

ABDUL MAJEED
v
GUNASEKERA, SECRETARY
MINISTRY OF JUSTICE AND OTHERS

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA),
WIJEYARATNE, J.
C.A 836/2001
MARCH 10, 2003
JUNE 20, 2003

Writ of Mandamus – Judicial Officer on compulsory leave – Is he entitled to fuel and driver's allowance? – Recommended by J.S.C. – Does writ lie.

Held:

- i) The use of a vehicle is primarily for the performance of official duties even though as an appendage privilege the judicial officers are permitted to use the vehicle on the payment of certain charges, even for personal use.
- ii) Fuel, the vehicle and driver's allowances are not personal expenses and are not reimbursable, under circumstances, especially where the vehicle was not in use, during the period under review for official functions.
- iii) Though the J.S.C. could make a recommendation, it is ultimately the 1st respondent who would be accountable for payments and such decision must in the end accord with the financial regulations.

APPLICATION for a *Writ of Mandamus*.

Romesh de Silva P.C., with *M.S.M. Suhaid* for petitioner.

Y.T.W. Wijeyatilake D.S.G., for respondents.

Agustus 8, 2003

SHIRANEE TILAKAWARDENA, J.(P/CA)

The petitioner has preferred this application seeking a *Writ of Certiorari* to quash the decision of the 1st respondent contained in the letters dated 26/02/1999 and 25/05/2001 which state that the Judicial Officers who are on compulsory leave are not entitled to the allowances which had been referred to in P3 and P12. They have also sought a *Writ of Mandamus* to direct the 1st respondent to pay the fuel allowance and the driver's allowance for the period from 01/04/1997 to 31/03/2000 and the vehicle allowance from 01/06/1997 to 31/03/2000. 01

The only matter that was argued in this case was whether fuel allowance and the driver's allowance should be paid to the petitioner who had been on compulsory leave with effect from 14th March 1997 to April 2000. It is admitted that the petitioner's official vehicle was withdrawn on the 24th of May 1997 and that the petitioner's fuel allowance, driver's allowance and the vehicle allowance were not paid during this period. It is also admitted that the petitioner's personal allowances and housing allowances which had been withheld were subsequently paid from April 1997. The petitioner has stated that in consequent to a letter sent by the Minister of Justice to the Secretary of the Judicial Service Commission seeking observations and recommendations of the Judicial Service Commission in respect of non payment of fuel, driver's and vehicle allowances to the petitioner that the Secretary to the Judicial Service Commission has replied by P11 that the Judicial Service Commission had recommended the payment of the fuel, driver's and vehicle allowances to the petitioner in this case. The position of the petitioner was that in view of this recommendation that such allowances had to be treated in compliance with the decision of the Judicial Service Commission. 10 20

It is not in dispute that the petitioner did not have the need to use his official vehicle bearing No.19-9329 during the period that he was on compulsory leave from 14/03/1997 to 03/04/2000. In considering this payment the first distinction that has to be made is that reimbursable expenses are not personal expenses. The use of a vehicle is primarily for the performance of official duties, even 30

though as an appending privilege the Judicial Officers are permitted to use the vehicle, on the payment of certain charges, even for personal use. But clearly, such use of the vehicle would be upon the contingency that the vehicle was used concurrently by the Judicial Officer in the performance of his official duties. In this context, the primary use of the official vehicle is for the purpose of performance of official functions and duties. Personal travel upon the payment of the allowance by the user of the vehicle is merely incidental to the official use of the vehicle.

40

In interpreting the distinction between personal emoluments and reimbursable expenses the Establishments Code clearly makes a distinction between these two payments and payments such as travelling expenses, transport allowances or consolidated allowances do not come under the category of personal emoluments. In these circumstances, the fuel, the vehicle and driver's allowances are not personal expenses and therefore are not reimbursable under circumstances especially where the vehicle was not in use during the period under review for official functions.

50

A specific Circular on this matter was issued by the Ministry of Justice Circular No.9 of 2001 dated 21.05.2001. This Circular had been issued by the Secretary to the Ministry of Justice having taken into account several of the instructions of the Ministry of Public Administration given through their several Circulars clarifying that when an officer was deemed to be absent from duty situation which includes the period of compulsory leave, no payments should be made in respect of fuel, driver's, official vehicles etc.

60

This Circular was perused and examined by this Court in terms of Article 140 of the Constitution as being part of the record and relevant in the decision of this case. An examination of other Circulars too has shown that the policy of the Ministry of Justice has been not to pay fuel, driver's and vehicle allowances to Judicial Officers who are on compulsory leave. It is also important that this Circular has also taken into account the several earlier Circulars that had been issued. The decision therefore taken not to pay the aforesaid allowances claimed by the petitioner would accord with the policy decision taken by the Ministry of Justice. Indeed the petitioner has sought to make reference to another Judicial Officer who had been granted such allowances during the period that he was on compul-

70

sory leave. But on this matter being drawn to the attention of the Secretary to the Ministry of Justice, (in their affidavit) they have stated that such payments are unauthorized and that early action would be taken to recover the same.

Though it may be argued that the Establishments Code defines public officers in a manner that excludes Judicial Officers it has been the convention and policy followed by the Ministry of Justice and others involved in the implementation of payment and determination of allowances and such payments, to be guided by the Establishments Code, by adopting certain provisions which appear to be relevant even for allowances that have to be paid to Judges. It also appears that in this context the Director General of the Establishment has also stated that in terms of a Ruling that the petitioner was ineligible to receive the allowances. Therefore even in terms of Establishments Code the payments of the allowances claimed by the petitioner could not be supported and he would therefore be disentitled to be paid the allowances he has claimed.

In any event, the petitioner has not set out the grounds on which he is seeking to quash the letters marked P3 and P12, as in any event there does not appear to be any decision that has been made which is either ultra vires, unreasonable or where which has not been in accordance with the principles of natural justice.

It also has to be observed that a mere recommendation by the Judicial Service Commission does not create an obligation or mandate regarding the payment of allowances. Though recommendations could be made, it is ultimately the Secretary, Ministry of Justice who would be accountable for payments that are made and accordingly as such decision must in the end accord with the financial regulations. In any event, the Judicial Service Commission would not be the authority to determine or make such payments.

Therefore the application of the petitioner is dismissed with costs in a sum of Rs.2000/-.

WIJEYARATNE, J. – I agree.

Application dismissed.