

**SELVAMANI
VS
DR. KUMARAVELUPILLAI AND OTHERS**

COURT OF APPEAL
SRIPAVAN J.
SISIRA DE ABREW J.
C. A, APPL. NO. 45/2004 (WRIT)
FEBRUARY 10, 2005

Writ of Certiorari/Mandamus to quash decision to demote and compel authority to restore to the earlier post-Is a writ of Certiorari available as a matter of right?- Has the Court discretion? - will a writ of Mandamus be granted when it appears that it would be futile ?

The Petitioner was requested to hand over the keys of the Projector Room to the Authorities before he went on leave. The Petitioner did not hand over same. The authorities conducted a disciplinary inquiry against the Petitioner for not handing over the keys when he went on leave. After the Inquiry, the Petitioner was demoted and transferred.

The Petitioner contends that he has been severely punished without any charges being framed-thus violating the provisions of the Establishment Code.

HELD -

- (i) It is an undisputed fact that the Petitioner did not hand over the keys to the Authorities when he went on Leave.

The Disciplinary Inquiry and the demotion of the Petitioner arose as a result of the said conduct.

It is not the practice of this Court to exercise the jurisdiction now invoked, to relieve the Petitioner of the Consequences of his own folly, negligence and laches.

Per Sisira de Abrew J.

"A person who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver submission to jurisdiction are all valid impediments, which stand against the grant of relief.

The Petitioner has been sent on vacation of post after the Order of demotion. This order has not been challenged by him.

HELD further :

- (i) Even if this application of the Petitioner is granted, he is not entitled to resume his earlier office in view of the Order of vacation of post. Therefore issuing a writ of Mandamus would be futile. A writ of Mandamus will not be issued if it will be futile to do so and no purpose will be served.

Application for Writs in the nature of Certiorari/Mandamus.

Cases referred to :

1. *Gunawardena vs Sugathadasa* - CA 1315/9 - CAM 29.11.1991
2. *Jayaweera vs Assitant Commissioner of Agrarian Services* - 1996 2 Sri LR 70.
3. *Sethu Ramasamy vs Moregoda* - 63 NLR 115
4. *Samsudeen vs Minister of Defence and External Affairs* 63 NLR 430
5. *Gunasinghe vs Mayor of Colombo* - 46NLR 85
6. *Eksath Engineeru Saha Samanya Kamkaru Samithiya vs S. L. S. de Silva* 73NLR 260

Srinath Perera for Petitioner

Ms. M. N. B. Fernando S. S. C. for Respondents

cur.adv.vult.

March 14, 2005

SISIRA DE ABREW J.

This is an application for writs of certiorari and mandamus to quash the decision of the first respondent demoting the petitioner and to compel the first respondent to restore the petitioner to his earlier post of Project Operator respectively.

The petitioner was appointed as a sanitary labourer of the Health Department with effect from 01.08.1985 and was promoted to the post of Project Operator with effect from 01.10.2001 by a letter dated 29.09.2001, issued by the first respondent. The petitioner who was attached to the 3rd respondent's office, applied for leave for 05 days from 13.07.2003 and his leave was approved. However, he could not report for duty on the due date as he fell ill and reported for duty only on 28.07.2003. The petitioner was in possession of the keys of the projector room in which the Audio- Visual equipment of the 3rd respondent was installed. Before the petitioner went on leave, the 3rd respondent requested the petitioner to hand over the keys of the projector room to the Administrative Officer, but the petitioner did not hand over the same as the 3rd respondent did not give the said order in writing. The petitioner, in his petition, claims that he requested the 3rd respondent to give the order in writing.

The petitioner states that on 01.08.2003 the 2nd respondent conducted a disciplinary inquiry against the petitioner for not handing over the keys of the said room when he went on leave. The statement of the petitioner was recorded and he signed the said statement. The petitioner alleges that after the said inquiry, the first respondent, by his letter dated 11.09.2003 (P4A), informed the petitioner that he has been demoted to the earlier post of Sanitary Labourer and was transferred to the District Hospital, Cheddikulam. The Petitioner was also asked to pay certain expenses incurred by the 3rd respondent's office as the respondents had to hire an audio-visual equipment during his absence.

The learned Counsel for the petitioner contends that he has been severely punished without any charges being framed and as such respondents have violated the provisions of the Establishments Code.

It is an undisputed fact that the petitioner did not hand over the keys of the projector room to the Administrative Officer when he went on leave for 05 days. It appears from the objections of the respondents that Audio-visual equipment and the public address system were installed in the projector room and no duplicate keys were available to this room. During

the period that the petitioner requested for leave, the access to the projector room became essential as the respondents were getting ready to launch certain programs. The respondents and the other member of the office did not have access to the projector room during the said period as a result of the above-mentioned conduct of the petitioner. In view of the above facts it appears that access to this room was essential in order to maintain smooth functioning of the office of the respondents where the petitioner was employed as a project operator. Hence it becomes the duty of the petitioner to hand over the keys of the said room when he goes on leave. It is not necessary for the 3rd respondent to make an order in writing directing the petitioner to hand over the keys to the Administrative Officer when the petitioner applies for leave.

The petitioner's leave for the period commencing from 14.07.2003 to 21.07.2003 was approved but on 22.07.2003 the petitioner did not report for duty instead, he sent a letter stating that he was unable to report for duty as he was not well. He reported for duty only on 28.07.2003. The petitioner has stated in his counter affidavit that he submitted a medical certificate to the 3rd respondent's office for the period commencing from 21.07.2003 to 27.07.2003. But the respondents have stated in their objections that the petitioner did not submit a medical certificate for this period. No evidence whatsoever was placed before this court to establish that a medical certificate was, in fact, submitted. It is observed that even on 22.07.2003 the petitioner failed to hand over the keys of the projector room to the 3rd respondent. He did not even indicate his willingness to send said keys to the respondent's office when he informed the 3rd respondent by 3R2 his inability to report for duty.

In view of the aforesaid conduct of the petitioner, failure to hand over the keys of the projector room becomes relevant in this case. The disciplinary inquiry and the demotion of the petitioner arose as a result of the said conduct. In view of the above facts it appears that the petitioner's demotion in P4A has arisen as a result of his own folly and negligence. In my view, the petitioner has come to this Court seeking redress for his own folly. H. W. Senanayake J in *Gunawardena Vs Sugathadasa*⁽¹⁾ observed that "It is not the practice of this Court to exercise the jurisdiction now invoked, to relieve the petitioner of the consequence of his own folly, negligence and laches. In the case of *Jayaweera Vs. Assistant Commission of Agrarian Services*⁽²⁾ Jayasuriya J. remarked that " A petitioner who is seeking

relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief". Applying these principles, I hold that a writ of certiorari will not lie to relieve the petitioner of the consequences of his own folly, negligence and laches.

For the above reasons I hold that this Court is not disposed to grant the relief claimed by the petitioner to quash the decision in P4A by way of a writ to certiorari.

The petitioner has now vacated post. This is evident from letter dated 25.08.2004 (3R9A). The petitioner has been sent on vacation of post after the decision in P4A. At the hearing of this application the learned Counsel for the petitioner admitted that no application for writ of certiorari has been filed to quash the said order whereby the petitioner was sent on vacation of post.

The petitioner by this application also moves for a writ of mandamus on the first respondent directing that the petitioner be restored to his earlier position i. e. to the post of Project Operator. Even if this application of the petitioner is granted, he is not entitled to resume his earlier office in view of the order of vacation of post (3R9A). Therefore, issuing a writ of mandamus in this case would be futile. In the case of *Sethu Ramasamy Vs. Moregoda*⁽³⁾ Gunasekara J. observed that "A mandamus will not be granted when it appears that it would be futile". In the case of *Samsudeen Vs Minister of Defence and External Affairs*⁽⁴⁾ L. B. de Silva J too remarked that "A writ of mandamus will not be issued if it will be futile to do so and no purpose will be served". In the case of *Gunasinghe Vs. Mayor of Colombo*⁽⁵⁾ De Kretser J. stated that "A mandamus will not be issued when it appears that it would be futile in its result". In the case of *Eksath Engineru Saha Samanya Kamkaru Samithiya Vs. S. C. S. de Silva*⁽⁶⁾ mandamus was sought to compel three respondents, the members of an Industrial Court, to function as an Industrial Court. By the time the application was heard by the Court all three members had ceased to hold office as members of the Court. The writ was refused because parties obviously cannot be ordered to do what they are not qualified to do and are therefore unable to do.

Applying the legal principles stated in the aforesaid decisions, I hold that the mandamus will not be granted when it appears that it would be futile.

I have already pointed out that issuing a mandamus would be futile in this case. The application of the petitioner for writ of mandamus should fail on this ground alone.

The learned counsel for the petitioner argued that the punishments imposed on the petitioner was invalid in law as the respondents had failed to frame charges against the petitioner. I have earlier pointed out that it would be futile to issue a writ of mandamus in this case and the petitioner is not entitled for a writ of certiorari. Therefore, failure to frame a charge against the petitioner does not arise for consideration.

For the above reasons I dismiss the petition of the petitioner. There will be no costs.

SRIPAVAN J.—I agree

Application dismissed.
