GAWARAMMANA
v
TEA RESEARCH BOARD AND OTHERS

COURT OF APPEAL
SRIPAVAN, J.
CA 809/99
JUNE 27, 2003
AUGUST 29, 2003

Writ of Certiorari – Termination Challenged – Does the petitioner's contract of employment have a statutory flavour? – Employment contractual – Does certiorari lie? – Public Office.

The services of the petitioner who was employed as a Transport Officer of the 1st respondent was terminated after Inquiry. A *writ of certiorari* was sought to quash the decision to terminate his services and a *writ of mandamus* to compel the respondents to re-instate him.

Held :

(i) The employment of the petitioner under the Tea Research Institute was contractual and as such no writ lies to remedy grievances from an alleged breach of contract or failure to observe the principles of natural justice.

(ii) Powers derived from contract are matter of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of *certiorari* is itself was not made in the exercise of any statutory power.

APPLICATION in the nature of *writ of certiorari/mandamus*..

Cases referred to:

1. *R* v *Electricity Commissioner* – 1924 1 KB 171 at 204.
2. *Chandradasa* v *Wijeratne* – 1982 1 Sri LR 412 at 415.
3. *U.S. de Silva* v *National Water Supply and Drainage Board and Another* – 1989 2 Sri LR 1
4. *R* v *British Broadcasting Corporation ex p. Lavelle* – 1983 1 WLR 23
5. *R* v *Lord Chancellor's Department ex. p. Nangle* – 1992 1 ALL ER 897.
6. *Ariyaratne* v *Sri Lanka Institute of Architects* – 2001 3 Sri LR 288.

7. *Nanayakkara* v *Institute of Chartered Accountants* 1981 2 Sri LR 52.

8. *Jayaweera* v *Wijeratna* 1985 – 2 Sri LR 413.

Hemantha Situge with *S. Sawaad* for petitioner.

Ms. M.N.B. Fernando, S.S.C. for 1-16th respondents.

17th and 18th respondents absent and unrepresented.

Cur.adv.vult

October 7, 2003

SRIPAVAN, J.

The petitioner was employed as a "Transport Officer" of the Tea Research Institute with effect from 1st July 1996 by the second respondent. The said appointment of the petitioner was subject to a probationary period of three years as evidenced by the letter of appointment marked P1. On or about 17th December 1997 the petitioner received a letter of interdiction signed by the second respondent dated 11th December 1997 marked P6. Thereafter the petitioner received a charge sheet dated 27th January 1998 marked P7 preferring ten charges levelled against him. When the inquiry commenced on 4th March 1998, upon a preliminary objection raised by the defence counsel, an amended charge sheet signed by the second respondent was served on the petitioner marked P8. Thereafter, the inquiry commenced on the amended charge sheet by the seventeenth respondent and concluded on 8th May 1999.

The basis of petitioner's challenge in these proceedings are as follows:–

(i) That the petitioner was not given an opportunity of being heard and an unbiased, free and fair inquiry has been denied to him.

(ii) That the seventeenth respondent, namely, the inquiry officer could not have performed his functions in the districts of Nuwara Eliya and Ratnapura where the disciplinary inquiries were held.

(iii) That the inquiry officer acted without jurisdiction.

(iv) That the letter of termination marked P13 was not signed by the disciplinary authority and therefore void *ab initio*.

Thus, the petitioner seeks to quash the decision to terminate his services from the Tea Research Institute dated 8th July 1999 marked P13 and a *writ of mandamus* compelling the first to sixteenth respondents to re-instate the petitioner with back wages and all other benefits.

The learned Counsel for the petitioner was unable to show any statutory provisions or any rules made by the Tea Research Board which advert to the powers or duties attached to the post of "Transport Officer" and the procedure for termination of services from the Tea Research Institute. In the circumstances, the primary issue for determination is that in the event of a dispute arising with regard to the termination of the services of the petitioner, can he seek relief by way of *certiorari* or *mandamus?* In *R* v *Electricity Commissioner*(1) *at 204* the *writ of certiorari* was said to be available against **"any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially".** Accordingly, the person determining the questions must have legal authority to do so. This being so, it is necessary to ascertain in the first instance whether the decision sought to be quashed was made in the exercise of any statutory power.

In the case of *Chandradasa* v *Wijeratne* (2) at 415 where the petitioner sought to quash the order of dismissal on the grounds of *mala fides,* bias and also on the ground of not being given a fair opportunity of being heard, Thambiah. J succinctly stated as follows; **"No doubt the competent authority was established by statute and is a statutory body. But the question is, when the respondent as competent authority dismissed the petitioner, did he do so in the exercise of any statutory power?.....The Act does not deal with the question of dismissal of employees at all. It does not specify when and how an employee can be dismissed from service – the grounds of dismissal or the procedure for dismissal. So that, when the respondent made his order of dismissal, he did so in the exercise of his contractu-**

al power of dismissal and not by virtue of any statutory power .....If the petitioner's dismissal was in breach of the terms of the employment contract, the proper remedy is an action for declaration or damages. The Court will not quash the decision on the ground that natural justice has not been observed."

The case of *K.S. De Silva* v *National Water Supply and Drainage Board and another* (3) referred to by the learned Senior State Counsel is also relevant to consider. In this case, the petitioner sought a *writ of mandamus* on the General Manager of the respondent Board on the basis that he has failed to carry out the directions of the said Board and has failed to appoint the petitioner to the post of Accountant, Grade IV. G.P.S. de Silva, J. (as he then was) commented thus; "Mr. Perera referred us to Sec. 68 and 69 of the National Water Supply and Drainage Board Law No. 2 of 1974. But these two Sections refer only to the powers and duties of the General Manager of the Board and the powers of the Board to appoint to its staff such officers and servants as the Board may deem necessary and determine their terms of remuneration and other conditions of employment. We were not referred to any rules made under the said Law No. 2 of 1974 which speak of powers or duties attached to the post of Accountant. In my opinion, the office to which the petitioner is seeking admission is not a "public office" of the kind which attracts the remedy of mandamus. It is an office essentially of a contractual or private character. Accordingly, as a matter of law, the *writ of mandamus* does not lie and the application must fail."

An employee of the British Broadcasting Corporation failed in her application for certiorari to quash her dismissal by the Corporation since the ordinary contractual obligations of master and servant had never been within the prerogative orders of mandamus, prohibition and certiorari (Vide *R* v *British Broadcasting Corporation ex. p Lavelle*(4). A civil servant failed in attempting to have a disciplinary penalty quashed since his proper course was to sue for breach of contract. The Queens' Bench Division in the case of *R* v *Lord Chancellor's Department ex. p Nangle*(5) held that **"the internal disciplinary procedures of the applicant's department arose out of his appointment and were consensual, domestic and informal unlike an appeal to an independent body**

set up under the prerogative. As such, judicial review would not be an appropriate remedy since there was an alternative and more effective remedy available from an industrial tribunal. The application for judicial review would therefore be dismissed."

Learned Counsel for the petitioner strenuously contended that the petitioner's contract of employment has a statutory flavour and heavily relied on the judgments of *Ariyaratne* v *Sri Lanka Institute of Architects*(6) *and Nanayakkara* v *Institute of Chartered Accountants* .(7) In Ariyaratne's case *(supra)* the petitioner sought a *writ of mandamus* directing the respondents to admit/enroll the petitioner as a Corporate Member. The Court upheld the argument put forward by the learned Counsel for the petitioner that Sec. 8 (1) of Law No. 1 of 1976 lays down the disqualifications precluding membership and the petitioner was not disqualified in any manner whatsoever from the membership as set out in Sec. 8 (1). In Nanayakkara's case, *(supra)* the Court observed that an examination of the regulations framed under the statute, namely the Manual of Procedure showed that the petitioner's employment had a statutory flavour which differentiated from ordinary relationship of master and servant.

The aforesaid two cases cited by the learned Counsel for the petitioner have no application to the case in hand. No statutory provision or regulations made by the Board giving statutory flavour to the post of "Transport Officer" were brought to the notice of court. Therefore, the petitioner has no powers and duties statutorily vested in him. The powers derived from contract are matters of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of *certiorari* is itself was not made in the exercise of any statutory power. (Vide *Jayaweera* v *Wijeratna).*(8)

For the reasons stated, I am inclined to agree with the submissions made by the learned Senior State Counsel that the employment of the petitioner with the Tea Research Institute was contractual and as such neither *certiorari* nor *mandamus* would lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of natural justice. The argument of the learned Counsel for the petitioner that the letter of termination (P 13) was not signed by the disciplinary authority, namely the sec-

ond respondent does not hold water. It was issued under the hand of the second respondent and countersigned by the Deputy Director (Administration). It is also observed that the petitioner at no 140
stage objected to the jurisdiction of the inquiry officer. Having participated at the inquiry without raising any objections, the petitioner is now estopped from challenging same at the eleventh hour.

The petitioner's application is therefore dismissed. There will be no costs.

Application dismissed.