

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

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

**CA-WRT-506-22**

Thalayarathne                      Mudalige                      Jagath  
Wickramasekara  
NO. 45, Bauddhaloka Mawatha, Suwarapola  
Piliyandala  
  
**Petitioner**

**Vs.**

1. State Mortgage and Investment Bank  
No. 269, Galle Road  
Kollupitiya  
Colombo 03.
  
2. Udayasiri Kariyawasam  
Chairman  
State Mortgage and Investment Bank No. 269,  
Galle Road  
Kollupitiya  
Colombo 03.

2A. Mr. Joseph Soosaithasan  
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.

4A. Prof. Aminda Methsila Perera

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.

5A. Mr. Bhuddika Madihahewa

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. Abeyesiriwardana

Director

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.

10. G.B. R. Dalpadadu

Inquiring Officer, State Mortgage and  
Investment Bank

Human Resource Division  
No. 269, Galle Road  
Kollupitiya  
Colombo 03.

**Respondents**

**Before :** N. Bandula Karunarathna, P/CA, J.  
B. Sasi Mahendran, J.

**Counsel:** Thanuka Nandasiri with Susil Wanigapura for the Petitioner  
Nigel Hatch, PC with Siroshui Illange for the 1<sup>st</sup>, 2A, 3<sup>rd</sup>, 4A, 5A, 6<sup>th</sup>, 9<sup>th</sup> and  
10<sup>th</sup> Respondents.

**Argued On:** 06.11.2024

**Written**

**Submissions:** 18.11.2024 (by the 1<sup>st</sup>, 2A, 3, 4A, 5A, 6, 9 and 10<sup>th</sup> Respondents)  
**On**

**Judgment On:** 19.12.2024

**B. Sasi Mahendran, J.**

### **JUDGMENT**

The Petitioner instituted this action by petition dated 29.12.2022 seeking *inter alia* writs of Certiorari to quash the decision marked P29 dated 10.08.2022 made by the 9<sup>th</sup> Respondent where the 9<sup>th</sup> Respondent based on the disciplinary inquiry report of the 10<sup>th</sup> Respondent has

imposed punishment on the Petitioner in accordance with State Mortgage and Investment Bank Rules.

It should be noted that, earlier the Petitioner has invoked the jurisdiction of this Court by case bearing No. CA/Writ/160/22 where one of the reliefs sought by the Petitioner in the petition marked R1 under prayer (c) was:

- c. “Grant a mandate in the nature of Writ of Certiorari quashing, the decision reflected at P-19 dated 06.10.202 to hold a new Disciplinary Inquiry against the Petitioner;

It should be noted that this was refused by the Courts.

The following facts are relevant in this case:

According to the petition, while the Petitioner was in service as an Assistant General Manager (Credit Administration) in the 1<sup>st</sup> Respondent Bank on 20.11.2017, a charge sheet was served on him pertaining to the involvement of the Petitioner in the misconduct or negligence in approving a personal loan amounting to a sum of Rs. 40,365,000 with another two employees.

Thereafter, an inquiry was held on the above charge sheet from 28.08.2018 and concluded on 18.12.2019. the Petitioner as per the letter dated 09.03.2018, the Petitioner’s annual increments and the bonus were suspended as decided by the Board of Directors until the disciplinary decision is given. The Petitioner further avers that the decision of the inquiry dated 18.12.2019 was not communicated to the Petitioner by the Disciplinary Authority of the Bank.

In any event, the Disciplinary Officer forwarded the Final Report only on 30.10.2020. According to the said report, the charges were not proved against the Petitioner.

In any event, the Acting General Manager has informed the Petitioner by letter dated 23.02.2022, that a fresh inquiry would be conducted based on the twelve charges against the Petitioner and that if the Petitioner failed to attend the said inquiry, such would proceed *ex parte*. However, the Petitioner states that he informed his inability to attend such an inquiry to the said Acting General Manager. Thereafter, the inquiry was held on 01.04.2022 and it was fixed on 21.04.2022 for which the Petitioner did not participate. the Petitioner states that by letter 21.04.2022, the Petitioner was informed that the tribunal has decided to proceed with the inquiry *ex parte*.

In the said case bearing No. CA/Writ/160/22, the Petitioner has challenged the decision to hold a fresh inquiry. By order dated 23.11.2023, the Court has held that the Disciplinary Authority has discretion under Rule 16.4 of the State Mortgage and Investment Bank Rules to quash the decision of the inquiry and order a fresh inquiry. The Court further considered that the Petitioner had failed to appear before the said inquiry despite him being informed. Furthermore, the Court formed the opinion that the disciplinary inquiry could be conducted against retired officers and that the conduct of the Petitioner with regarding the non-participation in the inquiry.

In the instant application, the main argument put forward by the Petitioner is that the findings of the 10<sup>th</sup> Respondent marked as P29 where the Inquiring Officer has come to the conclusion in the report by not considering the availability of the facts and material placed before him. The main objection taken by the Respondent is that under Section 18.1 of the State Mortgage and Investment Bank Rules marked as R2A the Petitioner has an alternative remedy available to make an appeal to the Appellate Authority.

Apart from that, this Court considers that to issue a writ of Certiorari the Petitioner has to satisfy the following grounds as set out in Desmond Perera and Others v. Karunarathne, Commissioner of National Housing and Others, (1994) 3 SLR page 316, at page 329 and 330.

“As pointed out by the learned President's Counsel for the 3rd respondent, Lord Diplock in the case of *CCSV v. Minister for the Civil Service* (1984) UKHL 9, clearly classified under three heads, the grounds on which administrative action could be made subject to control by judicial review. They are:

- (i) Illegality;
- (ii) Irrationality; and
- (iii) (iii) Procedural impropriety.”

In the instant case, the Petitioner has failed to satisfy this Court that the 10<sup>th</sup> Respondent who held the second disciplinary inquiry and the decision taken by the 9<sup>th</sup> Respondent to impose punishment against the Petitioner has acted beyond their jurisdiction and contrary to the principles of Natural Justice or that the said decision is imminently irrational or unreasonable.

In addition to that, our Courts have held that, when an alternative and equally efficacious remedy is available to a party, the party should be required to pursue such remedy before invoking the writ jurisdiction.

Her Ladyship Shiranee Tilakawardane J. P/CA (as her Ladyship then was) in the case of Ishak v. Laxman Perera, Director of Customs and Others (2003) 3 SLR 18 at 22 held that:

"Where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the Court is coming to a

discretionary decision.". "Where there is a choice of another separate process outside the Courts, a true question for the exercise of discretion exists. For the Court to require the alternative procedure to be exhausted prior to resorting to judicial review is in accord with judicial review being properly regarded as being a remedy of last resort. It is important that the process should not be clogged with unnecessary cases, which are perfectly capable of being dealt with in another tribunal. It can also be the situation that Parliament, by establishing an alternative procedure, indicated either expressly or by implication that it intends that procedure to be used, in exercising its discretion the Court will attach importance to the indication of Parliament's intention".

Section 18.1 of the State Mortgage and Investment Bank Rules reads as follows:

“An employee aggrieved by a disciplinary order made by the Disciplinary Authority will be permitted to make an appeal to the Appellate Authority”

In the instant case, the Petitioner has not lodged an appeal against the said disciplinary order though he was privileged to do so under the said Rule.

This Courts also notes that there is another effective alternative remedy available under Section 31B (1) of the Industrial Disputes Act No. 43 of 1950 which reads as follows:

“(1) A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to labour tribunal for relief or redress in respect of any of the following matters:- (See section 7 of Act No. 32 of 1990 relating to pending actions (set out in Annexure to this Chapter). See also Act No. 19 of 1990 in this connection.)

(a) the termination of his services by his employer;



- (b) the question whether any gratuity or other benefits are due to him from his employer on termination of his services and the amount of such gratuity and the nature and extent of such benefits, where such workman has been employed in any industry employing less than fifteen workmen on any date during the period of twelve months preceding the termination of the services of the workman who makes the application or in respect of whom the application is made to the tribunal;
- (c) the question whether the forfeiture of a gratuity in terms of the Payment of Gratuity Act, 1983 has been correctly made in terms of that Act,
- (d) such other matters relating to the terms of employment, or the conditions of labour, of a workman as may be prescribed.”

This Section was considered by His Lordship Alles J in Independent Industrial and Commercial Employees’ Union (on behalf of P.T. Fernando) v. Board of Directors, Co-operative Wholesale Establishment, Colombo 74 NLR 344 at 349 held that:

“The Industrial Disputes Act, being a progressive piece of social legislation intended to promote industrial peace, and whose main object was to ensure harmonious relations between the employer and employee, has necessarily to protect the interests of the employee who has voluntarily retired from the services of his employer. An employee who retires voluntarily from service does not cut himself completely from the moorings which attach him to his former employer and the language used in Section 31 B (1)(b) would seem to indicate that a retired employee can obtain relief from his employer even after he has ceased to be an employee.”

Be that as it may, the conduct of the Petitioner is crucial to this action. The Petitioner has not indicated why he has failed to participate in the said inquiry, knowing the seriousness of

the offence and the allegation made against him that he approved a personal loan amounting to Rs. 40,365,000/-.

Our Courts have held that even though the Petitioner is entitled to relief, still the Courts can refuse such considering his conduct.

In Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another (1996) 2 SLR 70 at page 73, His Lordship Jayasuriya, J held that:

“I hold that the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the court has a discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief. Applying these principles, I hold that this court is not disposed to grant the Petitioner discretionary relief upon this application in view of inordinate delay and laches in filing the application in Court.”

In Center for Environmental Justice and Others v. National Housing Development Authority and Others, CA/WRT/264/19, Decided on 23.02.2022, His Lordship Mohammed Laffar, J held that:

“In this context, I observe that the Petitioners have been negligent in not addressing the Court in a timely manner and that they have slept over their rights, if any, without any reasonable excuse whatsoever. Therefore, as identified above, the Petitioners’ prayer for grant of Writs by prayers (c) and (d) being substantial relief sought in their Petition, cannot be granted due to severe laches. This Court also observes that the

rest of the relief sought by the Petitioners are consequential to the said relief thereto and thus will not be entitled to such.”

Considering the above-mentioned reasoning, we dismiss the application with costs of Rs. 50,000/-

**JUDGE OF THE COURT OF APPEAL**

**N. Bandula Karunarathna (P/CA), J.**  
**I AGREE**

**PRESIDENT OF THE COURT OF APPEAL**