

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

In the matter of an application for mandates
in the nature of a Writ 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/0613/2021

**Wahalathantrige Don Lakhnath
Wijesinghe,**
No. 162, Naboda Road,
Mathugama.

Petitioner

Vs.

1. **Sri Lanka Tea Board,**
No. 574, Galle Road,
Colombo 03.
2. **Jayampathi Molligoda,**
Chairman,
Sri Lanka Tea Board.
- 2.1 **Niraj De Mel,**
Chairman,
Sri Lanka Tea Board.
3. **Harsha Ilukpitiya,**
Member of Sri Lanka Tea Board.

3.1 W.M.D.T Wickramasinghe,
Member of Sri Lanka Tea Board.

4. K.L. Gunaratne,
Member of Sri Lanka Tea Board.

4.1 Anil Cook,
Member of Sri Lanka Tea Board.

5. Jayantha Karunaratne,
Member of Sri Lanka Tea Board.

5.1 Ganesh Deivanayagam,
Member of Sri Lanka Tea Board

6. Lionel Herath,
Member of Sri Lanka Tea Board

7. Sanjay Herath,
Member of Sri Lanka Tea Board.

8. Thushara Priyadarshana,
Member of Sri Lanka Tea Board

8.1 D.G Mahipala,
Member of Sri Lanka Tea Board.

9. J.D.G. Senanayake,
Member of Sri Lanka Tea Boad.

9.1 . J. P. Priyangani,
Member of Sri Lanka Tea Board.

10. W.H.S. Samarasekua,
Member of Sri Lanka Tea Board.

11. Lalith Obeysekare,
Member of Sri Lanka Tea Board.

11.1. Senaka Alawattegama,
Member of Sri Lanka Tea Board.

12. D. Jeewanathan,
Member of Sri Lanka Tea Board.

13. Hishantha De Mel,
Member of Sri Lanka Tea Board.

13.1. Yshan Fernando,
Member of Sri Lanka Tea Board.

13.2. J. S Pathirana,
Member of Sri Lanka Tea Board.

14. Anil Alwis,
Member of Sri Lanka Tea Board.

*All are at
No 574, Galle Road,
Colombo 03.*

15. S. Anura Siriwardhana,
Director-General,
Sri Lanka Tea Board,
No 574, Galle Road,
Colombo 03.

15.1. Jayantha Edirisinghe,
Actg. Director General,
Sri Lanka Tea Board,
No 574, Galle Road,
Colombo 03.

16. **S. W. Wadanambi,**
The Inquiring Officer of the One Party
Tribunal,
No.54A, Dharamarathana Mawatha,
Maadiwela,
Kotte.

17. **S. A. Ranaweera,**
Inquiring Officer of the Preliminary
Inquiry No. 133, 5th Lane,
Siddhamulla,
Piliyandala.

18. **L.S.G. de Silva,**
Assistant Director (Administration and
Human Resource),
Sri Lanka Tea Board,
No 574, Galle Road,
Colombo 03.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: The Petitioner is absent and is unrepresented.

Ms. Zuhri Zane, DSG for the 1st to 15th and 18th Respondents.

Argued on: Disposed by way of written submissions.

Written Submissions: The Petitioner has not tendered written
submissions.
20.05.2024, by the Respondent

Decided on: 05.08.2024

MOHAMMED LAFFAR, J.

The Factual Matrix

The Petitioner was recruited to the post of Junior Manager Grade II of Sri Lanka Tea Board by the appointment letter dated 01.03.2013. Pursuant to a letter dated 17.01.2014 marked as 'P4', the Petitioner was designated as Procurement Officer Grade II in his official activities with effect from his date of appointment by the Director General (Acting).

The Petitioner states that there was a preliminary inquiry held against him based on a report dated 13.11.2018 issued by the Senior Internal Auditor of the Tea Board as a result of a special investigation conducted by the said Auditor upon the direction of the Director-General of the Tea Board alleging that the Petitioner has been involved with misconducts while he was serving as the Procurement Officer in the Procurement Section attached to the Tea Board, and as a result of that financial loss has occurred to Sri Lanka Tea Board.

Accordingly, statements were recorded from the Petitioner and several other employees at the said inquiry. The Petitioner states that a charge sheet dated 02.05.2019 marked 'P6' was issued by the Inquiring Officer along with his report informing the Petitioner to show cause in writing within 14 days of receiving the charge.

The aforesaid charge sheet contained ten charges of misconduct allegedly committed by the Petitioner during the procurement process for purchasing paper bags for the Sri Lanka Tea Board.

The Petitioner states that by letter dated 08.05.2019 marked 'P7', he requested the 2nd Respondent to provide him the certified copies of all the

documents that were used at the preliminary inquiry stating his urgency to reply to the alleged charges in the charge sheet.

The Petitioner further states that even though he requested the copies of the aforesaid documents in advance, said copies were not provided to him by the Respondents when they were needed and the Petitioner received the response from the 2nd Respondent by letter marked '**P8**', and informed the availability of certain documents to obtain copies and the availability of the remains for the Petitioner's perusal.

The Petitioner states that in the above circumstance, he did not have an opportunity to peruse the aforesaid documents and other statements. The Petitioner further states that therefore he was deprived of tendering a substantial explanation and he had to submit a written explanation dated 16.05.2019 denying charges against him to the 2nd Respondent through the 15th Respondent.

Thereafter, the Petitioner was informed by the 2nd Respondent Chairman in a letter dated 18.06.2019 marked '**P10**' that the explanation given by the Petitioner was rejected and the authorities of the Tea Board have decided to hold a formal disciplinary inquiry against the Petitioner in respect of the alleged charges.

The 16th Respondent had been appointed by the 2nd Respondent to conduct the formal disciplinary inquiry against the Petitioner on 02.10.2019 based on the charges listed in the charge sheet marked '**P6**'.

The tribunal on 20.01.2021 by an order marked '**P16**' found the Petitioner guilty of the 3rd to 10th charges while he was acquitted from 1st and 2nd charges.

The Petitioner in the instant Writ Application seeks *inter alia*;

- 1) A Writ of *Certiorari* quashing the decision of the Disciplinary Inquiry dated 20.01.2021 marked as ‘P16’ and the Order of the 1st Respondent, the Sri Lanka Tea Board dated 06.08.2021 marked as ‘P17’.
- 2) A Writ of *Mandamus* directing the Respondents to reinstate the Petitioner to the Post of Procurement Officer (Grade II) in the Sri Lanka Tea Board.

Preliminary Objection.

When this matter was taken up for support on 01.03.2024, a preliminary objection was raised by the Respondents on the maintainability of this Application. The said preliminary objection is on the footing that the Petitioner has not exhausted alternative remedies available to him prior to invoking the Writ jurisdiction of this Court and thus, in order to maintain his application before this Court, has intentionally misled the Court.

It is settled law that, if the preliminary objection is sustained, the Application can be dismissed without any need to venture into the facts of the case or its merits.

In **Pinnaduwege Baby Mallika Chandraseana vs C.W Abeyseriya**¹ this Court held,

“Prerogative Writs are discretionary remedies, and therefore, the Petitioner is not entitled to invoke the Writ jurisdiction of this Court when there is an alternative remedy available to him.”.

Hence, prior to invoking the Writ Jurisdiction of this Court, the Petitioner must have exhausted alternative remedies available to him in the first instance.

¹ CA/WRIT/457/2019

As per the Petitioner's Letter of Appointment marked 'P2' the appointing authority for the Petitioner is the Board of Directors of the Sri Lanka Tea Board thus, the disciplinary authority is also the same.

The Petitioner in order to substantiate the requirement of having exhausted alternative remedies available to him, tendered two letters marked 'X1' dated 16.02.2021 and 'X2' dated 02.03.2021 (the reply by the Sri Lanka Tea Board) which the Petitioner claimed to be his Appeal and subsequent reply by the disciplinary authority against disciplinary order marked 'P17' dated 06.08.2021. Upon examination, it is apparent to this Court that, the said 'X1' and 'X2' wherein the Petitioner alleges to have appealed the disciplinary order against him, are both issued antecedent to the date on which the disciplinary order was given.

According to the language in provisions of the Establishment Code Volume II, it is manifestly clear that any person aggrieved by a disciplinary order may file an Appeal only after the delivery of such order, and thus it is not possible to file an Appeal before a disciplinary order is issued. Accordingly, this Court finds that the Petitioner in this case has not exhausted the alternative remedies available to him, to the disciplinary authority prior to invoking the Writ jurisdiction of this Court.

Furthermore, the Petitioner having made representations before this Court stating that he has exhausted alternative remedies before invoking the jurisdiction of this court, there is sufficient material to state that the Petitioner has intentionally mislead Court thus has not disclosed all material facts and has violated his duty of *Uberrima fides* by failing to make a full and frank disclosure of all material facts relevant to this Application.

In **Fonseka vs. Lt. General Jagath Jayasuriya and Five Others**² wherein a divisional bench of this Court held that,

“a Petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.”.

Also, in **Dahanayake and Others v. Sri Lanka Insurance Corporation Ltd. and Others**³ wherein this Court held that,

“if there is no full and truthful disclosure of all material facts, the Court would not go into the merits of the Application but will dismiss it without further examination.”.

Thus, the Petitioner having suppressed the fact that he has not exhausted alternative remedies prior to invoking the Writ Jurisdiction of this Court and attempting to pollute the stream of justice in this case by attempting to mislead the Court by way of ‘X1’ and ‘X2’. Accordingly, I uphold the Preliminary Objection raised by the Respondents and dismiss the Application *in limine*.

Application Dismissed, No Costs.

JUDGE OF THE COURT OF APPEAL

² [2011] 2 Sri LR 372.

³ [2005]1 Sri LR 67