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

CA-WRIT-271-2023

1. Podujana- Progressive Employees Union
   No. 1316
   NelumMawatha
   Jayanthipura
   Battaramulla

2. S.A.R. Rasanga
   The Secretary (NARA Branch)
   Podujana- Progressive Employees Union
   Mattakkuliya,
   Colombo 15

Petitioners

v.

1. The National Aquatic Resources Research and Development Agency

2. Prof. M.J.S. Wijeyaratne
   The Chairman

3. Dr. Kamal Tennakoon
DerectorGeneal/ NARA

All of
The National Aquatic Resources Research
And Development Agency
Crow Island, Colombo 15.

4. Mrs. Indu Rathnayake
   Secretary,
   Ministry of Fisheries
   New Secretariat, Mligawatta
   Colombo 10.
5. Mr. SelvendranSalivan de Marian
   No. 17/2, Uyarappulam
   Anaikoddai, Jaffa.

6. Mr. N.M. P. Chaminda Fernando
   No. 3/9, Railway Station Road
   Colombo 4

7. Mr. N.M.P.Chaminda Fernando
   No.90, Pallansena Road,
   Kochchikade

8. Prof. Upali S. Amarasinghe
   No. 55/D/3, Ranmuthugala Gardens
   Kirillawala
   Kadawatha.

9. Dr. (Mrs) J.M. Asoka
   No. 59/9, Temple Road
   Colombo 10.

10. Mr. A.P. Kurumbalapitiya
    Add. Director General (Acting)
    Department of management Audit,
    Ministry of Finance

The Secretariat, Colombo 1.

11. Rear Admiral K.A.P.S.K. Kariyapperuma
    Commander (South Eastern Navel Area)
    Chief Hydrographer, Navy Head Quartos,
    Colombo 01.

12. Mr. S.J. Kahawatta
    Additional Director General
    Department of Fisheries and Aquatic Resources
    Maligawaththa Secretariat, Colombo 10.

13. Mr. A. Dissanayake
    Survey General, Department of Survey
    No. 150 KirulaRoal
    Narahenpita.

14. Mr. T.A.C.N. Thalangama
    Add. Secretary
    New Secretariat,
    Maligawaththa
    Colombo 10.

15. Ms. K.N. KumariSomaratne
    Add. Secretary, Ministry of Port and Shipping
    No. 19, Chaithya Road
    Colombo 01

16. Mrs. M.M.G.K.Meegahakotuwa
    Director General (Planning)
    State Ministry of Development
    Vocational Educational Research and Innovation

3rd Floor, Sethsiripaya
Battaramulla.

17. Mrs. B.A. Dmayanthi
    Senior Assistant Secretary
    Ministry of Fishiest , New Secretariat
    Maligawaththa
    Colombo 10

18. MrsChampikaHewage
19. Mr. Samantha Wijesinghe
20. Mrs. K.D.K.M. Kumari
    18th to 20th of
    Ministry of Fishiest , New Secretariat
    Maligawaththa
    Colombo 10

21. Mr. S.N. Hewagama
22. Mr. R.D.P.P.Ranasinghe
    21st and 22nd of
    The National Aquatic Resources Research and Development Agency
    Crow Island
    Colombo 15

23. Hon. Attorney General
    Attorney General's Department
    Colombo 12

Respondents

AND NOW BETWEEN

In the matter of an application made for intervention

GanegodaWidanageNilminiPavithra
No. 97/14 Nagahamulla Road
Kolonnawa

Intervenient- Petitioner

v.

1. Podujana- Progressive Employees Union
No. 1316
NelumMawatha
Jayanthipura
Baramulla

2. S.A.R. Rasanga
The Secretary (NARA Branch)
Podujana- Progressive Employees Union
Mattakkuliya,
Colombo 15

Petitioner-Respondents

1. The National Aquatic Resources Research and Development Agency

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The Chairman

3. Dr. Kamal Tennakoon
DerectorGeneal/ NARA

All of

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21. Mr. S.N. Hewagama
22. Mr. R.D.P.P.Ranasinghe
    21st and 22nd of
    The National Aquatic Resources Research and Development Agency
    Crow Island
    Colombo 15

23. Hon. Attorney General
Attorney General's Department
Colombo 12

Respondent- Respondents

Before : **N. Bandula Karunarathna P/CA, J.**
B. Sasi Mahendran, J.

Counsel: K.G. Jinasenafor the Petitioner
Dr. Cooreyfor the 1st,2nd, 3rd, 7th, 8th,9th,10th, 11th,13th, 15th and 16th Respondents
Z. Zain, DSG for the 4th,14th and 17thRespondents
ChandanaWijesuriya with WathsalaDulanjani for the 21st and 22nd Respondents
C. Abeywickrama for the Proposed-Intervenient-Petitioner

Supported on: 07.06.2024

Written Submissions On: 30.04.2024 (by the Petitioner)
05.04.2024 (by the 21st and 22ndRespondents)
16.04.2024 (by the 1st,2nd,3rd,7th, 8th, 9th-11th, 13th,15th and 16th Respondents)

Order On: 26.06.2024

B. Sasi Mahendran, J.

This order is pertaining to issue notices or not.

The Petitioners instituted this action seeking for a Writ of Certiorari quashing the decision made on 30th March 2023 by the Governing Board of the 1st Respondent namely, National Aquatic Resources Research and Development Agency (NARA) regarding of extend the probationary period of the 21st Respondent namely N.S Hewagama and 22nd Respondent namely R.D.P.P Ranasinghe for another period of one year.

The Facts of this matter very briefly are as follows;

The Petitioners state that, on the basis of an advertisement published in the daily publications on 9th January 2017, the applications had been called to appoint a suitable applicant for the post of office Director (Finance) of the 1st Respondent NARA and accordingly the 21st Respondent had been appointed to the said post effective from 15th March 2017.

In the meantime, by the annual report dated 25/11/2020 the 1st Respondent has been informed by the Department of Management Services that the 21st Respondent had not possess the qualification as per the scheme of recruitment of the 1st Respondent and did not possess the corporate membership of the Institute of Charted Accountant, that either his service should have been terminated in terms of clause 11.7 of Chapter II of the Establishments Code or in terms of 11.9 or 11.10 of the said Code the probation period of the 21st Respondent should have been extended. Therefore, the Governing Board of the 1st Respondent had decided to extend his probation period for him to improve his accounting practices, and that accordingly the probation period of the 21st Respondent had been extended by one year.In the meantime, secretary to the Line Ministry appointed a senior assistant secretary to investigate his qualifications. Accordingly the secretary has recommended the termination of the 21st Respondent. Later the Board decided to terminate the services of the 21st Respondent.

The 21st Respondent complained to the Department of Labor with regards to his imminent termination of his service. After the inquiry, the 1st Respondent agreed to extend the probation period of the 21st Respondent until he completed his Master's Degree in Economics which satisfied the required qualification. Thereafter, the Board has extended the probation period by its meeting held on 30.03.2023.

In respect of the 22nd Respondent, the Petitioners state that on the basis of an advertisement published in the daily publications on 22nd March 2018, the applications had been called for the post of Director (Administration and Human Resources) and accordingly, the 22nd Respondent had been appointed to the said position effective from 15th August 2018.

The issue raised by the Petitioners are that the 22nd Respondent is not eligible to hold the post of Director (Administration and Human Resources) as the 22nd Respondent did not have basic qualifications in terms of the SOR, because the degree possessed by the 22nd Respondent is not recognized by the UGC and he had no Corporate Membership of the Sri Lanka Institute of Personal Management to fulfill the requirement for the said appointment of the Director (Administration and Human Resources).

The 22nd Respondent states that upon inquiry by the Chairman of the 1st Respondent as to whether the basic degree possessed by the 22nd Respondent was a degree recognized by the UGC, the UGC and the KotelawalaDefence University have confirmed that the degree possessed by the 22nd Respondent is recognized by the UGC.

Accordingly, a decision was taken by the Governing Board of the 1st Respondent to extend the probation period by six months on 30/03/2023.

The 1st Respondent NARA was informed about the qualifications of the Respondents after the audit was conducted on 25/11/2020. Prior to that, the 1st Respondents were unaware of the qualifications of the Respondents.

According to the objections filed by the 1st to 16th Respondents dated 09.01.2024 they have given the reasons for extending the probation period of the 21stRespondent by 1 year. According to the averments in paragraph 9 (XX) of the said objection,

These Respondent state that the Board arriving at the said decision marked "1R12" considered *inter alia;*

a. A properly constituted interview board has recommended the appointment of the 21st Respondent;

b. The certificates he had produced were authentic and he should have been terminated if he had submitted bogus certificates;

c. The Governing Board had decided to inform him to improve his accounting practices and not definite period had been given;

d. The 21st Respondent had registered for a postgraduate and had sat for the final examination where he had passed all the subjects except one subject, which he had to repeat;

e. The 21st Respondent had served the 1st Respondent more than a period of four years and there has been no record of any inefficiency and malpractice.

And also with regards to the 22nd Respondent the Respondents have stated that although the 22nd Respondent did not have the basic qualification when he was recruited. Later, he has obtained a BSc degree which is approved by the UGC.

We are mindful that, the Petitioners are not challenging the appointment of the 21st and 22nd Respondents when they were recruited. The Respondents have given reasons for extending the probation period of both the Respondents. We are

mindful that there is no adverse findings with regard to the work of the Respondents during the said year.

In any event extending the probation period of both the Respondents is a decision in relation to terms of the contract of employment between the 1st Respondent and the 21st and 22nd Respondents.

In the said decision where the Petitioners wanted to quash it by way of writ of certiorari, the Petitioners failed to establish that the said decision is underpinning by statutory provisions which is amenable to writs.

In Galle Flour Milling (Pvt) Ltd v Board of Investment of Sri Lanka and another CA (Writ) No.1732/2001. ShiraneeThilakawardane J held that,

"The matter to be decided by this Court initially is whether relief that is being sought pertains to the agreement P7 and whether the decision contained in the letters dated 10.05.1999 and 21.10.1999 is essentially founded purely on contract and decision to terminate the agreement was within the context of the contractual relationship between the parties and not in the exercise of the powers of statutory authority. (DeAlwis vs. Sri Lanka Telecom 1955 2 SLR 38 at 41). In other words was the termination by the 1st Respondent underpinned by statutory provisions. Was the termination an exercise of statutory powers. If it was, and only if it was, public law would lie."

We are mindful of the Dictum of Atkin L J in the case of R v Electricity Commissioner 1924 1 KB 171 at 205.

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these Writs."

This dictum was considered in **Jayawardena v. Silva 72 NLR 25 at page 31, H.N.G. Fernando CJ, held;**

"We have had the benefit of full and helpful arguments from both sides upon the question whether a Writ will lie in this case, and Counsel have very properly referred us to numerous decisions, of British, Ceylon and other Courts. But we find after consideration that it will suffice to refer only to some of those decisions which in our opinion help to resolve the problem which we have to decide.

We ask no excuse for citing the celebrated dictum of Atkin L. J. in the case of B. v. Electricity Commissioner [1 (1924) 1 K. B. 171 at 205.]:-

This dictum was amplified in the judgment of Lord Hewart, C.J. in Rex v. Legislative Committee of the Church Assembly [2 (1928) 1 K. B. 411 at 415,] as follows :-

"The question therefore which we have to ask ourselves in this case is whether it is true to say in this matter, either of the Church Assembly as a whole, or of the Legislative Committee of the Church Assembly, that it is a body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially. It is to be observed that in the last sentence of Atkin L .J. the word is not "or ", but "and ". In order that a body may satisfy. the required test it is not enough that it should have legal authority to determine questions affecting the rights of subjects; there must be superadded to that characteristic the further characteristic that- the body has the duty to act judicially. The duty to act judicially is an ingredient which, if the test is to be satisfied, must be present. As these writs in the earlier days were issued only to bodies which without any harshness of construction could be called, and naturally - would be called Courts, so also today these Writs do not issue except to bodies which act or are under the duty to act in a judicial capacity .

Acting upon the dicta which we have just cited, what we have to consider is whether, in making an election under s. 130 of the Customs Ordinance, the Collector firstly has to determine a question affecting the rights of subjects, and secondly has to act judicially in making the election."

The above stated judgement was considered by Justice S. Srikandarajah J and D. S.C Lecamwasam J in **M.VRanatunga V KaduwelaPradeshiyaSabawa CA WRIT/ App/ No.** 916/2008 decided on 09.10.2010 at Page 87, 2010 [BLR] held that,

" In the above circumstances the Petitioners are seeking a writ of certiorari to quash the decision contained in the letters dated 05.09.2008 marked P22(a)- P22 (h). A writ of certiorari does not lie against a person unless he has legal authority to determine a question affecting the rights of subjects and at the same time, has the duty to act judicially when he determine such action".

In the instant case, the Petitioners have failed to establish that the 1st Respondent has a duty to act judicially when he was determining the extending the probation periods of the 21st and 22nd Respondents. We hold that the particular extension was granted considering the obligations arose from the said contract. We hold that the particular decision is a ministerial action. We further hold that, there is no evidence to establish that the decision is biased.

For the above said reasons, we dismiss the application with costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.
I AGREE

PRESIDENT OF THE COURT OF APPEAL