

**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 of the  
Democratic Socialist Republic of Sri Lanka.

**CA Writ Application No: 197/2021**

D.D. Chaminda,  
Sub-Inspector of Police,  
137(1)(A), Pollahena,  
Rendapola Junction,  
Dobamgoda.

**PETITIONER**

**-Vs-**

1. National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.

(Ceased to hold office)

1a. P.H. Manathunga,  
Chairman,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial International  
Conference Hall,  
Buddhaloka Mawatha,  
Colombo 07.

(Ceased to hold office)

2. Professor S.T. Hettige

(Ceased to hold office)

3. Savithri D. Wijesekara

(Ceased to hold office)

4. Anton Jeyanathan

(Ceased to hold office)

5. Y.L.M. Zawahir

(Ceased to hold office)  
(Ceased to hold office)

6. Tilak Collure
7. Dr. Frank de Silva

(2<sup>nd</sup> -7<sup>th</sup> Respondents are the  
Members of the National Police  
Commission).

8. Nishantha Anuruddha Weerasinghe,  
Secretary,  
National Police Commission,  
Building No. 9,  
Bandaranayake Memorial  
International Conference Hall,  
Buddhaloka Mawatha, Colombo 07.
9. Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.
10. Hon. Justice Jagath Balapatabandi,  
Chairman,
11. Mrs. Indrani Sugathadasa,  
Member,
12. V. Shivagnanasothy,  
Member,
13. Dr. T.R.C. Ruberu,  
Member,
14. Ahamed Lebbe Mohamed Saleem,  
Member,
15. Leelasena Liyanagama,  
Member,
16. Dian Gomes,  
Member,
17. Dilith Jayaweera,  
Member,

18. W.H. Priyadasa,  
Member,

19. M.A.B. Dayasenarathna,  
Secretary,

All of the Public Service  
Commission, No. 1200/9,  
Rajamalwatta Road, Battaramulla.

20. C.D. Wickremaratna,  
Inspector General of Police,  
Department of Police,  
Police Headquarters,  
Colombo 01.

21. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

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

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

**Counsel:** P. K. Perera for the Petitioner.

Ms. N. Kahawita, SSC for the Respondents.

**Written submissions tendered on:**

07.07.2023 by the Petitioner

19.10.2023 by the 20<sup>th</sup> and 21<sup>st</sup> Respondents.

**Argued:** by way of written submissions

**Decided on:** 22.02.2024

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

The Petitioner is a Sub-Inspector in the Police Department. He joined the Police Department as a Sub-Inspector of the Reserve Police Service and was subsequently absorbed into the Regular Service as a Sub-inspector. Thereafter he was promoted to the post of Inspector of Police. The Petitioner was charge-sheeted by the Police Department on 19.01.2015 for three offences, namely,

- I. Disreputable conduct - Committing an offence under Section 1 of the Police Disciplinary Code by aiding and abetting a gang of persons to commit theft or misappropriation of 5 heads of cattle.
- II. Pre-verification - Committing the offence of pre-verification under Section 5(B) of the Public Disciplinary Code by making a false statement in that regard.
- III. Aiding and Abetting in the commission of an act of indiscipline - Committing the offence of aiding and abetting under Section 16 of the Police Disciplinary Code.

The Petitioner pleaded not guilty to the charges. After a formal disciplinary inquiry, he was found guilty of those 3 charges and was demoted from the post of Inspector of Police to Sub-Inspector of Police. Aggrieved by the said decision, the Petitioner appealed to the National Police Commission (the Commission) where the Petitioner's appeal was rejected and ordered to make the punishments to be

effective (document marked as R1). Thereafter, the Petitioner appealed against the said decision of the Commission to the Administrative Appeal Tribunal (the AAT) on 01.03.2019 (document marked as P1). The Commission submitted its observation to the AAT (marked as P2) and the Petitioner submitted written submissions (marked as P3). By the Order dated 25.08.2020 (marked as P4), the AAT dismissed the Petitioner's appeal. Being aggrieved by the decision of the AAT, the Petitioner preferred this Writ Application praying for the substantive reliefs, *inter alia*,

(b) Issue a mandate in the nature of the Writ of Certiorari to quash the

(i) Decision of the Administrative Appeal Tribunal dated 25.08.2020 (P4).

(c) Issue a mandate in the nature of Writ of Mandamus against the 1<sup>st</sup> – 19<sup>th</sup>

Respondents directing them to,

- i. acquit the Petitioner from Charges I to III
- ii. remove the punishments imposed on the Petitioner
- iii. implement the punishment without a demotion to the post of Sub-Inspector
- iv. enter his name in the list of the Inspectorate

The learned Counsel appearing for the Petitioner informed this Court that the Petitioner is confining this Writ Application only to prayer b(i) of the Petition. The position of the Petitioner is that the evidence given by the PW1 and PW2 at the Formal Disciplinary Inquiry was not corroborated by the testimonies of the other witnesses and there was

no direct or circumstantial evidence that the Petitioner had aided or abetted in committing the offences mentioned in the charge-sheet served on him and the prosecution failed to prove the charges on the balance of probability. The Petitioner alleges that PW1 and PW2 (Jayasiri and his wife) had hatred towards him as the Petitioner had arrested the brother of Jayasiri's wife for possession of a hand grenade and therefore Jayasiri had implicated the Petitioner for the aforementioned illegal acts. The Petitioner further argues that the decision of the AAT should be subject to judicial review as it is erroneous in law on the face of the record.

The position of the Respondents is that the decision given at the Formal Disciplinary Inquiry has been based upon the consideration of all evidence placed at the inquiry as reflected in the Inquiry Report (marked as R2) and the AAT has also considered all the available evidence before the Inquiring Officer when arriving at its decision marked as P4. The learned SSC appearing for the Respondents argues that even though the Petitioner claims that there is no direct or circumstantial evidence that he had aided or abetted to commit the alleged offences, he has failed to satisfy this Court that the evaluation of evidence either by the Inquiring Officer and/or by the AAT is defective and further that the Petitioner has failed to submit any basis on which he claims that there is an error of law on the face of the record. Therefore, the learned SSC argues that there is no ground to review the Order of the AAT marked as P4.

The Petitioner is confining this Application to the prayer b (i) of the Petition for a Writ of Certiorari to quash the Order of the AAT marked as P4 and is arguing that there is an error of law on the face of the record. However, the Petitioner has not established any ground upon which he claims that there is an error of law on the face of the record. Therefore, this Court has to consider whether there is any error of law on the face of the record. When taking into consideration the Order delivered by the AAT, this Court can be satisfied that the AAT has considered whether the Inquiring Officer has properly considered, evaluated and weighed the evidence and the charges against the Petitioner were proved on the balance of probability at the Formal Disciplinary Inquiry. Tittawella, J. in *Gunasekera Vs. De Mel, Commissioner of Labour*<sup>1</sup> observed that,

*“A tribunal which has made findings of fact wholly unsupported by evidence or which it has drawn inferences wholly unsupported by any of the facts found by it will be held to have erred in point of law. The concept of error of law includes the giving of reasons that are bad in law or inconsistent, unintelligible or would seem substantially inadequate. It includes also the application of a wrong legal test to the facts found taking irrelevant considerations into account and arriving at a conclusion without any supporting evidence. If reasons are given and these disclose that an erroneous legal approach has been followed the superior Court can set the decision aside by certiorari for error of law on the face of the record. If the grounds or reasons stated disclose a clearly*

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<sup>1</sup> 79 (2) NLR 409 at 426.

*erroneous legal approach the decision will be quashed. An error of law may also be held to be apparent on the face of the record if the inferences and decisions reached by the tribunal in any given case are such as no reasonable body of persons properly instructed in the law applicable to the case could have made.”*

This Court can be satisfied that the reasons given by the AAT for its decision are neither inconsistent, unintelligible, substantially inadequate nor bad in law. The decision of the AAT neither has followed an erroneous legal approach in arriving at its conclusion nor has concluded without any supporting evidence that the Petitioner has rightfully found guilty of the charges at the Formal Disciplinary Inquiry and not one that no reasonable body of persons properly instructed in the law could have been made.

In *Chas Hayley and Co. Ltd., Vs. Commercial and Industrial Workers*<sup>2</sup>, Senanayake, J. has elaborated on what constitutes an error of law on the face of the record as a ground for certiorari, as follows,

*“It is well settled that the order of an inferior tribunal having a duty to act reasonably in determining the rights of the parties is liable to be quashed by Writ of Certiorari for an error of law appearing on the face of the record. A finding of fact may be impugned on the ground of error of law on the face of the record (a) erroneously refusing to admit admissible material evidence (b)*

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<sup>2</sup> [1995] 2 Sri LR 42 at 49-50.



*erroneously admitting inadmissible evidence which influences the finding (c) finding based on no evidence (d) where the tribunal had acted with manifest or clear unreasonableness or unfairness”.*

when scrutinising the decision of the AAT marked as P4, this Court can be satisfied that in arriving at the decision, the AAT has considered all the evidence placed before the Inquiring Officer at the Formal Disciplinary Inquiry, not erroneously refuse to admit admissible evidence or admit inadmissible evidence which influences the finding nor had acted with clear unreasonableness or unfairness. When considering the facts and circumstances of this case in light of the judicial pronouncements mentioned above this Court is of the view that there is no error of law in the face of the record in the AAT Order as alleged by the Petitioner.

Even though the Petitioner seeks to quash the Order of the AAT marked as P4, he does not seek to quash the decisions of the Commission (R1) and the Inquiring Officer (R2). Hence even if the decision of the AAT is quashed, the decisions of the Commission and the Inquiring Officer would remain intact. In *Samastha Lanka Nidahas Grama Niladhari Sangamaya Vs Dissanayake*<sup>3</sup> Saleem Marsoof, J. held that,

*“It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile.”*

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<sup>3</sup> [2013] BLR 68.

In the case of *Siddeek Vs Jacolyn Seneviratne*<sup>4</sup> Soza J. observed that,

*“The Court will have regard to the special circumstances of the case before issuing a writ of certiorari. The writ of certiorari clearly will not issue where the end result will be futility, frustration, injustice and illegality.”*

Marsoof, PC. J (P/CA) (as he then was) in the case of *Ratnasiri and others Vs Ellawala and others*<sup>5</sup> held that;

*"This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. Court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that "A writ... will not issue where it would be vexatious or futile.*

*It is manifest that it would be futile to issue a writ of certiorari as prayed for in the petition since what is sought to be quashed therein is the decision said to have been made by the Transfer Appeal Board. However, as evidenced by paragraph 1 of P2 and paragraph 2 of P5, the 4th respondent, to whom the power of transfer has been delegated by the Public Service Commission has approved and adopted the decisions of the Transfer Appeal Board. No relief has been sought against that decision although the petitioners were aware of it*

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<sup>4</sup> [1984] 1 Sri LR 83.

<sup>5</sup> (2004) SLR 180.

*having received P2 and P5. In the circumstances, it would be futile to grant the relief prayed for since it would still leave intact the decisions made by the 4<sup>th</sup> respondent.”*

Therefore, even if the decision of the AAT is quashed the decisions of the Commission and the Inquiring Officer will remain intact and the Application would be futile. For the reasons above-mentioned this Court is not inclined to issue a Writ of Certiorari to quash the decision of the AAT marked as P4 as prayed for in prayer (b)(i) of the Petition. Therefore, the Court dismisses the Writ Application. No costs ordered.

*Application dismissed.*

**JUDGE OF THE COURT OF APPEAL**

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

**I agree.**

**JUDGE OF THE COURT OF APPEAL**