

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

In a matter of an application for Writs of *Certiorari* and *Mandamus*, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.
CA/WRT/0056/2025**

Samarakoon Mudiyansele
Chaminda Prasad Samarakoon,
20A/1, Pilawala,
Gunnepana,
Kandy.

Petitioner

Vs.

1. **Ceylon Petroleum Corporation,**
No. 609, Dr. Danister De Silva Mawatha,
Colombo 09.
2. **D.J.A.S.De S Rajakaruna,**
Chairman,
Ceylon Petroleum Corporation,
No. 609, Dr. Danister De Silva Mawatha,
Colombo 09.
3. **Dr. Mayura Neththikumarage,**
Managing Director,
Ceylon Petroleum Corporation
No. 609, Dr. Danister De Silva Mawatha,
Colombo 09.

4. **Honorable Attorney General,**
Attorney General's Department,
Colombo 12.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J (ACT.P/CA).**
K. M. S. DISSANAYAKE, J.

Counsel: Mohamed Adamaly, P.C. with Ms. Kathya Seneviratne instructed
by Ms. Shanya Wickramaratne for the Petitioner.

Rajika Aluwihare, S.C. instructed by Kumudu Ariyaratna for the
1st to 4th Respondents.

Supported on : 19.02.2025

Written Submissions
of the Petitioner
tendered on : 21.03.2025

Written Submissions
of the 1st, 2nd and 3rd
Respondents
tendered on : 25.03.2025

Decided on : 16.05.2025

K. M. S. DISSANAYAKE, J.

This is an application by the Petitioner under Article 140 of the Constitution for a mandate in the nature of Writ of *Certiorari* to quash the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay, as

contained in the letter marked **P19**, and/or to quash the letter itself in its entirety; and for a mandate in the nature of a Writ of *Mandamus* directing the 1st and/or 2nd and/or 3rd Respondents to reinstate the Petitioner in employment in the marketing function in the same grade and post, and/or to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process.

The Petitioner had in his initial motion dated, 29.01.2025 filed in this Court at the time of the institution of the instant application, urged that this matter be listed for support of the application for notice, as well as the application for interim relief sought in his petition dated 29.01.2025 on any of the 3 days stated therein, namely; 05.02.2025, 06.02.2025, 10.02.2025 and stated that, direct notices would be served by the Petitioner on the 1st to 4th Respondents by registered post and proofs thereof would be furnished to Court by way of a motion.

However, the Petitioner in his subsequent motion dated 31.01.2025 which was received by Court Registry on the very same day on 31.01.2025 at 9:25 AM as evident from the Court frank affixed thereon, had urged that, this matter be listed for support of the application for notice, as well as the application for interim relief sought in the petition dated 29.01.2025 on the very same day on 31.01.2025.

When this matter came on before us on 31.01.2025 in pursuant to the motion so filed in this Court by the Petitioner, none of the Respondents were present in Court nor represented, and learned President's Counsel for the Petitioner had informed Court that, he had given notices of this application to the Respondents informing them that, this matter will be coming up for support of the application for notice, as well as the application for interim relief sought in the petition dated 29.01.2025 and brought to the notice of the Court that any of the Respondents were nevertheless, not present in Court nor represented in

Court, and therefore, moved to support both the applications for notice as well as for interim relief sought against the 1st to 3rd Respondents.

In the circumstances, this Court had having heard the learned President's Counsel for the Petitioner on the application for notice as well as for interim order, made order issuing notices on the 1st to 4th Respondents together with an interim relief as prayed for in prayer 'b' of the said petition of the Petitioner effective for 14 days and directing them to be served on the Respondents in the manner prescribed therein, returnable for 13.02.2025 on the belief that direct notices had duly, been dispatched to the 1st to 4th Respondents by the Petitioner informing them that this matter will be coming up before this Court on 31.01.2025 for the said purpose as submitted to Court by the learned President's Counsel for the Petitioner as evident from the minutes of Court dated 31.01.2025.

When this matter came on before us on 13.02.2025, learned State Counsel appearing for the 1st to 4th Respondents had brought to our notice that, no notice whatsoever had been served by the Petitioner on any of the Respondents informing them that, this matter will be coming up on 31.01.2025 for support of the application for notice, as well as the application for interim relief sought in his petition dated 29.01.2025 as informed to Court by the learned President's Counsel for the Petitioner on 31.01.2025, and in the result, the learned State Counsel had vehemently, moved Court to have the interim order so issued *ex-parte* without notice to the Respondents by Court against the Respondents, vacated for want of due notices on the Respondents.

In the result, the application for interim relief had been fixed by this Court for support afresh, thereby, directing written submissions to be filed in Court within the stipulated period of time as urged by Counsel, setting out their respective positions with regard to the application for interim relief and written

submissions were thus filed by the respective parties and order thereon was reserved for today.

The immediate matter before this Court for its determination being the application of the Petitioner for an interim relief of kind as prayed for in prayer 'b' of his petition dated 29.01.2025 and conversely, the application of the 1st to 4th Respondents for the refusal of the grant of the same.

The instant application for a mandate in the nature of Writs of *Certiorari* and *Mandamus* has to be fully, argued and decided on its merits at the final hearing of the same, but at this stage, this Court is only concerned with and/or considering the issue of an interim order as prayed for in prayer (b) of the petition, as observed by this Court in the decision in **CA Application No. 336/2012- decided on 22.02.2013.**

As observed by this Court in the decision in **Duwearatchi and Another Vs. Vincent Perera and Another 1984 (2) SLR 94** at Pages 100 and 101, it is necessary for this Court to form a tentative view, subject to a final decision at the hearing of this application for a mandate in the nature of Writs of *Certiorari* and *Mandamus*. The position in law is that, the Court can express for the purpose of a decision, a *prima facie* and a tentative opinion subject to a final decision and a *prima facie* and a tentative opinion should be formed on the material available on record, and that, this *prima facie* view is only expressed for the decision of the matter before us and is subject to a final decision; and that the Court does not determine the controversial issues in the case at this stage of considering an application for interim relief.

The main factor to be considered by a Court for the issue of or non-issue of a stay order in an application of this kind had been set out by the Supreme Court in the decision in **Billimoria Vs Minister of Lands and Land Development and Mahaweli Development and Two Others (1978-79-80) 1**

SLR 10 at page 13 that, “In considering this question, we must bear in mind that a stay order is an incidental order made in the exercise of inherent or implied powers of Court. Without such power the Court’s final order in most cases would if the Petitioner is successful, be rendered nugatory and the aggrieved party will be left holding an empty decree worthless of all purposes.”.

Court in the decision in **Billimoria Vs Minister of Lands and Land Development and Mahaweli Development and Two Others** (Supra) further observed at page 15 that, “The interests of justice therefore, required that, a stay order be made as an interim measure. It would not be correct to judge such orders in the same strict manner as a final order. Interim orders by their very nature must depend a great deal on judge’s opinion as to the necessity for interim action.”.

It was the view of this Court in the decision in **Duwearatchi and Another Vs. Vincent Perera and Another** (Supra) that “An interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied powers of the Court; and that as regards the issue of an interim stay order in a writ application, the Court is guided by the following principles;

- (i) Will the final order be rendered nugatory if the Petitioner is successful?
- (ii) Where does the balance of convenience lie?
- (iii) Will irreparable and irremediable mischief or injury be caused to either party?.”.

This Court in the decisions in **CA Application No. 336/2012** (Supra) and **CA (WRIT)174/2017- decided on 08.08.2017**, cited and applied with approval the above three principles laid down in **Duwearatchi and Another Vs. Vincent Perera and Another** (Supra) as being the guiding principles in determining as to whether or not an interim stay order in a writ application should be issued.

The substantive relief sought by the Petitioner in the instant application is two-fold, namely; a) for a mandate in the nature of a Writ of *Certiorari* quashing the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay, as contained in the letter marked **P19**, and/or to quash the letter itself in its entirety; and b) for a mandate in the nature of a Writ of *Mandamus* directing the 1st and/or 2nd and/or 3rd Respondents to reinstate the Petitioner in employment in the marketing function in the same grade and post, and/or to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process.

Let me now briefly, set out below, the facts and circumstances that according to the Petitioner, led him to have instituted the instant application for a mandate in the nature of Writs of *Certiorari* and *Mandamus* against the 1st, 2nd and 3rd Respondents;

The Petitioner being a citizen of Sri Lanka, joined the Ceylon Petroleum Corporation-the 1st Respondent as a clerk grade B/3 in or around 1995 and was subsequently, made permanent in it on 06.03.1999 (P1 and P2); that he was then promoted from time to time and by letter dated 08.11.2010, he was assigned covering up duties in the post of Manager Marketing; that He was finally, promoted to the post of Marketing Manager (Retail) by letter dated 17.05.2012 (P3 and P4); that on or about 2015, the Petitioner while serving in his position as Marketing Manager in the Ceylon Petroleum Corporation-1st Respondent, was transferred from the head office of the 1st Respondent to the Sapugaskanda New Terminal Under the Refinery function for unspecified duties with immediate effect pending disciplinary inquiry by letter dated 24.03.2015 (P5) on an aggregate of 6 baseless, unfounded, unsubstantial and misleading charges framed against him; that subsequently, he was interdicted on 18.08.2015(P6) without pay and issued 5 charge sheets dated 07.08.2015, 14.08.2015, 03.12.2015, 01.12.2015 and 26.05.2016 (P7(a) to P7(e)) all of

which set out and aggregate of 31 false and misconceived charges against him, which were responded to by individual letters addressing the charges in each of the aforesaid charge sheets; that notwithstanding comprehensive responses being provided by the Petitioner to the charges against him, the 1st Respondent initiated 5 disciplinary inquiries against him, which continued until the wrongful and unlawful termination of his employment on 29.12.2016 upon the purported findings of the inquiry related to the second and third charge sheets (P7(b) and P7(c)); the Petitioner challenged both his unlawful transfer and his unlawful interdiction through two separate fundamental rights applications in the Supreme Court, but both were withdrawn by him consequent to the termination of his services (P9(a) and P9(b)); that in response to the unlawful and wrongful termination of his employment, the Petitioner filed an application in the Labour Tribunal of Colombo praying *inter-alia* for reinstatement with full back wages and/or in the alternative, for compensation; that consequently, the 1st Respondent decided to settle the matter before the Labour Tribunal of Colombo and agreed to the demand of the Petitioner; that pursuant to that settlement, the Petitioner was reinstated with full back wages and without a break in service by the 1st Respondent with effect from 08.02.2021 (P13); that consequently, the Petitioner resumed, responsibilities in the position of Marketing Manager (Retail) with effect from 08.02.2021 and thus, it is evident that, the Petitioner was not in active employment under the 1st Respondent in his position as Marketing Manager (Retail) from the time he was wrongfully transferred on 24.03.2015 through the period of his interdiction and termination and until his reinstatement on 08.02.2021; that on 15.07.2024, the 1st Respondent issued an internal investigation report on the charging of Monthly Utility Fees (MUF) for Corporation Own Dealer Outlets (CODOs) (P15); that the chairman-the 2nd Respondent by virtue of the powers vested in him by such Disciplinary Rules as formulated by the 1st Respondent by virtue of powers vested in it by section 6 of the Ceylon Petroleum Corporation Act No.28

1961 (as amended) (P14), appointed a committee comprising of Additional Secretary (Investigation) of the Ministry of Public Administration, Provincial Councils and Local Government, Dammika Muthugala, Director General of the Sri Lanka Tea Board, S. M. Anuruddha and the Investigation Officer of the Ministry of Public Administration, Provincial Councils and Local Government, L.L.N. Pushpakumara to investigate certain matters relating to the alleged non implementation of Board decisions relating to the charging of MUF and/or Monthly Rental from CODOs; the Committee so appointed commenced its investigation and submitted investigation report dated 11.09.2024 (P16) recommending W.M.K.R.B. Wickramasinghe-Deputy General Manager (Marketing) and W.D.L.C. Abeygunawardena-Marketing Manager (Acting) to be interdicted with immediate effect and proceed with the preliminary investigation; and S.M.C.P. Samarakoon-Marketing Manager-the Petitioner to be transferred to a different location away from the marketing function and a charge sheet to be issued to him and mete out punishment following a disciplinary inquiry; that the 3rd Respondent purporting to act in terms of the rules, more particularly, rule 9(a) and having considered the recommendations of the said investigation report, transferred the Petitioner away from the marketing function by the letters dated 20.09.2024 and 24.09.2024 (P17(a) and P17(b)); subsequently, the Petitioner was issued with a charge sheet dated 02.01.2025(P18) which contained an aggregate of 6 charges on the purported non-implementation of the Board decision No. 38/1140, dated 29.10.2013 which sets out *inter-alia*, the new formula for MUF for CODOs and Treasury Owned Dealer Operated Outlets (TODOs) and to his surprise, he was also served with a letter of interdiction dated 03.01.2025 (P19) pending disciplinary inquiry purporting to interdict him with half pay following the preliminary investigation report (P16); that charges so framed against him in the said charge sheet (P18) are entirely, fallacious, misleading and misconceived and many of such charges relate to a period as far back as 10 years, namely 2013;

that, charges leveled against him in the charge sheet (P18), cannot thus, be raised against the Petitioner for the reasons set out in paragraph 27(a) and (b) of the petition of the Petitioner, namely that; a) they relate to a period during which the Petitioner had been transferred out of his functional area and/or was under interdiction and/or had been terminated from employment pursuant to baseless, vindictive, illegal actions against him; b) that in any event, the 1st Respondent had represented to the Labour Tribunal that all matters relating to the period upto 2018 were taken up in the inquiry before the said Tribunal, and consequently, the 1st Respondent is estopped from now attempting to identify further matters relating to the said period.

Let me now, examine the grounds alleged upon which the instant application for a mandate in the nature of writs of *Certiorari* and *Mandamus* were sought by the Petitioner.

As can be clearly, and manifestly, deducible from the averments in the paragraphs 28, 29, 30, 31 and 32 of the petition of the Petitioner, the first of those grounds alleged being the alleged act of the Managing Director of the 1st Respondent, namely; the 3rd Respondent, of subsequently interdicting the Petitioner with half pay (after first transferring him and interdicting other two officers, namely; Deputy General Manager (Marketing) and Manager Marketing (Acting) (Vide-paragraph 23 of the petition) in accordance with the recommendation of the committee) which according to the Petitioner, is entirely contrary to the recommendations of the 1st Respondent's own committee who investigated the matter and analyzed its circumstances and which according to the Petitioner, is also in blatant violation of and ultra vires Rule 9 of the Disciplinary Rules of the 1st Respondent for; according to the Petitioner, in any event, it is apparent that the said Rules do not vest powers in the Chairman and/or Managing Director to effect a transfer and interdiction of an officer specially when the recommendations of the committee, he himself appointed

only recommended the transfer of the said officer-the Petitioner pending a formal disciplinary inquiry and therefore, the action of the Chairman and/or Managing Director in interdicting the Petitioner with half pay in this instance is according to the Petitioner, unlawful, unreasonable, illegal, vindictive and steep in mala fides and had been conducted without any justification for the same demonstrating that, it has been conducted to victimize and embarrass the Petitioner *vis a vis* the staff of the 1st Respondent (Vide-paragraphs 29 to 32 of the petition of the Petitioner).

The second of those grounds alleged being the alleged direct or indirect representation made by the 1st Respondent to the Labour Tribunal in the said Labour Tribunal case bearing No. LT/08/148/2017 to the effect that all matters against the Petitioner had been brought before the Tribunal in the said case and therefore, the 1st Respondent is now, estopped from identifying further matters relating to the period up-to 2018 (Vide Paragraph 33 of the petition of the Petitioner).

The third of those grounds alleged being the alleged violation of the Principles of Natural Justice on the part of the 1st Respondent by not allowing further time to the Petitioner to respond to the said charges in the charge sheet(P20) which according to the Petitioner shows act of mala fides, hostility and vexatious conduct on the part of the 1st Res[p]endent which demonstrate that Petitioner had been unfairly prejudiced, as he had not been given an opportunity to be heard prior to the disciplinary inquiry, thus, violating the principle of Natural Justice.

The Respondents, on the other hand, vehemently, objected to both of the applications of the Petitioner for a mandate in the nature of Writs of *Certiorari* and *Mandamus* against the 1st and/or 2nd and/or 3rd Respondents and interim relief for the reasons stated in the written submissions of the 1st, 2nd and 3rd Respondents filed in this Court, substantive part thereof, of which is relevant

to the determination of the instant application for the Petitioner for interim relief, will be discussed later in this order.

As observed by me hereinbefore, the immediate matter before this Court for its determination being the application of the Petitioner for an interim relief of kind as prayed for in prayer 'b' of his petition dated 29.01.2025 on the one hand and conversely, the application of the 1st to 4th Respondents for the refusal of the grant of the same on the other.

I must reiterate that, the instant application for a mandate in the nature of Writs of *Certiorari* and *Mandamus* has to be fully, argued and decided on its merits at the final hearing of the same, but at this stage, this Court is only concerned with and/or considering the issue of an interim order as prayed for in prayer (b) of the petition, as observed by this Court in the decision in **CA Application No. 336/2012- decided on 22.02.2013.**

In the light of the decision in **Duwearatchi and Another Vs. Vincent Perera and Another** (Supra), it is necessary for this Court now, to form a tentative view, subject to a final decision at the hearing of this application for a mandate in the nature of Writs of *Certiorari* and *Mandamus*; and that, this Court has to express for the purpose of a decision in respect of the application for interim relief, a *prima facie* and a tentative opinion subject to a final decision and it should be formed on the material available on record; and that, this *prima facie* view is only expressed for the decision of the instant matter before us and is subject to a final decision; and therefore, this Court does not have to determine the controversial issues in the case at this stage of considering the instant application for interim relief.

The pivotal issue to be considered by this Court for the issue of or non-issue of a interim relief of kind as asked for by the Petitioner in the instant application, had been set out by the Supreme Court in the decision in **Billimoria Vs**

Minister of Lands and Land Development and Mahaweli Development and Two Others (1978-79-80) 1 SLR 10 at page 13 that, “In considering this question, we must bear in mind that a stay order is an incidental order made in the exercise of inherent or implied powers of Court. Without such power the Court’s final order in most cases would if the Petitioner is successful, be rendered nugatory and the aggrieved party will be left holding an empty decree worthless of all purposes.”.

Court in the decision in **Billimoria Vs Minister of Lands and Land Development and Mahaweli Development and Two Others** (Supra) further observed at page 15 that, “The interests of justice therefore, required that, a stay order be made as an interim measure. It would not be correct to judge such orders in the same strict manner as a final order. Interim orders by their very nature must depend a great deal on judge’s opinion as to the necessity for interim action.”.

It was the view of this Court in the decision in **Duwearatchi and Another Vs. Vincent Perera and Another** (Supra) that “An interim stay order in a writ application is an incidental order made in the exercise of the inherent or implied powers of the Court; and that as regards the issue of an interim stay order in a writ application, the Court is guided by the following principles;

- (i) Will the final order be rendered nugatory if the Petitioner is successful?
- (ii) Where does the balance of convenience lie?
- (iii) Will irreparable and irremediable mischief or injury be caused to either party?.”.

This Court in the decisions in **CA Application No. 336/2012** (Supra) and **CA (WRIT)174/2017- decided on 08.08.2017**, cited and applied with approval the above three principles laid down in **Duwearatchi and Another Vs. Vincent**

Perera and Another (Supra) as being the guiding principles in determining as to whether or not an interim stay order in a writ application should be issued.

Let me now, consider the instant application for interim relief in the light of the principle enunciated by Court in the decisions in **Billimoria Vs Minister of Lands and Land Development and Mahaweli Development and Two Others** (Supra) and **Duwearatchi and Another Vs. Vincent Perera and Another** (Supra).

Viewed in this light, in order to succeed, the Petitioner is bound to establish to the satisfaction of this Court in the first place, that the final order will be rendered nugatory if, the Petitioner is successful. In other words, the pivotal question that should be asked by this Court; Will the final order be rendered nugatory if the Petitioner is successful?

In this context, the pivotal question that would arise for our consideration is; Would the final order of this Court in the instant case, if the Petitioner is successful, be rendered nugatory and will he be left holding an empty decree worthless of all purposes?.

It is in this backdrop, let me now, examine the nature of the interim relief sought by the Petitioner in prayer (b) of his petition and it may be reproduced *verbatim* the same as follows;

“For an interim order staying the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19), and/or directing the 1st and/or 2nd and/or 3rd Respondents to make full payment of the Petitioner’s salary and emoluments during the period of his interdiction;”.

A careful analysis of the interim relief so sought by the Petitioner in prayer (b) of the petition makes it abundantly, clear that, it is a mix of two interim orders

of kind as sought together in single prayer of the petition by the Petitioner and they may, conveniently, be split into two as follows;

- 1) For an interim order staying the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19);
- 2) For an interim order directing the 1st and/or 2nd and/or 3rd Respondents to make full payment of the Petitioner's salary and emoluments during the period of his interdiction;

1 and 2 referred to above, would I think, call for separate treatment.

1) For an interim order staying the decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19);

It is in this context, the pivotal question that would now, arise for our consideration is; Would the final order of this Court in the instant case, if the Petitioner is successful, be rendered nugatory and will he be left holding an empty decree worthless of all purposes if interim order of this kind is not granted by this Court at this early stage of this case?.

It may now, be examined.

If the Petitioner satisfies this Court of the existence of those three grounds alleged by him, as enumerated above, at the hearing of the instant application which is the pivotal basis upon which Writs of kind as asked for by him in prayer (c) and (d) of his petition are entirely based on, this Court will no doubt, hold with the Petitioner and then, the impugned decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19) will certainly, be quashed by this Court by way of a Writ of *Certiorari* and also will proceed to issue a Writ of *Mandamus* directing the 1st and/or 2nd and/or 3rd Respondents to reinstate the Petitioner in

employment in the marketing function in the same grade and post, and/or to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process. In the circumstances, non-issue of a interim stay order of kind as asked for by the Petitioner in the first limb of prayer (b) of the petition will not render nugatory the final relief which will be obtained by the Petitioner in the instant application and as such the Petitioner will not in any manner, be left holding an empty decree worthless of all purposes if interim order of this kind is not granted by this Court at this early stage of this case.

Hence, I would hold that the Petitioner has not been able to satisfy this Court that, the final order/relief that may be obtained by him at the conclusion of the hearing, will be rendered nugatory if the Petitioner is successful, if this Court does not issue interim stay order of kind as asked for by the Petitioner in the first limb of the prayer (b) of the petition at this early stage of this case.

In the circumstances, It would clearly, appear to me that, the balance of convenience too, does not favour issuing of a kind of interim stay order as asked for by the Petitioner in the first limb of prayer (b) of the petition.

Moreover, in the circumstances, it cannot in any manner, be said that irreparable and irremediable mischief or injury will be caused to the Petitioner by non-issuance of interim stay order of kind as asked for by the Petitioner in the first limb of the prayer (b) of the petition at this early stage of this case for; If the Petitioner satisfies this Court of the existence of those three grounds alleged by him, as enumerated above, at the hearing of the instant application which is the pivotal basis upon which Writs of kind as asked for by him in prayer (c) and (d) of his petition are entirely based on, this Court will no doubt, hold with the Petitioner and then, the impugned decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19) will certainly, be quashed by this Court by way of a

Writ of *Certiorari* and also will proceed to issue a Writ of *Mandamus* directing the 1st and/or 2nd and/or 3rd Respondents to reinstate the Petitioner in employment in the marketing function in the same grade and post, and/or to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process.

For the reasons stated above, I would hold that, the Petitioner is not entitled to a interim stay order of kind as asked for by the Petitioner in the first limb of prayer (b) of the petition as rightly, contended by the learned State Counsel for the Respondents.

Relying on the decisions in **D. S. Gunasekara Passenger Transport Services Pvt Ltd Vs. The National Transport Commission and 4 others-CA (WRIT) 174/2017-decided on 08.08.2017, Shell Gas Lanka Ltd Vs. Samyang Lanka (Pvt) Ltd [2005] 3 SLR 14 and Ceylon Tobacco Company PLC Vs. Hon. Maithripala Sirisena and Two Others-CA. Application No. 336/2012-Decide on 22.02.2013**, it was contended by the learned State Counsel that, granting of interim relief in the form of suspending the interdiction would, in practical effect, amount to the grant of the final relief sought by the Petitioner, namely; the reversal of his interdiction and reinstatement to his position as Manager (Marketing) for; it is well established that where the interim relief sought is substantially identical to the final relief, such interim relief is not generally granted in view of the fact that interim relief by its very nature, is intended to preserve the status quo pending the final determination and not to preemptively grant the ultimate remedy sought by a party (Vide paragraphs 40 to 47 of the written submissions of the 1st, 2nd and 3rd Respondents).

Relying on the decisions in **People's Bank and 7 Others Vs. Yasasiri Kasthuriarachchi 2010 1 SLR** and **Shell Gas Lanka Ltd Vs. Samyang Lanka (Pvt) Ltd [2005] 3 SLR 14** the Petitioner, on the other hand, sought to counter the said contention of Respondents by contending that when there is, a strong

prima facie case in favour of the party seeking the relief it is permissible to grant interim relief which give substantially, the whole of the relief claimed in the action. It is thus, manifest that, the Petitioner himself concedes without any reservation by seeking to counter the contention of the Respondents in that manner on thrust of that argument that the interim relief so sought by him is substantially the same as the final relief sought by him against the Respondents as alleged by them.

It may now, be examined.

It is trite law that, it would be permissible to grant relief which gives substantially, the whole of the relief claimed in the action in a case where it is plainly, seen that, there was no defence whereas, there is a strong *prima facie* case for the party seeking the relief.

Now, the question is whether there is a there is a strong *prima facie* case for the Petitioner seeking the relief and conversely, whether it is plainly, seen that there is no defence.

It may now be examined.

The Petitioner in this case, seeks to quash the impugned decision of the 1st and/or 2nd and/or 3rd Respondents to interdict the Petitioner with half pay as set out in the letter marked (P19) by way of a mandate in the nature of a Writ of *Certiorari*. (Vide-prayer (c) of the petition of the Petitioner.) and the pivotal basis therefor being the act of the Managing Director-3rd Respondent, of subsequently, interdicting the Petitioner with half pay after first transferring him and interdicting two other officers in accordance with the recommendations of said committee, is entirely contrary to the recommendations of the 1st Respondent's own committee who investigated the matter and analyzed its circumstances and is also in blatant violation of and ultra vires Rule 09 of the disciplinary rules of the 1st Respondent (P14).

However, the extracts of the minutes pertaining to the meeting of the Board of Directors of the 1st Respondent held on 18.12.2024, a copy of which was submitted to Court along with the motion dated 14.02.2025 filed of record, marked as X2, by the Attorney-At-Law for the 1st to 3rd Respondents with a copy to the registered Attorney-At-Law for the Petitioner which was not disputed but, relied on by the Petitioner in his written submissions clearly, and unequivocally, shows that, at the ratification of the minute on 18.12.2024, the Chairman informed the Board that the final investigation report was submitted by the independent investigation committee and distributed a copy of the report for the attention of the Board; that the Chairman also informed the Board that CLO was directed to take subsequent action including serving charge sheets and to implement the recommendation of the report; that the Board of Directors instructed to expedite the disciplinary process and to take appropriate action with regard to the accused employees since the Marketing Function is a key function which handles the core-business of CPC; that the Board of Directors was of the view that the Manager (Marketing)-the Petitioner who is transferred to the Shipping Function, following the recommendation of the interim report on MUF, should be interdicted upon serving charge sheet until the disciplinary action on all three of them are completed and decisions taken on each of them for; this measure was taken in order to avoid any possible prejudice/ biasness in the disciplinary process while, any of them is serving in the corporation during the process.

Upon a careful scrutiny of the extracts of the minutes pertaining to the meeting of the Board of Directors of the 1st Respondent held on 18.12.2024 (X2), it unmistakably, shows, that the decision to interdict the Manager (Marketing)-the Petitioner who was then, on transfer away from his Marketing Function following the recommendation of the interim report of MUF (P16), was a decision taken by the Board of Directors at its meeting held on 18.12.2024

and therefore, it was a decision that had directly, derived from the said decision of a Board of Directors of the 1st Respondent taken as aforesaid.

It is to be observed that the letter of interdiction (P19) which followed the said decision of the Board of Directors contained in X2 does not state that it was a decision by the Board of Directors of the 1st Respondent taken on 18.12.2024 at its meeting after having scrutinized the final report submitted and recommendations made by the said committee regarding those three officers including the Petitioner on the non-implementation of the Board Decision relating to the charging of MUF from CODOs.

However, it is beyond any doubt upon careful scrutiny of the minutes of the meeting of the Board of Directors as contained in X2 that, decision to interdict the Petitioner was purely, a decision by the Board of Directors of the 1st Respondent taken on 18.12.2024 at its meeting after having scrutinized the final report submitted and recommendations made by the said committee regarding those three officers including the Petitioner on the non-implementation of the Board Decision relating to the charging of MUF from CODOs for the best interest of the Ceylon Petroleum Corporation-1st Respondent and to avoid any possible prejudice/ biasness in the disciplinary process while, any of them is serving in the corporation during the process as duly, empowered and authorized it by Rule 09(a) of the Disciplinary Rules of the Ceylon Petroleum Corporation formulated by it by virtue of the powers vested in it by section 6 of the Ceylon Petroleum Corporation Act No. 28 of 1961 (as amended)(P14).

Hence, Rule 09(a) of the Disciplinary Rules of the Ceylon Petroleum Corporation formulated by it by virtue of the powers vested in it by section 6 of the Ceylon Petroleum Corporation Act No. 28 of 1961 (as amended)(P14) confers upon the 1st Respondent to interdict its employee pending disciplinary action against him and in this instance, the Board of Directors of the Ceylon

Petroleum Corporation- 1st Respondent had clearly, taken a decision to interdict the Petitioner pending disciplinary action against him by virtue of the powers conferred upon it by Rule 09(a) of the Disciplinary Rules of the Ceylon Petroleum Corporation formulated by it by virtue of the powers vested in it by section 6 of the Ceylon Petroleum Corporation Act No. 28 of 1961 (as amended)(P14).

The decision of the Board of Directors of the 1st Respondent to interdict the Petitioner pending disciplinary action against him *prima facie* appears to be intra vires and not ultra vires as alleged by the Petitioner.

Hence, it *prima facie* appears that there was no strong *prima facie* case for the Petitioner seeking the said interim relief in the instant action whereas, it is plainly, seen that, there was a *prima facie* a strong defence for the Respondents.

Therefore, it would not be permissible to grant a kind of interim relief which gives substantially, the whole of the relief claimed in the instant action by the Petitioner inasmuch as it is plainly, seen that, there was *prima facie* a strong defence for the Respondents whereas, there was no strong *prima facie* case for the Petitioner seeking the kind of interim relief as prayed for in prayer (b) of his petition as rightly, contended by the learned State Counsel.

I would therefore hold, that kind of interim relief as prayed for in prayer (b) of his petition by the Petitioner cannot, be granted both in fact and law on this ground too.

In view of the above, I would hold that the Petitioner is not entitled to the kind of interim relief as prayed for in the first limb of prayer (b) of his petition by the Petitioner both in fact and law and therefore, it ought to be rejected *in limine*.

2) For an interim order directing the 1st and/or 2nd and/or 3rd Respondents to make full payment of the Petitioner's salary and emoluments during the period of his interdiction;

Here again, Disciplinary Rules of Ceylon Petroleum Corporation-the 1st Respondent (P14) which were heavily relied on by the Petitioner in proof of his case, are important and material and Rule 09(b)(i) thereof, provides that, non-payment or the payment of one half of the emoluments of an officer under interdiction for the period of interdiction is decided by the disciplinary authority, and Rule 09(b)(iv) thereof, defines the term "emoluments" to mean, the emoluments of his substantive post. It should not include any allowance in the nature of a duty allowance, or a reimbursement of expenditure incurred on official duty such as traveling, transport and combined allowance.

It is to be borne in mind that, as submitted by the Petitioner himself by paragraphs 19 and 20 of his Petition that, those Disciplinary Rules of Ceylon Petroleum Corporation-the 1st Respondent (P14) were formulated by the 1st Respondent by virtue of the powers vested in it by section 6 of the Ceylon Petroleum Corporation Act No. 28 of 1961 (as amended) binding all the employees thereof in relation to the matters set out therein.

Upon a careful scrutiny of Rule 9(b) of the Disciplinary Rules of Ceylon Petroleum Corporation-the 1st Respondent (P14), it manifestly, shows that, it does not confer any power or authority upon the 1st and/or 2nd and/or 3rd Respondents to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process.

In the light of Rule 9(b) of the Disciplinary Rules of Ceylon Petroleum Corporation which were formulated by virtue of the powers vested in the 1st Respondent (P14) under section 6 of the Ceylon Petroleum Corporation Act No. 28 of 1961 (as amended), it clearly, appears to me that this Court has no power

to issue an interim stay order directing the 1st and/or 2nd and/or 3rd Respondents to reinstate to reinstate the payment to the Petitioner of his full monthly salary and emoluments until conclusion of the disciplinary process in contravention of Rule 9(b) of the Disciplinary Rules of Ceylon Petroleum Corporation-the 1st Respondent (P14).

I would therefore, hold that kind of interim relief prayed for in the second limb of prayer (b) of the petition of the Petitioner too, cannot be granted by this Court both in fact and law.

In view of the above, I would hold that the Petitioner is not entitled to the kind of interim relief as prayed for in the second limb of prayer (b) of his petition both in fact and law and therefore, it ought to be rejected *in limine*.

In view of all the circumstances, I would hold that, the Petitioner is not entitled to the kind of interim relief as prayed for either in the first limb or the second limb of prayer (b) of his petition both in fact and law and therefore, it ought to be rejected *in limine*.

In the result, I would refuse to grant the kind of interim relief as prayed for in prayer (b) of the petition of the Petitioner.

I would thus, dismiss the application for interim relief as prayed for in prayer (b) of the petition of the Petitioner with costs.

JUDGE OF THE COURT OF APPEAL

MOHAMMED LAFFAR, J (ACT.P/CA).

I agree.

PRESIDENT (ACTING) OF THE COURT OF APPEAL