

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

*In the matter of an Application for Mandate
in the nature of writs of Certiorari and
Mandamus under and in terms of Article 140
of the Constitution.*

**CA (Writ) Application No.
491/2023**

W.A.V. Warnakulasooriya,
No. 11, Weera Mawatha, Depanama,
Pannipitiya.

PETITIONER

1. M.M.P.K. Mayadunne,
Secretary,
Ministry of Transport and Highways,
Maganeguma Mahamedura',
8th Floor,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.

1A. Eng. Ranjith Rubasinghe,
Secretary,
Ministry of Transport and Highways,
Maganeguma Mahamedura',
8th Floor,
Denzil Kobbekaduwa Mawatha,
Koswatta,
Battaramulla.

2. A.P.K. Abeydheera,
Project Director.
Badulla Chenkaladi Road Improvement
Project, 5th Floor, Wing A,
Sethsiripaya Stage I,
Battaramulla.

3. U.H.C. Priyantha,
Additional Secretary (Administration)
Ministry of Transport and Highways,

'Maganeguma Mahamedura',
8th Floor,
Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

4. B. Ranaweera
Additional Secretary (Rural Road
Development)
Ministry of Transport and Highways,
'Maganeguma Mahamedura',
8th Floor,
Denzil Kobbekaduwa Mawatha,
Koswatta, Battaramulla.

5. Director General,
Department of Management Services
Room No. 325
3rd Floor, Ministry of Finance,
The Secretariat,
Colombo 01.

RESPONDENTS

Before: M. T. MOHAMMED LAFFAR, J.

Counsel: Chamara Nanayakkarawasam, instructed by Sunil Watagala for
the Petitioner.
Ms. Shemanthi Dunuwella, SC for the Respondents.

Argued on : 05.06.2024

Written Submissions on : 12.07.2024 (by Petitioner)

Decided on : 04.09.2024

MOHAMMED LAFFAR, J.

The Petitioner through his amended Petition seeks orders in the nature of writs of *Certiorari* to quash the Charge Sheet marked 'P26' and the decisions contained in 'P16' and 'P17' to suspend the Petitioner's services. Furthermore, the Petitioner also seeks an order in the nature of writs of *Mandamus* directing

the 1st to 4th Respondents, or any one or more of them, to reinstate the Petitioner in service and to pay the Petitioner back wages and other emoluments that the Petitioner would have otherwise been entitled to if 'P16', 'P17', and 'P26' had not been issued against the Petitioner.

This case arises from the actions taken by the Respondents against the Petitioner during his employment. The Petitioner, a Certified Public Accountant and Internal Auditor with extensive qualifications and experience, was employed as the Project Internal Auditor for the Badulla Chenkaladi Road Improvement Project, a project under the Ministry of Transport and Highways (marked 'P1(a)' to 'P1(d)').

The Project, funded by the Saudi Fund for Development and the OPEC Fund, consists of two components: improvement of roads from Bibila to Chenkaladi (Component A) and from Badulla to Bibila (Component B) (marked 'P5'). The estimated cost for each component is submitted to be USD 60 million. The project commenced in January 2017 and is scheduled to continue until December 2025, barring any further extensions (marked 'P5').

The Petitioner was appointed to the role of Project Internal Auditor in 2018 after responding to an advertisement published by the Ministry (marked 'P3'). His initial contract was for one year but was extended multiple times based on his performance and the needs of the project, with his term extended until a replacement could be found (marked 'P4', 'P5', 'P6', 'P7', 'P8', 'P9').

On 13th January 2023, the Petitioner notified the 2nd Respondent, the Project Director, of his intention to contest the Local Authorities Election of 2023 as a candidate from the National People's Power (NPP) party (marked 'P13'). Subsequently, the Petitioner submitted his nominations on 19th January 2023. Initially scheduled for 9th March 2023, the election was postponed indefinitely due to financial constraints (marked 'P12').

On 13th March 2023, the Petitioner re-submitted his intention to contest the election following a request from the 2nd Respondent (marked 'P14'). However, the 2nd Respondent sought instructions from the Additional Secretary (Administration) of the Ministry regarding the Petitioner's candidacy (marked 'P15'). On 20th March 2023, the 2nd Respondent issued a letter suspending the Petitioner's services, citing instructions from the 3rd Respondent, pending guidance from the Election Commission (marked 'P16', 'P17').

The Petitioner appealed the suspension, asserting that he had not violated any laws or procedures by contesting the election (marked 'P18'). He further inquired whether the Respondents had sought instructions from the Election Commission, but it was revealed that no such instructions had been requested (marked 'P20'). Despite the Petitioner's continued appeals and his dire economic and health circumstances, including undergoing heart surgery, the Respondents failed to reinstate him or provide any resolution (marked 'P22', 'P32').

On 12th July 2023, the 1st Respondent issued a charge sheet against the Petitioner, alleging that as a Staff Grade Officer in the public service, he was required to resign before submitting his nominations for the election (marked 'P26'). The Petitioner contested this charge, arguing that he was not a public officer as defined by the Constitution or the Establishments Code, and that his role as an auditor in a project was distinct from a typical public service position (marked 'P27'). Furthermore, he contended that he had informed his Appointing Authority of his intention to contest the election, and no objections were raised at the time (marked 'P13', 'P14').

The Petitioner submits that his suspension and the issuance of the charge sheet have severely impacted his career and financial stability. He now seeks judicial intervention for the quashing of the suspension and charge sheet, reinstatement in his position, and compensation for the back wages lost due to the Respondents' actions, which he alleges were arbitrary, unreasonable, and politically motivated.

The Respondents argue that the Petitioner delayed filing his application by five months after his suspension, demonstrating laches, and that he misled the Court by claiming he is not bound by the Establishments Code, despite his appointment letter stating otherwise (Clause 4 of document marked 'P4', 'P16'). They acknowledge the Petitioner's role as Project Internal Auditor but maintain that his employment is governed by the Management Services Circulars and the Establishments Code. As a Senior Staff Officer under category PS4, the Petitioner was required to comply with these regulations, including rules on political candidacy (marked 'P11', 'R11').

The Respondents argue that the Petitioner's notification of his intent to contest the Local Authorities Election was mishandled, as his initial letter referred to a Provincial Council Election that was not due, leading to confusion. They claim he did not properly notify them of his actual candidacy until March 2023, after submitting his nominations (marked 'P13', 'P14', 'R9').

The Respondents justify the Petitioner's suspension on the basis that it was necessary to ensure compliance with the law while they sought further instructions. They contend that this was a procedural step taken while investigating whether the Petitioner's actions breached statutory or regulatory requirements (marked 'P16', 'P17', 'R10').

They assert that the Petitioner, as a Senior Staff Officer bound by the Establishments Code, was required to resign before submitting his nominations for the election. The charge sheet issued against him was based on his failure to comply with this requirement, which the Respondents argue was a clear violation of the relevant provisions of the Establishments Code (marked 'P26', 'R6(a)', 'R6(b)').

The Respondents deny any allegations of unlawful or arbitrary conduct, stating that all actions taken were in accordance with legal and administrative standards. They emphasize that the Petitioner was given a fair hearing and

that their actions were justified, including the suspension and the issuance of the charge sheet (marked 'R14', 'R15', 'R16').

The Respondents also argue that the Project is nearing completion, rendering the Petitioner's request for relief, including reinstatement, futile.

In the aforesaid context, Petitioner contends that the actions taken by the Respondents—specifically his suspension and the issuance of a charge sheet—were unlawful, arbitrary, and without any legal foundation. The Petitioner asserts that his role as Project Internal Auditor was governed by specific contractual terms distinct from those applicable to public officers in the general civil service. The relief sought through the issuance of Writs of Certiorari and Mandamus is grounded on the premise that the Respondents have acted in violation of established legal principles and administrative fairness, thus warranting judicial intervention in favour of the Petitioner.

Central to the Petitioner's argument is the nature of his employment and the applicability of the Establishments Code. The Petitioner maintains that his appointment was governed by the Management Services Circular No. 01/2019, which specifically addresses the terms and conditions of project staff, including salary scales, contractual obligations, and disciplinary procedures (marked 'P11'). He asserts that the Establishments Code, which primarily regulates public officers, does not apply to his role as a project employee. The Respondents' position that the Petitioner was bound by the Establishments Code, particularly the requirement to resign prior to contesting an election, is therefore legally untenable. The Petitioner argues that his role was explicitly defined under the terms of his contractual engagement, and thus outside the conventional public service structure, thereby exempting him from the provisions cited by the Respondents (marked 'P11', 'P27').

The Petitioner further contends that he had adequately notified the relevant authorities of his intention to contest the Local Authorities Election in

January 2023. This notification was made in writing to the 2nd Respondent, who, at the time, raised no objections and verbally indicated that there were no legal impediments to the Petitioner's candidacy (marked 'P13'). The Respondents, however, allege that the Petitioner failed to properly notify them and instead misled them by referring to an incorrect type of election. The Petitioner disputes this, emphasizing that his good faith efforts to communicate his candidacy were met with acceptance, and no objections or formal guidance were provided by the Respondents at the time. The subsequent disciplinary actions taken against him, including his suspension, were thus not only procedurally flawed but also in direct contradiction to the Respondents' initial tacit approval of his election candidacy.

The Petitioner's suspension of services without pay on 20th March 2023, is a critical issue. The Petitioner argues that this suspension was executed without due process and without any legal justification, infringing upon his right to a fair and unbiased administrative procedure. The Petitioner asserts that the suspension was ordered on vague grounds, pending guidance from the Election Commission—a step that was never conclusively pursued by the Respondents. This, highlights the Respondents' arbitrary exercise of disciplinary powers, which were used as a punitive measure without substantiated cause. Furthermore, the suspension deprived the Petitioner of his livelihood and professional standing without any conclusive findings of misconduct, thereby violating basic principles of natural justice.

The issuance of the charge sheet on 12th July 2023, which accused the Petitioner of failing to resign from his post before submitting his election nominations, is further evidence of the Respondents' flawed approach (marked 'P26'). The Petitioner argues that this charge was premised on a fundamental misinterpretation of his employment status and the applicable legal framework. He points out that as a project employee, he does not fall within the definition of a public officer under the Establishments Code or the Constitution, and therefore, the provisions cited in the charge sheet do not apply to him. The Petitioner contends that the Respondents' decision to issue

the charge was not only legally incorrect but also a gross overreach, as it sought to impose public service standards on a distinct contractual engagement. The Respondents' failure to recognize this distinction has resulted in a charge that is both procedurally and substantively flawed, rendering it void *ab initio*.

In addressing the Respondents' arguments, the Petitioner emphasizes that the Management Services Circular clearly delineates the boundaries of project staff employment and does not equate such roles with public officers subject to the Establishments Code (marked 'P11'). The Petitioner's legitimate expectation of continued employment until the completion of the project in December 2025 was repeatedly affirmed through extensions of his contract, which recognized his valuable contributions without any noted deficiencies or objections regarding his professional conduct (marked 'P7', 'P8'). The Respondents' abrupt and punitive actions, taken without due cause, violated the Petitioner's right to a stable and predictable work environment, further justifying his claim for reinstatement and compensation for lost wages.

The Respondents' position that the Petitioner's suspension was necessary pending further investigation is, according to the Petitioner, an after-the-fact justification that fails to address the procedural lapses that occurred at the time of suspension. The lack of immediate and clear communication with the Election Commission, coupled with the absence of any urgent or compelling evidence of misconduct, underscores the arbitrary nature of the Respondents' actions. The Petitioner argues that the Respondents have misused their disciplinary powers, applying them in a manner that is both disproportionate and without proper procedural safeguards.

The Petitioner's submission that he is not bound by the Establishments Code is further reinforced by the distinction between his contractual role and that of a public officer. The Respondents' reliance on specific provisions of the Establishments Code fails to consider the particularities of project-based employment, where distinct rules apply as defined by relevant Management

Services Circulars. This failure to appreciate the legal nuances of the Petitioner's position has led to unjust disciplinary measures that are unsupported by law.

In the said circumstances, this court is of the view that the Petitioner has successfully demonstrated that the Respondents' actions were legally flawed, procedurally unsound, and motivated by an incorrect application of the law. The suspension of his services, the issuance of the charge sheet, and the Respondents' overall conduct constitute a violation of his rights as a project employee and an abuse of administrative authority. The Petitioner has established a clear entitlement to the relief sought, including the quashing of the suspension and charge sheet, reinstatement to his position, and compensation for lost wages. The Respondents' arbitrary actions, lack of adherence to due process, and misapplication of regulatory standards unequivocally entitle the Petitioner to the issuance of Writs of Certiorari and Mandamus as prayed for prayers (c), (d), (e), (f), (g) and (h) of his Amended Petition.

Application allowed with costs of Rs. 10,000.00/- payable by the Respondents.

JUDGE OF THE COURT OF APPEAL