
**DHARMASENA
VS
SHANKER AND OTHERS**

COURT OF APPEAL.
SRISKANDARAJAH, J.
CA 2252/2004.
MARCH 22, 2006.

Writ of Certiorari - Police Ordinance - Decision to terminate the services - illegal, arbitrary not in conformity with Circulars?-Ultra vires-Reasonableness of the order?

The petitioner - a Reserve Inspector of Police-was charge sheeted and after inquiry was found guilty of the charges leveled against him and was suspended for the reason that he has committed a serious breach of discipline in terms of Police Department Orders. Thereafter his services were terminated as the 1st respondent had not recommended the reinstatement of the petitioner. The petitioner sought to quash the said decision terminating his services. The contention of the respondents was that the petitioner was suspended only on four occasions and in terms of the Circular reservists who are suspended over four times cannot be considered for reinstatement -Circular P32.

HELD:

- (i) The petitioner's reinstatement was refused for the reason that the 1st respondent- Deputy Inspector General of Police (Uva Range) has not recommended for reinstatement as the petitioner was suspended on a number of occasions. The letter does not specify on how many occasions he was suspended.
- (2) The documentary evidence shows that the petitioner was suspended on disciplinary grounds only on 2 occasions.
- (3) The petitioner was not suspended more than four occasions, therefore, the letter of refusal to reinstate is ultra vires- Circular P 32.
- (4) In any event, the reason given for not reinstating the petitioner cannot be reasonable as it does not refer to the number of

occasions the petitioner was suspended and whether those suspensions are on disciplinary grounds or not.

APPLICATION for Writ of Certiorari.

Rienze Arasakularatne PC with Wasantha Batugoda and Nilanthi Fernando for petitioner. Farzana Jameel SSC for Attorney General

Cur. adv. vult.

May 29, 2006.

SRIKANDARAJAH, J.

The Petitioner joined the Sri Lanka Police Reserve Force as a Reserve Sub Inspector of Police on 07.01.1979 and on 01.11.1987 he was elevated to the rank of Reserve Inspector of Police. On 01.04.2003 the Petitioner was transferred to the Hambegamuwa Police post. The Petitioner submitted that on 06.11.2003 he received a message that his son was seriously ill hence he left the police station at about 4 p.m. on the same day after handing over the police station to the next senior officer. His leave application pertaining to the period from 07.11.2003 to 09.11.2003 was handed over on 10.11.2003 and the said leave application was recommended by the 4th Respondent and approved by the 3rd Respondent. The 1st Respondent contended that the Petitioner had left the said Police station without complying with the standing orders of S. S. P. Monaragala Division dated 15.05.2003 and as stated by the Petitioner, he did not give charge or hand over the said Police Post to any officer. He had only made a routine out entry dated 06.11.2003 at 1600 hrs. The leave application of the Petitioner for the afore said period was only purportedly approved by the 3rd respondent on 31.12.2003 and the leave could be approved during "no leave period" only by the D. I. G. of the Range. An inquiry against the Petitioner was conducted on the above matter by Inspector of Police M. K. D. Silva the 7th Respondent on the direction of the 1st Respondent. The inquiry was conducted in conformity with the

provisions laid down in IG's Circular No.1590/2004 of August 2001(P28). After the inquiry the Petitioner was found guilty on ten (10) charges and he was suspended by a telephone message dated 27.02.2004 (P17) and by letter (P18) of the same date for the reason that he has committed a serious breach of discipline in terms of Police Department Orders A7.

The Petitioner contends that the said decision of the 1st Respondent to suspend him from service is illegal and/or arbitrary and/or unreasonable for the following reasons: that the 7th Respondent is not well disposed towards the 2nd Respondent who granted permission to the Petitioner to leave the station as such the inquiry conducted was biased, the inquiry conducted by an officer holding the same rank as that of the Petitioner and not by a person holding a higher rank, the suspension of the Petitioner has not been properly approved by the 5th Respondent as required by Reserve Police Headquarters Circular No.18/1997 but it was approved by the 6th Respondent and the suspension order could have been made by the 2nd Respondent and not the 1st Respondent according to IGP's circular No.1044/92 of 30.12.1999 and 1590/2002 of August 2001.

The Petitioner submitted that the inquirer is biased but the petitioner had not raised this objection before the inquirer ; without raising this objection before the inquirer the Petitioner cannot raise this objection in this court for the first time. The petitioner challenged the findings of the inquirer as the inquiry was conducted by an officer of the same rank and not by a higher officer. The inquiry should have been conducted by an officer of a higher rank as stipulated by Part II of Department order A7 and his suspension has not been properly approved by the 5th Respondent as required by Reserve Police Head Quarters Circular No 18 of 1997. The Respondents contend that only complaints made against a Police officer by the members of public have to be inquired into by a senior Gazetted Officer who is not below the rank of Assistant Superintendent of police. The 7th Respondent is a regular Police Officer senior in rank and service to the Petitioner and the 1st Respondent as the disciplinary authority is empowered to assign an officer to hold a preliminary inquiry in respect of lapses committed

by the rank of R/IP. The Petitioner also submitted that in terms of IGP circular No. 1044/92 dated 30.12.1999 and IGP's Circular No.1590/2001 of August 2001 it is the 2nd Respondent above named and not the 1st Respondent who can suspend the Petitioner. The Respondent contend that the 1st Respondents being a Deputy Inspector of Police (the disciplinary authority) he is superior in rank to the 2nd Respondent and the power of delegation are set out in circular No.1044(1) dated 30th December 1992(P31).

Even though the Petitioner has challenged the said inquiry on several grounds the Petitioner has not established that there is illegality or procedural irregularity in the holding of the inquiry. Therefore this court will not interfere in the findings of the inquirer.

The Petitioner further submitted that he received a letter from the 6th Respondent dated 24.08.2004, terminating the services of the Petitioner, as the 1st Respondent has not recommended the reinstatement of the Petitioner (P23). The Petitioner submitted that the decision of the 6th Respondent to terminate the services of the Petitioner is illegal and/or arbitrary and/or capricious and/or unreasonable for the reason that it is not in conformity with IGP's circular No. RP 1282/2003 of 29.12.2003 as only Reservists who are suspended over four times will not be considered for re instatement (P32).

The said document marked P32 in paragraph 4.5 provides as follows :

“Reservists who are suspended over 4 times will not be considered for reinstatement. Deputy Commandant/SLPR should forward Personal Files of such officers with his recommendation in order to demobilize the officers concerned.”

The Respondents have neither denied this document nor submitted any other document or circular that deals with the correlation between the number of suspensions and the re-instatement. According

to the above document only in cases where the number of suspensions exceed four the reinstatement is not considered.

The Petitioners reinstatement was refused by the letter P23 dated 24.08.2004 for the reason that the Deputy Inspector General of Police Uva Range has not recommended for reinstatement as the Petitioner was suspended on number of occasions. This letter does not specify how many occasions he was suspended. But the 1st Repondent in his affidavit filed in this case stated that the Petitioner had been suspended on four occasions during his tenure of service in the Sri Lanka Police Reserve (SLPR). The letters of suspensions are marked as IR2 (A), 1R2, (B), 1R2(C) and IR2(D). Out of these documents the documents marked 1R2(B), and 1R(C) are in relation to suspension on account of approved overseas leave and reinstatement. The only documents that relates to suspension on disciplinary grounds are IR2 (A) and 1R2(D). In any event the Petitioner was not suspended more than four occasions therefore if the aforesaid document marked P32 is in force the letter of refusal to reinstate is *ultra vires* the said document.

Even if the said document is not in force the reason given for not reinstating the Petitioner cannot be considered as reasonable as it does not refer to the number of occasions the Petitioner was suspended and whether those suspensions are on disciplinary grounds or not. If the Petitioner was not recommended for reinstatement taking into consideration the number of suspensions then it is unreasonable to consider suspensions that are brought about due to approved overseas leave. For these reasons this court issues a writ of certiorari to quash the decision contained in document dated 24.08.2004 marked P23. Therefore the court allows the application in relation to prayer (f) of the Petition without cost.

Application partly allowed.