IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for Mandates in the nature of Writs of Certiorari and Prohibition and Mandamus under and in terms of Article 140 of the Constitution.

Case No. CA/WRIT/0173/2025

Rohitha Amarapala H.A.R.W.,
No. 3/1A, Sri Dharmapala Road,
Mount-Lavinia.

PETITIONER

Vs.

1. Sri Lanka Insurance Corporation Life Limited

2. Mr. Nusith Kumarathunga,
   Chairman - SLICLL

3. Mr. Chandana L. Aluthgama,
   Group CEO – SLICLL

   All,
   Sri Lanka Insurance Corp. Ltd.,
   No.21, Vauxhall Street,
   Colombo 2.

4. Hon. Attorney-General,
   Attorney-General's Department,
   No. 159, Hulftsdorp,
   Colombo 12.

.

RESPONDENTS

Before: **R. Gurusinghe J.**

&

Dr. Sumudu Premachandra J.

Counsel: Geoffrey Algaratnam, P.C. with Melusha Dodangoda instructed by Ishara Gunawardena for the Petitioner.
Mohamed Adamely, P.C. with Dakshina Wickramaarchchi instructed by Manchula Seneviratne for the 2nd and 3rd Respondents.
Rajika Aluwihare, S.C. for the 1st and 4th Respondents.

Written Submissions: By the Petitioner – 15.05.2025
By the Respondents – 14/05/2025 and 19.05.2025.

Supported on: 28.04.2025

Order On: **19.06.2025.**

Order on formal notices and Limited Objections (Preliminary Objections)

Dr. Sumudu Premachandra J.

1] The Petitioner seeks judicial review of an alleged unlawful and unreasonable decision by the 1st, 2nd, and 3rd Respondents (SLIC, its Chairman, and Group CEO) to terminate his employment effective from 9th March 2025, contrary to Department of Public Enterprises Circular No. 02/2021 dated 14th December 2021.

2] He prays for a writ of certiorari to quash the decision in letter dated 30th December 2024 (X6), a writ of mandamus directing continuation of his employment until 9th March 2026 or until he reaches 60 years of age, and a writ of prohibition to restrain the Respondents from treating him as not in employment during that period. Interim relief and costs are also sought.

3] The backdrop of the facts are as follows; the Petitioner, with extensive experience in public and corporate sectors, was employed as DGM-HR & Administration at SLIC since 2018, originally via Management Services Rakshana (Pvt) Ltd but functionally part of SLIC. The Petitioner alleges that after the 2nd Respondent's appointment as Chairman in October 2024, the Petitioner was informally asked to resign due to alleged unpopularity among trade unions. Though the Petitioner submitted a conditional resignation proposal on 22nd November 2024 (X5), this was neither accepted nor acted upon. Instead, he was issued letter X6 on 30th December 2024 rejecting his request for extension and placing him on compulsory leave. The Petitioner challenges this as lacking due authority and contrary to applicable circulars.

4] The Petitioner argues that being placed on compulsory leave and denied employment beyond March 9, 2025, is unjust and contrary to established policies. The Petitioner draws a past practice of service extension beyond retirement age, as outlined in an undated policy signed by three officers. The Petitioner relies on reference Department of Public Enterprises Circular No. 02/2021 dated 14th December 2021, which sets the compulsory retirement age at 60 for employees in statutory companies, with the option to retire earlier at 55 based on performance. He says that he has consistently received positive evaluations and claims the circular is binding on all government-related bodies, including the 1st Respondent. He further shows that despite the 1st Respondent's request to exempt its employees from this circular, the Ministry of Public Enterprises denied the exemption in September 2024.

5] The Learned President's Counsel for the Petitioner argues that the Respondents denial of the Petitioner's employment beyond 9th March 2025 is unreasonable and violates his legitimate expectation. The Petitioner stresses that the 1st Respondent has consistently adhered to Ministry of Public Enterprise circulars, including one dated 6th April 2022, therefore, the Petitioner argues that denying his continued employment beyond 9th March 2025 is ultra vires, unreasonable, driven by improper motives, and violates natural justice and his legitimate expectations.

6] The 2nd Respondent has filed limited objections and strongly opposes the issuance of notice and interim relief sought by the Petitioner, on the grounds of deliberate suppression of material facts and misrepresentation of service records. The Petitioner, formerly DGM-HR at Sri Lanka Insurance Corporation (SLIC), is accused of producing self-serving evidence (X3) while omitting critical documents revealing a pattern of poor performance.

7] The Respondents made the following key allegations:

- Failure to implement the Medical Fitness Test (Rule 7.4), leading to the recruitment of unfit personnel.

- Misleading the Board in recommending the appointment of Mr. Thilina Hiripitiya to a non-existent post.
- Over 200 employee complaints in 2024, and a formal warning (Y3(A)) for gross negligence over a leaked memo.
- A history of extended probation due to unsatisfactory performance (Y4 series).
- Suppression of serious allegations and union letters (Y5–Y8) and an adverse internal investigation report (Y8), with a response dated 29 April 2020 (Y9).

8] The Petitioner is also accused by the Respondents for:

- Instrumentally drafting and applying the very Service Extension Policy (Y10–Y14) he now seeks to disavow in favour of Public Enterprise Circular No. 06 of 2022 (X8).
- Submitting multiple applications under the said policy and acknowledging cessation of service upon non-extension.
- Attempting to mislead the Court on the applicability of the Service Extension Policy and legitimate expectations.

9] The Respondents state that the Petitioner's final contract was under a new appointment dated 1st February 2024 with an enhanced retirement age (57). Due to repeated performance issues and misalignment with the new organizational vision, the Board chose not to extend the Petitioner's service beyond 9th March 2025 and instead placed him on paid leave, avoiding further reputational damage. The Respondents therefore seek dismissal of the Petition *in limine*, with costs.

10] The Respondents says due to following legal barriers the Petitioner cannot maintain an application under writ jurisdiction. Those are;

1. Writs do not lie to contracts of employment that means that writs cannot be granted to matters that are purely contractual in nature.
2. Writs do not lie where there are alternate remedies available.
3. Specific Performance is generally not awarded in relation to employment contracts, as it compels the employer to retain the employee, causing industrial disharmony.
4. Department of Public Enterprises Circular No. 02/2021 dated 14th December 2021is not amenable to Writ Jurisdiction as it does not have a statutory flavor and does not impose a statutory duty on the 1st Respondent
5. The Petitioner has failed to come to court with clean hands and has not disclosed material facts and documents and or has misrepresented facts to court. The suppression of material facts by the Petitioner constitutes grounds for refusal granting prerogative Writs

11] I would like to consider the ground of suppression of material facts and non-disclosure and misrepresentation of facts which would deny the relief for the Petitioner. The Respondents claim that the following documents have not been produced for the consideration, thus, the Petitioner has not come to the Court with clean hands. Those suppressed documents are;

- Y1 (A) – An extract of clause 7 of the Sourcing, Selection and Recruitment Policy Manual providing the pre-recruitment formalities

- Y1 (B) – Memo dated 25th November 2024 sent by the Petitioner to the 2nd Respondent

- Y2 (A) – Certified Extract of the minutes of the 7th Meeting of the Board of Directors of the 1st Respondent approving the recruitment of Mr. Thilina Hirapitiya based on the details of the Board paper submitted by the Petitioner

- Y2 (B) – Board Paper No.763/07th BM/2024/SLIC General submitted by the Petitioner

- Y2 (C) – A true copy of the email dated 17th June 2024 of the DGM-Support Services

- Y3 (A) – Letter of Warning dated 15th October 2020 raising concern over gross negligence and total failure to exercise due care and sense of responsibility expected from the Petitioner

- Y3 (B) – Letter dated 23rd December 2020 dated in response to the Petitioner's letter dated 23rd December 2020

- Y4 (A) – Letter dated 14th January 2019 issued to Mr. Amarapala informing that the prohibitory period would be extended by 6 months since performance needs to be further evaluated

- Y4 (B) – Letter dated 06th February 2019 providing the reasons for the extension of the prohibitory period

- Y4 (C) – The Petitioner's response dated 26th June 2019 to the letter marked Y4 (B)

- Y4 (D) – Letter dated 15th July extending the prohibitory period by a further period of 3 months with effect from 15th July 2019

- Y4 (E) – Letter dated 15th October 2019 informing that the prohibitory period has been further extended till 30th November 2019

- Y4 (F) – Letter dated 28th November 2019 informing the extension of the prohibitory period until 30th January 2020

- Y4 (G) – Letter dated 31st January 2020 confirming the employment of the petitioner with effect from 1st February 2020

- Y5 – Sample petitions of the employees dated 19th December 2024 issued to the Ministry of Finance

- Y6 – Letter to the Minister of Finance by insurance Employee's Union dated 25th June 2019 alleging that the Petitioner has arbitrarily and wrongfully carried out his duties and responsibilities

- Y7 (A) – Letter to the Minister of Finance by the Jathika Sewaka Sangamya dated 25.07.2019

- Y7 (B) – Letter to the Minister of Finance by Sri Lanka Nidahas Sewaka Sangamaya dated 25.07.2019

- Y8 – Letter dated 5th February 2020 providing for the outcome of the report of the said panel highlighting the serious issues of the Petitioner's performance

- Y9 – Petitioner's letter dated 29th April 2020 in response to Y8

- Y10 – The Human Resource Sub-Committee Paper No.29/2022 dated 30th May 2022 titled Service Extension Policy recommended by the Petitioner for the purpose pf revising the previous Extension Policy

- Y11 – The certified extracts of the minutes of the meeting held on 8th June 2022 by the Board of Directors of the 1st Respondent

- Y12 (A) – The Petitioner's application form for the extension of service dated 11th November 2022 requesting an extension for one year from 10th March 2023

- Y12 (B) – Letter dated 30th December 2022 issued to the Petitioner confirming the extension of his services for one year

- Y13 (A) – The Petitioner's application form for the extension of service dated 20th December 2023 requesting an extension for one year from 10th March 2024

- Y13 (B) – HR Committee Paper No.139/2023 approving the Extension of Services of the Petitioner pursuant to Y13 (A)

- Y13 (C) – Letter dated 19th January 2024 granting an extension of service until 10th March 2025

- Y14 – The Petitioner's application form for the extension of services dated 18th November 2024 requesting for the extension of service for a period of one year from 10.03.2025

12]The above documents show that the Petitioner's conduct of employment in his probationary period was extended without confirmation on time that he was under scrutiny before confirmation , the Board of Directors of the 1st Respondent approved the recruitment of Mr. Thilina Hirapitiya based on the details of the Board paper submitted by the Petitioner which was not satisfactory and the Petitioner was warned by letter dated 15th October 2020 raising concerns over gross negligence and total failure to exercise due care and sense of responsibility expected from the Petitioner. The sample petitions of the employees dated 19th December 2024 was sent to the Ministry of Finance against the Petitioner's unsavory conduct and further the Petitioner has arbitrarily and wrongfully carried out his duties and responsibilities. Further, some letters prove that he was granted extensions previously and leaking of confidential information.

13] It is seen that the if the above documents were tendered to the Court, the court may not arrive at a favorable decision for the Petitioner, thus, at least some of the vital documents have not been placed before this court for consideration. In ***Wickramage Don Subadra vs Kotikawatte Mulleriyawa Pradeshiya Sabhawa and others***, SC FR NO: SC/FR/247/2016, Decided on: 05.08.2024, His Lordship Samayawardhena, J. warned that suppression of material facts attracts not only dismissal of the application but also contempt of court proceedings as follows;

> *"Suppression of material facts not only warrants dismissal of the application in limine but also attracts dealing with the defaulting party for contempt of Court."*

14] In ***Walker Sons & Co Ltd v. Wijayasena*** [1997] 1 Sri LR 293 at 301-302, His Lordship Justice Ismail stated that, once suppression or misrepresentation is shown, "A party cannot thereafter plead that the misrepresentation was due through inadvertence or misinformation or that the applicant was not aware of the importance of certain facts which he omitted to place before court." In the

case in hand, the Petitioner was now estopped by suppressed facts now he cannot say anything against those allegations.

15] In the case of ***Alponso Appuhamy v.*** Hettiarachchi 77 NLR 131, His Lordship Justice Pathirana, held: When an application for a prerogative writ or an injunction is made, it is the duty of the Petitioner to place before the Court, before it issues notice in the first instance, a full and truthful disclosure of all the material facts; the Petitioner must act with uberrima fides.

16] Further, in the case of ***Moosajees Ltd. v. Eksath Engineru Saha Samanya Kamkaru Samithiya*** 79(1) NLR 285, the Supreme Court stressed that the paramount importance of full disclosure at the inception of the application. His Lordship Justice Rajaratnam, said that;

> *"The pleadings in their petition and affidavit do not contain a full disclosure of the real facts of the case and to say the least the petitioner has not observed the utmost good faith and has been guilty of a lack of uberrima fides by a suppression of material facts in the pleadings. It was neither fair by this Court nor by his counsel that there was no full disclosure of material facts."*

17] Moreover, in ***Namunukula Plantations Limited v. Minister of Lands and Others*** [2012] 1 Sri LR 365 at 376, His Lordship Justice Marsoof enunciated that the Court has a duty to deny relief to those who fail to truthfully disclose all material facts, held;

> *"It is settled law that a person who approaches the Court for grant of discretionary relief, to which category an application for certiorari would undoubtedly belong, has to come with clean hands, and should candidly disclose all the material facts which have any bearing on the adjudication of the issues raised in the case. In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence.*

In page 374 it was further stated:

> *"If any party invoking the discretionary jurisdiction of a court of law If any party invoking the discretionary jurisdiction of a court of law is found wanting in the discharge of its duty to disclose all material facts, or is shown to have attempted to pollute the pure stream of justice, the court not only has the right but a duty to deny relief to such person."*

18] In another case of suppression of material facts; ***Fonseka v LT. General Jagath Jayasuriya and Five Others*** [2011] 2 S. L.R. 372. His Lordship Salam J has mentioned that;

> *"Material facts are those which are material for the Judge to know in dealing with the application as made, materiality is to be decided by Court and not by the assessment of the applicant or his legal advisers".*

19] Based on the above legal literature, it is abundantly clear that the Petitioner has failed to come with clean hands and failed to file material documents and he has suppressed the documents unfavourable to him, which warrants the dismissal of the application *in limine*.

20] All parties have filed related authorities as written submissions. I am mindful of those authorities. The Petitioner has drawn several legal authorities and legal literature to support the contention that the contact between him and the 1st Respondent is amenable to writ jurisdiction. He has drawn several English Authorities in this regard. However, he has not addressed a single submission or case law regarding suppression and misrepresentation of facts, as I noted above. I am of the firm view that we should look at the English Authorities if the question at hand creates a grey area or uncertainty. The other limited objection raised by the Respondents that Writs or specific performances cannot be granted to matters that are purely contractual in nature. In relation to this objection, the following cases have a clear impact, which I now consider.

21] In ***GAWARAMMANA v TEA RESEARCH BOARD AND OTHERS***, [2003] 3 SLR 120, His Lordship SRIPAVAN, J. (As he then was) held that;

> *"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."*

22] In ***WICKRAMASINGHE v. CEYLON ELECTRICITY BOARD AND ANOTHER, [1997] 02 SLR 377,*** His Lordship Ranaraja, J. held;

> *"(1) The general rules of mandamus is that its function is to compel a Public Authority to do its duty. It is a command issued by a Superior Court for the performance of a public legal duty. It is only granted to compel the performance of duties of a public nature and not merely of a private character, that is to say for the enforcement of a mere private right stemming from a contract of the parties.*
>
> *(2) The petitioner has failed to satisfy this court that he has a statutory right to an extension of services under the respondent."*

23] In the case of ***Chandradasa Vs. Wijeratne,*** [**1982] 1 SLR 412**., His Lordship TAMBIAH J. held that the employees of Ceylon Oxygen Ltd. continued in employment under ordinary contracts of service and the order of dismissal was in the exercise of a private contractual right and hence no writ would lie. In this case, although the Petitioner has right to work till at the age of 60 years with the consent of the 1st Respondents and the Board of Management, his work performance and public relationship with the Unions were bad and that part was suppressed when filing this case, as I noted above.

24] In ***Mendis V Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya*** [1995] 2 SLR 284, held that it is in this context that the view has been firmly held that relationships that are based on contract, without anti statutory underpinning and actions of companies and private individuals and bodies, are not subject to judicial review by way of the Writs of Certiorari and Prohibition.

25] Further, in the case of ***Weligama Multipurpose Co-operative Society Ltd. v.Chandradasa Daluwatta*** 1984 (1) SLR 195, it was held that;

> *"Mandamus lies to secure the performance of public duty, in the performance of which an applicant has sufficient legal interest to be enforceable by mandamus; the duty to be performed must be of a public nature and not of a merely a private character. A public duty may be imposed by statute, charter or the common law or custom."*

26] In this case there is no such public nature involved and it was merely private character refuse to extend the Petitioner's employment for non-performance and etc…

27] I now consider whether the Petitioner can have a legitimate expectation on his extension of employment. In ***THIRIMAVITHANA VS. URBAN DEVELOPMENT AUTHORITY AND OTHERS*** [2010] 2 SLR 262, Sisira De Abrew, J. articulated that;

> *"Legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority upon the existence of a regular practice which the claimant can reasonably expect to continue."*

28] In the case in hand, there was no such promise and at the inception of the employment, he was placed on an extended probationary period which he was suppressed in this case initially. Thus, this court cannot see that there was a promise that had been given to him that his service be extended. The Petitioner has not averred in this regard. Thus, there is no hope for legitimate expectations on extension of employment.

29] It should be noted, if the service was unreasonably terminated, he has alternative remedies under the Industrial Dispute Act. Thus, I am of the view that the Petitioner cannot have writ jurisdiction when the alternative remedy is available.

30] This position was considered by Her Ladyship Shirani Thilakawardena J in the case of ***Ishak V. Lakshman Perera Director of Customs and Others*** (2003) 3 Sri LR 18 as follows;

> *"Where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy before seeking judicial review. In doing so the Court is coming to a discretionary decision."*
>
> *"Where there is a choice of another separate process outside the Courts, a true question for the exercise of discretion exists. For the Court to require the alternative procedure to be exhausted prior to resorting to judicial review is in accord with the* ***judicial review being properly regarded as being a remedy of last resort****. It is important that the process should not be clogged with unnecessary cases, which are perfectly capable of being dealt with in another tribunal. It can also be the situation that Parliament, by establishing an alternative procedure, indicated either expressly or by implication that it intends that procedure to be used, in exercising its discretion the Court will attach importance to the indication of Parliament intention."*[Emphasis is added]

31] The Petitioner sought his employment be extended under the Respondents. The Respondents do not wish to extend the employment. In this situation the court firmly believes that damages is the suitable remedy instead of ordering specific performance allowing unsavoury and anti-productivity situation. For that, there is specific forum. Thus, the Petitioner has an alternative remedy. This position was considered in ***HOTEL GALAXY (PVT) LTD. AND OTHERS v. MERCANTILE HOTELS MANAGEMENT LTD.*** [1987] 1 S. L.R. 05, and His Lordship Sharvananda, C. J. held;

> *"The relationship between the 1 st defendant and the plaintiff was that of principal and agent or master and servant. Hence the remedy which the plaintiff can have is damages and not specific performance."*

32] The Petitioner sought extension under writ to enforce the Department of Public Enterprises Circular No. 02/2021 dated 14th December 2021. However, I see that duty cast on the Respondent has no public duty, it is a private duty cast up on the Respondents under private employment contract. In ***WELIGAMA MULTI PURPOSE CO-OPERATIVE SOCIETY LTD. v. CHANDRADASA DALUWATTA***, [1984) 1 S.L.R 195, SHARVANANDA, J (As he then was) held that;

"A public duty may be imposed by statute, charter or the common law or custom. The duty prescribed by clause 7 of the Circular No. 18 of 1975 is not in the nature of a public duty such as to attract the grant of a Writ of Mandamus for its enforcement."

33] Thus, I do not think that the Petitioner can invoke a writ jurisdiction in this matter. I hold that there is no substance in this matter. On the said circumstances I uphold the limited objections (preliminary objections) raised by the Respondents and dismiss the application without issuing formal notices. However, no costs.

Dr. Sumudu Premachandra

Judge of the Court of Appeal

I agree.

R. Gurusinghe

Judge of the Court of Appeal