

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

In the matter of an Application in the nature of Writs of Certiorari and Mandamus under Article 140 of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka.

Rajapakse Mapa Mudiyanseelage Piyasena
Rajapakse

No. 196/5, Borella Road,
Depanama,
Pannipitiya.

C.A. (Writ) Application

Petitioner

No:366/21

-Vs-

1. Leka Geethanjali Perera
Chairman of the Appointed Committee,
Senior Assistant Secretary,
(Administration & Transport),
Ministry of Agriculture,
No. 80/5, Govijana Mandiraya,
Raja Malwatta Patumaga,
Battaramulla.
2. R. A. Uthpala A. Gunasekara
Member of the Appointed Committee,
Assistant Secretary, (Human Resources
Development),
Ministry of Agriculture,

No. 80/5, Govijana Mandiraya,
Raja Malwatta Patumaga,
Battaramulla.

3. Deevika Heendeniya
Member of the Appointed Committee,
Assistant Secretary Administration,
Ministry of Agriculture,
No. 80/5, Govijana Mandiraya,
Raja Malwatta Patumaga,
Battaramulla.
4. P. S. A. R. Weerakoon
Assistant Secretary (Former),
Ministry of Agriculture,
No. 80/5, Govijana Mandiraya,
Raja Malwatta Patumaga,
Battaramulla.
5. U. Jayasinghe
Secretary,
Ministry of Agriculture,
No. 80/5, Govijana Mandiraya,
Raja Malwatta Patumaga,
Battaramulla.
6. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : P. K. Prince Perera with Panchadsaran for
the Petitioner.

M. Jayasinghe, DSG, with N. De Zoysa, SC,
for the Respondents.

Argued On : 21.11.2023

Written Submission : Petitioner : 13.12.2023
tendered On

Decided On : 15.02.2024

Dhammika Ganepola J,

Factual Matrix of the application

The Petitioner is a retired public officer who joined the Department of Agriculture on 01.11.1960 as a Food Production Overseer and retired on 01.06.1997 after 39 ½ years of service. The Petitioner states that during his tenure, he was subjected to harassment in various ways by his superior officers. Therefore, the Petitioner had requested the relevant authorities to hold a formal inquiry in respect of his grievance. However, the Petitioner has made the said request long after his retirement. The Petitioner states that he had to submit several requests to the authorities to hold an inquiry in this respect. Upon receipt of said request, the 4th Respondent has appointed a Committee comprising 1st to 3rd Respondents to look into the request made by the Petitioner. Thereafter, the Petitioner had been called upon to the Ministry of Agriculture on 02.01.2019 and a statement had been recorded by

the 1st to 3rd Respondents. The Petitioner has submitted all the relevant documents with his statement. Nevertheless, the said Committee by its report marked P13 has come to the conclusion that allegations made by the Petitioner are unacceptable, false and that no injustice had been caused to the Petitioner.

Being aggrieved by the decision of the said Committee, the Petitioner has filed this application seeking a Writ of Certiorari to quash the said decision and a Writ of Mandamus directing the 5th Respondent to hold an independent inquiry into the complaint made by the Petitioner under the provisions of Chapter XLVIII Volume II of Establishment Code and grant the relief as prayed.

The Petitioner contends that the Committee appointed to look into the matter complained of has not held a formal inquiry under the Establishment Code and has not granted the Petitioner the opportunity to state his case, call any witnesses, cross-examine the relevant witnesses or a proper hearing. Hence, it is alleged that the decision of the said Committee is against the rules of natural justice and is ultra vires. It is further claimed that owing to the failure on the part of the 1st to 4th Respondents to hold a formal inquiry under Chapter XLVIII of the Establishment Code, the 1st to 4th Respondents had breached a legal and public duty.

Alleged failure to hold a Formal Inquiry under Chapter xlviii of the Establishment Code

The Committee in the subject of this Application had been appointed pursuant to a letter sent by a Petitioner dated 14.07.2020 to look into the grievances of the Petitioner. As per the Committee Report marked P13, the Committee has identified and categorized the complaints (P1) made by the Petitioner as follows:

1. Conduct leading towards the Petitioner lose his seniority in the service
2. Fraudulently altering the scheme of recruitment and promotion applicable to the Petitioner and preventing the Petitioner from attending the interviews to obtain his promotions

3. Failure to grant monthly salary, transport allowance and Agrahara insurance scheme to the Petitioner
4. Preventing the Petitioner from voting by effecting transfers during the election period

Volume II of the Establishment Code stipulated that it is the duty of the disciplinary authorities, heads of the departments, and the other institutional heads to act according to the provisions of its Chapter XLVIII in respect of all misconducts and the inadvertence of the respective public officers which would be punishable. The 1st and the 2nd Schedule and Appendix 1 set out the offences which may be committed by a public servant. Although statement P1 made by the Petitioner to said Committee refer to several injustices allegedly caused to the Petitioner, it does not reveal any alleged offence committed by a particular public officer. The statement of the Petitioner merely set out his grievance without identifying a person who has caused him such alleged injustice. In other words, the Petitioner does not specifically make allegations against a particular officer which would enable the relevant authorities to conduct an inquiry under the provisions of the Establishment Code. Provisions under Chapter XLVIII of the Establishments Code shall only be applicable in the event where disciplinary actions are required to be taken in respect of a particular public officer. Under such circumstances, no burden lies upon the said Committee to follow the provisions of Chapter XLVIII of Volume II of the Establishment Code to look into such grievance in terms of its provisions. If any misconduct or inadvertent of a particular officer is revealed, then the Disciplinary Authority could have conducted an inquiry following the provisions of Chapter XLVIII of the Establishments Code.

It is observed that the Establishments Code does not specify a procedure to be adopted by a Committee appointed a Head of the Department or a Secretary to the Ministry in conducting an inquiry in respect of a grievance of a particular officer. As there is no specific procedure laid down under the law, the Committee in subject was at freedom to choose an appropriate procedure on its own while giving due consideration to the principles of natural justice.

At this juncture it is noteworthy to observe the procedure to be adopted in conducting a similar investigation has been considered by Lord Denning MR in **Rv. Race Relations Board ex p Selvarajan [1975] 1 WLR 1686**. Lord Denning MR has summed up the procedure to be adopted in the case of investigating bodies such as the Commission for Racial Equality which is under a duty to act fairly:

“The investigating body is, however, the master of its own procedure. In it need not hold a hearing. It can do everything in writing. It need not allow lawyers. It need not put every detail of the case against a man. Suffice it if the board grounds are given. It need not do everything itself. It can employ secretaries and assistants to do all the preliminary work and leave much to them. But, in the end, the investigating body itself must come to its own decisions and make its own report.”[Wade & Forsyth, **ADMINISTRATIVE LAW eleventh edition page 440**]

Alleged Failure of the Respondents to give a fair hearing to the Petitioner

The Petitioner contends that he has not been given a fair hearing and has not been granted the opportunity to state his case, call any witnesses, to cross-examine the relevant witnesses by the said Committee.

Professor Wade emphasizes illustrating some cases where formal testimony and cross-examination are inappropriate.

“On the other hand, there are many administrative proceedings in which formal testimony and cross-examination are inappropriate, the inquiry being informal.¹ When offering a hearing after an investigation the Commission for Racial Equality need not produce witnesses for cross-examination.²” [Wade & Forsyth, **ADMINISTRATIVE LAW eleventh edition pages 438,439**]

In the instant Application, the Petitioner conceded the fact that he had submitted all the relevant documents with the statement made by him to the Committee marked P1 (see paragraph 5 of the Petition and paragraph 6 of the affidavit of the Petitioner). Since the Petitioner had been allowed to make a statement and submit all relevant documents before the Committee it is

¹. See *Re Pergamon Press Ltd* [1971] Ch 388 at 400; *Hearing v. Templeman* [1973] 3ALL ER 569 (no witnesses allowed); cf. *Ceylon University v. Fernando* [1960] 1 WLR 223 at 253(opportunity to cross-examine not requested); *O’Rourke v. Miller* (1984) 58 ALR269(police probationer not allowed to cross-examine); *Re Irvine and Restrictive Trade Practices Commission* (1987) 41DLR (4th) 429 (statutory inquiry, no right to cross-examine)

². *R v. Commission for Racial Equality ex p Cottrell & Rothern* [1980] 1 ELR] 1580.

evident that the Committee has granted the Petitioner an opportunity to adequately present his case. As per the Report of the said Committee, the Committee had conducted its investigations after obtaining a statement from the Petitioner, examining the relevant documentation, calling up further information from the Department of Agriculture and based on the information gathered from the discussions with the relevant officers in the Department of Agriculture (see P13). Under the given circumstances and the facts involved in the instant application, I am of the view that the said Committee has sufficiently complied with the principles of natural justice.

In R v. Commission for Racial Equality ex parte Cottrell and Rothson (1080) @ p1586 Lord Lane CJ stated *“as the frequently been said, and there is no harm in repeating it, all that the rules of natural justice mean is that the proceedings must be conducted in a way which is fair...”*

The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with, and so forth (see ***Russell v. Duke of Norfolk [1949] 1 ALL ER 109 at 118***). Under different situations and conditions, the requirements of compliance with the principles of natural justice shall vary.

In the instant application, it is observed that the Petitioner has made several appeals to the Public Service Commission stating that grave injustice had been caused to him by not granting him his due promotions. As per the documents marked R1 and R3 it is apparent that the Public Service Commission and the Administrative Appeals Tribunal had dealt with and rejected such grievance in respect of the promotion of the Petitioner. Therefore, it is apparent that the same claim in respect of the Petitioner’s promotion was determined by the PSC and AAT before it was placed before the Committee.

It is further observed that the Petitioner retired from the service on 01.06.1997. The Committee related to this application was appointed pursuant to a letter sent by the Petitioner dated 14.07.2020. The Petitioner seems to be solely responsible for the significant delay in submitting this application. The Petitioner has made several appeals to the Public Service Commission in respect of not receiving his allegedly due promotions commencing from 23.03.2012. The decision of the Public Service Commission

has been conveyed to the Petitioner by letter dated 13.08.2016. The appeal lodged against said Public Service Commission decision has been dismissed by the Administrative Appeals Tribunal on 11.02.2020. Therefore, I am of the view that there is a significant delay involved in Petitioner resorting to invoke the Writ jurisdiction of this Court and that the Petitioner has failed to support any illegality which warrants this Court to exercise its judicial review powers in respect of the decision of the Committee.

Conclusion

In the circumstances, I am of the view that the Petitioner has failed to establish any valid ground to warrant this Court to issue a Writ of Certiorari or a Writ of Mandamus as prayed for in the prayer of the Petition.

The Application is dismissed.

Judge of the Court of Appeal

Sobhitha Rajakaruna J.

I agree.

Judge of the Court of Appeal