

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

In the matter of an Application for mandates in the nature of Writs of Certiorari and Mandamus under Article No.140 of the Constitution of the Republic of Sri Lanka.

C.A. (WRIT) Application No.418/2012

H.G.S.Gunawardana
No.111/5, 3rd Lane
Nikakotuwawatte
Aluvihare
Matale

PETITIONER

Vs.

1. Justice N.E. Dissanayake, Chairman
2. Edmund Jayasuriya, Member
3. E. Jinadasa, Member

1st to 3rd Respondents, all of
Administrative Appeals Tribunal
No.05, Dudley Senanayake Mawatha
Colombo 8.

4. Dayasiri Fernando
Chairman
5. Palitha M. Kumarasinghe
Member
6. S.C. Mannapperuma
Member
7. Ananda Seneviratne
Member
8. N.H. Pathirana
Member
9. S. Thillai Nadaraja
Member
10. M.D.W. Ariyawansa
Member
11. A. Mohamed Nahiya
Member
12. Sirimavo A. Wijerathne
Member

The 4th to 12th Respondents, all of

Public Service Commission
No.177, Nawala Road
Narahenpita
Colombo 05.

13. T.M.L.C. Seneratne
Secretary
Public Service Commission
No.177, Nawala Road
Narahenpita
Colombo 05.

14. G.P. Abey Keerthi
Member
Administrative Appeals Tribunal
No.05, Dudley Senanayake Mawatha
Colombo 8.

Added Respondent

Before: Janak De Silva J.

&

N. Bandula Karunarathna J.

Counsel: Sanjeewa Ranaweera for Petitioner.
Anusha Samaranayake, SDSG for 1st - 4th and 13th Respondents.

Written Submissions: Filed on 31st December 2012 for Appellant

Filed on 4th June 2019 for Respondents

Argued on: 17/06/2019

Judgment on: 16/11/2020

N. Bandula Karunarathna J.

The Appellant, a class II Grade I Accountant of the Sri Lanka Accountants' Service, was issued with a charge sheet by the Public Service Commission consisting of four charges on offences alleged to have been committed while he was carrying at the Zonal Forest Conservation Office, Nuwara Eliya. The charges were as follows:

- I. When you came on transfer from the Nuwara Eliya Range Forest Office you have forwarded, a fraudulently prepared salary particulars signed by yourself to the Matale District Secretary stating rupees one hundred thousand less in the balance of the property, loan thereby committing an

offence under item 12 of the first schedule of chapter XLVIII of the Establishments Code.

- II. As, stated in charge I, you have negligently, inadvertently or purposely submitted fraudulent salary particulars to the Matale District Secretary, thereby committing an offence under item 09 of the first schedule of chapter XLVIII of the Establishment Code.
- III. Due to the understatement of your property loan balance you have between October 2003 and 16.07.2007 or there about wrongfully used or misappropriated Rs.15,750/-, the amount of interest belatedly recovered, thereby committing an offence under item 07 of the first schedule of Chapter XLVIII of the Establishment Code.
- IV. By committing all or several or one of the offences stated in charges I to III you have brought disrepute to the post you hold and the public service in general.

The Petitioner has filed this application praying for a writ of certiorari to quash the Order marked P21 delivered by the 1st to 3rd Respondents, the Administrative Appeals Tribunal (hereinafter referred to as "the AAT") and for writs of mandamus compelling the AAT to reinstate the Petitioner from the date of his dismissal together with back wages and in the alternative to compel the AAT to hear and determine the appeal to the AAT afresh. The grievance of the Petitioner could therefore be summed up as follows:

- (a) The AAT order is based on inaccurate facts and observations;
- (b) The AAT has failed to consider the fundamental basis and/or the substance of the charges framed against the Petitioner was completely vitiated and/ or negated by the revelation that the error/ inaccuracy had in fact occurred in July 2003.
- (c) The AAT has failed to consider that the charges preferred against the Petitioner stemmed from an inadvertent human error that had occurred prior to the incident;
- (d) The AAT had not properly directed itself in evaluating the evidence and drawing inferences thereof and could not have come to the impugned findings if it had properly directed itself;
- (e) The AAT has failed to consider that the punishment meted out is unfair, unreasonable, excessive unjustifiable and is contrary to the principle of proportionality.

After a formal inquiry into the charges the Appellant was found guilty of all the charges and was dismissed from service.

The Appellant states that it was never denied by the Appellant that he signed the document giving his salary particulars and took the document with him when he went on transfer to Matale

District Secretariat. It is submitted that signing one's own salary particulars is not an offence according to the position held by the Appellant in the office and in the absence of any other Senior Officer. It was also not denied that the Particular document had stated his property loan balance one hundred thousand rupees less which the Appellant came to know subsequently.

However, The Appellant states that at the formal disciplinary inquiry there was no evidence to state that the Appellant had prepared a fraudulent document. While the said document was signed and taken by the Appellant in September 2003, the wrong property loan balance had been recurring in the computer since July 2003. The fact had been revealed in evidence and had been admitted by the Public Service Commission in its "Observations" addressed to the AAT by letter dated 24.12.2012 at paragraph VII.

The Appellant states that up to July 2003, all loan (distress, vehicle and property) have been shown as an amalgamated or combined amount and in July they have been classified and shown separately as distress, vehicle and property loans. Data had been entered in the computer by the Management Assistant S.K. Ranaweera. He had stated in his evidence that he entered the data provided by the head office in the computer. He had also stated that he cannot remember whether the error was committed by him and goes on to say that if a mistake had been made by him, he should take the responsibility.

The Appellant states that Mr Ranaweera further states that he cannot definitely say whether the error had been made by him and he should take the responsibility. He further states that he cannot definitely say whether the error had been made by him. Mr. Ranaweera in his evidence also states that mistakes do occur when preparing salary documents and that such mistakes are corrected if they are revealed. Answering questions by the Inquiry Officer, Ranaweera had stated that even if the amount had been recorded by him less 100,000 rupees, he recorded the information provided by Sarath Bandara who maintained the CC 10.

However, the Appellant states that Sarath Bandara, denies that he provided the information. The evidence at the formal inquiry was that on the 25th of September, the day Appellant went on transfer it was Ranaweera who gave him the letter containing the salary particulars. Sarath Bandara in his evidence confirms this position, Bandara further says that few days after Mr.Gunawardane (Appellant) went on transfer Ranaweera took away the CC10 register stating that an error had occurred in Mr. Gunawardane's salary particulars.

The Appellant therefore states that there was absolutely no evidence at the formal disciplinary inquiry that the Appellant had prepared a fraudulent salary particular. On the other hand, the Appellant states that there is ample evidence from the facts of the case where obvious inference can be made that a mistake had been committed by Management Assistant Ranaweera in entering the classified data of the loans.

The Appellant further states that the Appellant cannot be found guilty of this charge as he, at the time of taking the salary particulars to the Matale District Secretariat had no knowledge that there had been a mistake. In any event as stated above there wasn't an iota of evidence that the

said salary particulars were prepared fraudulently. The logical inference that can be arrived at from the evidence is that a mistake had occurred when entering the classified loan particulars in the computer by Management Assistant Ranaweera.

Under this charge the Appellant had been charged for committing an offence under item 07 of the first schedule of offences of Chapter XLVIII of the Establishments Code. It reads as follows:

“misappropriate or cause another to misappropriate public funds”.

The Appellant states that the amount so allegedly misappropriated is Rs.15,750/-. It is submitted that the said amount had accrued to the credit of the Appellant due to the error occurring in the property loan in the salary particulars. This amount had been credited to the government no sooner it was known that it was due from the Appellant. It is submitted that there was no intention on the part of the Appellant to misappropriate the said amount of money. It is further submitted that there was no evidence to prove that the Appellant intentionally misappropriated or caused another to misappropriate any money. In the absence of the mental element that should accompany the act the Appellant cannot be found guilty of this charge.

The Appellant states that the Appellant did not deny the fact that he signed the document regarding his own salary particulars which contained an error and took it with him. It was argued that a certain amount of responsibility lies with the Appellant for signing a document that contained erroneous information. But the important question is whether he did it knowingly and purposely or whether he did it negligently or inadvertently as stated under Charge II. The Appellant states that in the absence of any evidence to prove that the Appellant did so knowingly and purposely it has to be construed as a thing that has happened through negligence or inadvertent.

The Respondents, on the contrary state that the prayers for writs of mandamus are misconceived in law and cannot be granted. It is submitted that it is only if Court quashes the Order P21, that the AAT would have to hear the matter afresh. The right to a fresh hearing cannot be compelled by way of a Writ of Mandamus since there is no statutory duty imposed on the AAT under Administrative Appels Tribunal Act No: 4 of 2002 and the Petitioner has no corresponding legal right to such a hearing. Likewise, the Petitioner also does not have a statutory right to reinstatement in the absence of a corresponding legal duty, imposed under the said Act, or under any other law, vide the Supreme Court judgment in Credit Information Bureau v Messrs. Jafferjee (Pvt) Ltd (2005) 1 SLR 89 at 93 on the conditions to be satisfied by an applicant for a Writ of Mandamus to issue.

It is submitted by the Respondents that a Writ of Certiorari will only lie if the Petitioner can demonstrate that the Order P21 is illegal, irrational (unreasonable) or made contrary to the principles of natural justice. Further, since the finding in this matter was based on evidence at a formal disciplinary inquiry, the findings of the AAT in respect of the evidence, would also be an additional ground for judicial review. Wade on Administrative Law 9th Edition at page 272 refers to lack of satisfactory evidence as a ground of judicial review.

It is the position of the Respondents that the Petitioner has failed to prove any of these grounds and that the decision of the AAT is:

- a. Supported by evidence;
- b. Reasonable;
- c. The punishment by way of dismissal is proportionate in view of the post/ profession of the Petitioner who is an Accountant, which requires the highest degree of integrity.

Subsequent to a thorough analysis of the facts of the case, it could be seen that on the Petitioner's own admission, he was responsible for the accounts in Nuwara Eliya. However, contrary to his above admission, the Petitioner's argument appears to be that the letter P3 had been prepared for him by one Ranaweera who functioned as the Management Asst. and as such the Petitioner could not be held responsible for any inaccuracies. The Petitioner also seeks to rely on various inconsistencies in Ranawera's evidence to justify his stance.

However, the Petitioner has signed the said document and regard to his designation, responsibility for the contents of P3 must be attributable to him and not to someone who worked in a designation below him. Furthermore, the contents of P3 related to his own salary particulars, with which he would have been familiar with.

It was also the Petitioner's position that the said letter had been prepared for his personal use, in case he wished to refer to his salary particulars at any given time. This item of evidence is very relevant to his motive and subsequent conduct. If the letter was for his personal use as claimed and no copy had been retained in the Nuwara Eliya Office and if as admitted the accuracy of its contents had not been cross checked against the CC10 register which contained a written record of his salary particulars, the 1st Point that is required to be made is that the information could have been jotted down on a piece of paper as opposed to being set down in a formal letter on the eve of his transfer on 25th September 2003.

The formal manner in which P3 has been prepared is borne out by the fact that it was addressed to the District Secretary, Matale and signed by the Petitioner on behalf of the Deputy Forest Conservator who was absent on that date, stating that it contains his salary particulars which has thereafter been set out in a particular format.

I further believe that the haste in which this document had been prepared on the eve of his departure when he had already been in receipt of his salary for September 2003, also supports the position that this document was deliberately prepared with the intention of committing a fraud. Again, if this was a document prepared for his own personal use as claimed and if none of the usual precautions had been taken in verifying its accuracy, the second point is that it should have been submitted by the petitioner to the Divisional Secretariat for the preparation of his salary, while serving at the Divisional Secretariat, Dambulla, unless steps were taken to inform

the Divisional Secretariat of the background in which P3 was prepared and to caution him to verify the contents of P3 as soon as possible, prior to acting upon it.

The justification introduced by the Petitioner for submitting P3 to the Divisional Secretariat that his salary particulars had not been forthcoming from the Nuwara Eliya Office came in October 2003, which is a very poor excuse indeed. The Inquiring Officer's observation in this regard is that the Petitioner could have contacted his successor by telephone and have requested that the relevant information be sent. This was after all the previous place of employment of the Petitioner where the other employees were known to him.

The Petitioner has taken the position that the inaccurate information relating to his loan had been entered into the computer in July 2003, and not on the eve of his departure on transfer. The Petitioner has failed to demonstrate how this could be an exonerating factor since he could have intended to benefit from this course of action, even if he did not go on transfer and had remained in Nuwara Eliya.

The evidence led was that both the Petitioner and Ranaweera had access to the computer passwords and either could have entered this information. It is pertinent to note however, that the final responsibility of checking the accuracy of the document lies firmly on the Petitioner, particularly since it contained information regarding his own loan. Thus, upon signing P3, the Petitioner unequivocally becomes responsible for its contents. This appears to be the basis on which the inquiring Officer found him guilty of the 1st and 2nd charge.

The crucial issue that one is required to consider is who stood to gain by the events that transpired and the obvious answer thereto, is the Petitioner. The outcome of this was a financial benefit to the Petitioner, which resulted in the inquiring Officer finding the Petitioner guilty of the 3rd charge (item 7 – misappropriate or cause another to misappropriate public funds). If the audit query had not been raised, the Government of Sri Lanka would have suffered a loss of Rs.100,000/- plus interest. The fact that the Petitioner made prompt payment upon notification of the audit query is equally consistent with his realization that the game is up and not necessarily with the inference that he made haste to rectify the situation.

I further note that the inquiring Officer has prepared a comprehensive report wherein the evidence of each witnesses had been analyzed in respect of each of the four charges separately. This document which has been marked as P17 has not been challenged in their proceedings.

The AAT had found the decision to dismiss the Petitioner to be justified and expressed views as follows:

"The Appellant had signed the said letter and he had taken the said letter himself to the Dambulla Provincial Secretary. Therefore, he will have to accept responsibility for the contents thereof. He is an Accountant by profession. An Accountant has to discharge his duties honestly. He has to be very honest when handling State Funds. Otherwise he is not suitable to hold the position of an Accountant. The punishment imposed on the

Appellant is commensurate with the offences he had been found guilty of. There is no basis to interfere with the findings of the PSC".

Therefore, the finding of the AAT cannot say to be against the weight of evidence or irrational or unreasonable having regard to the matters adverted to above. Furthermore, the decision to dismiss the Petitioner is proportionate having regard to the profession and post held by the Petitioner, which requires the highest level of integrity.

In these circumstances, it is my standing that there is no merit in the application of the Petitioner and that the Petitioner has failed to prove its case. As such, this application is dismissed with costs.

Judge of the Court of Appeal

Janak De Silva , J

I agree.

Judge of the Court of Appeal