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* and *Mandamus* under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 0033-21

Thalaththani Ralalage Maduranga Rathnasiri
No. 23/4,
Makola South,
Makola.

PETITIONER

Vs

1. Mr. Nishantha Ulugetenne
   Commander of the Navy,
   Sri Lanka Navy,
   Naval Headquarters,
   Colombo.

1A. Mr. Priyantha Perera
   Commander of the Navy,
   Sri Lanka Navy
   Naval Headquarters
   Colombo.

2. Mr. Piyal De Silva
   Former Commander of the Navy,
   Sri Lanka Navy,
   Naval Headquarters,
   Colombo.

3. Mr. Lakmal De Silva
   SC 28699
   Fleet Chief,
   Sri Lanka Navy,
   Naval Headquarters,
   Colombo.

4. Mr. Sanath Uthpala
   Commandant,
   Volunteer Naval Force,
   Volunteer Naval Headquarters,
   Welisara.

4A. Mr. Senaka Senevirathne
   Commandant,
   Volunteer Naval Force,
   Volunteer Naval Headquarters,
   Welisara.

4B. Mr. Dammika Kumara
   Commandant,
   Volunteer Naval Force,
   Volunteer Naval Headquarters,
   Welisara.

5. Secretary to the Ministry of Defense
   Ministry of Defense
   No. 15/5, Baladaksha Mawatha,
   Colombo 03.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Chamara Nanayakkarawasam with Geeth Karunarathna for the Petitioner.

Ms. Amsara Gajadheera, S.C. for the Respondents.

Written submissions tendered on:

18.07.2023 by the Petitioner

25.08.2023 by the Respondents

Argued on: 22.05.2023

Argument concluded by way of written submissions.

Decided on: 27.03.2024.

S.U.B. Karalliyadde, J.

The Petitioner is an Officer in the rank of Lieutenant in the Volunteer Naval Force in the Sri Lanka Navy and served as a hospitality manager in several naval bases which are administered by the Sri Lanka Navy. On 05.01.2019, the Petitioner by a letter marked as P-7 addressed to the Commander of the Navy, requested to be placed him on compulsory unpaid leave with effect from 26.02.2019. Nevertheless, no specific period for which he requires leave has been mentioned in P7. By the letter dated 25.03.2019 marked as P-8 issued by the Acting Commanding Officer of the Volunteer Naval Headquarters, the Petitioner was informed that his request for compulsory unpaid leave was approved by the Commander of the Navy. During his compulsory unpaid leave period, he faced the written and practical tests for his next promotion to the rank of Lieutenant Commander and also participated in the weekly camps held at the Naval

Base in Welisara. On 25.12.2019 by a letter marked as P-11, the Petitioner sought permission from the Commander of the Navy to report back to the active service. However, by a letter dated 19.02.2020 marked as P-12 issued on behalf of the then Commander of the Navy (the 2nd Respondent) the Petitioner was informed that his request to report for active service was refused by the 2nd Respondent, nevertheless, P-12 does not give any reason to support the 2nd Respondent's decision. The Petitioner again sought permission to report for work from the incumbent Commander of the Navy (the 1st Respondent) on 05.08.2020 by a letter marked as P-13 but once again his request was rejected by a letter dated 16.09.2020 marked as P-14 by the 1st Respondent without assigning any reasons. The Petitioner challenges in the instant Application the decisions of the 2nd Respondent (P-12) and the 1st Respondent (P-14) not to allow the Petitioner to report back for work on the basis that those decisions are *ultra vires*, illegal, contrary to the Navy Act and the Regulations, malicious, vindicative, devoid of legal reason, violative of principles of Natural Justice, frustrative of the Petitioner's legitimate expectations, arbitrary, unreasonable, irrational, capricious and unfair.

In this Writ Application, the Petitioner is seeking the following reliefs*, inter alia*,

a) For the grant and issuance of an order in the nature of Writ of Certiorari quashing the decision of the 1st Respondent contained in P-14
b) For the grant and issuance of an order in the nature of Writ of Certiorari quashing the decision of the 2nd Respondent contained in P-12
c) For the grant and issuance of an order in the nature of Writ of Mandamus directing the 1st and 4th Respondents to permit the Petitioner to report for active service in the Sri Lanka Volunteer Naval Force

d) For the grant and issuance of an order in the nature of a Writ of Mandamus directing the 1st and 4th Respondents to pay the Petitioner his salary, allowance and other emoluments with effect from February 2020

By way of preliminary objections, the learned SC appearing for the Respondents argues that this Writ Application cannot be maintained on several grounds. Firstly, the learned SC argue that the Petitioner is guilty of laches and has failed to explain the inordinate delay. However, the Petitioner in his Petition to this Writ Application and Counter Affidavit, has duly explained the reasons for the delay in seeking redress of this Court such being that the non-functioning of the Court due to the Covid-19 pandemic situation prevailed in the country back then. The Court will accept the said position of the Petitioner and conclude that the delay has been explained by the Petitioner to the satisfaction of the Court.

Secondly, the learned SC argues that the Petitioner is barred from seeking reliefs from the Court as he had failed to exhaust the statutory remedy available to him as provided in the Navy (Redress of Grievances) Regulations of Gazette No.10, 431 of 01 August 1952 marked as R-5 (the Regulations). The Regulations provide that,

> *"Where an officer is aggrieved by any action of and is unsuccessful in obtaining redress from, his Commanding Officer, he may make a written appeal for redress to the Commander of the Navy, and where he is aggrieved by any action of the Commander of the Navy, either in respect of his appeal or in respect of any other matter, he* ***may*** *make a written appeal to His Excellency the President. An order made by His Excellency the President on any such appeal shall be final."* [Emphasis added]

Accordingly, it appears to this Court that the Regulations provide an adequate remedy for the Petitioner. Under such circumstances, it is pertinent to consider whether the Petitioner is entitled to relief from this Court bypassing the remedy provided by the Regulations. When perusing the language used in the Regulations, the Court is attentive to the inclusion of the word **"may"** which is generally used to denote a permissive provision and implies that some degree of discretion is vested in the aggrieved party. In *Rajender Mohan Rana & Ors Vs Prem Prakash Chaudhary & Ors*[1], it was held that,

> *"Naturally, the word 'may' mean discretion and is not mandatory. In the present case, we do not see any reason why the word 'may' in Section 55 should be read as 'must' or 'shall.'* ***Courts do not interpret the word 'may' as 'shall' unless such interpretation is necessary and required to void absurdity, inconvenient consequence or is mandated by the legislature's intent, which is collected from other parts of the statute****."* [emphasis added]

The learned Counsel appearing for the Petitioner quoted *Amarasinghe Vs. Azath Sally*[2] in which their Lordships of the Court of Appeal held that,

> *"Provisions for some specific statutory remedy cannot be considered as a limitation of other remedies, provided by law,* ***especially in the absence of any specific provisions excluding such remedies.****"* [emphasis added]

Accordingly, it is apparent that the Regulations do not include any specific words which exclude the other remedies and the legislature intends that the Regulations must not affect the jurisdiction of any competent court. In terms of Section 13D of the Navy Act,

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[1] LPA No. 554/2011
[2] (2004) 2 SLR 159

any person subject to the Naval law could be tried for any civil offence committed before a court exercising civil jurisdiction. Further, Section 132 of the Navy Act provides that a court exercising writ jurisdiction could issue writs in respect of decisions of any naval Officer exercising judicial powers under the Navy Act. Under such circumstances, it is clear that the Petitioner in the instant Application is not restricted to seek other remedies prescribed by law including writs. However, the general principle is that since the prerogative Writs are discretionary remedies, the petitioner is not entitled to invoke the Writ jurisdiction when there is an alternative remedy available to him. Therefore, Writ Applications are not maintainable under Article 140 where an equal, efficient, and adequate alternative remedy is available[3]. Therefore, the next question that arises is on what grounds an aggrieved party could invoke Writ jurisdiction in such circumstances. In *Pinnaduwage Baby Mallika Chandraseana Vs C.W Abeysuriya, Acquiring Officer, Greater Colombo Flood Control Project, Kaduwela Divisional Secretariat Division, Sri Lanka Land Development Corporation*[4], Justice Mohammed Laffar emphasized that,

> *"It is to be noted that, the* ***alternative remedy is, always, not a bar to invoke the Writ jurisdiction of this Court****. If the Court is of the view that, the alternative remedy is inadequate,* ***where there has been a violation of the principle of Natural Justice,*** *where the impugned order is without jurisdiction and there are errors on the face of the record, the Petitioner is permitted to invoke the Writ jurisdiction before exhausting the alternative remedies provided in law."* [emphasis added]

[3] *Linus Silva Vs. The University Council of the Vidyodaya University* [64 NLR 104]
[4] CA/WRIT/457/2019

Justice Arjuna Obeyesekere in the case of *Wickremasinghage Francis Kulasooriya Vs. Office ill Charge, Police Station Kirindiwela*[5], held,

> *"The question that arises for consideration in this application is what should a Court exercising Writ jurisdiction do, when confronted with an argument that an alternative remedy is available to the Petitioner and that such alternative remedy should be resorted to?* ***This Court is of the view that a rigid principle cannot be laid down and that the appropriate decision would depend on the facts and circumstances of each case****. That said, where the statute provides a specific alternative remedy, a person dissatisfied with a decision of a statutory body should pursue that statutory remedy instead of invoking a discretionary remedy of this Court.* ***That remedy should be equally effective and should be able to prevent an injustice that a Petitioner is seeking to avert.*** *Furthermore, if the Writ jurisdiction is invoked where an equally effective remedy is available,* ***an explanation should be offered*** *as to why that equally effective remedy has not been resorted to."* [Emphasis Added]

In the instant case, the Petitioner argues that the exhaustion of the statutory remedy provided in the Regulations cannot be considered an effective and adequate remedy available to him on three grounds.

First, the Petitioner argues that preferring an appeal to His Excellency the President cannot be considered as an effective alternative remedy available to him because it had to be logged through the 2nd Respondent who allegedly harboured malice against the Petitioner. However, it is observed by this Court that according to the Regulations, when an officer is aggrieved by any action of the Commander of the Navy, he can directly

[5] CA (Writ) Application No. 3381-2011

make a written appeal to His Excellency the President. There is no requirement in the Regulations that such appeal must be submitted through the Commander of the Navy. Therefore, I am of the view that the above-stated position of the Petitioner is devoid of merit.

Secondly, the learned Counsel appearing for the Petitioner argues that in such an appeal no hearing would be granted to the Petitioner and His Excellency the President would act upon the observations called from the Commander of the Navy which this Court could admit as a viable reason why the statutory remedy of preferring an appeal to His Excellency the President would not be effective, appropriate and able to prevent the alleged injustice caused to the Petitioner.

Thirdly, the learned Counsel argues that even to make an appeal to His Excellency the President the Petitioner was unaware of the basis on which the 1st and 2nd Respondents arrived at their impugned decisions until the Respondents filed their Statement of Objections in this Application. There is no material before this Court for its satisfaction that reasons were provided for the 1st and 2nd Respondents' decisions mentioned in P12 and P14. The Court could accept that since the 1st and 2nd Respondents failed to give reasons for their decisions the Petitioner had prevented from seeking alternative remedy provided in the Navy Act, namely preferring an appeal to the President.

In *Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai & Ors*.[6], wherein the Apex Court of India held,

> *"Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.*

[6] (1998) 8 SCC 1.

> *But the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction.* ***But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.****"* [Emphasis added]

In *Harbanslal Sahnia v Indian Oil Corpn. Ltd*[7], wherein the Apex Court carved out the exceptions mentioned in *Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai & Ors*. (supra) as thus:

> *"In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights;* ***(ii) where there is failure of principles of natural justice;*** *or (iii) where the orders or proceedings are wholly without jurisdiction, or the vires of an Act is challenged."* [emphasis added]

It is trite law that the decision-makers have a duty to give reasons for the decisions they make. Lord Denning MR in *Breen Vs. AEU* [8] held that,

[7] (2003) 2 SCC 107
[8] 1971] 1 All E.R. 1148, 1154

"Indeed, to omit reasons is not only to take away the "good" in the administration but also to instill bad administration in society. The giving of reasons is a fundamental requirement of fairness and is necessary for the satisfaction of parties. The concepts of fairness, justice and reason are interchangeable and one cannot be achieved without the other. Reasons are the link between the decision and the mind of the decision maker."

Whenever there is a duty owed by one person to another, there is a correspondent right on that person to ensure that the duty is fulfilled. Accordingly, it is possible to enforce the duty to provide reasons as a constitutional right as well. Progressive legal thought has taken the stance that natural justice demands reasons for decisions even in the absence of an explicit statutory provision or legislation requiring them. According to Lord Donaldson MR in *R Vs. Civil Service Appeal Board, exp. Cunningham*[9],

"There is a principle of natural justice that a public law authority should always or even usually give reasons for its decision."

In addition, the current position seems to be that the courts are more likely to require justification or reasons for decisions if there is a right of appeal or judicial review. In *R Vs. Crown Court at Harrow, exp. Dave*[10], the Crown Court gave a decision without reason. There was an appeal. The decision was quashed for the absence of reasons; that absence made it impossible to exercise the right of appeal. In the case of *Mahabir Prasad Vs. State of U.P.*[11], the Supreme Court of India similarly held that,

[9] [1991] 4 All E.R. 310
[10] [1994] 1 All E.R. 315
[11] [1970]1 SCC 764

> *"if a quasi-judicial order is subject to appeal the law necessarily implies the requirement of reasons otherwise the right of appeal shall become 'an empty formality,"*

Furthermore, the duty to provide justification shall apply in cases where it is reasonable to assume that a misuse of authority has occurred. In *Padfield Vs. Minister of Agriculture, Fisheries and Food*[12], it was held, obiter, that the court could come to the conclusion that there was no rational reason if no reason was provided, even though the relevant Act did not specifically require one. In this case, the Minister's decision not to refer a take-over bid was challenged for irrationality. The House of Lords held,

> *"The absence of reasons for a decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all the other known facts and circumstances point overwhelmingly in favour of a different conclusion,* ***the decision-maker who has given no reasons cannot complain if the court draws the inference that he had no rational reason for his decision****."*[emphasis added]

In the instant Application, it manifests that the 1st and 2nd Respondents had failed to provide any reason for denying the Petitioner's request to report back to active service before the Petitioner invoked the jurisdiction of this Court. However, in the statement of objections filed by the Respondents have taken up the position that the decisions embodied in P-12 and P-14 were based on the letters of warning produced marked R3(a), R3(b) and R3 (c) issued on the Petitioner.

[12] [1968] 1 All E.R. 694 HL

- The letter of warning dated 04.07.2014 marked R3(a) has been issued to the Petitioner by the Commandant of the Sri Lanka Navy Ship "Parakrama" consequent to an incident that happened in the Lighthouse Restaurant on 04.08 .2013. The learned Counsel appearing for the Petitioner submits that as per the "Navy General 051349 January 2010" issued by the Sri Lanka Navy (C-1 annexed to the Counter Affidavit) the valid period of a letter of warning is 03 years and by the time of the impugned decisions embodied in P-14 and P-12 were taken the letter of warning produced marked R3(a) had already been expired.
- The learned Counsel appearing for the Petitioner drew the attention of the Court that the letter of warning dated 27.09.2018 produced marked as R3(b) had been issued by the 2nd Respondent while the Petitioner was serving in the Naval Rest Mihinthale and prior to the issuance of the said letter of warning R3(b) no inquiry or investigation was held against the Petitioner and no allegation or charge was communicated to the Petitioner and argues that even though the Respondents in their statement of objections claims that the said letter of warning R3(b) was issued after holding an inquiry no proof of such inquiry which led to the issuance of R3(b) was produced along with their statement of objections.
- In respect of the third Letter of Warning marked as R-3(c), the learned Counsel for the Petitioner argues that since the Petitioner was placed on compulsory unpaid leave, that letter of warning was never received by the Petitioner and the Respondents have also failed to provide any proof of acknowledgement of R3(c).

The learned Counsel appearing for the Petitioner further argues that if it is the position of the Respondents, that the decisions embodied in P-12 and P-14 were made as a punishment consequent to the letters of warning produced marked R3(a), R3(b) and R3(c) since the Petitioner was not given any hearing before impose the said punishment and he is unaware for how long this punishment will last and therefore the decisions of the 1st and 2nd Respondents not to permit the Petitioner to report back to work is disproportionate.

The learned Counsel appearing for the Petitioner further argues that the Petitioner had a legitimate expectation that he would be permitted to report back to duty when he makes such an application and that if there were disciplinary reasons disqualifying the Petitioner serving in the Voluntary Naval Force, the Respondents should not have approved his leave and instead the Petitioner should have been disciplinarily dealt with.

Under the above-stated circumstance, the learned Counsel appearing for the Petitioner argues that the impugned decisions taken by the 1st and 2nd Respondents denying the Petitioner's request to report back to active service is unfair, unreasonable, disproportionate, in violation of the Petitioner's legitimate expectations, tainted with malice and in violation of the principles of Natural Justice.

As discussed above, considering all the facts and circumstances I hold that the decisions contained in P12 and P14 taken by the 1st and 2nd Respondents without offering the Petitioner an opportunity to be heard and without assigning reasons are unfair, unreasonable, against the legitimate expectation of the Petitioner and natural justice. Therefore, the Court decides to issue Writs of Certiorari quashing the decisions containing in P12 and P14 as prayed for in prayer (c) and (d) to the Petition and a Writ of Mandamus compelling the 1st and 4th Respondents to permit the Petitioner to report

for active service of the Navy as prayed for in prayer (e) of the Petition. In prayer (f) the Petitioner has sought a Writ of Mandamus directing the 1st and 4th Respondents to pay him the salary, allowances and other emoluments since he sought permission to report for work in February 2020. Nevertheless, his request has been turned down. Therefore, the Court cannot order to pay him the salary for a period which he has not served, i.e. from 26.02.2019 to the date of reassuming duties. Nevertheless, that period should be considered as a period in which he was in active service in deciding all other benefits he should and should have been entitled to other than the salary. The period in which the Petitioner was unable to report to the active service should not affect the promotions of the Petitioner. The 2nd Respondent should personally pay Rs. 200,000/- to the Petitioner as compensation and Rs. 25,000/- as costs of this Application.

Application allowed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL