

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

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

CA (Writ) Application No 223/2016

1. Kodagoda Jayarathnage Nirosha Tharangani,
Baduwatta, Gangodagama South, Hakmana.
2. Mahagedara Holiya Bandaralage Rajana
Saman Bandara Mahagedara,
No. 35, Sangarajagama, Hanguranketha.
3. Abdul Rahuman Fowzi Ameen,
No. 339/04, Araliya Garden, Wattala.
4. Andrahennadige Panduka Swarnahansa,
No. 58/03/05, Dolahena, Pitipana, Homagama.
5. Manoj Dushantha Hewa Jayasinghe,
"Rosa Kelum", Mahawatta,
Kassingama, Tissamaharamaya.
6. Loku Hiraluge Prasanna Priyadarshana,
No 288/01/B, Arambe Road,
Yatanwala Ruwanwella.
7. Weerasuriya Mudiyansele Amindu
Sanka Bandara Weerasuriya,
No. 85, Warallapola, Wadakada.
8. Galapita Gedara Mudiyansele
Mahesh Kulathilake,
Dankanda, Raththota, Matale.
9. Weerasinghe Kaluthanthri Arachchige
Aruna Nishatha Fernando,

No. 23, Katukurunda, Moratuwa.

10. Muhandiramge Don Benadict
Ashan Hemantha,
No. 859/12, St. Rita's Road,
Thunpaliya, Weligampitiya, Ja-Ela.
11. Dasanayake Mudiyanse Ralahamilage
Jayantha Bandara Dasanayake,
No. 153/B, Parana Walawwa,
Girihagama, Kumburegama.

PETITIONERS

Vs.

1. Sri Lanka Transport Board.
2. Ramal Siriwardane,
Chairman, Sri Lanka Transport Board.
- 2A. Kingsley Ranawaka,
Chairman, Sri Lanka Transport Board.
3. P.D. Balasooriya,
Chief Executive Officer,
Sri Lanka Transport Board.
4. Indika Kulathilake,
Deputy General Manager (Administration),
Sri Lanka Transport Board.
5. P.P. Peiris,
Chief Human Resources Manager,
Sri Lanka Transport Board.
- 5A. P.S. Walgmpaya,
Chief Human Resources Manager,
Sri Lanka Transport Board,

1st – 5th, 9th and 17th Respondents at 200,
Kirula Road, Narahenpita, Colombo 5.

6. B. Sarath Perera,
Chief Regional Manager (Colombo),
Regional Office,
Sri Lanka Transport Board,
Central Bus Stand, Pettah.
7. Nihal Somaweera,
Secretary, Ministry of Transport & Civil Aviation.
- 7A. P.S. Widanage,
Secretary,
Ministry of Transport and Civil Aviation,
No. 1, D.R. Wijewardena Mawatha, Colombo 10.
- 7B. H.M. Gamini Seneviratne
Secretary,
Ministry of Passenger Transport Management,
Sethsiripaya, Battaramulla.
8. Nimal Siripala De Silva,
Minister of Transport and Civil Aviation,
No. 1, D.R. Wijewardena Mawatha, Colombo 10.
- 8A. Mahinda Amaraweera,
Minister of Passenger Transport Management,
Sethsiripaya, Battaramulla.
9. H. Sibil Perera,
Human Resource Management Division,
Sri Lanka Transport Board
200, Kirula Road,
Narahenpita, Colombo 5.
10. W.P. Ranjith Premathilake,
Talangama Depot,
Sri Lanka Transport Board, Talangama.

11. A.L. Siddik,
Eastern Regional Office,
Sri Lanka Transport Board, Kalmunai.
12. W.D. Wasantha,
Regional Office (Ruhuna),
Sri Lanka Transport Board, Magalla, Galle.
13. K.T.L.M. Leelaratne,
Regional Office (Ruhuna),
Sri Lanka Transport Board, Magalle, Galle.
14. H.M.W. Abeyratne,
Regional Office (Kandy),
Sri Lanka Transport Board, Katugasthota.
15. W.M.S. Bandara,
Regional Office (North Western),
Sri Lanka Transport Board,
Badagamuwa, Thorayaya.
16. Sandya Jayawadana,
Human Resources Management Division.
17. H.P.Sarath Walgampaya,
Human Resources Management Division,
Sri Lanka Transport Board,
200, Kirula Road,
Narahenpita, Colombo 5.
18. S.J. Anthony Perera,
Regional Office (Gampaha),
Sri Lanka Transport Board, Nittambuwa.
19. D.M.D. Dissanayake,
Regional Office (Nuwara Eliya),
Sri Lanka Transport Board, Delpitya, Atabage.

RESPONDENTS

Before: Mahinda Samayawardhena, J
Arjuna Obeyesekere, J

Counsel: Saliya Peiris, P.C., with Thishya Weragoda and Pulasthi Rupesinghe for the Petitioners

Lal Wijenayake with Ranjith Ranawaka for the 1st – 5th Respondents

Pasindu Silva with Kavindu Geeganage for the 6th, 9th, 10th, 12th, 14th – 17th Respondents

Ms. Yuresha Fernando, Senior State Counsel for the 7th and 8th Respondents

Argued on: 30th June 2020

Written Submissions: Tendered on behalf of the Petitioners on 4th December 2019

Tendered on behalf of the 1st – 5th Respondents on 27th July 2020

Tendered on behalf of the 6th, 9th, 10th, 12th, 14th – 17th Respondents on 26th November 2019

Decided on: 11th September 2020

Arjuna Obeyesekere, J

The Petitioners are Graduates of recognized Universities in Sri Lanka. Having joined the 1st Respondent, the Sri Lanka Transport Board during the period 1997 – 2008, all Petitioners were Executive Grade Officers at the time this application was filed. The Petitioners state that during this period, they have held different positions, and have received several promotions, a fact which has not been disputed by the 1st Respondent.

The Petitioners state that at the time of the impugned action of the 1st Respondent, they were holding the following positions:

Petitioner	Position	Grade	Date of Appointment to the said position
1 st	Assistant Human Resources Manager (Recruitment)	IIIA	28.08.2013
2 nd	Depot Manager (Thalangama)	IIIA	16.02.2012
3 rd	Chief Regional Manager (Eastern Sector)	I	17.01.2014
4 th	Chief Regional Manager (Ruhuna)	I	16.07.2014
5 th	Regional Operations Manager (Ruhuna)	IIIA	23.05.2014
6 th	Chief Regional Manager (Kandy)	I	03.06.2014
7 th	Regional Operations Manager (North Western)	IIIA	14.08.2014
8 th	Deputy Human Resources Manager	I	01.09.2014
9 th	Assistant Human Resources Manager (Disciplinary)	IIIA	01.09.2014
10 th	Regional Operations Manager (Gampaha)	IIIA	09.12.2011
11 th	Chief Regional Manager (Nuwara Eliya)	II	20.06.2014

The Petitioners state that by a letter dated 26th March 2015 marked 'P5a', the 1st Petitioner was informed that the 9th Respondent had been appointed to cover up duties in the post held by the 1st Petitioner, and that she should hand over the documents and goods in her custody to the 9th Respondent. Similar letters had been issued to the 2nd Petitioner ('P5b'), the 5th Petitioner ('P5e(i)'), the 8th Petitioner ('P5h') and the 10th Petitioner ('P5j').

The 4th Petitioner, the 6th Petitioner, the 7th Petitioner, the 9th Petitioner, and the 11th Petitioner did not receive letters similar to the letters received by the above mentioned Petitioners. Instead, they were only copied the letters sent to their successors, namely 'P5d', 'P5f', 'P5g', 'P5i', and 'P5k'.

The Petitioners state further that by a letter dated 20th March 2015 marked 'P5c(i)', the 3rd Petitioner had been transferred with immediate effect to another Division of the 1st Respondent, and had been requested to hand over the documents and goods in the custody of the 3rd Petitioner to the 11th Respondent. A similar letter had been issued to the 8th Petitioner ('P5h').

The Petitioners state that no reasons were assigned for the above actions of the 1st Respondent, except a bare statement that it was being done due to exigency of service. The Petitioners claim that consequent to the said letters, they were not assigned any duties, much to their embarrassment and humiliation. The Petitioners state further that the 9th – 14th Respondents, and the 16th - 18th Respondents are of a junior grade than the Petitioners whom they replaced, and therefore are of an inferior rank to the Petitioners. The Petitioners have also complained that some of the benefits and perquisites that they were in receipt of had been withheld, after the letters 'P5a – 'P5k' were issued. The Petitioners have admitted that several months later, but prior to the filing of this application, they were transferred to other Divisions within the 1st Respondent, but claim that they had not been assigned any duties, even in their new work stations.

The complaint of the Petitioners to this Court is twofold. The first is that no reasons have been assigned for the above actions which they claim have been done for political considerations. The second is that the actions of the 1st Respondent is arbitrary and illegal. It is in the above factual circumstances that the Petitioners have filed this application, seeking the following relief:

- (a) Writs of Certiorari to quash the letters 'P5a' – 'P5k' by which the 9th -19th Respondents have been appointed;
- (b) Writs of Prohibition preventing the 9th – 19th Respondents from functioning in the posts that were held by the Petitioners; and

- (c) Writs of Mandamus compelling the 1st Respondent to appoint each of the Petitioners to the posts they held prior to the issuance of the letters marked 'P5a' – 'P5k'.

I shall now consider the position of the 1st Respondent, who does not deny the issuance of the said letters. The 1st Respondent states that:

- a) Given the fact that the 1st Respondent is carrying out an island-wide operation, it has offices all over the country which require to be manned by suitable and qualified personnel;
- b) In terms of their letters of appointment, the Petitioners are liable to be transferred to any place in the Country;
- c) The 1st Respondent had identified certain locations and certain areas that require improvement and increased productivity, and that such an exercise required the placement of experienced officers in such locations;
- d) The Petitioners were transferred on the basis of exigencies of service;
- e) The Petitioners were assigned work at their new stations, and some of the Petitioners have in fact been assigned special responsibilities;
- f) The Petitioners were not deprived of their salaries, allowances, and other benefits that they were entitled to, and their service contracts were not breached in any manner whatsoever;
- g) Those who replaced the Petitioners were experienced Officers who were suitable for the post.

I must note that the 1st Respondent did not take up the position that the decisions in 'P5a' – 'P5k' arise out of the Contract of Employment between the Petitioner and the 1st Respondent, and hence are outside the Writ jurisdiction of this Court.

It is agreed between the parties that the letters of appointment issued to the Petitioners contained a clause that the Petitioners are liable to be transferred, and that they have agreed to serve in any part of the Country. It is further agreed between the parties that the 1st Respondent does not have a transfer policy, scheme or a procedure. Hence, I have no dispute with the position of the 1st Respondent that the Petitioners are liable to be transferred to any place where their services are required, and that the 1st Respondent may do so in its best interests, especially since the 1st Respondent does not have a transfer policy or procedure. However, I am of the view that, that does not serve as a license to the 1st Respondent to arbitrarily engage in the transfer of employees, without adducing any plausible reasons or to strip an employee of his duties and responsibilities, leaving that person staring at the ceiling.

I observe that eight of the Petitioners had been appointed to the post they held at the time 'P5a' – 'P5k' was issued, less than one year prior to 'P5a' – 'P5k'. In such circumstances, if there was a necessity for a transfer, either because a Petitioner was required at a particular station, or because the services of one of the Respondents was required at a particular station in view of the expertise they possessed, the 1st Respondent should have stated so in the letters marked 'P5a' – 'P5k', or else, at the least, submitted material to this Court to substantiate same. What the 1st Respondent has done is simply to make bare statements in its Statement of Objections which have not been supported by material, expecting this Court to blindly accept same.

Furthermore, except in the case of the 3rd and 8th Petitioners, none of the other Petitioners had even been transferred. What the 1st Respondent has done is simply issued letters to the said Petitioners or to their successor informing the Petitioners to hand over their duties to one of the 9th – 19th Respondents, or else requesting the Respondents to take over from the particular Petitioner. The said letters, quite apart from depriving the said Petitioners of a work station, have stripped them of their right to serve the 1st Respondent with dignity and amounts to degrading treatment. The actions of the 1st Respondent certainly emits an odour of harassment and victimization of the Petitioners, as alleged by the Petitioners.

The 1st Respondent is a Public Corporation funded by the Government. Its actions, reflected in 'P5a' – 'P5k' amounts to payment of salaries and other benefits to employees to whom no work has been assigned. Having done so, the 1st Respondent has the audacity to claim in its Statement of Objections that it has not withheld the salaries of the Petitioners, as if payment of salary alone, without allocation or assignment of work, is sufficient. If such an action is not arbitrary and illegal, I cannot see what else would be.

In the above circumstances, I am in agreement with the submission of the learned President's Counsel for the Petitioners that the actions of the 1st Respondent are arbitrary, and hence, I am of the view that the letters 'P5a' – 'P5k' are liable to be quashed by a Writ of Certiorari.

This brings me to the issue of whether relief should be afforded to the Petitioners in view of the position taken up the Respondents that the Petitioners are guilty of laches. It is not in dispute that this application was filed on 15th July 2016, even though 'P5a' – 'P5k' had been issued in February and March, 2015. The learned Counsel for all Respondents submitted that the Writ of Certiorari being a discretionary remedy, this Court should not exercise its discretion in favour of the Petitioners in view of the delay on the part of the Petitioners in filing this application.

On the face of it, it is clear that there has been a delay of over one year. The Superior Courts of this country have consistently held that a petitioner seeking a discretionary remedy such as a Writ of Certiorari must do so without delay, and where a petitioner is guilty of delay, such delay must be explained to the satisfaction of Court. In other words, unexplained delay acts as a bar in obtaining relief in discretionary remedies, such as Writs of Certiorari and Mandamus.

In **Biso Menika v. Cyril de Alwis**¹ Sharvananda, J (as he then was) set out the rationale for the above proposition, in the following manner:

¹[1982] 1 Sri LR 368; at pages 377 to 379. This case has been followed by the Supreme Court in Ceylon Petroleum Corporation v. Kaluarachchi and others [SC Appeal No. 43/2013; SC Minutes of 19th June 2019].

“A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. But exercise of this discretion by Court is governed by certain well accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver..... The proposition that the application for Writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a Writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay..... An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed.”² (emphasis added)

In **Seneviratne v. Tissa Dias Bandaranayake and another**³, the Supreme Court, adverting to the question of long delay, stated that:

“If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, nam leges vigilantibus, non dormientibus subveniunt,⁴ and for other reasons refuses to assist those who sleep over their rights and are not vigilant.”

In **Issadeen v. The Commissioner of National Housing and others**⁵ Bandaranayake J, dealing with a belated application for a Writ of Certiorari held as follows:

“Although there is no statutory provision in this country restricting the time limits in filing an application for judicial review and the case law of this country is indicative

² See Mary Leslin Mendis and another v. Land Reform Commission and others [SC Appeal No. 90/2009; SC Minutes of 12th February 2016]

³ [1999] 2 Sri LR 341 at 351.

⁴ For the law assists the watchful, (but) not the slothful.

⁵ [2003] 2 Sri LR 10 at pages 15 and 16.

of the inclination of the Court to be generous in finding ‘a good and valid reason’ for allowing late applications, I am of the view that there should be proper justification given in explaining the delay in filing such belated applications. In fact, regarding the writ of certiorari, a basic characteristic of the writ is that there should not be an unjustifiable delay in applying for the remedy”.

Sharvananda, J⁶ in **Biso Menike’s** case went on to consider if an application for a writ should be dismissed on account of delay where the act complained of is an illegality, and stated that:

*“When the Court has examined the record and is satisfied the Order complained of is **manifestly erroneous** or **without jurisdiction** the Court would be loathe to allow the mischief of the Order to continue and reject the application simply on the ground of delay, **unless there are very extraordinary reasons to justify such rejection**. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction.”* (emphasis added)

The following passage from **Lindsey Petroleum Co., Vs. Hurd** was also referred to in **Bisomenike’s** case:⁷

*“**Two circumstances always important in such cases are the length of the delay and the nature of the acts done during the interval** which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as related to the remedy.”⁸*

In my view, the above judgments clearly illustrate four important matters, although not necessarily in a particular order. The first is that an application for a Writ must be filed without delay. The second is that where there is, on the face of the application, a delay,

⁶ Supra; page 379.

⁷ (1874) L.R., 5 P.C 221 at 239.

⁸ Supra; page 378.

such delay must be explained to the satisfaction of Court. The third is that delay can be ignored, if the act complained of is manifestly illegal, such as a decision of a statutory authority made in excess of jurisdiction. The fourth is the nature of the acts that have taken place during the time period between the impugned decision or act and the filing of the application. These factors are relevant when determining whether the discretion of this Court should be exercised where the Petitioners are guilty of delay.

The Petitioners have submitted that in October 2015 they lodged complaints over 'P5a- P5k' to the Political Victimisation Committee that had been appointed in 2015 but that the said Committee did not take action on their complaints.⁹ The Petitioners have stated further that they came to Court, only because the said Committee failed to proceed with their complaints. While litigants must come to Court at the earliest, Courts do not expect litigants to rush to Court without exploring alternative remedies available to them under the law. However, the explanation offered by the Petitioners still fails to explain the time lag between 'P5a- P5k' issued in February/March 2015 and the complaint to the Committee in October 2016. In these circumstances, I am unable to accept the explanation offered by the Petitioners for the delay.

I also wish to consider whether the developments that have taken place after 'P5a- P5k', and prior to the filing of action would disentitle the Petitioners to the relief sought. During the period between March 2015 and the filing of this application in July 2016, the Petitioners have been assigned to different locations of the 1st Respondent in different capacities, as borne out by the letters marked 'P6a' – 'P6i'. On some occasions, the new stations have been assigned at the request of the Petitioners themselves.¹⁰ It appears that the Petitioners are settled in their new stations and assignments, and therefore, I am of the view that to turn back the clock would not benefit the Petitioners or the Respondents.

⁹ Vide complaints marked 'P7a' – 'P7h(i)'.
¹⁰ Vide 'P6a', 'P6d(ii)', 'P6f', 'P6h(i)' and 'P6i'.

In the above circumstances, I decline to exercise the discretion vested in this Court, and hence, I refuse to grant the Petitioners, the reliefs prayed for. I accordingly dismiss this application, without costs.

Judge of the Court of Appeal

Mahinda Samayawardhena, J

I agree

Judge of the Court of Appeal