the Petitioner. In the averment 14 of the Petition the Petitioner has stated that he was confined to his house and could not perform his duties because he was going from bad to worse as a result of the snake bite. Therefore, I am of the view that it is not just and reasonable for AAT to order to reinstate the Petitioner with back wages for a period which he did not work and not fit for work. When scrutinizing the P-20, this Court can be satisfied that the AAT has considered all those facts and decided that the Petitioner should be reinstated prospectively without back-wages. Therefore, this Court cannot

accept the position of the Petitioner that the AAT has not considered the above mentioned facts.

There is no material before this Court to be satisfied that the Petitioner had reinstated or he had reported/ made any attempt to report for work complying the Order of the AAT dated 28.01.2019. Nevertheless, our considered view is that the Petitioner should have compelled the decision of the AAT and complain about his grievances later. Since the Petitioner is dead by now, he cannot report for work again. Therefore, this Court is not in a position to order the 10<sup>th</sup> Respondent to implement the Order of the AAT and reinstate him in the service and to make any order regarding the due promotions, salary increments and salary increases. Under such circumstances, I hold that, this Application has now become futile and should be dismissed. In this regard following Court decisions are relevant. In the case of *P.S. Bus CO Ltd. Vs. Members and Secretary of Ceylon Transport Board*<sup>1</sup> Sinnetamby, J held as follows;

*“The prerogative writs are not issued as a matter of course and it is in the discretion of Court to refuse to grant it if the facts and circumstances are such as to warrant a refusal. A writ, for instance, will not issue where it would be vexatious or futile.”*

In *Rosalin Vs. Sundaralingam and Others*<sup>2</sup> which was regarding the re-listing of a writ of habeas corpus application W. L. Ranjit Silva, J. ruled as follows;

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<sup>1</sup> (61) NLR 491 at Page 495.

<sup>2</sup> (2005) 1 Sri L. R. 260 at Page 262.

*“This Court is also mindful of the maxim ‘Lex non Cogit Ad impossibilia’ that is, the law does not expect a person to do what is impossible. This applies with equal force to the courts of law as well. On the same reasoning Court will not issue an order which cannot be implemented or would be redundant...”*

Considering all the above stated facts and the authorities, I dismiss the Writ Application without costs.

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**