

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

In the matter of an application for Writs of Certiorari and mandamus under Article 140 of the Constitution.

CA. Writ. No:466/19

AAT/137/2017(NPC)

Geekiyana Kankanamalage Eric

Lushan Bandara Alahakoon

No.15C, Police Quarters,

Maradana.

Appellant

Vs.

01. National Police Commission
Bandaranayake Memorial,
International Conference Hall,
Colombo 07.

**Members of the National Police Commission-
Respondents**

NOW

Geekiyana Kankanamalage Eric

Lushan Bandara Alahakoon

No.15C, Police Quarters,

Maradana.

Appellant-Petitioner

01. Acting Inspector General of Police,
Police Headquarters,
Colombo 01.
02. National Police Commis
Bandaranayake Memorial International
Conference Hall,
Colombo 07.
03. Prof. Siri Hettige (chairman)
04. Ariyadasa Cooray (member)
05. Savithriya Gayathri Wijesekara (member)
06. Y.L.M. Sawahir (member)
07. D.T.P. Thilak Collure (member)
08. Anton Jeganathan (member)
09. Frank Silva (member)

Members of the National Police Commission

- 3A. E.W.M. Lalith Ekanayake
(Retd. High Court Judge) (Chairman)
- 4A. D.K. Renuka Ekanayake (Member)
- 5A. Kanapathipillai Karunaharam (Member)
- 6A. G.P. Sarath Gamini De Silva (Member)
- 7A. Dilshan Kapila Jayasuriya (Member)

8A. A.A.M. Illiyas (Member)

Substituted Respondents in place of Members of the
Police Commission

10. Hon. Justice Jagath Balapatabedi (Chairman)

11. Mrs. Indrani Sugathadasa

12. Dr. T.R.C. Ruberu

13. Mr. Ahamod Lebbe Mohamed Saleem

14. Mr. Leelasena Liyanagama

15. Mr. Dian Gomes

16. Mr. Dilith Jayaweera

17. Mr. W.H.Piyadasa

**10 to 17 Respondents are members of Public
Service Commission**

18. Justice N.E. Dissanayaka (Chairman)

19. A. Gnanathanasan (member)

20. G.P. Abeykeerthi (member)

Substituted Respondents in place of the members
of the Public Service Commission

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

Respondent

Before : Dhammika Ganepola, J.

Counsel : M. Liyanagedara for the Petitioner.
Mihiri De Alwis, SC for the Respondent.

Argued On : 02.07.2024

Written Submission : Petitioner : 12.08.2024
tendered On Respondents : 27.08.2024

Decided On : 03.09.2024

Dhammika Ganepola, J.

Background of the application

The Petitioner in the instant application joined the Police Department on 01.12.1988 as a Sub-Inspector and was promoted to the rank of Chief Inspector on 01.01.20006. It was alleged that, on 26.04.2012, while the Petitioner was driving his vehicle towards Maradana from Borella in a reckless manner, he had been stopped by a Traffic Police Officer and had been taken to Police Station, Borella. Subsequently, the Petitioner had been produced before a Judicial Medical Officer and the said Judicial Medical Officer had found the Petitioner smelling of liquor. The Petitioner had been charged before the Magistrate Court of Colombo in the case bearing No. 54934/4/12 under the Motor Traffic Act and subsequently had been discharged on the basis that the case against the Petitioner had not been proved beyond reasonable doubt.

As a result of the alleged incident, the service of the Petitioner was suspended from his services on 01.05.2012 and was reinstated on 26.06.2013. The Charge Sheet

bearing No. ED/12/46/2012 was served on the Petitioner which was followed by a Preliminary inquiry conducted on 14.05.2012. The Petitioner states that he requested the Inspector General of Police to hold an impartial inquiry by appointing a different Inquiry Board as the Preliminary Inquiry so conducted was ineffective and consisted of many irregularities. In spite of such, subsequently a formal disciplinary inquiry had been held and the Petitioner had been found guilty of all the charges. By the Disciplinary Order dated 30.06.2016(P8), the Petitioner was demoted to the rank of Inspector of Police, was placed on the initial salary step, was made liable to pay a penalty of Rs. 30,000/- and required steps to be taken to forfeit the Petitioner's salary from 02.05.2012 to 27.06.2013.

Being aggrieved by the said disciplinary order the Petitioner preferred an appeal to the National Police Commission (NPC) against such order based on the irregularities and the inconsistencies adopted in the respective Preliminary and the Formal Inquiry. However, NPC by its order dated 20.06.2017 (P13), dismissed the appeal after an inquiry and affirmed the Disciplinary Order P8. The appeal preferred to the Administrative Appeals Tribunal (AAT) against the said decision of the NPC P13 was dismissed by its order dated 26.08.2019 (P14). Being aggrieved by the said decisions the Petitioner invokes the writ jurisdiction of this Court moving this Court to issue Writs of Certiorari to quash the Disciplinary Order(P8), decision of the NPC(P13) and the decision of AAT (P14) and a Writ of Mandamus compelling the 1st to 9th Respondents to replace the Petitioner in the rank of Chief Inspector.

The Respondents submit that the appointment of a Preliminary Investigation Officer and the proceedings of the inquiry were made in accordance with the law. Further, the appeals preferred before NPC and AAT were duly conducted giving due consideration to all the materials placed before it and in terms of the law. Thus, the Respondents claim that there are no merits in the Petitioner's application against the AAT Order. The Respondents also rely upon the constitutional ouster clause as set out under Article 61A of the Constitution.

Constitutional Ouster in terms of Article 61A of the Constitution

The Respondents have taken up the stance that the jurisdiction of this Court in hearing this matter is ousted by Article 61A of the Constitution by which the decisions of the Public Service Commission are immune to writ jurisdiction of this Court. The Petitioner seeks a Writ of Certiorari to quash the decision of the NPC(P13) and a Writ of Mandamus against the Inspector General of Police and the members of the NPC. However, after the institution of the instant application, by virtue of the 20th Amendment to the Constitution, power to consider all matters pertaining to the appointment, promotion, transfer, disciplinary control and dismissal of Police Officers and appeals by Police Officers pending before the National Police Commission had been transferred to the Public Service Commission. Accordingly, the caption of this application had been amended by substituting the then members of the Public Service Commission as 10th to 17th Respondents in place of NPC. Nevertheless, after the effect of the 21st Amendment to the Constitution such power to consider the matters pertaining to appointment, promotion, transfer, disciplinary control and dismissal of police officers other than the Inspector-General of Police, have been re-vested with the NPC. Hence the substitution of members of the Public Service Commission has no effect in this application. Further, it is observed that the Petitioner is not seeking any relief against the Public Service Commission or its order.

The Respondents submit that the substantive reliefs sought in prayer (b) and(c) are subject to a Constitutional ouster clause as stipulated in Article 61A of the Constitution on the basis of such circumstances. As such, I am of the view that a necessity does not arise for this Court to consider the effect and applicability of such Constitutional ouster clause under the instant application.

Constitutional ouster in terms of Article 155C of the Constitution

The Petitioner under the instant application seeks an order quashing the decision contained in P13 of the NPC and a Writ of Mandamus against the NPC compelling NPC to replace the Petitioner in the rank of Chief Inspector. The writ jurisdiction of this Court to inquire to or call in question any order or decision made by NPC is ousted by Article 155C of the Constitution and any order or decision made by NPC is immune from legal proceedings. Said Article 155 C is as follows;

155C. Subject to the jurisdiction conferred on the Supreme Court [under paragraph (1) of Article 126 and the powers granted to the Administrative Appeals Tribunal under Article 155L,] no court or tribunal shall have the power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission or a Committee, in pursuance of any power or duty, conferred or imposed on such Commission or Committee under this Chapter or under any other law.

Hence, I am of the view that this Court is constitutionally barred from entertaining the application of the Petitioner for Writ of Certiorari against the decision of NPC and that such application cannot be sustained in law. In fact, in the case of **Atapattu v. People's Bank 1997 (1) Sri.L.R.208, Bandaranayake v. Weeraratne 1981 (1) Sri.L.R.10 at page 16**, the Court upheld the said position as follows:

“that the ouster clauses contained in the Constitution would bar jurisdiction that has been granted within the Constitution and would therefore such ouster Clause adverted to above would be a bar to the entertaining of writ applications to invoke the writ jurisdiction by this Court.”

In the above premise, I am of the view that this Court is ousted from the jurisdiction of hearing or making any determination upon a decision made and issued by NPC. Therefore, this Court would not proceed to consider the legality of the decision of NPC as contained in P13. However, it is viewed that there is no constitutional ouster which debars this Court from reviewing the legality of a decision of AAT. In the above context, I will now consider whether the AAT has duly altered, varied, rescinded or confirmed the decision of NPC.

Procedure for Holding Disciplinary Action under the Establishment Code

Clause 6 of Chapter XLVIII of the Establishment Code, lays down the procedure to be adopted in conducting a disciplinary action by a Head of Department or other Officer holding delegated authority from the Public Service Commission. Clause 6:1 of Chapter XLVIII of the Establishment Code reads as follows.

6:1 The Public Service Commission may delegate authority to Heads of Departments and other Public Officers from time to time by notification published in the Gazette of the Democratic Socialist Republic of Sri Lanka

and in such instances, the power of disciplinary control over relevant officers will be vested with such Heads of Departments and other Public Officers.

Accordingly, the Public Service Commission may delegate authority to Heads of Departments and other Public Officers from time to time by notification published in the Gazette and in such instances, the power of disciplinary control over relevant officers will be vested with such Heads of Departments and other Public Officers. The Petitioner relies on the Gazette Notification No.1733/52 dated 25.11.2011(P5a) which delegates the disciplinary control and dismissal power of the Rank of Chief Inspector of Police and below over the Inspector General of Police (IGP). By the institutional Circular bearing No.2327/2011 dated 01.01.2012 marked X1, the IGP has brought into notice of such delegation to all the relevant officers of the Police Department.

Further, the authority to hold a preliminary investigation is provided under Clause 6:2 of Chapter XLVIII of the Establishment Code as follows:

6:2. Where a Head of Department or other Public Officer holding delegated authority in terms of sub-section 6.1 above contemplates disciplinary action against an officer in a category of officers coming within his disciplinary authority, he should hold a preliminary investigation himself or cause to be made a preliminary investigation by another officer or a group of officers appointed by him.

In view of Clause 6.2 above, a Head of Department or a person who holds delegated authority or a person appointed by such delegated authority could conduct a Preliminary Investigation. In other words, the direction to hold a Preliminary Investigation must come from the Disciplinary Authority.

Further, Clause 13:1 defines the term “Preliminary Investigation” under Clause 13:1 of Chapter XLVIII of the Establishment Code as follows:

13:1 A preliminary investigation is that which is conducted by a Disciplinary Authority or Head of Institution or other Appropriate Authority or by an officer or a Committee of Officers duly authorized by the above authorities to find facts as are necessary to ascertain the truth of

suspicion or information that an act of misconduct has been committed by an officer or several officers and to find out and report whether there are, prima-facie, sufficient material and evidence to prefer charges and take disciplinary action against the officer or officers under suspicion.

Appointment of the Preliminary Investigating Officer

The Petitioner claims that the AAT erred in law in deciding the correctness of the appointment of the Preliminary Investigating Officer. The Petitioner submits that the appointment of the Preliminary Investigating Officer i.e. ASP/ Leelawansa had not been done by the Delegated Authority IGP as per the Gazette Notification P5a. It is claimed that the said ASP/ Leelawansa conducted the Preliminary Investigating only on the directions of the Director, of Sri Lanka Police College. It is on the common ground that the preliminary inquiry in respect of the alleged misconduct of the Petitioner was held on 14.05.2012 by one Y.L. Leelawansa Assistant Superintendent of Police (ASP). At the time of the alleged incident (26.04.2012), the Petitioner was designated as a Chief Inspector of Police.

In a letter sent by the Deputy Inspector General of Police Ajith Wickramasekara dated 01.01.2012 marked (X2), DIG/Ajith Wickramasekara had informed IGP that ASP/ Leelawansa would conduct a Preliminary Inquiry in respect of the alleged misconduct of the Petitioner on the instructions of the Director, Sri Lanka Police College. Said letter(X2) had been marked as P9 by ASP/ Leelawansa at the Disciplinary inquiry (pages 122&124 of the docket). Said reference is as follows.

“එ අනුව ප්‍ර.පො.ප. අලෙකොන්ගේ විෂමාවාර හැසිරීම සම්බන්ධව මූලික පරීක්ෂණ පැවැත්වීමට අධ්‍යක්ෂ, ශ්‍රී ලංකා පොලිස් විද්‍යාලයේ උපදෙස් අනුව සහකාර පොලිස් අධිකාරී වයි.එල්.ලීලවංශ මහතා විසින් සිදුකරනු ලබයි.”

The Preliminary Investigation Report (R2) submitted by the said ASP/ Leelawansa to the Director, Sri Lanka Police College also signifies that the task has been entrusted upon him by the Director, Sri Lanka Police College. Said reference in the R2 is reproduced as follows.

“ආයතන සංග්‍රහයේ II කාණ්ඩයේ XLVIII වන පරිච්ඡේදය 6:2 පරිදි උක්ත නිලධාරියාට විරුද්ධව මූලික විමර්ෂණ පැවැත්වීම නියෝජ්‍ය පොලිස්පතිතුමා බඳවාගැනීම, පිරිස් හා පුහුණු විසින් එතුමාගේ අංක DIG/T/OW/436/12 මගින් නියෝග කර ඇත. එම නියෝග ප්‍රකාරව ඔබ තුමා විසින් එම කාරණය මා වෙත පවරන ලද අතර ආයතන සංග්‍රහයේ II කාණ්ඩයේ XLVIII වන පරිච්ඡේදයේ 13:1 පරිදි මා විසින් පවත්වන ලද විමර්ෂණ වාර්තාව පහත පරිදි වේ.”

Furthermore, the Respondents have failed to place any evidence before this Court to support the fact that said appointment of the Preliminary Investigating Officer had been done by the IGP upon the Delegated Authority. Instead, the Respondents rely on the Gazette Notification No. 2161/32 dated 06.02.2020(R3) in which the power of Disciplinary Control and Interdiction of the Rank of Chief Inspector of Police and below (excluding officers in Charge of Police Stations and Officers in Charge of Functional Divisions) has been delegated to the IGP/Senior Deputy Inspector General of Police and the Gazette Notification No.1733/52 of 25.01.2011. The Respondents submit that the appointment of the Preliminary Investigation Officer has been made in compliance with the said Gazette R3. However, it is significant to note that Gazette R3 has only been issued on 06.02.2020 and the said Gazette R3 is not operative in retrospective effect. The preliminary investigation into the alleged misconduct of the Petitioner was conducted on 14.05.2012 by the investigating officer ASP Leelawansa, well before the publication of said Gazette R3. Therefore, the Gazette R3 shall have no application in respect of the investigation conducted in 2012 against the Petitioner. Further, the Gazette Notification No.1733/52 of 25.01.2011, referred to in paragraph 10(v) of the Statement of Objections of the Respondents, has not been produced before this Court. Further, it is observed that no such Gazette Notification exists. Under such circumstances, I am of the view that the appointment of the Preliminary Investigating Officer ASP Leelawansa to conduct the preliminary inquiry against the Petitioner has not been done in terms of the applicable law.

Decision of the AAT

The Petitioner has taken up a stand before AAT that the officer who had conducted the Preliminary Investigations was not an officer appointed by the Disciplinary Authority in compliance with Section 6:2 of Chapter XLVIII of the Establishment Code. Considering the said position, AAT by its order dated 26.08.2017 (P14) has concluded as follows:

“it is interesting to note that the appellant had been attached to the Police Training School on 26.04.2012 when he had committed the alleged acts of misconduct. ASP/Y.L. Leelawansa was attached to the Kalutara Police Training School in April 2012. The DIG Training Range had made an order to the Director of Police Training School Kalutara to conduct a Preliminary Investigation into

the alleged misconduct that had been committed on 26.04.2012. The Director of the Police Training School had directed ASP/ Y.L. Leelawansa to conduct a Preliminary Investigation. ASP/ Y.L. Leelawansa in any case was a Head of the Department of the appellant. Therefore, he was legally entitled to conduct the said Preliminary Investigation in terms of Section 6.2 of Chapter XLVIII of the Establishment Code.”

It appears that the AAT was of the view that direction has been given to the ASP/Leelawansa to conduct the Preliminary Investigation by the Director of the Police Training College by order of the DIG Training Range. Such circumstances also support the stand of the Petitioner that there was no direction from the IGP to appoint the said ASP/Leelawansa as a Preliminary Investigating Officer.

Further, a definition is given for the “*Head of Department*” in Clause 1:1:7 in Chapter XLVIII of Volume ii of the Establishment Code in the following manner.

1:1:7 “Heads of Departments” means the Heads of Departments and other officers listed in Appendix I of Volume I of the Establishments Code and other officers appointed from time to time by the Cabinet of Ministers as Heads of Departments.

Appendix I of Volume I of the Establishments Code stipulates that Inspector General of Police is the Head of the Police Department. Therefore, it is apparent that the ASP/Leelawansa was not vested with the authority to hold the preliminary inquiry by the Head of Department of the Petitioner. Accordingly, the conclusion of the AAT that, the ASP/ Y.L. Leelawansa in case of the matters pertaining to instant application, was a Head of the Department of the Petitioner and therefore, he was legally entitled to conduct the said Preliminary Investigation in terms of Section 6.2 of Chapter XLVIII of the Establishment Code is a complete misinterpretation of law. Accordingly, the order of the AAT cannot be sustained in law.

The Petitioner has taken up several other grounds, that may be considered by this Court, such as irregularities and inconsistencies in the evidence led and produced by the Respondents against the Petitioner at the Preliminary and the Formal Inquiries. In view of the above my findings, I am of the view that consideration of such matters does not arise in the above context.

Conclusion

In the circumstances and the reasons given above I am inclined to issue only a Writ of Certiorari quashing the decision of AAT marked P14. I order no cost.

Application is partly allowed.

Judge of the Court of Appeal