

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 Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA (Writ) Application No: 282/2019

D.G.S Dharmasena
"Nissanka",
Nagahapola, Akuramboda.

Petitioner

Vs.

1. Hon. Justice Nimal N.E. Dissanayake,
Chairman, Administrative Appeals Tribunal.
2. A. Gnanathan, P.C.,
Member, Administrative Appeals Tribunal
3. P. Abeykeerthi,
Member, Administrative Appeals Tribunal.

All at, No. 35, Silva Lane,
Dharmapala Place, Rajagiriya.

4. Dharmasena Dissanayake.
Chairman, Public Service Commission.
5. Prof. Hussain Ismail.
6. Sudarma Karunarathna.
7. Dr. Prathap Ramanujan.

8. V. Jegarajasaingam.

9. S. Ranuge.

10. D. Laksiri Mendis.

11. Sarath Jayathilake.

5th – 11th Respondents are Members of
the Public Service Commission.

4th – 11th Respondents are at
Public Service Commission,
1200/9, Rajamalwatta Road, Battaramulla.

12. Secretary,
Ministry of Public Administration and
Home Affairs, Colombo 7.

13. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Arjuna Obeyesekere, J

Counsel: Wijayadasa Rajapakshe P.C., for the Petitioner

Supported on: 9th October 2019

Written Submissions: Tendered on behalf of the Petitioner on 23rd January
2020

Decided on: 13th March 2020

Arjuna Obeyesekere, J

The Petitioner has filed this application, seeking *inter alia* a Writ of Certiorari to quash the decision of the Administrative Appeals Tribunal (AAT) annexed to the petition marked '**P12**', which upheld the findings and disciplinary order imposed on the Petitioner by the Public Service Commission (PSC) and dismissed the appeal of the Petitioner.

The facts of this application very briefly are as follows.

The Petitioner had joined the Sri Lanka Administrative Service (SLAS) in April 1995, as a Class (II) Grade 2 Officer. The Petitioner had subsequently been promoted to Class (I) in January 2007. During the period relevant to this application, the Petitioner had served as the Divisional Secretary, Matale.

A preliminary investigation had been conducted by the Ministry of Public Administration and Home Affairs into a complaint that the Petitioner, together with another person by the name of Upali Dharmaratne had sexually abused two young boys on 4th February 2011. The PSC, having considered the Preliminary Investigation Report annexed to the petition marked '**P4**', had issued the charge sheet annexed to the petition marked '**P6**', containing the following charges:

“ වෝදනා පත්‍රය

ඔබ ගි ලංකා පරිපාලන සේවයේ । පත්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශීය ලේකම් ලෙස සේවය කරමින් සිටියදී ආයතන සංග්‍රහයේ XL VIII වැනි

පරිච්ඡේදයේ පළමුවන උපලේඛනය යටතට ගැනෙන මෙහි පහත සඳහන් චෝදනාවන්හි අඩංගු වන රාජකාරි පැහැර හැරීම හා/හෝ විෂමාචාරයන් යෙදීම යන වැරදි එකක් හෝ කිහිපයක් හෝ සියල්ලම හෝ සිදුකිරීම හේතු කොට ගෙන ඔබ සේවයෙන් පහ නොකිරීමට හෝ වෙනත් අයුරකින් ඔබට දඩුවම් නාපැමිණවීමට හෝ හේතු ඇතොත්, එම හේතු මෙම චෝදනා පත්‍රය ලැබී දින තිහක් (30) ක් ඇතුළත පොලොන්නරුව දිස්ත්‍රික් ලේකම්, මාතලේ දිස්ත්‍රික් ලේකම් හා රාජ්‍ය පරිපාලන හා ස්වදේශ කටයුතු අමාත්‍යාංශයේ ලේකම් මගින් මා වෙත ලිඛිතව ඉදිරිපත් කරන ලෙස ආයතන සංග්‍රහයේ XL VIII වැනි පරිච්ඡේදයේ 4:5 උප වගන්තිය යටතේ රාජ්‍ය සේවා කොමිෂන් සභාවේ අණ පරිදි මෙයින් ඔබට නියෝග කරමි. ඔබගේ පිළිතුරේ පිටපතක් සෘජුව මා වෙත එවන්න.

චෝදනා

- (I) ඔබ ගී ලංකා පරිපාලන සේවයේ I පන්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශීය ලේකම් ලෙස සේවය කරමින් සිටියදී, මාතලේ, අළුවිහාරය, බිරිදෙවල පාර, අංක 05 පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 14 ක් හෝ ඊට ආසන්න වයසැති ආර්. දනුෂ්ක නවින් පෙරේරා සහ මාතලේ, අළුවිහාරය, බිරිදෙවල පාර, 1 ජනපදය පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 12 ක් හෝ ඊට ආසන්න වයසැති කේ.එම්.ලක්මිත කුමාර යන බාලවයස්කාර දරුවන් දෙදෙනා 2011.02.04 දින මාතලේ දිස්ත්‍රික් ලේකම් කාර්යාලයේ පැවැත්වෙන නිදහස් දින උත්සවයේ පෙරහැර කොඩි ඇල්ලීම සඳහා රැගෙන යාමට පැමිණි බව පවසමින් එදින පෙ.ව. 10.30 ට හෝ ඊට ආසන්න වේලාවකදී ආර්. දනුෂ්ක නවින් පෙරේරා දරුවාගේ නිවසට ගොස් අසත්‍ය ප්‍රකාශයක් සිදුකර එම දරුවන් දෙදෙනාගේ ඥාතින් නොමඟ යවා නීත්‍යානුකූල භාරකාරත්වයෙන් අපහරණය කිරීම මගින් ඔබ විසින් ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ රාජ්‍ය නිලධාරීන් විසින් සිදුකළ හැකි වරදවල් සම්බන්ධයෙන් පළමුවන උපලේඛනයේ අංක 10 වගන්තිය යටතට ගැනෙන වරදක් සිදු කිරීම.
- (II) ඔබ ගී ලංකා පරිපාලන සේවයේ I පන්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශීය ලේකම් ලෙස සේවය කරමින් සිටියදී, මාතලේ, අළුවිහාරය, බිරිදෙවල පාර, අංක 05 පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 14 ක් හෝ ඊට ආසන්න වයසැති ආර්. දනුෂ්ක නවින් පෙරේරා සහ මාතලේ, අළුවිහාරය, බිරිදෙවල පාර, 1 ජනපදය පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 12 ක් හෝ ඊට ආසන්න වයසැති කේ.එම්. ලක්මිත කුමාර යන බාලවයස්කාර දරුවන් දෙදෙනා 2011.02.04 දින අංක WP PA –

4875 දරන මාතලේ ප්‍රාදේශීය ලේකම් නිල කැඩ රටයෙන් මාතලේ ප්‍රාදේශීය ලේකම් නිල නිවස තුළට රැගෙනවිත් ඔවුන්ට එම නිල නිවස තුළදී අසත්‍ය ලිංගික දර්ශන ඇතුලත් සිඩි තැටියක් රූපවාහිනී යන්ත්‍රයක් මගින් නැරඹීමට සැලැස්වීම මගින් ඔබ විසින් ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ රාජ්‍ය නිලධාරීන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධ පළමුවන උපලේඛනයේ 10 වන වගන්තිය යටතට ගැනෙන වරදක් සිදු කිරීම.

(III) ඔබ ගි ලංකා පරිපාලන සේවයේ | පන්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශීය ලේකම් ලෙස සේවය කරමින් සිටියදී, 2011.02.04 දින මාතලේ ප්‍රාදේශීය ලේකම් නිල නිවස තුළදී මාතලේ, අළුවිහාරය, බිරිඳෙවල පාර, අංක 05 පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 14 ක් හෝ ඊට ආසන්න වයසැති ආර්. දනුෂ්ක නවින් පෙරේරා දරුවාට ලිංගික අපචාරයක් සිදු කිරීමට තැත් කිරීමෙන් මගින් ඔබ විසින් ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ රාජ්‍ය නිලධාරීන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධයෙන් පළමුවන උපලේඛනයේ අංක 10 වන වගන්තිය යටතට ගැනෙන වරදක් සිදු කිරීම.

(IV) ඔබ ගි ලංකා පරිපාලන සේවයේ | පන්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශීය ලේකම් ලෙස සේවය කරමින් සිටියදී, 2011.02.04 දින මාතලේ, අළුවිහාරය, බිරිඳෙවල පාර, 1 පනපදය පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 12 ක් හෝ ඊට ආසන්න වයසැති කේ.එම්. ලක්ෂිත කුමාර යන දරුවාට ලිංගික අපචාරයක් කිරීම සඳහා අළුවිහාරය මහා විද්‍යාලයේ නැටුම් විෂය භාර ගුරුවරයා වන උපාලි ධර්මරත්න යන අයට මාතලේ ප්‍රාදේශීය ලේකම් නිල නිවසේ කාමරයක් වෙන් කර දී අනුබල දීම මගින් ඔබ විසින් ඔබ විසින් ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ රාජ්‍ය නිලධාරීන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධයෙන් පළමුවන උපලේඛනයේ අංක 10 හා 15 වන වගන්තිය යටතට ගැනෙන වැරදි සිදු කිරීම.

(V) ඔබ ගි ලංකා පරිපාලන සේවයේ | පන්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශීය ලේකම් ලෙස සේවය කරමින් සිටියදී 2011.02.04 දින මාතලේ, අළුවිහාරය, බිරිඳෙවල පාර, අංක 05 පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 14 ක් හෝ ඊට ආසන්න වයසැති ආර්. දනුෂ්ක නවින් පෙරේරා සහ මාතලේ, අළුවිහාරය, බිරිඳෙවල පාර, 1 පනපදය පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 12 ක් හෝ ඊට ආසන්න වයසැති කේ.එම්.

ලක්ෂිත කුමාර යන බාල වයස්කාර දරුවන් දෙදෙනා ලිංගික අපයෝජනයට ලක් කිරීමට තැත් කිරීම සඳහා රාජ්‍ය දේපල වන අංක WP PA – 4875 දරන මාතලේ ප්‍රාදේශීය ලේකම් නිල කැබ් රථ සහ මාතලේ ප්‍රාදේශය ලේකම් නිල නිවස පරිහරණය කිරීම මගින් ඔබ විසින් ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ රාජ්‍ය නිලධාරීන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධ පළමුවන උපලේඛනයේ 10 වන වගන්තිය යටතට ගැනෙන වැරදි සිදු කිරීම.

(VI) ඔබ ගි ලංකා පරිපාලන සේවයේ I පන්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශය ලේකම් ලෙස සේවය කරමින් සිටියදී 2011.02.04 දින තම නිල රථය වන WP PA – 4875 දරන කැබ් රථයෙන් ටියදුරු වසන්ත කුමාර යන අය සමග ක්ෂේත්‍ර රාජකාරි කල බවට, 2011.09.23 දින මූලික විමර්ශනයේදී සාවාද්‍ය ප්‍රකාශයක් ලබා දීම මගින් ඔබ විසින් ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ රාජ්‍ය නිලධාරීන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධ පළමුවන උපලේඛනයේ 15 වන වගන්තිය යටතට ගැනෙන වැරදි සිදු කිරීම.

(VII) ඔබ ඉහත අංක I සිට VI දක්වා චෝදනාවලට සඳහන් වැරදි එකක් හෝ කිහිපයක් හෝ සියල්ලම සිදු කිරීම මගින් ඔබ දරන තනතුරින් පොදුවේ රාජ්‍ය සේවයන් අපකීර්තියට පත් කිරීම.

Charge No. 5 had been amended by 'P7' as follows:

“ඔබ ගි ලංකා පරිපාලන සේවයේ I පන්තියේ නිලධාරියකු වශයෙන් මාතලේ ප්‍රාදේශීය ලේකම් කාර්යාලයේ ප්‍රාදේශීය ලේකම් ලෙස සේවය කරමින් සිටියදී 2011.02.04 දින මාතලේ, අළුවිහාරය, බිරිදෙවල පාර, අංක 05 පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 14 ක් හෝ ඊට ආසන්න වයසැති ආර්. ධනුෂ්ක නමින් පෙරේරා සහ මාතලේ, අළුවිහාරය, බිරිදෙවල පාර, 1 පනපදය පදිංචි අළුවිහාරය මහා විද්‍යාලයේ ඉගෙනුම ලබන වයස අවුරුදු 12 ක් හෝ ඊට ආසන්න වයසැති කේ.එම්. ලක්ෂිත කුමාර යන බාල වයස්කාර දරුවන් දෙදෙනා ලිංගික අපයෝජනයට ලක් කිරීමට තැත් කිරීම සඳහා රාජ්‍ය දේපල වන අංක WP PA – 4875 දරන මාතලේ ප්‍රාදේශීය ලේකම් නිල කැබ් රථය සහ මාතලේ ප්‍රාදේශය ලේකම් නිල නිවස පරිහරණය කිරීම මගින් ඔබ විසින් ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ රාජ්‍ය නිලධාරීන් විසින් සිදු කළ හැකි වරදවල් සම්බන්ධ පළමුවන උපලේඛනයේ 8 හා/හෝ 10 වගන්තිය යටතට ගැනෙන වැරදි සිදු කිරීම.”

A formal disciplinary inquiry had thereafter been held against the Petitioner, where he was represented by a retired officer of the Sri Lanka Administrative Service. This Court observes that the practice adopted at the inquiry was to mark the statement made by each witness during the preliminary investigation so that it would form part and parcel of the inquiry, and to supplement the statement with evidence in chief, followed by cross examination and re-examination.

The prosecution had led the evidence of several witnesses, including that of the mother of one of the children involved. Although the evidence in chief of one of the children was led and his cross examination had commenced, his evidence could not be concluded as his mother had informed the Inquiry Officer that the victim is undergoing mental stress. The proceedings of 30th June 2014 bears out the following:

“මේ අවස්ථාවේදී එම සාක්ෂිකාර ආර්. ධනුෂ්ක නවින් පෙරේරාගේ දරුවාගේ මව වන පී.එම්.එන්.ආර්.කේ රත්නායක මහත්මිය විනිශ්චය සභාවට පැමිණ කරුණු ඉදිරිපත් කිරීමට අවශ්‍ය බව පැමිණිල්ල මෙහෙයවන නිලධාරී දැක්වූ හෙයින් ඇය විනිශ්චය සභාව ඉදිරියට කැඳවන ලදී. ඇය කියා සිටියේ තම දරුවා වන ධනුෂ්ක පෙරේරා මෙම සිද්ධිය නිසා මානසිකව බිඳ වැටී සිටින බවත්, ඔහු නිරන්තරයෙන් නිවසේදී කල්පනා කරමින් සිටින හෙයින් ඒ ගැන සලකා බලා ඔහුගෙන් ප්‍රශ්න ඇසීමෙන් තව දුරටත් මානසික බිඳ වැටීමකට ඉඩ ඇති හෙයින් ප්‍රශ්න නොකරන ලෙස ඉල්ලා සිටියාය. එසේ වුවද ඇය තම සාක්ෂිය දීමට කැමැති බව වැඩි දුරටත් කියා සිටී.”

As this child could not complete his evidence, the Inquiry Officer has quite rightly refused to act on the said evidence. This, together with the fact that the second child did not give evidence at all, meant that there was no evidence placed with regard to the charges relating to attempted sexual abuse, which

had apparently taken place at the official quarters of the Petitioner. At the conclusion of the case for the complainant, the Inquiry Officer had afforded the Petitioner an opportunity of giving evidence or summoning any other person to give evidence on his behalf. The Petitioner however had not availed himself of either of these opportunities.¹

The Inquiry Officer, by his report annexed to the petition marked 'P9', had found the Petitioner guilty of Charge Nos. 1, 6 and 7. The PSC, by a disciplinary order dated 13th September 2016, had demoted the Petitioner to Class II of the SLAS, and imposed a penalty of Rs. 30,000. Dissatisfied by this decision of the PSC, the Petitioner had filed an appeal with the AAT. After affording the Petitioner a hearing, the AAT, by its order 'P12' had held as follows:

- (a) The imposition of the penalty is not enforceable in terms of PA Circular No. 29/2011;
- (b) The Petitioner had rightly been found guilty of Charge Nos. 1, 6 and 7;
- (c) The punishment imposed is commensurate with the serious nature of the charges.

Aggrieved by the said decision of the AAT, the Petitioner filed this application seeking *inter alia* the aforementioned relief.

This matter was supported for notice on 9th October 2019. This Court, having heard the learned President's Counsel for the Petitioner, invited the learned

¹ Vide proceedings of 20th August 2014.

President's Counsel to tender brief written submissions setting out the grounds on which he seeks judicial review of the decision marked '**P12**'. In the written submissions filed on behalf of the Petitioner, it has been submitted that the decision of the Inquiry Officer is illegal and irrational, in that the Petitioner could not have been found guilty on the material that was available to the Inquiry Officer, and that the AAT failed to consider the said deficiencies.

The Petitioner has made available to this Court, marked '**P8**' a complete copy of the proceedings before the Inquiry Officer including the statements made by the witnesses to the Officer who conducted the Preliminary Investigation, and the report of the Inquiry Officer, thus affording this Court an opportunity of considering the complaint of the Petitioner.

In **Council of Civil Service Unions vs Minister for the Civil Service**², Lord Diplock classified the three grounds upon which administrative action is subject to judicial review, namely '*illegality*', '*irrationality*' and '*procedural impropriety*'. If the complaint of the Petitioner that there was no evidence at all is correct, then an order made in such circumstances will be illegal. If however there was evidence, this Court can consider whether the conclusion arrived at is reasonable and rational. Lord Diplock went on to state that, "*by 'irrationality' I mean what can now be succinctly referred to as 'Wednesbury unreasonableness'*"³. *It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.*" In **Secretary of State for Education and Science v Metropolitan Borough Council**

² 1985 AC 374.

³ Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1)KB223.

of Tameside⁴ it was held that to fall within the expression of 'unreasonableness' it must be conduct which *no sensible authority acting with due appreciation of its responsibilities would have decided to adopt*.

This Court is mindful that the function of this Court when considering an application for a Writ of Certiorari is to look at the legality of the decision and not whether it is right or wrong. As Lord Brightman stated in the House of Lords in Chief Constable of North Wales Police v Evans⁵:

"Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power..... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made."

This Court is of the view that it can consider the factual circumstances and the evidence that was considered by the decision maker where an argument is presented, as in this application, that the decision is unreasonable or irrational, or where an argument is taken that there was no material at all to arrive at a decision, resulting in an error on the face of the record. Even in such cases, the Courts will only consider the factual circumstances to the extent of determining whether the decision maker took into account relevant considerations from the evidence placed before him, in making a decision. If a decision has been influenced by considerations which either expressly or

⁴[1977] AC 1014.

⁵[1982] 1 WLR 1155 at 1174.

implicitly cannot lawfully be taken into account, a Court may hold that such discretionary power has not been exercised validly. The reasons provided for a decision would allow Courts to effectively scrutinize the decision and detect what factors have influenced the decision maker.

The first charge for which the Petitioner was found guilty relates to the Petitioner taking away the two children from their residence on 4th February 2011 on the pretext that they are required to hold flags during the Independence Day celebrations. The starting point for this charge is the evidence of Anuruddhika Perera, the Cultural Officer attached to the Matale District Secretariat Office at the relevant time.⁶ She had stated that arrangements had been made to conduct the 63rd Independence Day celebrations at the District Secretariat Office, Matale. The task entrusted to her was to arrange dance troops from five schools in the area to perform at the said celebrations. One of the schools selected was Aluvihare Madya Maha Vidyalaya, which is the school attended to by the two children. However, due to adverse weather conditions that prevailed in Matale prior to 4th February, the event had been scaled down and the Principals of the five schools had been informed in advance in writing that the dance recitals had been cancelled.⁷ She had stated further that the event was held on a scaled down basis, with the participation of about 40 persons. This witness had not been cross examined by the defence officer. Thus, it is reasonable to assume that the Petitioner, being the Divisional Secretary, Matale was aware that the celebrations had been scaled down.

⁶ Vide proceedings of 7th March 2014.

⁷ Although the letters sent to the Principals of the Schools have been marked at the inquiry, copies of same have not been filed of record.

Ms. Anjalika Atapattu, the Administrative Officer at the District Secretariat, Matale had confirmed that the Petitioner had been present at the ceremony, and had left the premises after the event was concluded at about 9.45.

The next witness is the mother of one of the children, Kumari Ratnayake.⁸ She had stated that her son was a dancing student and was attending dancing classes conducted by Upali Dharmaratne. She had stated that in the morning of 4th February 2011, at about 10.30, the said Upali Dharmaratne who was known to her, had visited her house together with the Petitioner who was not known to her, and informed her that her son is required to hang flags for the Independence Day celebrations. The evidence that transpired at the inquiry was that by then, the Independence Day celebrations had already been scaled down, and that in any event, the celebrations were over by 10.45 and there was no necessity to take the two young children on the pretext they are required to hang flags. The mother says that she had consented to her son going with the said Upali Dharmaratne as she had known him for several years. Similar evidence had been given by the mother of the other child, Heen Menike.⁹

This Court has examined the report of the Inquiry Officer marked 'P9', and observes that the Inquiry Officer had found the Petitioner guilty of Charge No. 1, only after he was satisfied of the following:

- a) That the Petitioner had visited the house of the two children;

⁸ Vide proceedings of 20th June 2014.

⁹ Vide proceedings of 20th August 2014.

- b) That the Petitioner had misrepresented the fact that the children were required to assist at the Independence Day celebrations, when in fact the celebrations had been held on a scaled down basis and had been concluded by that time;
- c) That the children would not have been released to the Petitioner, had the parents of these two children known the correct factual position.

This Court observes that even though this witness had been cross examined, it has not been suggested that the Petitioner did not visit the home of the witness and/or that the Petitioner was not involved in the taking away of the children.

The AAT, having considered the above evidence that was led before the Inquiry Officer had come to the conclusion that the Petitioner had been rightly found guilty of Charge No. 1. This Court, having considered the evidence that has been led before the Inquiry Officer, is satisfied that there was sufficient evidence to establish Charge No. 1. Therefore, this Court is of the view that the decision of the Inquiry Officer as well as that of the AAT is not only legal but is also reasonable in light of the evidence that was placed before it. The decision of the AAT is certainly not a decision *which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.*¹⁰ On the contrary, it is the view of this Court that the decision of the AAT is a decision

¹⁰ Council of Civil Service Unions vs Minister for the Civil Service; Supra.

which a *sensible authority acting with due appreciation of its responsibilities would have decided to adopt*¹¹.

Charge No. 7, which is a consequential charge that the Petitioner has brought the Public Service to disrepute by committing the acts accused of in Charge Nos. 1-5, has also been established by virtue of the Petitioner being found guilty for Charge No.1.

The only issue left for this Court to consider in relation to Charge Nos. 1 and 7 is whether the punishment imposed on the Petitioner is excessive and unreasonable. As observed earlier, the Petitioner had been demoted to Class II. This Court is of the view that the said punishment imposed by the PSC on the Petitioner is extremely reasonable, and in fact, lenient, especially in the context of the purpose for which the two children were said to have been taken for, which charge could not be established due to the absence of the testimony of the children, for the reasons mentioned earlier in this Order. This Court is therefore in agreement with the decision of the AAT that *the punishment imposed is commensurate with the serious nature of the charges*.

This Court shall now consider whether the decision that the Petitioner is guilty of Charge No. 6 is reasonable. This Court must observe that this charge has no nexus to any of the previous charges, and the outcome of this charge has no bearing on the other charges. As noted earlier, the Petitioner had been found guilty of Charge No. 6, which is that the Petitioner had made a false statement during the Preliminary Investigation that his driver was present when he

¹¹ Secretary of State for Education and Science v. Tameside Metropolitan Borough Council; Supra.

engaged in field activity on 4th February 2011. The driver assigned to the Petitioner, Wasantha Kumara had denied that he accompanied the Petitioner on any field visits that day. He had stated further that he did not sign the running chart of 4th February 2011 pertaining to the vehicle allocated to the Petitioner, although all other running charts had been signed by him, thereby confirming that he did not drive the vehicle that day.

During his evidence in chief, Wasantha Kumara had admitted that all what he had said in the statement made to the Officer conducting the Preliminary Investigation is correct. However, during cross examination, he had retracted his position and stated that he had accompanied the Petitioner, after meeting the Petitioner at 1pm that afternoon. The Inquiry Officer however had acted upon the position taken up by Wasantha Kumara that he stands by the statement he made during the Preliminary Investigation, the effect of which is that he did not accompany the Petitioner on his field visits, and arrived at the conclusion that the Petitioner is guilty of Charge No. 6. The Inquiry Officer had also recommended that disciplinary action be taken against Wasantha Kumara for giving false evidence.

This Court cannot fault the Inquiry Officer and the AAT for having acted upon the statement made by Wasantha Kumara, especially since he had not signed the running chart for that day, which is the best evidence in light of the circumstances to suggest that he did not accompany the Petitioner. However, even if the benefit of the doubt could have been extended to the Petitioner in view of the evidence given during cross examination, and the Petitioner was exonerated of Charge No. 6, this Court is of the view that such a decision would not have any effect on the finding of the Inquiry Officer and the AAT on

Charge Nos. 1 and 7, nor would it impact on the punishment imposed on the Petitioner as a result of being found guilty for Charge Nos. 1 and 7.

In the above circumstances, this Court is of the view that the Petitioner has not established a prima facie case that warrants this Court issuing formal notice of this application on the Respondents. This application is accordingly dismissed, without costs.

Judge of the Court of Appeal