

**BASNAYAKE  
VS  
SECRETARY TO THE TREASURY AND OTHERS**

COURT OF APPEAL.  
IMAM. J.  
SRISKANDARAJAH. J.  
CA 1841/2003.  
FEBRUARY 25, 2005.  
APRIL 27, 2005.  
MAY 18, 2005.  
AUGUST 26, 2005.  
SEPTEMBER 23, 2005.

*Writ of Certiorari—World Bank five year project -Appointed for one year period  
- Annual extension given - Services terminated after the five year period - New  
Management Circular issued to increase allowance and period - legitimate  
expectation - Applicability of Circular ?*

The petitioner was appointed as Project Director of a World Bank Project which was a five year project till February 2003. The petitioner was initially appointed

for one year but annual extensions were granted and his services were terminated in June 2003. By a Management Circular in 2000, the salaries of on going project staff were increased and the staff could serve for a period of three years from 01.01.2001. The petitioner contends that he could serve till 01.01.2004 and also sought arrears of salary, on the basis of the new Management Circular. It was also contended that the project had in fact not come to an end as there were advertisements in the newspapers calling for the post of Director.

**HELD:**

1. Whether the project to which the petitioner was appointed has come to an end in the year 2003 is a matter of fact, and when there are conflicting claims this Court cannot determine this question of fact in these proceedings.
2. The Project which commenced in February 1998 for five years comes to an end in February, 2003, therefore the petitioner cannot have any expectation of extension of service after February, 2003.
3. The Management Circular in 2000 deals with review of salaries of the staff, but does not alter the terms and conditions of employment entered into with the employees of the on going projects.
4. The salary revision is dependent according to the Management Circular on the performance appraisal, the respondent has submitted that the performance of the particular unit is not up to the expected standard - the respondent has no duty to place the salary of the petitioner at its maximum as a matter of course.

**Held further :**

5. The Circular on which the petitioner is relying has no statutory force, and therefore he cannot - seek a Writ of Mandamus on the basis of the said Circular.

**Cases referred to :**

1. *Weligama Multi Purpose Co-operative Society Ltd., vs. Chandradasa Daluwatta* 1984 1 Sri LR 195 at 199

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2. *Perera vs. Municipal Council, Colombo* 48 NLR 66

*Ananda Kasturiarachchi* for petitioner.

*A. Gnanathan DSG with Ravindra Gunaratne* for 1st to 3rd respondents

*Cur.adv.vult.*

October 18th, 2005.

**SRISKANDARAJAH. J.**

The Petitioner was functioning as the Deputy Director of Education in charge of policy planning and program review from 1991 to 1994. In 1994 he was appointed as a Director in charge of the same section and retired on 15.02.1998. Prior to his retirement the Petitioner was appointed as Project Director of the Project Co-ordination Unit General Education Project II (GEP II) on 25.11.1997. This project is a World Bank project conducted under the Ministry of Education. After the retirement the Petitioner was appointed to the same post on a contract basis for one year with effect from 29.01.1998 by letter dated 28.06.1998 (P 10A). Even though the letter of appointment stipulates that the appointment of the Petitioner is for one year the Petitioner submitted it is in fact until the conclusion of the project. The project (GEP II) is a five year project and it was implemented in February 1998. His one year contract was extended annually without any application and he had an expectation that he could continue in this capacity until the completion of the Project.

By a Budget Circular No.79 dated 29.09.2003 titled "Recruitment of staff of the foreign funded projects and their salaries", the Petitioner's salary was increased from 30,000 to 50,000. This circular also provides that all appointments to the post of foreign funded projects should be on temporary/casual/basis for the duration of the project period.

In the year 2000 by a Management Service circular No.10 dated 26.12.2000 (P17) issued by the 1st Respondent the salaries of the staff of the Project Management Units of Projects assisted by foreign funding agencies were revised from 1.1.2001. This Management service circular No10 repealed the previous circulars including the Budget Circular No. 79 dated 20.09.1998 and its amendment dated 12.03.1989. According to Management Circular No.10 the maximum salary stipulated to the Project Director of a project above 10 million US\$ is Rs.75,000

The Petitioner submitted that he and the other Management staff made representations to the then Secretary to the Ministry of Education by their letter dated 05.03.2002 (P14) and requested him to consider the payment of the monthly salary as stipulated by the said Management circular. There was no response to this request and in the mean time there were changes in the government. After the 2nd Respondent was assigned to the function of foreign funded projects requests were made to him to implement the revised salary scheme as per circular P14. The 2nd Respondent requested the Petitioner and others who are in the similar category to submit the Performance Appraisal and on this request Performance Appraisals were submitted (P16). In the meantime the 2nd Respondent by his letter dated 26.06.2003 (P20) terminated the services of the Petitioner with effect from 30.06.2003. Simultaneously the services of the entire senior key staff including the Deputy Project Directors of the said project were also terminated.

The Petitioner by this application has sought to quash the decision of the 2nd Respondent terminating his services P20 on the basis that the termination of his services was illegal, unjust, unreasonable and had been made *mala fide*. He has also sought a mandamus directing 1st and 2nd Respondents to pay the arrears of salary in accordance with the provisions of the Management Circular No.10.

The contention of the Petitioner is that even though the letter of appointment issued to him dated 29th of January 1998 is for a period of one year on a contract basis it was in fact till the completion of the project. The Petitioner in his affidavit filed in support of this application at paragraph II has given the details of the project for which he was the Project Director and he has categorically stated that the Project commenced in February 1998 and it is a five year project.

When the Budget Circular No.79 dated 29.09.1998 titled "Recruitment of Staff for the Foreign Funded Project and Their Salaries" was brought into effect the salary of the Petitioner was increased from 30,000 to 50,000 and this circular specified that all appointments to the post of foreign Funded Projects should be on temporary/casual/contract basis for the duration of the project period.

The Management circular No.10 dated 26.12.2000 titled "Recruitment of Staff for Foreign Management Units (PMU) of Projects Assisted by

Foreign Financing Agencies and Their Emoluments" which came into effect on 01.01.2001 repealed the above circular No.79 dated 29.09.1998 and its amendment.

The Management Circular No.10 of 26.12.2000 P12 has specific provisions in paragraph 10 namely "Salaries of project management staff of on going projects". By this provision the appointment of the on -going project staffs were recognized and it provides that their salary should be reviewed according to the provisions of this circular.

The Petitioner submitted that his service was terminated from 30.06.2003 by P20 and the services of all other staff officers of the said project were also terminated along with him. The 2nd Respondent admitted this position in his affidavit and stated that the Petitioner was given an opportunity to work until 30th of June, 2003 until the end of the project. The project was for a specific purpose and has a specific time frame and the project has come to an end hence the services of the Petitioner and other Management Staffs were no longer required and their services were terminated. The Petitioner submitted that the project has not come to an end and there were advertisements in the newspapers calling for the post of the Director and other staff officers for the same project. Whether the project to which the Petitioner was appointed has come to an end in the year 2003 is a matter of fact and when there are conflicting claims this court cannot determine this question of fact in this proceedings as these proceedings are based only on affidavits and documents filed in support of the affidavits.

The Petitioner in his own affidavit in paragraph II had admitted that the period for which he was appointed as a Project Director commenced in February 1998 and it is for a five year period. He emphasized that even though his letter of appointment states that the contract of employment is for one year and extended annually, in fact it is until the conclusion of the project. Even according to the Petitioner the project which commenced in February 1998 for five years comes to an end in February, 2003 and therefore the Petitioner cannot have any expectation of extension of his services after February, 2003. However as the 2nd Respondent submitted that the Petitioner was permitted to serve until June, 2003 by this time the project has come to the conclusion and his service was terminated.

The Petitioner claimed that clause 2.7 of the Management circular No.10 is applicable to him and accordingly he could serve for a period of three

years from 01.01.2001 which position cannot be accepted as the said provision is only applicable for new recruits appointed under the circular. The officers and the staff of the on-going project are referred to in this circular under paragraph 10.

Officers who are serving under the on-going projects at the date of the Management Circular No.10 will be bound by the Circulars under which they were recruited for service. The provisions contained in clause 10 of the circular deals with the review of salaries of the staff of the on-going projects but the circular does not alter the terms or conditions of employment entered into with the employees of the on-going projects. As admitted by the Petitioner (in paragraph 11 of his affidavit) and the Respondents the said project has come to an end in February 2003 and Therefore the services of the petitioner were terminated in June 2003 in accordance with the letters of appointment and the relevant circulars. Therefore this Court holds that the termination of the services of the Petitioner is neither illegal nor unreasonable. Therefore the application to quash the decision contained in the letter P20 is refused.

The 2nd question is whether the Petitioner is entitled for the salary adjustments as provided under the Management circular No.10. Clause 10.1 of the said circular provides :

"A committee comprising the Secretary of the Ministry/Chief Secretary of the Provincial Council, Head of the implementing agency and a representative each from the Treasury and Ministry of Public Administration should review remuneration of Project Directors and Senior Project Management Staff of on-going projects and make suitable adjustments. Such adjustments in the service contract should be made after the performance appraisal referred to at Paragraph 8 is undertaken".

The salary review provided in this management circular is different from the salary adjustment provided in the circular No.79. The circular No.79 in paragraph 3.1 provides "Salaries of the Project staff should adhere to the following criteria : and it has given salaries in accordance with qualification and experience in the relevant field. Therefore the Petitioner was placed in the corresponding salary scale of Rs.50,000 according to his qualifications and experience. But it is not so under the Management circular No.10. This circular provides a procedure that has to be followed to review the existing salary of the Project Director and it provides that the maximum

salary in which they could be placed is Rs.75,000. The procedure that has to follow for salary adjustment has been specifically provided in the said circular and it provides that the performance appraisal has to be obtained from the relevant officers and on its basis the salary adjustments have to be made. The Petitioner submitted that the 2nd Respondent requested the Petitioner and the other similarly placed officers to submit performance appraisals. A copy of the performance appraisals that were submitted are marked P.16. The 2nd Respondent submitted that he has taken all the necessary steps under the Management circular No.10 and this Respondent also submitted that the performance of this particular unit is not up to the expected standards. On the basis of the performance appraisal the Respondents have to review the salary of the officers and the maximum limit of the salary is Rs.75,000. The salary revision is dependent on the performance appraisal. The Respondents has no duty to place the salary of the Petitioner at its maximum as a matter of course. In these circumstances the Petitioner cannot claim that his salary should be reviewed and placed at its maximum.

On the other hand the Respondent submitted that the circulars on which the Petitioner is relying has no statutory force for this court to grant relief to the Petitioner. In *Weligama Multipurpose Co-Operative Society Ltd. v Chandradasa Daluwatta* at 199 Sharvananda, J. held :

“The writ will not issue for private purpose that is to say for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by the ordinary contractual remedies such as damages, specific performance or injunction. They are not enforceable by mandamus which is confined to public duties and is not granted where there are other adequate remedies., *Perera v Municipal Council Colombo*<sup>2</sup>.

In my view the duty prescribed by clause 7 of Circular No.18 of 1973 relied on by the Petitioner is not in the nature of public duty such as to attract the grant of a writ of mandamus for its enforcement. The instructions which the Co-operative Employees Commission has issued and on which the Petitioner Respondent bases his application does not impose a public duty on the Respondent co-operative society to pay half months salary to an interdicted officer. The Court of Appeal has overlooked the fact that the authorities relied on by the Petitioner for the payment of salary to the

interdicted officer is only a circular and not a regulation. A circular not referable to the exercise of any delegated legislative power, it does not prescribe any duty having statutory potential.”

This Court upholds the objections of the Respondents that the circular on which the Petitioner is relying has no statutory force and therefore he cannot seek a writ of mandamus on the basis of this circular.

For the aforesaid reasons the application of the Petitioner is dismissed without costs.

**IMAM J.** —/ agree.

*Application refused.*

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