

**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* in the terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Kumara Sirimal Punchihewa,  
No. 335/04 Bulathgama,  
Balangoda.

Presently at,  
No. 43/120, Soyza Waththa,  
Dungaloitiya,  
Thalahena,  
Negambo.

**PETITIONER**

**Vs.**

**Court of Appeal Case No:**  
**CA/WRIT/535/23**

1. The Minister of Justice, Prison Affairs and Constitutional Reforms,  
The Ministry of Justice, Prison Affairs and Constitutional Reforms,  
No. 19, Sri Sangaraja Mawatha,  
Colombo 10.
2. The Secretary,  
The Ministry of Justice, Prison Affairs and Constitutional Reforms,  
No. 19, Sri Sangaraja Mawatha,  
Colombo 10.

3. The Chairman,  
Public Service Commission,  
No. 1200/9 Rajamalwatta Road,  
Battaramulla.
4. The Secretary,  
Public Service Commission,  
No. 1200/9 Rajamalwatta Road,  
Battaramulla.
5. The Secretary,  
The Administrative Appeals Tribunal,  
Silve Lane, Sri Jayawardenapura,  
Kotte.
6. The Commissioner General of Prison,  
Department of Prison,  
No. 150, Baseline Road,  
Colombo 09.
7. The Secretary to the Cabinet of Ministers,  
Office of the Cabinet of Ministers,  
Lloyd's Building,  
Sir Baron Jayathilaka Mawatha,  
Colombo 01.
8. The Chairman,  
The Committee on Public Petitions,  
Parliament of Sri Lanka,  
Sri Jayawardenapura,  
Kotte.
9. The Secretary,  
The Committee on Public Petitions,  
Parliament of Sri Lanka,  
Sri Jayawardenapura,  
Kotte.

10. The Secretary – to the Hon. Prime Minister,  
Prime Minister’s Office,  
No. 58, Sir Ernest De Silva Mawatha,  
Colombo 07.

**RESPONDENTS**

**Before:** S.U.B. Karalliyadde, J  
Mayadunne Corea, J

**Counsel:** K. Ashoke Fernando instructed by A. R. R. Siriwardena for the  
Petitioner.  
Ishara Madarasinghe, S.C. for the 1<sup>st</sup>, 2<sup>nd</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup>  
Respondents.

**Supported on:** 12.12.2024

**Decided on:** 30.01.2025

**Mayadunne Corea J**

The reliefs the Petitioner prays for are as follows.

- “(b) *Grant and issue a writ of certiorari to quash the vacation of post of the Petitioner vide the notice of post bearing no. කොට්ඨාස/මාලි/168/2006 dated 04.04.2006 marked as P2;*
- (c) *Grant and issue a writ of mandamus compelling the Respondents to initiate steps in the preparation of a Cabinet paper and obtain the approval of the Cabinet of Ministers to overrule the decisions of the Public Service Commission dated 27.06.2007 (P9) and 13.10.2014 (P 15) in the light of the recommendation made by the Committee on Public Petitions dated 07.07.2014 (P14) and in the light of guidelines stipulated in the Circular bearing no. E&O/AC/1/8/6 directed by the Secretary to the President dated 10.10.2014 marked as P 17;*

(d) *Order the 1st, 2nd and 6th Respondents to retire the Petitioner with effect from 04.04.2006;”*

The facts of the case briefly are as follows. The Petitioner was employed as a jailor guard from 11.12.1985 until 04.04.2006. The Petitioner states that he did not report to work from 13.02.2006 due to ill health. He received a notice of vacation of post dated 04.04.2006.

Upon receiving the notice of vacation of post, the Petitioner appealed to the Public Service Commission through his disciplinary authority (the Commissioner General of Prison). The Commissioner General of Prison recommended the reinstatement of the Petitioner and directed the appeal to the Public Service Commission. The Public Service Commission rejected the appeal by the letter marked as P9. The Petitioner has filed a Writ Application bearing No. CA WRIT 473/2008, where upon the Court of Appeal rejected the Application.

The Petitioner has subsequently sought intervention from various officials/institutions. Namely, the Commissioner General of Prison, Committee on Public Petitions, the Director General - Establishment, the Hon. Speaker, the Hon. Prime Minister, His Excellency the President and the Minister of Justice. However, the Public Service Commission has rejected the recommendations. Hence, this Application.

### **Respondents' objections**

The Respondents raised several objections pertaining to the issuance of notices. Among other things the Respondents argued that the Petition should fail as the Petitioner is guilty of

- Undue delay
- Misrepresentation of material facts.
- The Petitioner has sought the same relives in a previous Writ Application

This Court will consider the objections raised by the Respondents and the submissions of the Petitioner.

### **The Petitioner's case**

To understand the issue before the Court clearly, it is pertinent to consider the history of the Petitioner's grievance. The Petitioner was a jailor guard attached to the Colombo remand prison. He had been appointed as a jailor guard on 02.12.1985 (P1). The parties are not at variance that the Petitioner had failed to report to work from the 13.02.2006. The Petitioner submits that he had fallen sick and it is his contention that he had sent a telegram informing his sickness to the superior over the phone. It is further contended that despite informing, the Petitioner has been sent on vacation of post. The said letter of vacation of post had been signed by the Superintendent of Prisons, Colombo remand prison. The said letter is dated 04.04.2006 (P2). The Petitioner by his prayer (b) is seeking a Writ of Certiorari to quash the said decision.

### **Want of necessary parties**

It is appropriate at this stage to consider the prayer (b) of the Petition which is reproduced here with;

*“(b) Grant and issue a writ of certiorari to quash the vacation of post of the Petitioner vide the notice of post bearing no. කොට්ඨාස/මාලි/168/2006 dated 04.04.2006 marked as P2”*

The Petitioner in his submissions urged the Court to quash the decision reflected in document marked as P2. However, this Court observes that the Petitioner has failed to make the author of P2 a party to this Application. The above-said order the Petitioner is seeking to quash by way of a *Certiorari* will directly affect the author of the said letter. Hence, in the view of this Court the author of the document sought to be quashed is a necessary party to this Application. Our Courts have constantly held that the Petitioner's failure to include necessary parties is fatal to a Writ Application.

A necessary party to a Writ Application was defined by Gamini Amaratunga, J. in *Wijeratne (Commissioner of Motor Traffic) v Ven. Dr. Paragoda Wimalawansa Thera and 4 others* (2011) 2 SLR 258

- 1) *The first rule regarding the necessary parties to an application for a Writ of Certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a Respondent to the application.*
- 2) *The next rule is that those who would be affected by the outcome of the Writ application should be made Respondents to the application.*
- 3) *A necessary party to an application for a Writ of Mandamus is the officer or the authority who has the power vested by law to perform the act or the duty sought to be enforced by the Writ of Mandamus. All persons who would be affected by the issue of Mandamus also shall be made Respondents to the application.*

In ***Rawaya Publishers and another v. Wijeyadasa Rajapaksa (2001) 3 SLR 213*** it was held,

*“In the context of writ applications, a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence is necessary to a complete and final decision on the question involved in the proceedings... If they are not made parties then the petition can be dismissed in limine. It has also been held that person vitality affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity (vide Prabodh Derma v. State of Uttara Pradesh AIR 1985 – SC 167 also see Encyclopedia of Writ By P.M. Bakshi)’”*

This Court will now consider the objection raised by the Respondents pertaining to prayer (b).

### **The Petitioner has sought the same reliefs in a previous Writ Application**

The Respondents also contend that when the Petitioner was sent the notice of the vacation of post the Petitioner at the outset failed to appeal to the relevant authority namely, the Prisons Commissioner General. Instead, he had submitted an appeal to the Public Service Commission. The Public Service Commission had dismissed the appeal (P9). Thereafter, the Petitioner had appealed against the said order to the Administrative Appeals Tribunal. The said tribunal by its Order in 2007 had dismissed the appeal (P11). The Petitioner thereafter filed a Writ Application seeking to quash the said decisions in the Court of Appeal bearing No. CA Writ 473/2008. The Court of Appeal then delivered its decision on

09.07.2010 and dismissed the Writ Application. The Petition of the said Writ Application is marked as P12A. In the said Petition, the Petitioner has pleaded the vacation of post letter marked as P2 and further has pleaded that they have canvassed the validity of the said letter before the Public Service Commission and the Administrative Appeals Tribunal and has sought to quash the Administrative Appeals Tribunal order. But the Court of Appeal after hearing both parties had made its decision and dismissed the Writ Application. It is the contention of the Respondents that in this background the Petitioner's contention to quash the letter sending him on vacation of post amounts to recanvassing the same ground yet again in the Court of Appeal.

In considering the said objection this Court observes that the Petitioner originally went to the Public Service Commission challenging the decision on P2 whereby he was sent on vacation of post. Being unsuccessful, he impugned the order of the Public Service Commission before the Administrative Appeals Tribunal. The main subject was again the vacation of post letter and whether the Public Service Commission's decision not to set aside the said vacation of post Order. Hence it is the view of this Court that the Petitioner by this Application is again indirectly challenging the said processes of him been sent on vacation of post and the decision to send him on vacation of post. Therefore, it is our view, that the Petitioner is attempting have another bite of the same cherry and is directly canvassing the decision to send him on vacation of post. Accordingly, this Court is inclined to uphold the objection raised by the Respondents.

At this stage, it is also appropriate to note that though the Petitioner contends that he has informed his inability to report to work by a phone call, the Petitioner has nowhere submitted any proof of the same. Further, we observe that the Petitioner has failed to report to work from 13.02.2006. The vacation of post letter had been issued dated 04.04.2006 which means for nearly two months the Petitioner had failed to submit any document to the prisons authority to substantiate his claim of illness. The document marked as P3, which is a copy of a receipt of a telegram, does not reflect the correct date, month or the year it had been sent nor does it say to whom it is addressed.

It is also observed that there is a medical issued by an ayurvedic dispensary dated 03.04.2006. However, strangely the medical states that the Petitioner had been treated until 04.04.2006. The Petitioner's Counsel failed to explain to this Court as to how a medical issued on the 3<sup>rd</sup> can state that the Petitioner has obtain treatment on the 4<sup>th</sup>, as 4<sup>th</sup> is the day after issuance of the medical. However, leaving it as it may this Court will now consider the next objection.

### **Delay in making this Application**

This Court will now consider the submissions of the learned Counsel of the Petitioner pertaining to the reliefs he is seeking namely, prayer (c). The learned Counsel is seeking a Writ of Mandamus, to give effect to the document marked as P14. This is a letter issued by Public Petitions Committee Office of the Sri Lanka Parliament. The letter is dated 07.07.2014 and is addressed to the Public Service Commission. The recipient of the said letter had replied to the same by letter dated 13.10.2014 and had informed the committee of their inability to reconsider the decision to send the Petitioner on vacation of post. It is observed that when the reply to P14 is received and the reply is marked as P15, there is no further proceedings pertaining to the request made in P14.

The Petitioner has not sought to quash P15. Hence, P15 is now in force and as I have observed above, the request in P14 comes to an end with the refusal to accede to the said request by P15.

The Petitioner then relied on P17, a circular issued by the Presidential Secretary. In the said circular it is stated that if the recommendations of the institution stipulated therein cannot be carried out, then it is advised to forward a cabinet paper through the relevant subject minister to appraise the cabinet. Though the Petitioner was not clear on the exact relief he seeks, even if we are to consider that he is seeking a Writ of mandamus to give effect to the instruction laid down in P17, still the said procedure should have been done in 2014. The Petitioner has invoked the Writ jurisdiction of this Court in the year of 2024 and is attempting to give effect to P17 which is ten years after the recommendation of the Public Petitions Committee being made and refused by the Public Service Commission. It is the view of this Court that the Petitioner has failed to explain this inordinate delay of ten years. Accordingly, this Court upholds the objection of the Respondents on delay.

The parameters for considering delay in Writ applications were laid down in ***Biso Menika v Cyril de Alwis* 1982 (1) SLR 368** as follows:

*“a writ of certiorari is issued at the discretion of the Court. It cannot be held to be writ of a right or one issued as a matter of course. But exercise of this discretion by this 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 disintitiled 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 sleep doer 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 order which the applicant seeks to have quashed”.*

In keeping with the above decision, this Court is of the view that the Petitioner has failed to explain his delay.

Accordingly, for the reasons stated above, this Court is of the view that the Petitioner has failed to demonstrate a *prima facie* case to obtain notice. Hence, this Court is not inclined to grant notice and proceeds to dismiss this Application.

**Judge of the Court of Appeal**

**S.U.B. Karalliyadde, J**

I agree

**Judge of the Court of Appeal**