

**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 writ of Certiorari and Mandamus  
under and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

Thalayarathne Mudalige Jagath  
Wickramasekara  
No.45, Bauddhaloka Mawatha,  
Suwarapola,  
Piliyandala.

**CA/WRIT/160/2022**

**PETITIONER**

Vs.

1. State Mortgage and Investment Bank  
No.269, Galle Road,  
Kollupitiya,  
Colombo 03.
2. Udayasri Kariyawasam  
Chairman,  
State Mortgage and Investment  
Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.
3. Saman Galappaththi  
Director,  
State Mortgage and Investment  
Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.
4. Chamila Cooray  
Director  
State Mortgage and Investment  
Bank

No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.

5. Senaka Bandara  
Director,  
State Mortgage and Investment  
Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.
6. H.C.Dilip Lal De Silva  
Director  
State Mortgage and Investment  
Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.
7. K.R. Abeysiriwardana  
State Mortgage and Investment Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.
8. H.N.N. Gunasekara  
Director  
State Mortgage and Investment  
Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.
9. L.I. Ranasinghe  
General Manager (Acting)  
State Mortgage and Investment Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.
- 9A. Indika Thushara Asuramanne  
General Manager  
State Mortgage and Investment  
Bank  
No. 269, Galle Road,

Kollupitiya,  
Colombo 03.  
10. C.B.R. Dalpathadu  
Inquiry Officer,  
State Mortgage and Investment  
Bank  
No. 269, Galle Road,  
Kollupitiya,  
Colombo 03.

**RESPONDENTS**

**Before:** Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel:** Thanuka Nandasiri with Susil Wanigapura for the Petitioner.

Nigel Hatch PC with Siroshini Illangage for the 1<sup>st</sup> to 8<sup>th</sup>, 9A, and 10<sup>th</sup> Respondents.

**Argued on:** 12.09.2023

**Written Submissions-** Petitioner - 11.09.2023

1<sup>st</sup> to 8<sup>th</sup>, 9A, and 10<sup>th</sup> Respondents - 31.08.2023

**Decided on:** 23.11.2023

**Sobhitha Rajakaruna J.**

When the instant Application was supported in open court on 29.07.2022, the learned Counsel for the Petitioner at the outset informed Court that the Petitioner would confine his case only to the relief prayed for in paragraph 'C' of the prayer of the Petition. Accordingly, this Court needs to consider only whether the Petitioner is entitled to a mandate in the nature of a writ of Certiorari quashing the decision reflected in the letter dated 06.10.2021 marked 'P19'.

The said 'P19' is a letter issued by the Acting General Manager of the State Mortgage and Investment Bank ('SMIB') expressing his view of commencing a fresh disciplinary inquiry against the Petitioner. Originally, the Petitioner was subjected to a disciplinary inquiry following the service of the charge sheet dated 20.11.2017, marked 'P4'. The charges against the Petitioner were based on the alleged misconduct or negligence in approving a personal loan for a sum of Rupees Forty Million Three Hundred and Sixty-Five Thousand (Rs.40,365,000.00) while serving as an Assistant General Manager of SMIB. The Inquiry

Officer expressed an opinion referring to the evidence led before him that the charges 1 to 12 against the Petitioner have not been proved. Having analyzed the final report of the said disciplinary inquiry held against the Petitioner, the Disciplinary Authority of the SMIB decided to disagree with the decision of the said Inquiry Officer. Accordingly, the Acting General Manager of the SMIB by the said letter marked 'P19' informed the Petitioner that a fresh disciplinary inquiry would be commenced against the Petitioner on the same charges. It is noted that the said Acting General Manager has not accepted the final decision of the previous disciplinary inquiry based on clause 16.3 of the Disciplinary Rules ('Rules') marked 'P27'/'R3' of the SMIB.

The Petitioner claims that even though the previous disciplinary inquiry against him was concluded on 18.12.2019 the Disciplinary Authority of the SMIB failed to communicate its final decision to him. Anyhow, as per the cover letter marked 'R7' the Inquiry Officer has forwarded his Final Report ('R7(a)') to SMIB only on 30.10.2020. It is seen that the Petitioner has been given extensions of service from time to time until the conclusion of the said disciplinary inquiry (Vide 'R6' and 'R6(a)'). Moreover, the Petitioner states that he retired on 15.12.2020 reaching the retirement age of sixty years but it appears that it occurred whilst the said disciplinary inquiry was in progress. Meanwhile, SMIB notified the Petitioner through a letter dated 23.02.2022 ('P22') of the new Inquiry Officer and the Prosecution Officer for a fresh disciplinary inquiry which was scheduled to commence on 01.04.2022.

The Petitioner pleads that the decision to hold a fresh disciplinary inquiry against him is contrary to the provisions stipulated in Clauses 16.3 and 16.4 of the said Rules. The contention of the Petitioner is that such a decision has been taken in a scenario where the final decision of the first disciplinary inquiry against the Petitioner was pending for approximately two years. Additionally, the Petitioner argues that no provisions are spelled out in the Rules to initiate disciplinary inquiries in respect of retired officers.

Now I need to examine the relevant provisions of the said Rules of the SMIB with respect to the power of the Disciplinary Authority in reference to the orders of the disciplinary inquiries.

16.3-

'When the Disciplinary Authority receives the report of the Inquiry Officer, the former should himself analyse and study the contents of the report. Thereafter, the Disciplinary Authority can either agree or disagree with any decision or finding of the Inquiry Officer in respect of any charge or charges and accept or reject or revise any or all of the findings of the Inquiry Officer. Where he disagrees clear reasons for such disagreement must be noted down in the relevant file.'

16.4-

'If the Disciplinary Authority requires further clarification on any point, he may refer the matter back to the Inquiry Officer for report or further inquiry as necessary. If circumstances justify it, the Disciplinary Authority may also quash any inquiry proceedings and order a fresh inquiry, indicating in the relevant file the reasons for such action.'

In terms of the above provisions, the Disciplinary Authority has the discretion either to agree or disagree with any final decision or finding of an Inquiry Officer. If the Disciplinary Authority disagrees with any such finding he must note down the clear reasons for such disagreement in the relevant file. Further, the Disciplinary Authority is empowered either to refer the matter back to the Inquiry Officer or to quash the inquiry proceedings and order a fresh inquiry. The mandatory requirement therein is to note down the reasons for such a decision in the relevant file. The Petitioner having limited the reliefs to paragraph 'C' of his prayer asserts that the reasons in regard to the decision to conduct a fresh inquiry have not been communicated to him and accordingly, the said decision to hold a fresh inquiry is unreasonable, irrational and ultra vires. Thus, a reasonable question arises at this stage whether the Disciplinary Authority while recording the reasons in the relevant file is bound to communicate such reasons to the Petitioner.

As opposed to the arguments raised by the Petitioner, the contents of the letter dated 06.01.2021 marked 'R9' are drawn to the attention of this Court by the 1<sup>st</sup> to 8<sup>th</sup>, 9A and 10<sup>th</sup> Respondents ('Respondents'). In the said letter 'R9' the General Manager/ Chief Executive Officer of SMIB communicates with the Inquiry Officer of the first disciplinary inquiry the

reasons as to why the former has not agreed with the findings of the disciplinary order. In addition to the aforesaid 'R9', the SMIB even at its Board Meeting held on 20.07.2021 resolved to initiate a fresh disciplinary inquiry against the Petitioner and as a consequence, the 10<sup>th</sup> Respondent was appointed as the Inquiry Officer. The extract of the minutes of the said Board meeting is marked 'R10'. Anyhow, the Petitioner has raised objections continuously for conducting a fresh disciplinary inquiry against him.

There cannot be any ambiguity on the point that the Disciplinary Authority has in fact formulated specific reasons for his decision to conduct a fresh inquiry against the Petitioner. This is clearly evinced in the said letter marked 'R9', though that document is not a copy of the minute sheets or other pages of whatever the file maintained by the SMIB dealing with the affairs of the first disciplinary inquiry. It is important to note that there are no expressed provisions in the 'Rules' that the Disciplinary Authority is duty-bound to communicate his decisions that are recorded in the relevant file. Anyhow, I must draw my attention to the aspect of whether there is any breach of the rules of Natural Justice by the SMIB for not communicating such reasons in a specific communique to the Petitioner.

I take the view that when assaying whether the rules of Natural Justice are violated the court cannot stick only to the traditional yardsticks. With the evolution of legal jurisprudence, the concept of Natural Justice has gone beyond its ancient parameters which are generally considered as the Rule Against Bias<sup>1</sup> and the Right to a Fair Hearing<sup>2</sup>. The scope of the rule of Natural Justice has been expanded through judicial activism to give a broader definition which also includes the 'duty to act fairly'. However, it cannot be restricted to the said concept of fairness as the rules of Natural Justice have now been crystalised into various dimensions. Thus, the right of a litigant to know the reasons for the decision taken by the public authority is an essential element in establishing the Rules of Natural Justice. In this backdrop, the assessment of violation of the rules of Natural Justice should be analysed based on the facts and circumstances of each case.

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<sup>1</sup> *Nemo iudex in causa sua*

<sup>2</sup> *Audi alteram partem*

It is noted that my findings above corroborate the conceptual framework illustrated in the following paragraph in *M.P. Jain and S.N. Jain 'Principles of Administrative Law', 9th ed. (2022) LexisNexis, p.412*

*"What are the requirements of natural justice cannot be laid down in any straight-jacket. This is a well-settled position in law. The facts and circumstances of the case in question would alone provide the answer whether natural justice has been complied with or not. This is so well-settled position by now that no case law need be adverted on this subject."*<sup>3</sup>

No evidence is available to form an opinion that the SMIB has suppressed the reasons to call for a fresh inquiry. The Petitioner has not denied having knowledge of issuing the above-mentioned letter marked 'R9' but has only attempted to elucidate the facts described therein. In the Counter Affidavit, the Petitioner has just made a general denial upon the respective provisions in the Statement of Objections of the Respondents rather than expressly contesting the existence of the aforementioned document 'R9'. The Respondents contend that there is no specific necessity to record reasons on the face of the document containing the findings of the Inquiry Officer. Nevertheless, the Disciplinary Authority has seemingly taken much effort to elaborate on such reasons in the said letter marked 'R9'. Similarly, the Petitioner has failed to establish any inordinate or unreasonable delay on the part of the SMIB in forwarding the report of the first disciplinary inquiry. As observed earlier the Inquiry Officer has taken more than ten months to forward his final report ('R7(a)') to SMIB after the conclusion of its proceedings.

Based on the facts and overall circumstances of this case, I am not convinced that the Petitioner was prejudiced by any conduct of the relevant authorities, in failing to make the Petitioner aware of the reasons recorded by the Disciplinary Authority to hold a fresh disciplinary inquiry. Thus, I am not inclined to consider the relief prayed for in paragraph 'C' of the prayer merely based on the proposition of the Petitioner that the reasons to summon a fresh inquiry have not been communicated to him.

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<sup>3</sup> Ashwani Kumar v State of Bihar, AIR 1996 SC 2833: (1996) 7 SCC 577, 609 (para 72) See also Ashwani Kumar v State of Bihar, AIR 1997 SC 1628: (1997) 2 SCC 17.

Now I advert to the circumstances relating to the second disciplinary inquiry held against the Petitioner after his retirement. The Respondents contend that the Petitioner has failed to appear before the second disciplinary inquiry despite him being informed, in writing, the necessity of his appearance. The stand taken by the Petitioner that no disciplinary inquiry can be conducted against retired officers is a proposition to which I cannot simply agree. In this regard I need to draw my attention to the provisions of section 36:4 of Chapter XLVIII of the Establishments Code (E-Code) which declare that the Disciplinary Authority can conduct a disciplinary inquiry against an officer retired subject to section 12 of the Minutes of the Pensions irrespective of the retirement of such officer. I am aware that the SMIB is not governed under the E-Code or the Minutes on Pensions, but the rationale adopted in those sections has a considerable bearing in this case.

The Petitioner was absent at the inquiry held on 01.04.2022 and even on the subsequent dates. Due to such absence of the Petitioner, the new Inquiry Officer has decided to proceed with the fresh disciplinary inquiry ex parte. Upon the conclusion of the said second inquiry by the 10<sup>th</sup> Respondent, the Petitioner was found guilty of all twelve charges against him. The respective disciplinary report dated 5.7.2022 is marked 'R14'. The Petitioner was duly informed about the said second disciplinary order and as a consequence his services have been terminated with effect from his date of retirement (i.e., 15.12.2020) barring him from any entitlement to terminal benefits by the letter dated 10.08.2022 marked 'R15'. Apparently, the Petitioner has not lodged an appeal against the said disciplinary order ('R14') though he was privileged to do so under the provisions of the Rules of the SMIB. Neither does he challenge the said report through the instant Application. Further, I take the view that the Petitioner has failed to satisfy Court that the author of the impugned document 'P19' has acted beyond his jurisdiction and contrary to principles of Natural Justice or pronounces a decision which is eminently irrational or unreasonable.

In these circumstances, I do not see any necessity to analyse the objections raised by the Respondents who argue that this court has no jurisdiction to entertain the instant Application as it deals with matters arising from a contract of employment between the Petitioner and the



SMIB. However, it is important to note that this court has constantly decided<sup>4</sup> that the Court of Appeal has the discretionary power to exercise writ jurisdiction even on a question arising out of a contract of employment if the disciplinary order of a public authority was in breach of statutory restrictions/provisions and also if the public authority has taken a decision assuming a jurisdiction which he does not have or exceeding his jurisdiction by violating a statutory requirement which eventually comes under any of the established grounds of judicial review.

For the reasons set forth above I hold that the Petitioner is not entitled to the relief as prayed for in paragraph 'C' of the prayer of the Petition. Hence, I proceed to dismiss this Application. I order no costs.

*Application is dismissed.*

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree.

**Judge of the Court of Appeal**

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<sup>4</sup> See: - W G Chamila v Urban Development Authority and others CA/WRIT/215/2022 decided on 26.10.2022; Devendra Budalge Sudesh Lalitha Perera v Janatha Estates Development Board and others CA/WRIT/004/2022 decided on 06.10.2022; Vithanage Vajira Kelum Perera v Sudath Rohana Chairman, Independent Television Network and Others CA/WRIT/508/2021 decided on 29.08.2023.