

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

CA (Writ) Application No.112/2016

In the matter of an Application for mandates in the nature of Writ of Certiorari and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. Jayawickrama
Ranaviru Mawatha
Lunama
Ambalanthota.

PETITIONER

- Vs

1. National Savings Bank
"Savings House"
255, Galle Road
Colombo 3.
2. Aswin De Silva, Chairman
3. A.K.Seneviratne, Director
4. Ajith Pathmasiri, Director
5. Anil Rajakaruna, Director
6. Suranga Naullage, Director
7. D.L.P.R. Abeyaratne,
Postmaster General (ex-office Director)
8. Chandima Hemachandra, Director.

2nd to 8th Respondents, All of

National Savings Bank
"Savings House"
255, Galle Road
Colombo 3.

9. S.D.N. Perera, General Manager
10. Assistant General Manager
(Human Resources Development).

9th and 10th Respondents, All of

National Savings Bank
"Savings House"
255, Galle Road
Colombo 3.

RESPONDENTS

Before: Janak De Silva J.
&
N. Bandula Karunarathna J.

Counsel: Sanjeewa Ranaweera for the Petitioner.
Vikum De Abrew D.S.G. for the Respondent.

Written Submissions: of the Petitioner filed on 31st January 2020.
of the Respondents filed on 14th October 2019.
Further Written Submissions of the Respondent filed on 11th March 2020.

Argued on: 26/02/2019.

Judgment on: 18/11/2020.

N. Bandula Karunarathna J.

The Petitioner filed this Writ Application seeking *inter alia*;

- a) Grant and issue mandate in the nature of a Writ of Certiorari quashing the decision made by the 10th Respondent to interdict the Petitioner.
- b) Grant and issue mandate in the nature of a Writ of Certiorari quashing the decision made by the 10th Respondent to frame serious charge against the Petitioner.
- c) Grant and issue mandate in the nature of a Writ of Certiorari quashing the purported charge sheet dated 16-10-2015 (P5) issued to the Petitioner by the 10th Respondent.
- d) Granting and issue mandate in the nature of a Writ of Prohibition prohibiting the 1st Respondent and/or any other Respondent/s and/or any other authority from proceedings with the disciplinary inquiry initiated/contemplated by the purported charge sheet dated 16-10-2015 (P5) issued to the Petitioner by the 10th Respondent.
- e) Grant and issue mandate in the nature of Writ of Prohibition prohibiting the 1st Respondent and/or any other Respondent/s and/or any other authority from taking any further disciplinary action against the Petitioner in pursuance of the purported charge sheet dated 16-10-2015 (P5) issued by the 10th Respondent.

The Petitioner states that the Petitioner was appointed as a banking assistant, of the 1st Respondent-Bank on contract basis for one year (from 01-07-2014 to 01-07-2015) in terms of the appointment letter (P1) the disciplinary rules of the 1st Respondent-Bank were applicable to the Petitioner (vide paragraph No.02 of P1). The Petitioner was interdicted by the 10th Respondent for an alleged embezzlement of Rs.50,000/-.

The letter of interdiction (P2) is dated 27.07.2015 accordingly it has been issued after 26 days from the expiration of the Petitioner's contract of employment with the 1st Respondent-Bank. Subsequently, the Petitioner was served with a purported charge sheet dated 16-10-2015 (P5) by the 10th Respondent.

It is the position of the Petitioner that though the Petitioner's one year contract had expired, the Petitioner was not informed of any extension of her contract. Subsequently, the Petitioner was served with a letter of interdiction which implies that she was treated as a permanent employee by the 1st Respondent-Bank. The Petitioner relies on the pay slips marked P3 (a) and P3 (b), wherein the Petitioner has been identified as a grade VI employee of the 1st Respondent-Bank to substantiate her position that she was treated as a permanent employee by the 1st Respondent-Bank at the time the letter of interdiction was issued. It is the position of the Petitioner that only the permanent employees were categorized into Grades by the 1st Respondent-Bank;

However, the 1st Respondent-Bank denies the aforesaid position of the Petitioner and states that the Petitioner's contract of employment was not extended by the 1st Respondent-Bank. Hence, the Petitioner's contract of employment with the 1st Respondent-Bank came to an end with effect from 01-07-2015 and the Petitioner was not an employee of the 1st Respondent-Bank after that date.

Accordingly, when the letter of interdiction dated 27-07-2015 (P2) and the purported charge sheet dated 16-10-2015 were issued, the Petitioner was not an employee of the 1st Respondent-Bank and there was no contract of employment between the Petitioner and the 1st Respondent-Bank. In the circumstances the Petitioner states that if the Respondents' position is correct (that the Petitioner was not treated as a permanent employee and her contract of employment came to an end with effect from the expiration of her one year contract with the 1st Respondent-Bank), it could be emphasized that the letter of interdiction (P2) and the purported charge sheet (P5) have been issued without any legal authority. Hence, the 1st Respondent-Bank has no authority to interdict the Petitioner and frame charges against her unless the Petitioner is recognized as an employee of the 1st Respondent-Bank.

The Petitioner states that the 10th Respondent has no Authority to interdict the Petitioner. According to the Rule 5.1 of the aforesaid disciplinary code (P4), it is the relevant disciplinary authority that has the power to interdict an employee of the 1st Respondent-Bank. However, as per annexure 1 of the said disciplinary code [which is separately marked as P4 (b)], it is the 9th Respondent (General Manager) who is the disciplinary authority of the employees who are categorized as Grade 1 and above.

As the Petitioner has been treated as a Grade VI employee [vide P3 (a), P3 (b)], it is abundantly clear that the 9th Respondent is the Petitioner's disciplinary authority. The letter of interdiction (P2) has been issued by the 10th Respondent and the aforesaid letter does not state or disclose or make any reference to any other authority or person who made the decision to interdict the Petitioner. Hence, it is crystal clear that the decision to interdict the Petitioner has been made by the 10th Respondent himself and as pointed out above, it is only the 9th Respondent who had the authority to interdict the Petitioner.

The Petitioner states that the 10th Respondent has no authority to issue the purported charge sheet marked P5. In terms of rule 15.1 of the disciplinary code (P4), punishments which are categorized as rigorous punishments are imposed in respect of serious charges (charges framed under schedule A). According to annexure 1 of the disciplinary code (which is separately marked P4 (b)), it is the 9th Respondent who is the disciplinary authority who could impose rigorous punishments on the employees belonging to Grade I to Grade III-III (which includes Grade VI) employees. Accordingly, it is clear that the 9th Respondent who has the authority to frame serious charges against and/or to issue a charge sheet containing serious charges to an employee belonging to Grade VI.

The Petitioner also states that in terms of the circular marked P6, the 10th Respondent has no authority to sign the letter of interdiction (P2) and the purported charge sheet (P5)

The Petitioner states that the failure to communicate a decision is construed as no such decision was ever made. This application was instituted in March 2016 and after the court, having being satisfied with the submissions made on behalf of the Petitioner issued notices to the Respondents. The 1st Respondent-Bank addressed the letter dated 24-08-2016 (R3) to the Petitioner stating that it was the 9th Respondent who had taken the decision to interdict the Petitioner. Furthermore, the Respondents' have furnished the document marked R1 together with their statement of objections with a view to arguing that it was in fact the 9th Respondent who took the decision to interdict the Petitioner. It is the submission of the Petitioner that the aforementioned documents (R1 and R3) are an afterthought and are prepared for the purpose of this case and if the 1st Respondent had decided to interdict the Petitioner as stated in R1 and R3, such decision should have been communicated to the Petitioner at the time such decision was taken.

The Petitioner emphasizes that the amended charge sheet R3 has also been issued without legal authority and in any event such an amended charge sheet cannot have a life of its own as it is an improvement of the original charge sheet. The 1st Respondent –Bank has taken up the position that the purported charge sheet marked P5 was subsequently amended (R4) and therefore even if the original charge sheet marked P5 is quashed by this court the amended charge sheet (R4) remains valid. In terms of rule 7.9 of the disciplinary code (P4) the charge sheet can only be amended by the disciplinary authority and the amended charge sheet marked R4 has been issued by the Personal Manager and not the 9th Respondent who is the disciplinary authority of the

Petitioner. Hence, the Petitioner states that even the amended charge sheet marked R4 is not valid in law.

The Petitioner believes that the Petitioner's termination of services or dismissal does not make this application futile because if the charge sheet which is challenged in these proceedings is quashed, that itself makes the termination also invalid for the reason that the termination has been done based on the charges contained in the said charge sheet. In other words, the said charge sheet is a nullity for want of authority, then the termination has no validity in law because nothing flows from a nullity.

The Respondent whilst denying the position of the Petitioner has stated as follows:

- (a) The Petitioner was recruited on 01/07/2014 as a Banking Assistant for a period of one year as per document marked P1 and the said contract has not been extended by the 1st Respondent;
- (b) Upon the preliminary investigation, it was founded that the Petitioner had defrauded a sum of Rs.50,000/- from the 1st Respondent;
- (c) Having been taken a decision to interdict the Petitioner the letter of interdiction dated 27/07/2015 was served on her (vide R1);
- (d) Subsequently, the charge sheet marked P5 was issued to the Petitioner;
- (e) An inquiring officer was appointed to inquire into the charges. The Petitioner had moved for time on several occasions citing various excuses (vide R2a -R2f);
- (f) The Petitioner was served with an amended charge sheet after notifying the same to the Petitioner (vide R3and R4);
- (g) Having replied the said charge sheet, the Petitioner had not cooperated with the Respondent to conclude the inquiry (vide R5a-R5d);
- (h) The Petitioner has informed the 1st Respondent that she would not participate the inquiry until the Writ Application is concluded (vide R6).

The Respondents state that thereafter, a domestic inquiry was held against the Petitioner based on the amended Charge Sheet marked as R4. The inquiring officer found the Petitioner guilty for all the charges. Thereafter, the 1st Respondent terminated the services of the Petitioner with

effect from 27/07/2015 by the letter dated 22/02/2019. The Petitioner has preferred an application to the Labour Tribunal against the decision of the 1st Respondent.

The Respondents state that the Bank has issued an excess amount of Rs.50,000/- on 13/05/2015. It was found that the Petitioner had deposited a sum of rupees 30,000/- to her account in Ambalatota Branch (A/C No.1-0110-01-32756) and balance 20,000/- to her mother's (Mrs.M.I.B. Pieris) Account (Account No.1-0011-01-83393). It is important to note that utmost confidence is expected from an employee of the Bank. An officer whose conduct is questionable is not fit to work in a bank.

In the case of BOC v Maniwasagam 1995 2 SLR 79, the Supreme Court held that the ex-bank officer had clearly forfeited the confidence reposed on him as an employee of the Bank and therefore, the termination was justified. The Court cited with approval the following quotation of Siva Selliah J. in the case of Sithamparanathan v. Peoples Bank 1986 – 1 SLR 411; where His Lordship held;

"It is needless to emphasize that the utmost confidence is expected of any officer employed in a Bank ... he owes a duty both to the Bank to preserve its fair name and integrity and to the customer whose money lies in deposit with the Bank. Integrity and confidence thus are indispensable and where an officer has forfeited such confidence has been shown up as being involved in any fraudulent or questionable transaction, both public interest of the bank demand that he should be removed from such confidence".

In this instance case, I believe that the Petitioner acted fraudulently and therefore, serving the letter of interdiction, charge sheet and subsequent termination has been done in terms of the law.

It is evident that the Petitioner has subsequently informed the 1st Respondent that she would not participate the inquiry until this Writ Application is concluded. The conduct demonstrate that the Petitioner did not want to participate the inquiry due to the reasons best known to the Petitioner. This conduct of the Petitioner deprives any relief from a Writ Court.

In the case of Jayaweera vs. Assistant Commissioner of Agrarian Service (1996) 2 SLR 70 at 73 the Court of Appeal held:

"Petitioner seeking a prerogative Writ is not entitled to relief as a matter of course or as a matter of right or as a routine. Even if he is entitled to relief still court has discretion to deny him relief having regard to his conduct, delay, laches, waiver, submissions of jurisdiction are all valid impediments which stand against the grant of relief."

Subsequent to a thorough analysis of the facts of the case, it could be seen that the Application of the Petitioner is futile. As per the document marked R1, the decision to interdict and serve the charge sheet to the Petitioner was taken by the General Manager of the 1st Respondent. The Charge Sheet marked P5 was later amended and the Petitioner was served with the amended Charge Sheet dated 26/08/2016 marked as R4.

The domestic inquiry proceeded subsequently based on the amended charge sheet. The inquiring officer found the Petitioner guilty for the said charges. The Respondent filed the amended Charge Sheet marked as R4. The Petitioner has not taken steps to amend the Petition and challenge the amended Charge Sheet. Challenging P5 is futile and therefore, it would be only an academic exercise.

As a general rule, Certiorari is not granted where the end result would be futility, frustration, injustice and illegality. (Sideek V Jacolyn Seneviratne 1984 1 SLR 83 and Air Vice Marshall Elmo Perera v Liyanage 2003 1 SLR 331)

The Amended charge sheet marked R4 has been issued by the Personal manager. The said charge sheet marked R4 is an independent complete charge sheet. It contains charges, list of witnesses and documents. By the charge sheet R4, the Petitioner was called upon to show cause to the said charge. Therefore, the submission that the amended charge sheet marked as R4 cannot have a life of its own is without any basis.

Further, it could be seen that the Petitioner has exercised effective alternative remedy provided by law. It is trite law that where a person has remedy provided by the law, first he has to recourse to such remedy. The Petitioner has exercised the remedy by filing an application in the Labour Tribunal. In the case of Hendrick Appuhamy V. John Appuhamy 69 NLR 29 where the Court of Appeal refused to intervene on the basis that the action was not maintainable since the Petitioner should have sought his remedy under the Paddy Lands Act and should have filed action in the District Court. This has been followed in the case of Mahanayake v. Chairman Ceylon Petroleum Corporation and others I2005J 2 SLR at 193.

The Petitioner has submitted that the decision of the 10th Respondent has no force of law. The decision to interdict the Petitioner was taken by the General Manager of NSB. The General Manager has delegated his authority on disciplinary actions to the Personal Manager by P6. It is pertinent to note that no prejudice has caused to the Petitioner even if the Petitioner could highlight a defect. (Seneviratne v UC Kegalle 2001 3 SLR 105).

I further note that the disciplinary rules of the 1st Respondent is part of the contract of employment. All steps have been taken against the Petitioner in terms of the said contract. It has not been established by the Petitioner that the interdiction and subsequent issuance of charge sheets has statutory flavor.

In the case of Gawarammana v Tea Research Board and Others [2003 3 SLR 120], the court held that the employment of the Petitioner under the Tea Research Institute was contractual and as such no writ lies to remedy grievances from an alleged breach of contract or failure to observe the principles of natural justice. According to the judgment, the signing of documents by a different officer does not attract Writ jurisdiction.

The Petitioner is before the Labour Tribunal and has taken up the position that termination of the service is contractual and is subject to the disciplinary and administrative rules of the NSB. Furthermore, the fact that the Petitioner has filed an application in the Labour Tribunal demonstrate that the Petitioner also admits that the relationship with the 1st Respondent is one of contractual nature.

In the circumstances aforesaid, the application of the Petitioner is futile and is hereby dismissed with cost.

Judge of the Court of Appeal

Janak De Silva , J

I agree.

Judge of the Court of Appeal