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

In the matter of an application for Orders in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Mr. M. Abraham,
12/2, Vidhans Lane,
Eachchamoddai,
Jaffna.

Through Powers of Attorney Holder

Mr. Nicholas Anton Raymond,
12/2, Vidhans Lane,
Eachchamoddai,
Jaffna.

PETITIONER

C.A. Case No. WRT/0523/25

Vs.

1. Justice K.T. Chithrasiri,
   Chairman,
   Administrative Appeals Tribunal,
   35, Silva Lane,
   Rajagiriya.

2. J.J. Rathnasiri,
   Member,
   Administrative Appeals Tribunal,
   35, Silva Lane,
   Rajagiriya.

3. Mr. S. Nandasekaran,
   Member,
   Administrative Appeals Tribunal,
   35, Silva Lane,
   Rajagiriya.

4. Mr. P. Waduge,
   Secretary,
   Administrative Appeals Tribunal,
   35, Silva Lane,
   Rajagiriya.

5. The Chairman,
   National Police Commission,
   Block 09, BMICH premises,
   Bauddhaloka Mawatha,
   Colombo 07.

6. Mr. N.A. Weerasinghe,
   Secretary,
   National Police Commission,
   Block 09, BMICH premises,
   Bauddhaloka Mawatha,
   Colombo 07.

7. The Chairman,
   Public Service Commission,
   No. 1200/9, Rajamalwatta Road,
   Battaramulla.

8. The Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

9. Inspector General of Police,

Sri Lanka Police Department,
Police Headquarters,
Colombo 02.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J

COUNSEL : M.A.A.M. Beshad for the Petitioner instructed by Maneka Wickramanayake.

Rajin Gooneratne, SC for the Respondents.

SUPPORTED ON : 14.07.2025

DECIDED ON : 29.07.2025

ORDER

K.M.G.H. KULATUNGA, J.

1. This application was supported on 14.07.2025 for notice and this Order is thus made. The petitioner by this application is seeking *inter alia* a writ of *certiorari, "to quash the decision contained in A7 dated 12.11.2024"* by prayer (c); a writ of *mandamus "directing the Administrative Appeals Tribunal to consider the appeal bearing No. 10.12.2019 of the petitioner in merit"* by prayer (d); and a writ of *mandamus*, "*directing 1st, 2nd and 4th of the Administrative Appeals Tribunal to consider the appeal bearing No. 10.12.2019 of the petitioner in merit"* by prayer e). (The prayers reproduced verbatim as they appear in the petition).

2. The petitioner in effect is seeking a *certiorari* to quash a decision made to reject the appeal by the Administrative Appeals Tribunal on 12.11.2024 and a *mandamus* directing the members of the

Administrative Appeals Tribunal to consider his appeal preferred on 10.12.2019 on its merits.

Facts

3. The petitioner was attached to the Police Department as a Police Constable and then as a Sub-Inspector. Somewhere around October 1981, he has been transferred to the Mount Lavinia Police Station, where he claims to have served as the Officer-in-Charge of Vice (Vice OIC) and also subsequently appointed as OIC Admin. Then, on 01.08.1985, he had been transferred to the Gampaha Police Station. However the petitioner has not reported to the Gampaha Police Station as transferred. Instead, he claims to have travelled to Jaffna to his home, ostensibly due to some health reason. As submitted by his Counsel, he claims that when he was in Jaffna with his family, he was threatened by the militants that he should not work for the Sri Lanka Police Force, and if so, dire consequences would befall his family.

4. It is also the position of the petitioner that in view of these and other circumstances which he narrates in his petition, he did not report to duty and subsequently made applications for no-pay leave on three occasions in 1985, but the said applications were rejected. He reiterates and emphasizes that he was not able to report to Gampaha and accept the transfer due to significant emotional distress and physical strain, as he was ill approximately for two weeks. As the petitioner failed to report to the Gampaha Police, he had been served with a letter of Vacation of Post ('VOP') dated 01.08.1985. The learned Counsel for the petitioner in support of this application submitted and conceded that the petitioner left for Canada in September 1985, and also admitted that he returned once again in 1988.

5. It is also common ground that the petitioner is now a Canadian citizen permanently resident in Canada, and not a Sri Lankan citizen. In fact, this application had been preferred through his Power of Attorney

holder. The petitioner, having thus left the country, has subsequently made an appeal under the Public Administration Circular 14/88 of 25.04.1988, read with Circular No. 4/2006, which provided for persons who could not report to duty due to the prevalent situation and being displaced, to make an application to resume duties. This Circular primarily provided for those public servants who had been displaced due to the ethnic violence to seek relief. It is apparent that persons who were employed in State institutions in the Northern and Eastern Provinces were whom this relief was afforded to. Be that as it may, the petitioner, by letter A2(a), dated 24.06.2017, makes an application through the Inspector General of Police ('IGP') for re-instatement in service. This appeal has been preferred to the Appeals Division of the Public Service Commission (A2 annexed is only a photocopy).

6. Simultaneously, the petitioner appears to have preferred an appeal dated 30.08.2018 to the National Police Commission against the VOP, which was considered and rejected by letter dated 22.11.2019 (A4). The petitioner has then preferred an appeal by letter dated 10.12.2019 (A5), to the Administrative Appeals Tribunal (hereinafter sometimes referred to as the 'AAT') against the said rejection of his application by the National Police Commission. The AAT rejected this appeal by the Order dated 12.11.2024, which is the impugned Order marked A7. (A7 annexed document is a photocopy of a true copy which is '*a certified copy*'). The basis of the rejection is that the relief sought is for a matter of which the effective date was prior to the year 2022, and as such, the AAT does not have jurisdiction as it was for a period preceding the establishment of AAT.

7. The learned State Counsel raised the preliminary objection that the petitioner is guilty of laches, that there is a serious misrepresentation of facts, as well as serious suppression of facts, and further, that the petitioner has not come with clean hands in accordance with the Rules.

Delay.

8. I will at the outset consider the issue of delay. The impugned Order is dated 12.11.2024. This application has been preferred on 09.05.2025. It is almost six months after the impugned Order. No explanation is assigned for the delay. In the context and nature of the present application, a delay of six months is substantial and relevant.

9. In ***Bisomenike vs. C. R. de Alwis*** (1982) 1 SLR-368, Sharvananda, J., (as he then was) observed that;

> *"A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. The exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue it at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, submitting to jurisdiction, laches, undue delay or waiver.* ***The proposition that the Application for Writ must be sought as soon as the injury is caused is merely an Application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chance of his success in Writ Application dwindles and the Court may reject a Writ Application on the ground of unexplained delay.*** *An Application for a Writ of Certiorari should be filled within a reasonable time."* [emphasis added].

Similarly, in ***Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another*** [1996] 2 SLR 70 it was held as follows:

> *"A Petitioner who is seeking relief in an application for the issue of a Writ of Certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to*

relief, still the Court has a discretion to deny him relief having regard to his conduct, delay, laches, waiver, submission to jurisdiction - are all valid impediments which stand against the grant of relief."

In the absence of any plausible explanation, it appears that the petitioner is certain of laches, which warrants the dismissal of this application.

The affidavit is not supportive of the facts averred in the petition.

10. The petitioner has preferred this application through a Power of Attorney holder. As to the regularity and the sustainability of an application of this nature filed in this form, will not be considered at this juncture. However, I observe that the supporting affidavit may not, in this form, suffice to support the averments in the petition. Rule 3(1) of the Court of Appeal (Appellate Procedure) Rules of 1990 requires a petition to be supported by an affidavit. The said Rule is as follows:

"Every application made the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 or 141 of the Constitution shall be by way of petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified-copies thereof) in the form of exhibits. Where a petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of the Court to furnish such document later. Where a petitioner fails to comply with the provisions of this rule the Court may, ex mero motu *or at the instance of any party, dismiss such application."*

11. The affidavit is tendered by the Power of Attorney holder, who simply states that he is deposing to these facts "*as instructed by the petitioner*." This, as I see, is a reference to some intimation received from the principal Mr. M. Abraham. The affidavit does not at any point state that

he is deposing to these facts based on his personal knowledge or on documents made available to him, except that he merely avers that the information deposed to is true and correct to the best of his knowledge *vide* paragraph 71 of the affidavit. An affidavit is required to place before Court certain assertions of facts made in the petition in an admissible form. Such facts should be deposed to by a person who is personally aware or has come to know of it through documentation, and maybe to a certain extent matters which he verily believes. As the deponent has deposed to the several matters *"as instructed by the petitioner,"* they are certainly not matters which the deponent had personal knowledge, but what he may have heard from the petitioner. It is, at its best, hearsay.

12. It is settled law that such matters of fact should be placed before this Court by a person who is able to speak to such facts having perceived from his own senses. There is a total absence of material to support this petition as required by Rule 3(1). The petitioner has reserved the right to tender an affidavit affirming to the facts and circumstances of this case in due course by paragraph 70 of the petition, as well as the affidavit. However, no such affidavit was tendered. In these circumstances, I hold that the petition is not duly supported by an affidavit as required by Rule 3(1).

13. Udalagama, J., in ***Perera vs. Perera*** **(2001) 3 Sri LR 30** held that,

> *"This court has on numerous occasions held that in applications for leave to appeal compliance of Rule 3 (1) of the Supreme Court Rules of 1990 pertaining to appellate procedure is mandatory."*

Similarly, in ***Mark Rajandran vs. First Capital Ltd.***, 2010 (1) SLR 60, Dr. Shirani Bandaranayake, Acting C.J. (as she was then) held at page 64 that,

> *"Rule 2 read with Rule 6 of the Supreme Court Rules, 1990 clearly indicate that an application for leave should be made by way of a petition with affidavits and documents in support of that*

> *application.* ***In such circumstances, it is the affidavit that breathes life in to the petition****. It would therefore be futile to attempt to support an application, where leave is sought against the judgment of the High Court without a valid affidavit."* [emphasis added].

In the above circumstances, I find that the petitioner has failed to support the averments of fact in the petition as required by Rule 3(1) and the petitioner cannot have an maintain this application on this ground alone.

Documents not duly certified.

14. Rule 3(1) also requires that the originals of such documents material to such application or certified copies thereof be annexed. Many of the documents annexed to the petition are mere photocopies. There are no originals tendered, except for the Power of Attorney (A15). The petitioner is primarily challenging the decision dated 12.11.2024 of the Administrative Appeals Tribunal (A7). This document annexed, appearing at page 79 marked A7, is a photocopy of a true copy and now has been certified as being *a true and accurate copy of the document* reported to the person so certifying. This is so certified by a Justice of the Peace. What is critical and significant is that this is a photocopy of a true copy of the said Order. It is apparent that the so called certified copy is not of the original but that of a true copy. This is thus, not a "duly certified copy" of the original as required by Rule 3(1).

In ***Shanmugavadivu v. Kulathilake***, 2003 (1) SLR 215 at page 220, Bandaranayake, J held that;

> *"On numerous occasions the Supreme Court as well as the Court of Appeal have held that the compliance of the Supreme Court Rules and the Court of Appeal Rules is imperative. In a situation where an application was made to the Court of Appeal without the relevant documents being annexed to the petition and the affidavit,*

but has stated the reason for such inability and sought the leave of the Court to furnish such documents on a later date, the Court could have exercised its discretion and allowed the petitioner to file the relevant documents on a later date. However on this occasion, as pointed out earlier, no such leave was Page 17 of 21 sought by the appellant and in the circumstances, the Court of Appeal could not have exercised its discretion in terms of Rules 3(1) (a) and 3(1)(b) of the Court of Appeal (Appellate Procedure) Rules."

A. L. Shiran Gooneratne, J., in ***Sharmila Roweena Jayawardene Gonawela v. Hon. Ranil Wickramasinghe and Others***, CA/WRT/388/2018, decided on 21.05.2019, held that,

"The Court of Appeal Rules make provision, under Rule 3(1)(a), for a Petitioner to tender originals of documents or certified copies thereof, in support of the averments contained in an application to exercise powers vested in this Court by Articles 140 or 141 of the Constitution. The documents marked P6(a)-(e) and P7(a)-(e), attached to the affidavit, are not original documents or certified copies of original documents. The failure to comply with the said Rule remains unexplained. The Rule relating to the discretion of Court in consideration of surrounding circumstances, as noted above, in my view, cannot be outweighed by considerations which disregard the objective of the Rule. I observe that there is a clear and consistent non-compliance of the said Rule in the application submitted to Court. Accordingly, the Petitioner has failed to satisfy the procedure for invoking the writ jurisdiction of this Court, the strict compliance of which is imperative. For the reasons aforementioned, I uphold the preliminary objection raised by the Respondents and dismiss the Petitioner's Application for non-compliance with Rule 3(1)(a), of the Court of Appeal Rules."

To that extent, the Order intended to be challenged is not duly tendered to this Court. This is further compounded by the fact that the averments

of the petition are also not supported by an affidavit from a person who is personally aware of the facts or of the documents as expounded above. Accordingly, the petitioner is in serious breach of Rule 3(1) as aforesaid.

No averment in compliance with Rule 3(2).

15. On a perusal of the petition, I see no averment as required by Rule 3(2) of the Court of Appeal Rules, which reads as follows:

> *"The petition and affidavit, except in the case of an application for the exercise of the powers conferred by Article 141 of the Constitution shall contain an averment that the jurisdiction of the Court of Appeal has not previously been invoked in respect of the same matter. If such jurisdiction has previously been invoked the petition shall contain an averment disclosing relevant particulars of the previous application. Where any such averment as aforesaid is found to be false or incorrect the application may be dismissed."*

16. The above, couched in the mandatory form, specifically requires an averment, that the jurisdiction of this Court has not been previously invoked in respect of this matter, to be included. This requirement has been held to be mandatory in several decisions by our Superior Courts. Sarath N. Silva J., (as he was then) in ***Jayawardena and five others vs. Dehiattakandiya Multi Purposes Co-operative Society Ltd and fifty others*** [1995] 2 Sri L.R. 276 (at page 280) held as follows:

> *"This formulation is a clear guide that there could be no situation where a second application can be filed by the same party on the same subject matter. Indeed there could be situations where there is fresh material on the basis of which a party may seek leave of court to institute fresh proceedings in respect of the matter challenged in the previous proceedings. There may also be situations where a specific reservation is made, reserving the right of the petitioner to institute fresh proceedings at a future date. In the absence of any exceptional circumstances such as fresh*

material or reservation as aforesaid, it would be inconsistent with the said Rules for a party to institute a subsequent application regarding the matter that has been challenged in a previous application."

Further, in ***Woodman Exports (Pvt) Ltd vs. Commissioner General Labour and others*** 2010 (BLR) 238, the Supreme Court held that,

"*The non-compliance with a mandatory Rule by a party could lead to serious erosion of well-established Court procedures maintained by our Courts throughout several decades and therefore the failure to comply with Rule 8(3) of the Supreme Court Rules would necessarily be fatal.*"

This was cited with approval by Mayadunne Corea, J., in ***V. Upul Nishantha vs. Prof. Rohan Fernando, Director General Geological Survey and Mines Bureau and others***, CA/WRT/379/2017, decided on 15.05.2022.

Suppression of facts.

17. As for the issue of suppression of facts, I observe that the petitioner in his petition, does not clearly state the fact of him being transferred to Gampaha and his failure to report for duty there. This is a fact that he ought to have narrated directly and clearly. It is only in paragraph 39 that he narrates that he, whilst on vacation in Jaffna, was prevented from reporting for duty by armed militants, resulting in the termination of his services. On the one hand, he had failed to directly state the facts of his transfer and his non-reporting in a clear and direct averment. Secondly, the learned Counsel in his submission emphasized the fact that the petitioner was unable to report to duty due to ill health. Similarly, the petitioner attempts to make out that he was unable to report to the Gampaha Police Station as he was prevented from doing so by the armed militants in Jaffna.

18. The petitioner, in one breath, takes up the position that he was unable to report to Gampaha Police Station due to ill health, and then also states that he travelled to Jaffna to spend his vacation. If he was suffering from such a state of ill health, I am at a loss to understand how he could have travelled to Jaffna. If he could have travelled to Jaffna, he then could not have had a difficulty to report to duty at Gampaha. Then, it is admitted by the learned Counsel, that two weeks hence, he returns to Colombo and travels to Canada. If the petitioner could have travelled back to Colombo, was able to make all travel arrangements, and set off to Canada, I see no reason as to why he could not be able to report to the Gampaha Police Station. On the face of it, the averments are inconsistent and are so improbable that they are, in all probabilities, must be false and untrue. Accordingly, I am satisfied that the petitioner has uttered falsehoods and has attempted to suppress material facts as aforesaid.

Misrepresentation of facts.

19. The petitioner, at paragraph 13 of A2, specifically states that he was "*reluctantly compelled to proceed to Canada.*" The reason given for so leaving was due to the petitioner not being granted overseas no-pay leave. He also states that he tendered his resignation on 15.09.1985. A2(a) happens to be the initial request or appeal submitted to the Public Service Commission through the IGP dated 24.06.2017. Having so asserted in his subsequent appeal to the AAT, dated 14.11.2024 marked A8, the petitioner takes a different position according to which he asserts that, whilst serving at the Gampaha Police, he had gone on leave to his hometown Jaffna, and was prevented from reporting to work, and VOP was served. The sum total is that the Counsel making submissions on the instructions of the petitioner, at various stages as aforesaid, took up inconsistent and different positions as to the actual reason for the failure to report to work. At one point, he claims to have been compelled to leave as his request for overseas no-pay leave was refused. Then he also attempts to make out that he suffered from hypertension and therefore

was required to visit home, and also takes up the position that he was on leave while serving at Gampaha and was prevented from reporting to work by armed militants.

20. On a consideration of the totality of the material submitted and the submissions of the learned Counsel for the petitioner, it is apparent that the petitioner is now making an attempt to establish that the vacation of post was as a result of being prevented from reporting to work by the militants and his ill-health. However, as evident from A2(a), the petitioner has secured overseas employment and has sought overseas no-pay leave, which had been rejected, and the petitioner has then, on his own volition, decided to proceed to Canada notwithstanding leave not being granted. This is confirmed by him tendering the resignation on 15.09.1985. He had left for Canada in September 1985 and in this pursuit, he had not reported to the Gampaha Police with effect from 01.08.1985. To my mind, these positions cannot co-exist, and cannot all be true. The petitioner is uttering untruths and half-truths and is also misrepresenting certain facts. He is not here with clean hands, so to say.

21. In ***Kiriwanthe and Another v. Nawaratne***, (1990) 1 Sri L.R 1, A. De Z. Gunawardana, J., considered a series of judgments of the Court of Appeal, as follows:

> *"A similar view was expressed in the case* ***of Alfonso Appuhamy vs. Hettiaratchi*** **77 NLR 131** *where it was stated:*
>
> > *"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 material facts. The petitioner must act with uberrima fides."*
>
> *Justice Soza in dealing with the question of invoking the revisionary jurisdiction of this court in the case of* ***Navaratnasingham vs. Arumugam*** *[1980] 2 Sri LR I states:*

> *"I would like to emphasize that in applications of this type the Court expects and insists on uberrima fides."*

In dealing with an application for a Writ of Certiorari in the case of ***Collettes Ltd. v. Weerakoon and Four Others****, CA Application No. 77/88, C.A.M. 08.09.1989, the Court of Appeal in its judgment has stated that,*

> *"Thus it is essential that when a party invokes the writ jurisdiction or applies for an injunction to this Court, all facts must be clearly, fairly and fully pleaded before the Court, so that the Court would be made aware of all the relevant matters. It is necessary that this procedure must be followed by all litigants who come before this Court in order to ensure that justice and fair play would prevail."*

Hector Yapa, J., in ***Jayasinghe v. The National Institute of Fisheries and Nautical Engineering and others*** [2002] 1 Sri L.R. 27 held that,

> *"When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of* ***Blanca Diamonds (Pvt) Limited vs. Wilfred Van Els and Two Others****, the Court highlighted this contractual obligation which a party enters into with the Court,* ***requiring the need to disclose uberrima fides*** *and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations, vide*

Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac. *This principle of uberrima fides has been applied not only in writ cases where discretionary relief is sought from Court, but even in Admiralty cases involving the grant of injunctions."* [emphasis added].

Conclusion.

22. In the above circumstances, considering the delay, serious misrepresentations, the suppression of material facts, and the utterance of untruths, disentitles the petitioner to invoke the discretionary remedy of writ of this Court. To cap it all, there is serious non-compliance with Rule 3 of the Court of Appeal (Appellate Procedure) Rules of 1990. There is no basis in law or otherwise to issue notice in this application as prayed for.

23. Accordingly, notice is refused and the application of the petitioner is rejected and dismissed. I make no order as to costs.

JUDGE OF THE COURT OF APPEAL