

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.

Court of Appeal Writ
Application No:

CA/WRT/711/2025

1. Dhammike Wijerathne,
15/156,
Lotus Garden, Kiribathgoda

*(Presently residing at 39, Moonstone View,
Moonstone Lane, Singapore 328496)*

And 16 others

PETITIONERS

vs

1. Vijitha Herath,
Minister of Foreign Affairs, Foreign
Employment and Tourism, Ministry of
Foreign Affairs at; Republic Building,
Sir Baron Jayathilake Mawatha,
Colombo 01

*(Also at Ministry of Foreign
Employment at;
17th Floor, 'Mehewara Piyasa',
Narahenpita, Colombo 5.)*

And 22 others

RESPONDENTS

Before: Hon. Justice N. R. Abeyesuriya PC (P/CA)

Hon. Justice K. P. Fernando

Counsel: Praveen M. Premathilaka for the Petitioners

Manohara Jayasinghe, D.S.G. for the Respondents.

Supported On: 08/07/2025

Decided On: 11/07/2025

N. R. Abeyesuriya, PC, J.

The instant matter pertains to the purported termination of services of the petitioners who were posted to the ‘employment and welfare division’ of Sri Lankan diplomatic missions abroad. It does appear that the primary duty of the petitioners was to look into the welfare of the migrant Sri Lankan workers who were residing in those countries.

As submitted by the Counsel for the Petitioners, they were required to enter into an agreement with the Secretary, Ministry of Foreign Affairs of Sri Lanka. The Petitioners were all recruited by the Sri Lanka Bureau of Foreign Employment (SLBFE) and appointed by the Secretary of the Ministry of Foreign Affairs to the “migrant welfare” divisions of various diplomatic missions. The Petitioners have marked and produced copies of the aforesaid agreements applicable to the Petitioners as P7 (I- VIII) and P8 (I- VIII).

It should be noted that the persons recruited to be posted belong to two broad categories described as ‘**home based officers**’ and ‘**local based officers**’. Home based officers are the persons recruited from within the officer cadre of the Sri Lanka Bureau of the Foreign Employment (SLBFE) while local based officers are those recruited from the respective countries which the Sri Lankan missions are based. Depending on which category the employees belong to, they were required to enter into agreement either with both SLBFE and the Ministry of Foreign Affairs of Sri Lanka or Foreign Ministry only.

Irrespective of the category, the agreements which were required to be signed contained a specific clause with regard to the termination of employment which

contains identical provisions. In the agreement pertaining to local based officers the following clause was included as 1.(I) (c)

“Notwithstanding anything to the contrary contained herein, the secretary, Ministry of Foreign Affairs of the government of the Democratic Socialist Republic of Sri Lanka shall have discretion to terminate this appointment at any time without adducing any cause, and in such event the Person engaged will be transferred to Sri Lanka forthwith”

In respect of the other category officers i.e. home based, the agreement also contain a similar clause bearing the same numbering which is reproduced below 1.(I) (c),

“Notwithstanding anything to the contrary contained herein, on the recommendation of SLBFE, the secretary, Foreign Ministry of the government of the Democratic Socialist Republic of Sri Lanka shall have the full right to terminate this appointment at any time without adducing any cause, and in such circumstance, the person engaged will be transferred to Sri Lanka forthwith”

Initially the officers were posted for a period of two years and the appointment was subjected to a six month probation period. There was also a provision for the extension of service at the discretion of the relevant authority.

Subsequent to being posted and change of Government in Sri Lanka, the Petitioners were served with termination of service letters signed by the Secretary Ministry of Foreign Affairs, Foreign Employment and Tourism. These letters have been marked as P11 (I-XVII) by the Petitioners. In this document, it is categorically stated that the termination of employment is based on a policy decision of the Government of Sri Lanka. The Counsel for the Respondents submitted that a decision must be taken to recall the officers recruited from outside the cadre of SLBFE. The Petitioners have contended that the act of termination of service communicated to them by Secretary Ministry of Foreign Affairs who is the Second Respondent is in fact based on the letter sent by the First Respondent (Minister of Foreign Affairs) to the Second Respondent dated 6th of June 2025.

The Petitioners allege that the said decision of the Secretary lacks *vires*, is unreasonable, arbitrary and unjustifiable.

Writ of Certiorari has been prayed for to quash the aforementioned documents marked P11 and the letter of the Foreign Minister marked as P12. The petitioners have also prayed for interim relief staying the implementation of the documents marked P11.

The Petitioners have contended that they had legitimate expectation of being employed at the respective foreign mission for at least for a period of two years. However, the Respondents contended that from the outset the Petitioners were aware of the fact that their services were liable to be terminated prior to the expiry of the two year period at any time without adducing any cause at the discretion of the appointing authority and therefore there was no unambiguous certainty of tenure. The Counsel for the Respondents submitted that legitimate expectation requires an unqualified promise. For the doctrine of legitimate expectation to apply, the representation giving rise to the alleged legitimate expectation must be unambiguous and unqualified. The authority given to the Secretary to terminate the deployments prematurely obliterates any legitimate expectation.

The Petitioners contended that the issuance of documents marked P11 which they contend is based on P12 was not pursuant to a policy decision made by the Government but is based on extraneous considerations. It was the contention of the Petitioners that the decision cannot be assumed to be a policy decision or cannot be an afterthought when the decision does not expressly state so.

The document marked as P12 according to the Petitioners does not specifically allude to a policy decision and in fact no reason is stated therein. It should be noted that the Counsel for the Respondents admitted that even policy decisions are amenable to judicial review by this Court if found to be illegal, arbitrary, unreasonable and on the grounds of *mala fide*.

The Counsel for the Respondents submitted that all the Petitioners were persons recruited from outside the cadre of the SLBFE and in addition to the Petitioners another batch of 5 such employees too would be recalled similarly. These five officers who on account of exigencies have been permitted to remain in the respective mission will be recalled at the earliest opportunity pursuant to the policy decision of the government.

The Supreme Court of India in BALCO Employees Union (Legal) v. Union of India and Others [AIR 2002 SC 350] held thus;

“In a democracy it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or *mala fide*, a decision bringing about change cannot *per se* be interfered with by the Court”

This Court has carefully considered the merits of this application and hold that this application has no legal basis. As there is no legal basis for this application and it is misconceived in law, this Court refuses to issue notice on the Respondents. Therefore this Court dismisses this application. No order is made with regard to cost.

Notice Refused.

PRESIDENT OF THE COURT OF APPEAL

K. P. Fernando, J.

I agree.

JUDGE OF THE COURT OF APPEAL