

SAMARAWEERA
v
MINISTER OF PUBLIC ADMINISTRATION

COURT OF APPEAL
SRIPAVAN, J.
C.A. NO. 107/99
MARCH 12, 19, 25, 2003

Writ of Mandamus – Duty must be of public nature not merely of a private character – Administrative Regulations – Do they have the status of "Law" ? – Delay – Reasonable time – Court of Appeal (Appellate Procedure Rules) 1990.

The petitioner made an application to join the Grama Sevaka Niladari's Service, was selected in 1989 and sent for training. An application for a *Writ of Certiorari* in 1996 was withdrawn to enable the petitioner to pursue Administrative Relief, the Minister of Social Services suggested to appoint the petitioner, backdating the appointment with effect from 1989 without back-wages. As he was not appointed he sought a *Writ of Mandamus*.

Held :

- (i) To be enforceable by Mandamus the duty to be performed must be of a public nature and not merely of a private character. The letter issued in 1989 does not prescribe any duty having statutory potential.
- (ii) The previous application was withdrawn without reserving the right to institute this application. It would be inconsistent with the Court of Appeal (Appellate Procedure Rules 1990) for a party to institute a subsequent application regarding the same matter that has been challenged in a previous application.
- (iii) Court has a discretion to deny the petitioner relief having regard to his conduct and delay. "Administrative Regulations laid down in the Ceylon Government Manual of Procedure do not have the status of 'Law' and non-compliance with them cannot be enforced by Mandamus."

APPLICATION for a *Writ of Mandamus*.

Cases referred to :

1. *De Alwis v Silva* – 71 NLR 108
2. *Biso Menika v Cyril de Alwis* –1982 1 SRI LR 368 at 379.
3. *Jayawardena and Five others v Dehiattakandiya Multi Purpose Co-operative Society Ltd*, 1995 2 SRI LR 276.

4. *Gunasekera v Weerakoon* – 73 NLR 262
5. *Abdul Rahuman v The Mayor of Colombo* – 69 NLR 211

Nizam Kariappar for petitioner.

Ms. Farzana Jameel S.S.C. for respondents.

Cur.adv. vult.

April 30, 2003

SRIPAVAN, J.

The petitioner who is a permanent resident of Anuradhapura made an application to join the Grama Sevaka Niladhari's Service pursuant to an advertisement published in the Gazette in November 1987 calling for applications for vacancies in the Grama Sevaka Niladhari's Service, Grade II. The petitioner stated that he was summoned for an interview and was selected by the Interview Board. The Secretary, Ministry of Public Administration by his letter dated 22.9.1989 (P2) informed the Government Agent of Anuradhapura to call the petitioner and few others for training to be appointed as Grama Sevaka Niladhari in the District of Anuradhapura. The petitioner alleged that he was not given any appointment in 1989 and as such instituted this application in the year 1999 seeking a *writ of mandamus* directing the 1st respondent and/or 2nd respondent and/or the 3rd respondent to appoint him to the Grama Sevaka Niladhari's Service grade II effective from 22.09.1989.

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The Learned Senior State Counsel for the respondents strongly objected to the substantive relief sought by the petitioner mainly on two grounds, namely, laches and that the petitioner is not legally entitled to be appointed to the post of Grama Sevaka Niladhari.

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It appears that the petitioner filed SC. Application No. 249/94(P3C) seeking, *inter alia*, an order directing the Government Agent, Anuradhapura to act according to the letter dated 22.09.89. The said application was dismissed by the Supreme Court on a preliminary objection raised by the Learned State Counsel appearing for the respondents that the petitioner's claim was time barred. Thereafter, the petitioner made an application to the Court of Appeal in CA. Application No. 126/96 and the said application was withdrawn on 29.3.1996 to enable the petitioner to pursue adminis-

trative relief from the relevant authority (P4). The petitioner made an appeal to the 1st respondent through the Governor of the North Central Province and the Minister. An inquiry was conducted by the Additional Secretary to the Ministry of Public Administration in respect of the petitioner's appeal. The petitioner stated that the then Minister of Social Services, the member of Parliament representing the petitioner's electorate by P8 dated 09.09.98 suggested to appoint the petitioner backdating his appointment with effect from 22.09.1989 without backwages. 30

The general rule of mandamus is that it lies to secure the performance of which the petitioner has sufficient, legal interest. To be enforceable by mandamus, the duty to be performed must be of a public nature and not merely of a private character. The authority relied on by the petitioner for his appointment was the letter marked P2 which does not prescribe any duty having statutory potential. In *De Alwis v Silva*⁽¹⁾ the Supreme Court held that the administrative regulations laid down in the Ceylon Government Manual of Procedure do not have the status of "law" and non-compliance with them cannot be enforced by mandamus. Even if this Court goes by the letter P2, it only demonstrates, that the Secretary, Ministry of Public Administration instructed the 3rd respondent to send the chosen candidates (including the petitioner) for training. In the absence of any documentary proof to establish that the petitioner has successfully completed the training programme, this Court cannot compel the respondents to appoint the petitioner to the post of Grama Sevaka Niladhari, Grade II. 40 50

Having interviewed and selected in the year 1989, as submitted by counsel for the petitioner, the present application was filed almost 10 years after the document P2 was sent to the 3rd respondent. The petitioner who is seeking a discretionary remedy of this court is not entitled to relief as a matter of course. The Court has a discretion to deny him relief having regard to his conduct and delay. It may be appropriate to quote the observations made by Sharvananda, J. (as he then was) in the case of *Biso Menika v Cyril de Alwis*⁽²⁾. 60

"What is reasonable time and what will constitute undue delay will depend upon the facts of each particular case. However the time lag that can be explained does not

spell laches or delay. If the delay can be reasonably explained, the Court will not decline to interfere. The delay which a court can excuse is one which is caused by the applicant pursuing a legal remedy and not a remedy which is extralegal. One satisfactory way to explain the delay is for the petitioner to show that he has been seeking relief elsewhere in a manner provided by the law."

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The petitioner having withdrawn C.A.Application No. 126/96, sought administrative relief not in a manner provided by law. The relief sought by the petitioner was extra legal and this Court cannot excuse him for making this application almost three years after withdrawing the said C.A. Application No. 126/96. In any event, the previous application No. 126/96 was withdrawn without reserving the right to institute this application. It would be inconsistent with the Court of Appeal (Appellate procedure Rules of 1990) for a party to institute a subsequent application regarding the same matter that has been challenged in a previous application. "*Vide Jayawardena and Five others v Dehiattakandiya Multi Purpose Co-operative Society Ltd* (3)". On this ground too, the petitioner's application fails.

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When a petitioner applied for a *Writ of Certiorari and Mandamus* to enhance the compensation awarded to him 07 months earlier by an Acquiring Officer under the Land Acquisition Act, the Supreme Court refused the application on one of the grounds, namely, that the petitioner was guilty of undue delay in making the application. *Vide Gunasekera v Weerakoon*(4). In the case of *Abdul Rahuman v The Mayor of Colombo*(5) Sansoni CJ. refused an application for a *Writ of Mandamus* on the ground of delay.

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For the aforesaid reasons, I dismiss the petitioner's application without costs.

Application dismissed.