# IN THE COURT OF APPEAL OF THE

### DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application read with Article 138 and the Article 154 P (3)(b) and 154 P (6) of the Constitution.

Jennet Swarnakanthi Abeysighe Jayawardhana 4th Lane Aluwihare Wattha, Aswedduma, Kurunegala.

#### **Petitioner**

Vs.

CA Case No; CA (PHC) 221/19 PHC Case No; HCW 02/2018

- 1. Kurunegla Co-operative Hospital Society Limited No. 303, Colombo Road, Kurunegala.
- 2. A. Dharmawansha, Disciplinary Officer, Dhampallessa, Narammala.
- 3. R. P. Amarasena, Appeal Inquiry Officer, Circular Road, Hettipola.
- 4. Co-operative Employee's Commission of North Western Province Provincial Office Complex, Kurunegala.

## And **Now Between**

Jennet Swarnakanthi Abeysinghe Jayawardhana 4th Lane, AluwihareWattha, Aswedduma, Kurunegala.

# **Petitioner Appellant**

#### Vs.

- 1. Kurunegala Co-operative Hospital Society Limited No. 303, Colombo Road, Kurunegala.
- 2. A. Dharmawansha, Disciplinary Officer, Dhampallssa, Narammala.
- 3. R. P. Amarasena Appeal Inquiry Officer, Circular Road, Hettipola.
- 4. Co-operative Employee's Commission of North Western Province Provincial Office Complex., Kurunegala.

## **Respondent Respondents**

**Before** Hon. M Sampath K. B Wijeratne, J. (CA)

Hon. M. Ahsan R. Marikar, J. (CA)

<u>Counsel</u>: Thilak Wijesinghe appears with Piyumi

Sulochana instructed by Shan

Rathnayaka for the Petitioner-Appellant.

Sapumal Bandara with Lakshitha Edirisinghe for the 1st Respondent-

Respondent.

Sudharshana De Silva, DSG with Abigail Jayakody, SC for the 4<sup>th</sup> Respondent.

Written Submissions : 1st Respondent-Respondent filed on

20.09.2022

Petitioner-Appellant filed on 10.11.2022

4<sup>th</sup> Respondent – Respondent filed on

07.07.2023

Argued on : 19.06.2024

<u>Decided on</u> : **26.07.2024** 

# M. Ahsan R. Marikar, J. (CA)

#### Introduction

- 1) The Petitioner-Appellant had preferred this appeal against the Respondent-Respondents, seeking to set aside the Order made by the Provincial High Court Judge of North Western Province and to enter a Judgement endorsing the relief prayed in the original petition to the Provincial High Court.
- 2) The reliefs prayed for in the instant appeal are as follows;
  - a) To set aside the Judgment/Order dated 2019.07.19 of the Provincial High Court of North Western Province

- b) To enter the Judgment endorsing the relief prayed in the original petition to the Provincial high Court
- c) To grant costs, and
- d) To grant such other and further reliefs

### Facts of this case

- 3) The Petitioner-Appellant is hereinafter referred to as Appellant and the Respondent-Respondents as Respondents.
- 4) The Appellant was an employee at the 1st Respondent, Kurunegala Co-operative Hospital Society Limited, as an attendant. The Appellant had been charged with certain misconduct that had occurred at the 1st Respondent Hospital. Thereafter, the charge sheet had been served to the Appellant.
- 5) The initial charges had been subsequently amended, and a charge sheet containing four charges had been served to the Appellant subsequently.
- 6) On that, a preliminary inquiry had been conducted by the 2<sup>nd</sup> Respondent, who imposed penalties following the said inquiry resulting in the Appellant being sent on compulsory retirement.
- 7) Aggrieved by the said decision the Appellant had made an appeal to the 4th Respondent the Co-operative employees Commission of North Western Province.
- The 4th Respondent also found the Appellant guilty of the charges 8) at the appeal inquiry and the compulsory retirement was endorsed.
- 9) The position taken by the Appellant is that, prior to amending the charges the charge No.3 was raised on the basis that when a patient named Peshala Herath was discharged, the Appellant had

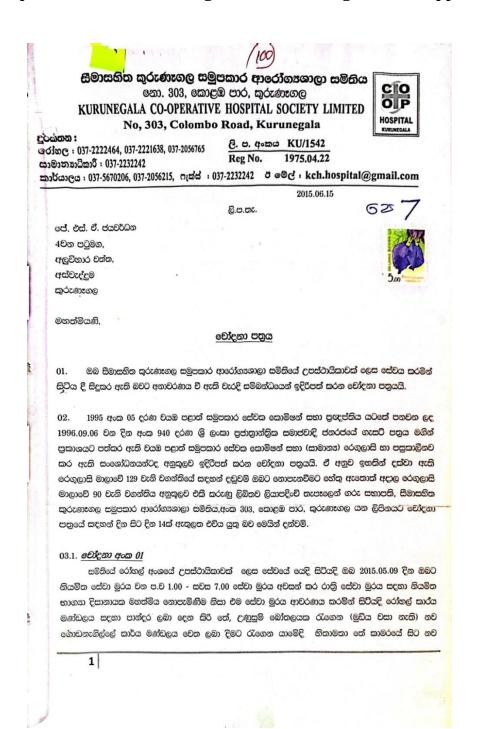
failed to accompany the patient in a wheelchair to the patient's vehicle. The main grievance of the Appellant was although the said charge was dropped later; the said Peshala Herath was one of the Co-operative Employees Commission member who had affirmed the permanent retirement of the Appellant at the 4th Respondent's meeting held on 26th April 2017.

- 10) On the said grounds the Appellant had filed a Writ/Revision application to the Provincial High Court of Kurunegala, which was dismissed by the Learned High Court Judge.
- 11) Aggrieved by the said decision the Appellant had preferred this appeal.

# Analysis of the Facts of the case

- 12) This case was taken up for argument on 19th June 2024. Counsel for the Appellant and the Deputy Solicitor General appearing for the Respondents concluded the argument.
- 13) As per the argument raised by the Appellant and on perusal of the documents the following disputed points should be considered.
  - (i) Have the Respondents framed the initial charge sheet, raising charge No.3 which related to a member of the 4th Respondent Commission?
  - (ii) If so, can the decision taken by the 4th Respondent on 26th April 2017 be maintained?

- I) Have the Respondents framed the initial charge sheet, raising charge No.3 related to a member of the 4<sup>th</sup> Respondent Commission?
- 14) I reproduce the initial charge sheet framed against the Appellant.





ගොඩනැගිල්ලේ පළමු මහලේ හෙද ඒකකය දක්වා බිම දිගේ තැතින් තැන හලා අපරිස්ෂාකාරි ලෙස රාජකාරි කටයුතු කිරීම, සේවා ස්ථානය අපිරිසිදු කිරීම තුලින් ඔබ වයඹ පළාත් සමුපකාර සේවක කොමිෂන් සභා (සාමාන්ෂ) රෙගුලාසි මාලාවේ IV වන පරිශිෂ්ඨයේ අංක 8,9 හා 13 යටතට ගැනෙන බරපතල වැරදි එකක්, කීපයක් හෝ සියල්ල සිදු කිරීම.

## 03.2. චෝදනා අංක 02

2015.05.09 දින රාතුි සේවා මුරය ආවරණය කරමින් සිටියදී ඔබ විසින් ඉහළ නිළධාරීන්ගේ අවසරය හෝ උපදෙස් නොමැතිව 2015 වසරට ලබාදුන් අනුමත කළ නිළ ඇදුම ගලවා ඉවත් කර පැරණි දුර්වර්ණ වූ නිළ ඇදුම (සුදු ගවුම) ඇඳ ගෙන රාතුි සේවා මුරය ආවරණය කිරීමත්, මේ පිළිබඳව විමසීමේදී ඉහළ නිළධාරීන්ට සේවා ලාභින් ඉදිරිපිට උස් හඬින් වාද කරමින් ඉහල නිළධාරීන්ට අවනත නොවීම තුලින් ඔබ වයාම පළාත් සමුපකාර සේවක කොමිෂන් සභා (සාමානෘ) රෙගුලාසි මාලාවේ IV වන පරිශිෂ්ඨයේ අංක 8,9 හා 13 යටතට ගැනෙන බරපතල වැරදි එකක්, කීපයක් හෝ සියල්ල සිදු කිරීම.

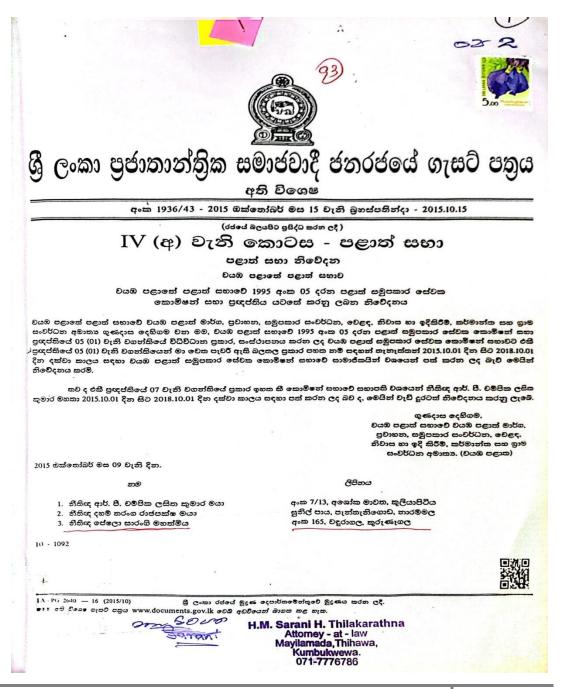
#### 03.3 වෝදනා අංක 03

2015.05.10 දින උදේ රාජකාර කටයුතු වල යෙදි සිටි ඔබ විසින් 103 කාමරයේ නේවාසික පුතිකාර ලබා ගත් පේෂලා හේරත් නැමති රෝගියා රෝනලින් බැහැර වන අවස්ථාවේ රෝද පුටුවෙන් රෝගියා ඔවුන්ගේ වාහනයට පුවාහනය නොකිරීමෙන් තුළින් තමාට නියමිත රාජකාරියෙන් මගහැරීම තුලින් 1995 අංක 5 දරණ වයඹ පළාත් රෙගුලාසි මාලවේ IV වන පරිශිෂ්ඨයේ අංක 8,9 හා 13 යටතට ගැනෙන වැරදි එකක්, කීපයක් හෝ සියල්ල සිදු කිරීම.

#### 03.4 වෝදනා අංක 04

සමිතියේ ඔබගේ සේවා කාළය තුළ ඔබ විසින් සිදුකර ඇති විනය විරෝධී සිද්ධීන් සම්බන්ධයෙන්, වැටුප් වර්ධක අත්හිටුවීම, අවවාද කිරීම්, රාජකාරී පැහැරහැරීම් සම්බන්ධයෙන් නිදහසට කරුණු විමසීම් ආදී කිරියාමාර්ගයන් ගෙන තිබියදීත් මෙම චෝදනා පතුයේ අංක 01,02, හා 03 චෝදනාවන්හි දක්වා ඇති ආකාරයේ විනය විරෝධී කටයුතු නැවත නැවත සිදු කිරීමෙන් ඔබ වයඹ පළාත් සමුපකාර සේවක කොමිෂන් සභා (සාමානෘ ) රෙගුලාසි මාලාවේ IV වන පරිශිෂ්ඨයේ අංක 01,02 හා 03 යටතට ගැනෙන බරපතල වැරදි එකක්, කිහිපයක් හෝ සියල්ල සිදුකිරීම.

- 15) It is evident from the said charge sheet No.3 refers to an individual named Peshala Sarangi. Notably, the Gazette Notification No. 1936/43 dated 15<sup>th</sup> October 2015 specifies that the Attorney-at-Law Peshala Sarangi had been appointed as a member of the 4<sup>th</sup> Respondent from 1<sup>st</sup> October 2015 to 1<sup>st</sup> October 2018.
- 16) The said Gazette notification is reproduced as follows;



- 17) Although as per the Commission regulations, the minimum Quorum of the 4<sup>th</sup> Respondent's meetings can be maintained as two. However, the meeting held by the 4<sup>th</sup> Respondent dated 26<sup>th</sup> April 2017 three members named in the aforesaid Gazette notification had participated and confirmed the inquiry appeal decision to send the Appellant on permanent retirement.
- 18) To support the aforesaid fact, I draw my attention to page number 04 of the Co-operative Employee Commission Regulations of the North Western Province No 05 of 1995 and it is reproduced as follows:
  - (2) ලොවීම හ් සතා රස්වීවී වල ගණපුර්ණය සඳහා එදි සාමාජිකයන් දෙදෙනෙකු පැමිණ සිටීම පුමාණවස් වේ.
  - (3) සාමාජිකයන් දෙදෙනෙකු පමණක් පැමිණ සිටින අවස්ථාවකදී යම් කරුණක් පිළිබඳව ශීරණයන් ගත කොහැකි වූ විටක ඒ කරුණ සොමනේ සහුවේ සාමාජිකයන් තිදෙනාම පැමිණ සිටින රස්වීමකට ඉදිරිපත් කළ යුතුය.
  - (4) නොවීමත් සභාවේ සාමාජිකයන් නිදෙකාව පැවිණැ සිටින අස්වීමකදී යුම් කරුණක් පිළිබඳව ගත යුතු සිරණය සම්බත්ධයෙන් ඒ සාමාජිකයන් අතර, වැ මහය වෙනස් වන්නේ නම් වැඩි දෙනාගේ මහයද අනුව හිරණයකට එළඹිය යුතුය. එහෙත් සාමාජිකයින් සමානව බෙදුනහොත් සභාපති වරය හිරක ජන්දයක් හිමිවේ.
  - (5) සොවිසන් සභාවේ සාමාජිකයන් අතර පුරප්පාඩුවා පැවසීම නිසා හෝ පත් සිටීම යම්බන්ධයෙන් වන අඩුපාඩුවක් නිසා හෝ ඒ කරුණ ශේතු නොට ගන නොම්සන් සභාව විසින් ගනු ලබන තීරණ හෝ කරනු ලබන නියෝග හා විට්විටාන කිසිවන් නිර්බල නොවන්නේ ය. නැතහොත් නිර්බල වන්නාසේ නොසැලකිය පුරිසේ ය.
  - (6) ස්වකිය කාර්ය පරිපාවී පක්ස් කර හැබිම පිළිමඳ ඉහත සඳහන් කරුණු වලින් ආචරණය කොවන්නා වූ ඕනෑම කරුණක් සම්බන්ධයෙන් අවශා වන විට්විටා සතුස් කර ගැනීමට කොමිනේ සභාවට බලය ඇත්තේ ය.

යා මා ජනය කිට පාරිඉම්ක ගෙවීම • 08. වයම පළාතේ පළාත් සභාවේ මුදල් විෂය තාර අමාතතවරයාගේ එසඟශ්වය ඇතිව තොම්ෂන් සභාවේ සභාපතිව සහ එහි සාමාජිතයන්ට ගෙවිය යුතු පාරිලුමිත සහ දීමනා අමාතතවරයා විසින් නියම කළයුතු වන්නේ ය.

- 19) It would be apparent to any prudent person that the 4<sup>th</sup> Respondent Commission member Attorney-at-Law Peshala Sarangi's name had transpired on the initial charge sheet in charge No.3. Therefore, it is my considered view that she should not have participated at the meeting held to confirm the permanent retirement of the Appellant.
- 20) The Learned High Court Judge had not considered the said fact when she heard the revision application, her view was that the Appellant was initially convicted on four charges and the said Peshala Sarangi had acted in accordance with the guidance of the 3<sup>rd</sup> Respondent.
- 21) It is not a reasonable decision made by the Learned High Court Judge knowing that the said Peshala Sarangi was the Complainant against the Appellant as per the initial charge sheet.

# II) If so, can the decision taken by the 4th Respondent on 26th April 2017 be maintained?

- 22) In view of the aforesaid facts, documents and the Gazette notification, the decision taken by the 4<sup>th</sup> Respondent on 26<sup>th</sup> April 2017 cannot be sustained.
- 23) Thus, I set aside the order made by the Learned High Court Judge dated 19<sup>th</sup> July 2019 and set aside the decision taken by the 4<sup>th</sup> Respondent on 26<sup>th</sup> April 2017.
- 24) Further, it is evident that the inquiry panel had conducted the inquiry against the Appellant with the knowledge that there had been a charge initially against the Appellant by a member of the 4<sup>th</sup> Respondent Commission.
- 25) As per the Co-operative Employee Commission Regulations of the North Western Province No 05 of 1995 the appeal inquiry had been

conducted under the purview of the 4th Respondent Commission as the Commission is in charge of all the disciplinary inquiry procedures. It is abundantly clear the person who conducted the appeal inquiry would have been biased towards the initial charge sheet issued against the Appellant which included a charge related to a Commission member.

- 26) Therefore, the decision of the appeal inquiry cannot be sustained as the appeal inquiry had been held during the period when Attorney at-Law Peshala Sarangi was a member of the Respondent Commission.
- 27) In the said circumstances, I hereby set aside the appeal inquiry dated 27th January 2017 and direct the 1st Respondent to conduct a fresh inquiry as the 4th Respondent Commission member's period is presently completed.

# **CONCLUSION**

As per the facts related, I allow the appeal and set aside the High 28) Court Judge's order dated 19th July 2019, 4th Respondent commission's decisions dated 26th April 2017 and the inquiry appeal decision dated 27 January 2017, and fix tax cost payable by the Respondents to the Appellant.

Judge of the Court of Appeal

#### M Sampath K. B. Wijeratne, J. (CA)

I agree

Judge of the Court of Appeal