

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

M. M. Chandralatha Munasinghe
No. 86, Pathirajagama,
Thirappana

PETITIONER

C.A 22/2012 (Writ)

Vs.

1. E.M. Gunasekera
Registrar General
Registrar General's Department
234/A3, Denzil Kobbekaduwa
Mawatha, Battaramulla.
2. K. A. Tilekeratne
Director General of Pensions,
Department of Pensions,
Maligawatte Secretariat,
Colombo 10.

And 6 others

RESPONDENTS

BEFORE: Anil Gooneratne J.

COUNSEL: Maduranga Ratnayake for Petitioner

Kaushalya Molligoda for 8th Respondent

Vikum de Abrew D.S.G., for 1st – 4th, 6th & 7th Respondents

ARGUED ON: 29.11.2013

DECIDED ON: 23.5.2014

GOONERATNE J.

Petitioner in this application has sought Writs of Certiorari, Mandamus & Prohibition. The prayer to the petition refer to numerous remedies by way of the above writs. The case in a nutshell is that two wives of the Piyadasa Serugolla (deceased) claim the pension of the deceased. Petitioner was married to the deceased (Deega Marriage P1) in the year 1977. She had some spells abroad for employment at Saudi Arabia and Kuwait. Petitioner claims to have visited Sri Lanka on and off and during the period she was available in Sri Lanka, she learnt that the deceased had an affair with another lady (8th Respondent) to whom the deceased married for the second

time, on the basis of dissolution of the first marriage with the Petitioner, and the Petitioner claims to have no knowledge of the dissolution of marriage.

The above Piyadasa Serugolla died on or about June 2004, and the Petitioner applied for the pension, and to her dismay was informed that the marriage was dissolved and she would not be entitled to a pension. Petitioner applied for a certificate of dissolution from the District Registrar, Anuradhapura and the reply (P5) was that no marriage had been dissolved and as such from January 2008 she received a pension. However on or about July 2010 (P10) letter was received by the Ombudsman (6th Respondent) regarding a complaint made by the 8th Respondent as regards the pension and to attend an inquiry. At the inquiry the 8th Respondent produced the marriage certificate (P12) and 3rd copy of Petitioner's alleged divorce (P11). The grounds for dissolution appears to be malicious desertion for a period of 2 years (vide P11). There is a question of non-registration of the divorce as above which has caused some difficult to the authorities concerned as well as the Petitioner, 8th Respondent, and at the inquiry before 6th Respondent, it appears that by 6R2, (hand written). 5th Respondent takes the responsibility for such a lapse. An order was made by the 6th Respondent by P13 that the Registrar General should take steps under Section 13 of the Birth and Deaths Registration Act

read with Section 33(17) of the Kandyan Marriage and Divorce Act to re-register the dissolution of marriage between Piyadasa Serugolla and the Petitioner and to pay the pension to the 8th Respondent. This is one of the main orders challenged inter alia by the Petitioner.

Thereafter and consequently to order P13 the Public Petitions Committee of Parliament directed the Registrar General to take steps accordingly and the Registrar General registered the dissolution of marriage by P15. In the submissions on behalf of the petitioner it was the position that she would challenge by this application order P13, P15 and P11 (the divorce copy submitted by 8th Respondent) and P12 (the Marriage Certificate between the deceased and 8th Respondent). The following legal position are taken on behalf of the Petitioner.

- (a) The Registrar General (and or 3rd & 4th Respondents) has failed to act in terms of Section 13 of the Birth & Deaths Act. P 15 is as a result of acting under dictations.
- (b) Ombudsman acted without jurisdiction P13 is ultra vires of the Parliamentary Commissioner for Administration Act No. 17 of 1981. Recommendation is wrong and Section 33(17) of the Kandyan Marriage and Divorce Act is not applicable.
- (c) Legality of Order P11 – P12 depends on legality of P15.

The position of the 8th Respondent who is an effected party is important to be considered to arrive at a final decision by this court. The 8th Respondent states that late Piyadasa Serugolla did not meet or have any contact with the Petitioner during the course of his marriage with the 8th Respondent. Petitioner did not attend the funeral. Subsequent to the death of P.Serugolla to whom she was married and in her capacity of a widow applied for the pension in terms of the Widows & Orphans Pension Fund as amended. 8th Respondent states necessary documentations were submitted by the Irrigations Department to Department of Pensions, and the 8th Respondent was paid a pension until informed by P8. The question that is posed seems to go round the dissolution of marriage, (P11) which could not be accepted as proof of such dissolution (4 & P9). This was due to the fact that District Registrar's Office, Anuradhapura disclosed that office does not possess a record. As such the 8th Respondent appealed to several authorities and finally Petitioned the Public Petitioner's Committee of Parliament (8R7), and from that point referred to the 6th Respondent Ombudsman for investigation and recommendation (8R8 pg. 43). At the conclusion of investigation Ombudsman sent recommendation in a report dated 11.8.2010 (8R10 – P13). On receipt of above the Public Petitions Committee made a decision. (8R11). As such per

decision of 8R11 the Registrar General and District Registrar have caused the error/omission to be rectified and dissolution was duly entered in the records (P15). I will refer to the numerous points and objections raised by the 8th Respondent against the issue of prerogative writs in favour of the Petitioner.

- (a) Application is misconceived and cannot be maintained
- (b) Suppression of material facts
- (c) Failed to arrange the necessary parties
- (d) Application is vitiated by laches

I also need to consider the position of the 6th & 7th Respondents. It is stated inter alia in the objections of these Respondents that :

- (1) Secretary to the Public Petitions Committee referred the petition sent by the 8th Respondent for investigation and report to the said committee 6R1.
- (2) During the investigation 5th Respondent submitted a letter admitting the dissolution of the divorce was recorded in terms of Section 32(e) of the Kandyan Marriage and Divorce Act, as amended – 6R2.
- (3) Compliance made by deceased and Petitioner were submitted 6R3 - ^R5.
- (4) 6th Respondent made a recommendation as per P13 to the Public Petitions Committee of Parliament, having considered all evidence.
- (5) 7th Respondent communicated the decision of the committee to all parties to the inquiry – 6R6 of 26.10.2010.
- (6) Decisions and recommendations of 6th Respondent cannot be challenged.

I have also noted the contents of pleading filed on behalf of 1st, 2nd & 4th Respondents.

This court had been provided with material to demonstrate that the Petitioner was married to the deceased Piyadasa Serugoll and after sometime she left the island for some period of time for employment in Saudi Arabia and Kuwait. There is also material to the effect that both of them did not get on well with each other apart from absence from each other for a period of time, inclusive of police complaints, against each other. Whatever it is a dissolution of marriage has taken place on the basis of 2 year of malicious desertion on the part of the Petitioner. Legality of such an order may be in dispute, in the manner argued by the Petitioner. There is also material of an affairs between the deceased and 8th Respondent which resulted in a marriage.

It is apparent that the application made to this court by the Petitioner has been made belatedly. There are several grounds which would disentitled the remedy of a prerogative writ which are discretionary remedies of court. Unexplained delay is one such ground which is apparent from the record. An explanation need to provide cogent reasons. The reasons adduced by Petitioner does not appear to be adequate in the context of this case. The non acceptance of the 3rd copy of the dissolution of marriage produced by the

8th Respondent seems to be the starting point of the entire issue. However all these had been regularized. A mistake or a lapse of a Government official should not result in a denial of a right to a litigant. District Registrar's office did not possess a record of the dissolution of marriage due to a serious mistake or lapse that occurred in that office. A citizen should not suffer on that account. As such 8th Respondent in circumstance is entitled to forward a petition or an appeal to the Public Petitions Committee of Parliament. (8R7) Thereafter the available machinery was put into operation as provided by statute. The above committee referred the matter to the 6th Respondent (Ombudsman).

P13 is the recommendation sent by the 6th Respondent after an investigation/inquiry. The material placed before court indicates reports were called from officials and an investigations done by giving an opportunity for all concerned to place each others case before the 6th Respondent. The recommendation in brief is regarding the non-retention of a record or office copy of the certificate of dissolution was the result of a mistake/inadvertence of the 3rd to 5th Respondent and as such it need to be rectified.

The office of the 6th Respondent is established as in article 156(1) of the Constitution. I would refer to the following Sections of Act No. 17 of 1981.

Section 10(1) of the Parliamentary Commissioner for Administration Act No. 17 of 1981 provides as follows:

“Where the Committee of Parliament set up to consider petitions presented by Members of Parliament (hereafter referred to as the “Public Petitions Committee”) is of the view that any petition presented to it by a Member of Parliament discloses an infringement of a fundamental right or other injustice by a public officer, or officer of a public corporation, local authority, or other like institution, it may refer such petition to the Ombudsman for investigation and report”

Section 10(3) of the said Act, provides as follows:

“Where the Ombudsman is of the view that a complaint or allegation received by him under subsection (1) or subsection (2) discloses an infringement of a fundamental right or other injustice by a public officer or an officer of a public corporation, local authority or other like institution, he shall investigate and report on such complaint or allegation, in accordance with, and subject to the provisions of this Act, and shall notify the Public Petitions Committee, of the commencement of such investigations.”

Sections 15 and 16 provide for the conduct of investigations by the Ombudsman and section 17 provides as follows:

“(1) Upon the conclusion of his investigation, the Ombudsman shall determine whether there has been, or is likely to be –

- (a) any infringement of a fundamental right; or
- (b) any other injustice, including the question as to whether any decision, recommendation, or omission which was the subject – matter of the investigation –
 - (i) Was contrary to law;
 - (ii) Was based wholly or partly on a mistake of fact or of law;
 - (iii) (iii) was unreasonable, unjust, oppressive or improperly discriminatory or otherwise wrong;
 - (iv) Was in accordance with a practice that is, or may be, unreasonable, unjust, oppressive or improperly discriminatory; or
 - (v) was made or done in the exercise of a discretion –
 - A. Which has been exercised for an improper purpose or on irrelevant grounds or by reference to irrelevant considerations, or by failing to take account of material considerations; or
 - B. Without giving reasons although reasons ought in the opinion of the Ombudsman, to have been given; or
 - (vi) Was occasioned by unreasonable delay, apathy or indifference

(2) the Ombudsman shall report his determination, together with his reasons therefore to the head of the institution concerned, and the Minister to whom the department, public corporation, local authority or other institution concerned has been assigned and also to the ‘Public Petitions Committee.

(3)

- (a) In any case where the Ombudsman determines, that there has been or his likely to be an infringement of a fundamental right or any other injustice, the Ombudsman may in his report make such recommendations as he thinks fit, and in such event, may require the head of the institution to notify within a specified

time, the steps, if any which he proposes to take to give effect to his recommendations.

(b) without prejudice to the generality of the foregoing provisions of this subsection, the Ombudsman may recommend that -

(i) the matter be reconsidered;

(ii) the omission be rectified;

(iii) the decision be cancelled or varied;

(iv) the practice on which such decision, recommendation, or omission was based, be altered;

(v) reasons be given for such decision, recommendation, or omission

(c) If within the time so specified no action is taken which appears to the Ombudsman to be adequate or appropriate, the Ombudsman shall after considering the observations, if any, made by the Head of the Institution, forward a copy of his report to the President and to Parliament. The Ombudsman shall attach to such report, a copy of the observations, if any, made by the head of the institution concerned.

(d) If, within the time so specified, action is taken which appears to the Ombudsman to be adequate or appropriate, the Ombudsman may forward a copy of his report to the President and to Parliament together with a statement of the action taken." (emphasis added)

The aforesaid provisions clearly demonstrate the powers and jurisdiction of the 6th Respondent. Further there is no doubt that the legislature intends the 6th Respondent to investigate and report to the authorities concerned. I am inclined to accept the views of the 8th Respondent that it is only a recommendation that is required to be made, and the 6th

Respondent does not make any decision. This is in compliance with the statute, and what the 6th Respondent has done is nothing more than to convey his recommendation to 7th Respondent. The Public Petitions Committee had adopted the recommendation/report which cannot be termed a decision. Perusal of document 8R11 adds more support for my views. The Public Petitions Committee considered the report and recommendation (P13) of the 6th Respondent and made a decision as in 8R11. Perusal of 8R11 is very clear and self explanatory. The decision in 8R11 was carried out and implemented. As referred to in 8R11 the Registrar General office and the District Registrar's Office rectified the mistake/omission. As such dissolution of the marriage between the Petitioner and Piyadasa Serugolla was duly entered in the books and register. P15 is the dissolution of Marriage Certificate issued having gone through the process.

A Commissioner appointed under the Commission of Inquiry Act, to inquire and report is not amendable to certiorari or prohibition. *Dias Vs. Abeywardena* (1966) 68 NLR 409. An adverse finding of fact against someone could not in any way alter the legal rights The Commissioner in fact finding commission and has no legal consequences. 70 NLR 439, 447. 6th Respondent in the instant case has no power to make a binding determinations. 6th

Respondent's reports and recommends the Parliamentary Public Petitions Committee based on 6th Respondent arrives at a decision. What matters is the decision of the Public Petitions Committee. Nor was document 8R1 produced by the Petitioner.

8R11 is not challenged, which is the actual decision. P13 is no decision amenable to the writ jurisdiction of this court. As such on such recommendations remedy sought in prayer (b) & (c) has to be rejected. Petitioner also seeks to challenge P15. It is the regularized certificate, issued after 8R11. It is a ministerial Act and not a decision these became ministerial Acts after 8R11. As such prayer (d) to (i) cannot be even be considered in the manner pleaded in the petition and prayer. The rest of the remedies sought in the prayer to the petition cannot be granted and has to be rejected. As long as the decision in 8R11 remains, no other relief could be granted. Petitioner has not challenged 8R11. When I peruse 6R1 to 6R6, the role of the 6th Respondent could be easily understood. Document 6R2 is ample and sufficient proof of a lapse/mistake of a public officer. I have also considered and perused all the documentation placed before court by the 8th Respondent. This enable me to arrive at a conclusion that a serious lapse of a public officer led to a protracted

investigation and inquiry. It is admitted in 6R2. All this could have been avoided to a great extent.

I have to emphasize that the situation contemplated and relied upon by the Petitioner under Section 13(1) of the Birth and Deaths Act has no application. There is no loss or damage or the certificate being illegible. The 3rd copy of the dissolution of marriage was available. 6R2 confirm a serious lapse, and an admission of the dissolution of marriage under the relevant statute. One cannot get confused on such a provision, and facts and circumstances and the law cannot be considered in isolation. I have considered the entirety of facts. 8R1 also state that Piyadasa Serugolla divorced the Petitioner. In the absence of proof that one could resort to the provision of Section 13 and its proviso, I reject the argument of the Petitioner on this aspect

In all the above facts and circumstances of this writ application, I hold that there is no merit in this application. The grounds urged by the 8th Respondent which disentitle the Petitioner for a prerogative writ are all satisfied and acceptable to court. As such this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL