

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

In an application under and in terms of
Article 140 of the Constitution seeking
inter alia Writ of Certiorari, Mandamus and
Prohibition.

Elabadagama Kankanamlage Udaya
Kumara Indika,
“Anusha”, Makwaththa,
Asgiriya, Gampaha

Petitioner

C.A.Writ No.392/2022

Vs

1. Vice Admiral D.N.S Ulugetenne,
NRX 0267,
Commander of the Navy,
Naval Head Quarters, P.O.Box 593,
Colombo 01.
2. Commodore N.M.J.D Nissanka,
NRX 0565,
Acting Director General Administration,
Naval Head Quarters, P.O.Box 593,
Colombo 01.
3. Rear Admiral K.J.Kularatne,
NRX 0369,
Commander Eastern Naval Area,
Naval Head Quarters, P.O.Box 593,
Colombo 01.
4. Captain H.M.C.S.B.Herath
NRX 1051,
Commanding Officer, SLNS Tissa,
SLNS Tissa, Naval Dockyard,
Trincomalee.
5. Rear Admiral W.H.U.P.Hewage,
Director General Administration,
Naval Head Quarters, P.O.Box 593,
Colombo 01.
6. Commander P. Vithana,
Acting Director of Administration.
Naval Head Quarters, P.O.Box 593,
Colombo 01.

7. Rear Admiral L.H.S.R.Lelwala,
Director General Administration,
Naval Head Quarters, P.O.Box 593,
Colombo 01.
8. Commodore K.A.P.S.K. Kariyapperuma,
Director General Administration,
Naval Head Quarters, P.O.Box 593,
Colombo 01.

Respondents

- Before : **N. Bandula Karunarthna, J. (P/CA)**
M.Ahsan R.Marikar, J,
- Counsel : Ruwantha Cooray instructed by Nalin Samarakoon for the
Petitioner.

Maithree Amerasinghe SC for the Petitioner.
- Argued on : 21.03.2023
- Decided on : 30.05.2023

M. Ahsan R. Marikar, J.

Introduction

- 1) The Petitioner made this application on 26th October 2022 and had sought to issue notices to the Respondents and to grant the following interim reliefs prayed for in prayer (n) and (o) of the petition.
 - n. Grant an interim order staying the operation of the decision marked P2(i);
 - i) suspending the Petitioner from the service of the Sri Lanka Navy
 - ii) withholding pay and allowances of the Petitioner
 - o. Grant an interim order preventing the Respondents and/or any one or more of the from proceeding to inquire/investigate/record

evidence/making recommendation and/or acting in terms of the purported charge sheet as contained in document marked P14(ii)

Facts of the Petitioner's case

- 2) The Petitioner has contended that the Petitioner has served in the ranks of the Sri Lanka Navy for well over 25 years after joining as a cadet officer and was promoted as Commander. A dispute had arisen after the Petitioner was promoted to the position of Commander and was assigned the post of Naval Mess Manager at the Eastern Command Wardroom.
- 3) During the period on or around 26th January to 24th February, the Petitioner was hospitalized and after the Petitioner returned to work, he was arrested and detained in the Navy Prison at the Navy Headquarters. Later on, the Petitioner was informed of the reason for the arrest which purported to financial anomalies/irregularities caused in the management of the Naval Mess by Petitioner.
- 4) An inquiry was conducted against the Petitioner and he was suspended from the service from 4th July 2020.
- 5) Subsequent to the inquiry the Petitioner was informed that the Sri Lanka Navy had suffered a total loss of Rs. 8 799 728.66 and the Petitioner was ordered to pay Rs. 6 176 653.30 by the P3 letter dated 24th March 2021.
- 6) By the letter marked and produced as P5, the Petitioner was ordered to pay Rs. 5 million to reinstate the Petitioner.
- 7) On the said grounds, the Petitioner had made a payment of Rs. 5 million and by the letter marked as P10 again the Petitioner was ordered to pay the balance of Rs. 1 176 653.30. However, after the Petitioner made the

initial payment and several representations, the Sri Lanka Navy had failed to inform the Petitioner as to the reinstatement of service.

- 8) Further, the Petitioner has stated that after the Petitioner had made the payments, without reinstating him, the Sri Lanka Navy had issued a charge sheet containing 9 charges against the Petitioner which is marked and produced as P14(i) and P14(ii).
- 9) On the said grounds the Petitioner had pleaded the decision taken by the Respondents are ultra virus, arbitrary, capricious and unreasonable.
- 10) The grievance of the Petitioner was that the findings of P3 had been arrived at without giving a reasonable opportunity for the Petitioner to defend himself.
- 11) Therefore, P3 and P10 findings are in violation of the rules of Natural Justice.
- 12) The next dispute raised by the Petitioner is that after the P3 and P10 findings, issuing the charge sheet is contrary to the law and had no force or avail in law.
- 13) On the said grounds the Petitioner has sought to invoke the writ jurisdiction of this court to get the reliefs prayed for in the prayers of the petition.

The Disputed Facts arisen between the Parties

- 14) When the matter was supported on 21st March 2023 both parties made oral submissions and agreed to file written submissions. However, none of the parties have submitted written submissions.

15) Considering the oral submissions made by both parties I have to address the following disputes to consider whether the notices and interim orders can be issued.

- (i) Was the Petitioner suspended from his service by the Sri Lanka Navy?
- (ii) Has the Sri Lanka Navy ordered the Petitioner to pay Rs. 6 176 653.30 after holding an inquiry?
- (iii) Has the Petitioner made a payment of Rs. 5 million?
- (iv) Has the Sri Lanka Navy issued a charge sheet by P14(i) and P14(ii) against the Petitioner?
- (v) Is the said charge sheet, in violation of Natural Justice and or has it caused prejudice to the Petitioner to invoked the writ jurisdiction of this court?

Was the Petitioner suspended from his service by the Sri Lanka Navy?

16) The Petitioner was a Mess Manager in the year 2020. He was arrested and suspended from the service of the Sri Lanka Navy on or around 26th February 2020. That fact is not disputed by the Petitioner or the Respondents.

17) Therefore, it can be admitted that the service of the Petitioner was suspended from 26th February 2020 by the Sri Lanka Navy.

Has the Sri Lanka Navy ordered the Petitioner to pay Rs. 6 176 653.30 after holding an inquiry?

18) Documents marked and produced as P3, P4, P5 and P6, supports that the Sri Lanka Navy had directed the Petitioner to deposit Rs. 5 million as per

the decision made by the inquiry against him to consider his reinstatement.

- 19) The Petitioner too had made an appeal against the said order by P4 and requested to make an initial payment of Rs. 2.5 million and to make the balance payment by instalments.
- 20) In the said circumstances, it is a proven fact by the letters marked as P3 to P6 that the Petitioner was ordered to deposit Rs. 5 million in favour of the Sri Lanka Navy.

Has the Petitioner made a payment of Rs. 5 million?

- 21) The Petitioner had made a payment of Rs. 5 million in favour of the Sri Lanka Navy by P9(ii) and P9(iii). After depositing the said sum the Petitioner had written to the Navy Commander informing him of the said deposit by letter marked as P9(i) and requested to reinstate him to the same post which was assigned to him.
- 22) The said P9(ii) and P9(iii) support the fact that the Petitioner had deposited the requested amount directed by the Sri Lanka Navy.

Has the Sri Lanka Navy issued a charge sheet by P14(ii) against the Petitioner?

- 23) The Sri Lankan Navy had issued the charge sheet marked as P14(ii). The said charge sheet contained 9 charges.

Is the said charge sheet in violation of Natural Justice and or has it caused prejudice to the Petitioner to invoked the writ jurisdiction of this court?

- 24) The Counsel for the Petitioner argued that the Sri Lanka Navy held the inquiry against the Petitioner and ordered him to deposit Rs. 6 176 653.30 to consider the reinstatement.
- 25) Therefore, issuing a charge sheet by P14(ii) is illegal.
- 26) The position taken by the Counsel for the Petitioner is that a person cannot be charged for the same offence twice.
- 27) The State Counsel appeared for the Respondents, argued that the 1st inquiry was held only to recover the misappropriated money. However, for the said misappropriation the Sri Lanka Navy is entitled to hold a disciplinary inquiry against the Petitioner.
- 28) On the said grounds there is no violation or illegal conduct caused by the Respondents against the Petitioner.
- 29) In considering the above submissions and the documents, although the Petitioner had made several appeals to the Naval Commander, the Petitioner had made the payments directed by the Sri Lanka Navy as per P3 to P6 documents.
- 30) In the said letters issued by the Sri Lanka Navy, the reinstatement of the Petitioner had never been stated forthwith.
- 31) The Sri Lanka Navy had specified that they will only consider the reinstatement of the Petitioner by the letter marked as P5. On the said grounds we are agreeable with the argument raised by the State Counsel.

- 32) The inquiry pertinent to P3 document had been held to recover the money misappropriated which was made aware of by the Auditor.
- 33) The subsequent charge sheet issued by P14(ii) is a general charge sheet issued by the Sri Lanka Navy for the conduct of the Petitioner to take necessary disciplinary action.
- 34) On the said circumstances we do not see any illegality or illegal conduct of the Sri Lanka Navy against the Petitioner to invoke the writ jurisdiction of this court.
- 35) In the instant application, the Petitioner has failed to prove a single fact that the Respondents have acted unlawfully and or excessive power had been used to decide the interdiction of the Petitioner.
- 36) In the decision of **Geeganage V. Director General Customs**¹, Gunwardene J. had made the following observations;

*“The above grounds are to be designated as errors of law, and all or any one of which grounds, the impugned decision made by the 2nd respondent has to be quashed. **Animanic**² decision seems to suggest that any error of law will have the effect that the body subsequently acts without power and so denying that some errors may be made within jurisdiction and therefore immune from judicial review. The Animanic (majority) decision also held that not only errors with respect to preconditions to the exercise of power may lead to acting without jurisdiction but also errors made in the course of exercising the power. This issue is*

¹ [2001] 3 SLR 179 at pg 194, 195.

² *In Re Animanic* [1969] 2 AC 147.

*very important because if error of law goes to jurisdiction that expands the scope of judicial review and the possibility of intervention by the courts. Animinic is important because it held that any error of law may well be a jurisdictional error and therefore reviewable under the ultra vires doctrine. There has been some doubt as to whether or not Animinic abolished entirely the distinction between jurisdictional and non-jurisdictional errors. This appears to have been resolved by the House of Lords in **R v Lord President of the Privy Council, ex parte**³, in which it was held that; "in general any error of law made by an administrative tribunal or an inferior court in reaching a decision can be quashed for error of law". The ground for this is the ultra vires doctrine that these bodies had been conferred their decision making powers by the Parliament presumably on the basis that it would be exercised on the correct legal basis."*

- 37) In *Writ of Mandamus* the Petitioner has to prove injustice caused to him. That fact is decided in **Karavita and Others V. Inspector General of Police**⁴.
- 38) In view of the aforesaid judgements and in considering the facts pertinent to this case we do not see that the Petitioner had supported any fact to consider to invoke the writ jurisdiction of this court.

³ [1993] AC 682 at 682.

⁴ [2002] 2 SLR at pg 287.

Conclusion

39) In the said circumstances the Petitioner's application does not have any grounds to consider the judicial review to issue a writ as the Respondents have not taken any illegal decision or violated the rules of the Sri Lanka Navy. On that we dismiss the petition dated 26th October 2022 subject to payment of cost.

Judge of the Court of Appeal

N. Bandula Karunarathna J. (P/CA)

I agree

President of the Court of Appeal