

**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 *Writ of Mandamus and Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**C.A. (Writ) Application
No: 0519/2023**

Ceylon Petroleum Corporation
No. 609, Dr. Danister De Silva Mawatha
Colombo 09.

Petitioner

Vs.

1. K.G.K. Senarathne,
442/18, Meda Gettuwa Road,
Rathmalgoda, Poruwadanda,
Horana.
2. The Commissioner General of Labour,
Labour Secretariat, Narahenpita,
Colombo 5.
3. Dr. Palitha Senadheera,
Arbitrator,
Attorney-at-Law
No. 501, Narangoda Paluwa,
Batuwatte
4. Hon. Manusha Nanayakkara
Minister of Labour and Foreign
Employment,
7th Floor, Mehewara Piyesa, Narahenpita
Colombo 5
- 4A. Minister of Justice Public Administration,
Provincial Councils,

Local Government and Labour
7th Floor, Mehewara Piyesa
Narahenpita, Colombo 05

4A Added Respondent

5. The Registrar, Industrial Court,
9th Floor, Labour Secretariat,
Colombo 5

Respondents.

Before : R. Gurusinghe, J.
&
Dr. S. Premachandra, J.

Counsel : Manoli Jinadasa with Chanakya Ranasinghe, AAL.
instructed by Janith Peiris, AAL.
for the Petitioner

Dilip Obeysekera, AAL with Sanjeewani Dissanayake, AAL,
Instructed by Kumari Siriwardena, AAL
for the 1st Respondent

Indumini Randeny, SC
instructed by N. Wickramasinghe SA,
for the 2nd, 4th and 5th Respondents

Argued on: 02-02-2026

Decided on : 05-03-2026

Judgment

R. Gurusinghe, J.

The petitioner, The Ceylon Petroleum Corporation (Corporation), filed this application against the respondents seeking the issuance of a Writ of Certiorari quashing the award made by the 3rd respondent (the arbitrator) in

favour of the 1st respondent, dated 21-06-2023, which marked as X10 and the Gazette notification in Gazette Extraordinary No. 2342/05 containing the said award (marked as X10 (b) dated 24-07-2023).

Facts stated in the petition are briefly as follows;

The 1st respondent joined the Corporation in 2007, as a General Labourer and was promoted to the position of Pipeline Petrol at Grade C/5. At the time material to this application, the 1st respondent was working as a Grade C/4, Security Assistant at the Corporation's Tar Yard at Muthurajawela. This appointment was followed by his transfer from the Distribution Terminal at Sapugaskanda, after threatening a security officer in charge of the Sapugaskanda Terminal.

On or about 05-12-2018, an investigation was initiated against the 1st respondent consequent to a complaint received by the Manager (Security/Investigation), alleging that, while on night duty at Muthurajawela on 04.12.2018, the 1st Respondent was intoxicated whilst carrying a T56 firearm. Further, it was alleged that the 1st respondent had attempted to stab one Susantha, the Senior Security Assistant of the petitioner, on 05-12-2018, and in the course of such conduct, addressed him in abusive and offensive language.

Upon the conclusion of a preliminary investigation, the 1st respondent was interdicted without pay by a letter dated 15-02-2019, subject to a pending formal inquiry [marked as X5 (iv)]. By the charge sheet dated 14-05-2019, marked as X5 (vii), five charges were preferred against the 1st respondent in the course of the disciplinary proceedings conducted by an independent disciplinary inquiry officer. The final report of the domestic inquiry was produced marked X5(xx). In the said report, the independent inquiry officer concluded that the 1st respondent was guilty of charges 4 and 5. Further, he held that charges 1 to 3 were not sufficiently proved.

Charges preferred against the 1st respondent are as follows:

01 වන චෝදනාව.

වර්ෂ 2018/12/04 වන දින හෝ ඊට ආසන්න දිනයකදී සංස්ථාවේ මුතුරාජවෙල තාර අලෙවිභා ගබඩා සංකීර්ණයේ අංක 02 මුරහලෙහි රාත්‍රී සේවා මුරයෙහිදී නියමිත පරිදි ගිනි අවි (T-56අවිය) රාජකාරී කටයුතු කරගත නොහැකි වන ආකාරයෙන් රාජකාරී වේලාව තුළ අධිකලෙස බීමත්ව සිටීම මගින් ඔබ විසින් බරපතල වරදක් සිදු කර ඇත.

02 වන චෝදනාව.

වර්ෂ 2018/12/05 වන දින හෝ ඊට ආසන්න දිනයකදී පෙ.ව. 6.15 හෝ ඊට ආසන්න වේලාවක දී සංස්ථාවේ මුතුරාජවෙල තාර අලෙවිහා ගබඩා සංකීර්ණයේ ඇතුළුවීමේ හා පිටවීමේ දොරටුව (B/Y දොරටුව) වෙත ත්‍රිරෝද රථයකින් පැමිණි ඔබ, එම අවස්ථාවේ එම ඇතුළුවීමේ හා පිටවීමේ දොරටුවේ (B/Y දොරටුවේ) රාජකාරී කටයුතු කරමින් සිටි බී-3 ශ්‍රේණියේ ජෙෂ්ඨ ආරක්ෂක සහකාර ඩී. පී. ඒ. සී. සුසන්ත (15404) යන අයට අසහය වචනයෙන් දෝෂාරෝපණය කිරීම මගින් ඔබ විසින් බරපතල වරදක් සිදුකර ඇත.

03 වන චෝදනාව

වර්ෂ 2018/12/05 වන දින හෝ ඊට ආසන්න දිනයකදී පෙ.ව. 6.15 හෝ ඊට ආසන්න වේලාවක දී සංස්ථාවේ මුතුරාජවෙල තාර අලෙවිහා ගබඩා සංකීර්ණයේ ඇතුළුවීමේ හා පිටවීමේ දොරටුව (B/Y දොරටුව) වෙත ත්‍රිරෝද රථයකින් පැමිණි ඔබ, එම අවස්ථාවේ එම ඇතුළුවීමේ හා පිටවීමේ දොරටුවේ (B/Y දොරටුවේ) රාජකාරී කටයුතු කරමින් සිටි බී-3 ශ්‍රේණියේ ජෙෂ්ඨ ආරක්ෂක සහකාර ඩී. පී. ඒ. සී. සුසන්ත (15404) යන අයට ඔබ සන්නකයේ තිබූ පිහියකින් ඇනීමට තැත්කිරීම මගින් ඔබ විසින් බරපතල වරදක් සිදුකර ඇත.

04 වන චෝදනාව

ඔබ වෙත ලබා දී ඇති පත්වීම් ලිපියේ 25වන කොන්දේසියේ ඇතුළත් අකීකරුකම, අශිෂ්ඨභාවය, අවිනිතභාවය, රාජකාරී පැහැර හැරීම, සංස්ථාව මගින් පනවා ඇති නීතිරීති උල්ලංඝනය කිරීම යනාදී වැරදිවල නිරත වෙමින් සංස්ථාවේ ගෞරවය කෙළෙසන ලෙස ක්‍රියා කිරීම මගින් ඔබ විසින් බරපතල වරදක් සිදුකර ඇත.

05 වන චෝදනාව

ඉහත 1හා/හෝ 2 හා/හෝ 3 හා/හෝ 4 දරන චෝදනාවලින් අනාවරණය කරන ලද වැරදිවල නිරතවීමෙන් සංස්ථා සේවකයෙකු වශයෙන් ඔබ කෙරෙහි ලංකා බනිජ තෙල් නීතිගත සංස්ථාව තබා ඇති විශ්වාසය කඩවන අයුරින් ක්‍රියා කිරීම මර්ගය ඔබ විසින් බරපතල වරදක් සිදුකර ඇත.

The Inquiring officer concluded that the 1st respondent was intoxicated at the time of the incident. Nevertheless, the 1st charge alleging that the 1st respondent was under the influence of liquor was not sufficiently proved. The inquiring officer further held that the 2nd charge also was not sufficiently proved. With respect to charge no.3, the inquiring officer decided that if the 1st respondent had attempted to stab Susantha, they ought to have reported the matter to the Police. However, the Officer decided that the 1st respondent

assaulting Susantha had constituted a breach of discipline. In regard to the 4th charge and 5th charges, the inquirer found the 1st respondent guilty, as the 1st respondent had breached the 25th condition of his appointment letter.

The Inquiring Officer recommended that, as the 1st respondent was of a short-tempered personality and on that basis, recommended that he was unsuitable to handle firearms.

However, the inquiring officer further recommended extending consideration on sympathetic grounds on the basis that the 1st respondent was sustained with injuries while serving as a soldier during the ethnic conflict, that he was a father of three school-aged children, and he had donated one of his kidneys. Thereafter, the 1st respondent was reinstated by the Corporation, subject to certain conditions.

Prior to such reinstatement, the Corporation sent a letter to the 1st respondent, which was marked X5 (xxx). One of the conditions in the said letter was that the 1st respondent would be reinstated to his former position, but without entitlement to back wages or increments for the entire period during which he was under interdiction. Further, that letter states that if the 1st respondent agrees to accept the conditions set out therein and informs the Corporation, the Corporation will issue a reinstatement letter to the 1st respondent. The 1st respondent accepted the said conditions, and he was reinstated to his post.

Following his reinstatement, 1st respondent requested for the payment of back wages for the period during which he was under interdiction. The HR manager of the Corporation replied to the petitioner by letter dated 11-03-2020, marked X5 (xxxi). In the said letter, the HR Manager informed 1st respondent that, he had been found guilty of certain charges and had breached condition 25 of his appointment letter. He was reinstated, subject to the condition that he would not be entitled to back wages for the entire period of interdiction, with a severe warning imposed from 06-02-2020. He further stated that, according to the disciplinary rules of the Corporation, employees who were interdicted for disciplinary charges and found guilty of any charge have never been paid back wages for the interdicted period. Accordingly, the 1st respondent was informed that back wages could not be paid.

Thereafter, the 4th respondent, the Minister of Labour and Foreign Employment, by Gazette Notification dated 30-09-2022, appointed an

Arbitrator in terms of Section 4 (1) of the Industrial Dispute Act. The statement of the matter in dispute referred to the Arbitrator is as follows:

Statement of Matter in Dispute

The matter in dispute between the aforesaid parties is –

Whether Mr. K.G.K. Senarathne has been caused injustice by the deprivation of one year's service and the salaries and all allowances for that period, following the disciplinary inquiry against him and if so, to what relief he is entitled.

Commissioner General of Labour

Dated at the Office of the Commissioner General of Labour,
Colombo, on this 14th day of September, 2022.

At the arbitration, the 4th respondent gave evidence. On behalf of the petitioner, a witness gave evidence and marked documents.

After the arbitration inquiry, the arbitrator decided that the 4th respondent had been interdicted from 04-12-2018 to 06-02-2020, and that the 4th respondent is entitled to 14 months' back wages, calculated at Rs. 56,270/- per month, totalling Rs. 787,780/-. Further, the petitioner-Corporation was directed to deposit the said sum with the Assistant Commissioner of Labour, of Colombo Central.

The petitioner-Corporation challenged that decision in this Writ application. The Corporation has deposited the said sum with the Assistant Commission of Labour before filing this action. Further, the petitioner has given notice of repudiation on 24-08-2023 of the award made by the arbitrator in arbitration no. A/55/2022 to the 1st respondent and the 2nd respondent, in terms of Section 20 of the Industrial Dispute Act.

Grounds for challenging the arbitral award, pleaded by the Corporation, are as follows:

- (a) The learned Arbitrator has acted *ultra vires* of the jurisdiction conferred on him under the Industrial Disputes Act (as amended) by ignoring the statement of matter in dispute referred to him by the Commissioner General of Labour under the Industrial Disputes Act (as amended) and by making an award in excess of the relief prayed for by the 1st Respondent;

- (b) The learned Arbitrator has erred in law in failing to consider that the 1st Respondent is estopped from claiming salaries in arrears for the period of interdiction, as he has accepted the reinstatement subject to the condition that he is not entitled to any salaries in arrears and therefore, the 1st Respondent cannot approbate and reprobate;
- (c) The learned Arbitrator has erred in law in determining that the 1st Respondent cannot be guilty of the 4th and 5th charges levelled against him without being guilty of the first 3 charges, when in fact charge 4 is an independent charge and can be determined without relying on 1st to 3rd charges, and accordingly the 5th charge too can be established. The learned Arbitrator in complete ignorance of the evidence, has determined that these two charges could not have been proved as he had not been found guilty of charges 1, 2 and 3, which constitutes an absolutely perverse finding on the part of the learned Arbitrator;
- (d) The learned Arbitrator has erred in law in wrongly determining that the petitioner had conducted the disciplinary inquiry unjustly and unfairly, but thereupon had relied on the very order that he criticized to justify that the 1st Respondent is entitled to salary in arrears for the period of interdiction as he has not been found guilty for the first 3 charges by the independent disciplinary inquiry officer. Thus, the Award of the learned Arbitrator is irrational and/or arbitrary, and accordingly, there is an error on the face of the record;
- (e) The learned Arbitrator has erred in law in failing to consider that the independent disciplinary inquiry officer had concluded that the 1st Respondent had shown the behaviour of an intoxicated person not suitable to carry a T-56 weapon and that the 1st respondent had committed an undisciplined act by assaulting D.P.A.C. Susantha, the Senior Security Assistant of the petitioner though he was not found guilty for the first 3 charges and thus there was sufficient evidence to establish charges 4 and 5 preferred against the 1st respondent. The non-consideration of the said facts had led to a perverse order which is irrational and arbitrary;
- (f) The learned Arbitrator has erred in law in calculating the salary in arrears for a period of 14 months, contrary to the statement of matter in dispute referred to him by the Commission General of Labour under the Industrial Disputes Act (as amended). As such, the Award is in excess of the reference;

- (g) The learned Arbitrator has erred in law and acted arbitrarily in calculating the salary in arrears, ignoring the oral and documentary evidence that was placed before him and had even gone beyond the relief sought by the 1st respondent. Therefore, there is no justification to award salary in arrears for a period of 14 months, and the award is irrational, unjust, excessive, contrary to the evidence and erroneous laws;
- (h) The learned Arbitrator has erred in law in failing to consider that the 1st Respondent had failed to produce an iota of evidence to establish the relief sought by him from the arbitration;
- (i) The learned Arbitrator had completely failed to consider that his Award must be just and equitable to both parties and had completely ignored all of the evidence presented on behalf of the Petitioner and failed and/or neglected to appreciate that the 1st respondent is not entitled to any relief sought by him. No valid reasons have been given for awarding relief to the 1st Respondent;
- (j) The findings of the learned Arbitrator are not supported by the evidence on record and/or contradictory and/or inconsistent and/or perverse, and as such, there is an error on the face of the record.

According to the Statement of Matter in Dispute, the 1st respondent has sought relief in respect of the deprivation of one year's service following the disciplinary inquiry conducted against him. The 1st respondent, in his evidence before the arbitrator, sought back wages for one year, calculated at the rate of Rs. 40,000/- per month.

The Learned Arbitrator awarded compensation for a period of fourteen months, calculated at Rs.56,270/- per month. By doing this, the learned Arbitrator had acted in excess of his jurisdiction according to the statement of the matter in dispute referred to by the Minister of Labour.

The Arbitrator had erroneously concluded that the 1st respondent had been deprived of his salary from 07-12-2018, based on the document marked R18.

The 1st respondent was, in fact, interdicted on 15-02-2019, by letter marked X5 (iv). The 1st respondent was reinstated on 06-02-2020 by letter marked X5 (x).

In those circumstances, there is no basis for the Arbitrator to grant fourteen months' back wages to the 1st respondent.

In Colombo Commercial Co. Ltd. v. Shanmugalingam 66 NLR 26, the Supreme Court held that,

part of the award which declared that paragraph 2 of the letters of warning should not have any effect should be quashed by certiorari as being in excess of the jurisdiction conferred on the arbitrator by the provisions of section 16 of the Industrial Disputes Act. In the alternative, it was vitiated by error of law on the face of the record if the arbitrator had purported to act on the "just and equitable" ground in section 17 (1) of the Act.

In Shanmugam v. Maskeliya Plantations Ltd, the Supreme Court held that;

The award is vitiated by an error of law which goes to jurisdiction in that the arbitrator approached the applicant's case from the standpoint of a contractual right when the relevant section 17(1) of the Industrial Disputes Act enjoined him to make such award as may appear to him just and equitable.

The learned Arbitrator decided that the 1st respondent could not have been found guilty of charges 4 and 5, and, as he had not been found guilty of charges 1 to 3 of the charge sheet, the disciplinary committee had no reason to find him guilty of charges 4 and 5. This seems to be the reason the relief was granted to the 1st respondent. Charges 4 and 5 of the charge sheets are as follows:

04 වන චෝදනාව

ඔබ වෙත ලබා දී ඇති පත්වීම් ලිපියේ 25වන කොන්දේසියේ ඇතුළත් අකීකරුකම, අශිෂ්ඨභාවය, අවිනිතභාවය, රාජකාරී පැහැර හැරීම, සංස්ථාව මගින් පනවා ඇති නීතිරීති උල්ලංඝනය කිරීම යනා දී වැරදිවල නිරත වෙමින් සංස්ථාවේ ගෞරවය කෙළෙසන ලෙස ක්‍රියා කිරීම මගින් ඔබවිසින් බරපතල වරදක් සිදුකර ඇත.

05 වන චෝදනාව

ඉහත 1හා/හෝ 2 හා/හෝ 3 හා/හෝ 4 දරන චෝදනාවලින් අනාවරණය කරන ලද වැරදිවල නිරතවීමෙන් සංස්ථා සේවකයෙකු වශයෙන් ඔබ කෙරෙහි ලංකා බනිෂ් තෙල් නීතිගත සංස්ථාව තබා ඇති විශ්වාසය කඩවන අයුරින් ක්‍රියා කිරීම මර්ධන මට්ටමින් ඔබ විසින් බරපතල වරදක් සිදුකර ඇත.

When considering these charges alongside charges 1, 2, and 3, it is evident that charge 4 is quite independent of charges 1 to 3. As the Charge 4 was proved, the finding that the 1st respondent was guilty of charge 5 was not unreasonable.

The disciplinary inquiry report had been marked before the Arbitrator without any objection. In this application, it was argued on behalf of the 1st respondent that the inquiry report should not have been marked without calling the witnesses, who gave evidence before the disciplinary inquirer.

In the case of *Asian Hotels Properties PLC vs Fredrick S. Benjamin* and others SC Appeal 143/2010 decided on 03-09-2012, Dr Shiranee Bandaranaike J. (as she then was) stated that;

Similarly, the provisions of the Evidence Ordinance would not be applicable in an inquiry conducted by the Labour Tribunal or by the Arbitrator. The Evidence Ordinance has clearly stipulated the degrees of proof and the ascertainment of standards that are necessary for the administration of justice. As the Labour Tribunals should dispense just and equitable relief, to arrive at their decisions, they would not require strict degrees of proof that is required in a court of law since there is no necessity to comply with the provisions of the Evidence Ordinance. Furthermore, Section 36(4) of the Act specifically states that strict compliance with the provisions of the Evidence Ordinance is not required. However, this does not mean that the Labour Tribunals are barred from accepting any evidence. They could, if necessity arises, to rely on material available before the Tribunal. What is necessary is to grant just and equitable relief and for this purpose it is essential that the principles of natural justice should be followed. This position was clearly, expressed by Tambiah, J. in

The Ceylon Workers Congress v The Superintendent, Kallebokka Estate (Supra).

“Although, by subjective standards of an employer, a dismissal may be bona fide and just and equitable, nevertheless, when

looked at objectively, it may be unjust and inequitable Whenever a Tribunal is given the power to decide a matter justly and equitably, it is given a discretion (Daniel v Rickett). Therefore, the Industrial Disputes Act, as amended, gives a discretion to the Labour Tribunal to make an Order which may appear just and equitable, and such a jurisdiction cannot be whittled away by artificial restrictions.”

In Batticaloa Multi-Purpose Co-operative Societies Union Ltd v V. Velupillai (1971) 76 N.L.R. 60, Alles J held that,

In considering, however, what “ just and equitable ” orders should be made, I see no objection to Presidents of Labour Tribunals examining or even acting on the evidence led at the domestic inquiry, after satisfying themselves that the evidence has been properly recorded, ensuring that the workman had a fair opportunity of meeting the allegations made against him and seeking support for his findings from the evidence so led. No doubt, in certain matters, the President has naturally to be cautious in accepting the deposition of a witness who has not been called at the inquiry before him.

In view of the above, I hold that the inquiry report had duly admitted. If the 1st respondent taken up any objection to the inquiry report being produced before the Arbitrator, the Corporation could have called the relevant witnesses. Further, the petitioner before the arbitrator and in the present application mainly relied on the admission of the 1st respondent. Therefore, the position of the 1st respondent that hearsay evidence was crept in before the Arbitrator has no basis. The 1st respondent himself has admitted in his evidence that he was intoxicated. The relevant proceedings are reproduced below.

2.8 Pages 30-31 of the brief

ප්‍ර- එකකොට තමුන් ඒහි සඳහන් කරලා තියෙනවා නිදිමත ගතිය යන්නත් එක්ක කියලා බුලත් විටක් සැපුබවට තමුන් ප්‍රකාශ කරලා තියෙනවා? ඒ වගේම තමුන් වෙනදත් මේ ආකාරයට බුලත් විට භාවිතා කරන බවත් තමුන් ප්‍රකාශ කරලා තියෙනවා?

පි- ඔව්.

ප්‍ර- ඒ වගේම තමුන් කියලා තියෙනවා තමුන් නොසිතූ විදිහට ඒ බුලත් විට වලට තමුන් මත් වෙලා

දහඩිය දමා සිහිමද ගතියක් මුලු ඇහේම අප්‍රාණික ගතියක් ඇති වුණා කියලා තමන් ප්‍රකාශ කරලා තියෙනවා?

පි- ඔව්.

ප්‍ර- දැන් පසුව තමුන් එම තත්වය හේතු කොට ගෙන එම ගිනි අවි භාර දීලා තමුන්ගේ ශරීරයේ තිබ්බ අප්‍රාණික බව නිසා රාත්‍රී විවේකාගාරයේ තමුන් නිදා ගත්තා විවේක ගන්න ගියා කියාලත් සඳහන් වෙනවා?

පි- නැහැ එහෙම සඳහනක් මම මෙකේ කොහේවත් කියලාත් නැහැ එහෙම සඳහනක් මෙහි කොයි අවස්ථාවකවත් සටහනක් නැහැ.

ප්‍ර - එහි අවසාන කොටස බලන්න 072 හි?

පි - නැහැමට පෙන්වන්න ඔබ තුමිය එහෙම දෙයක් සඳහන් කරලා තියෙනවානම්

ප්‍ර - ආර් - 72 08 අවසාන පේළි දෙක බලන්න මහත්තයා (එම අදාළ කොටස කියවා සිටි)?

පි- ඔව්.

ප්‍ර - ඒ අනුව තමන් ඒ දින රාත්‍රියේ එම ස්ථානයේ රැදී සිටියා නේද?

පි- ඔව්.

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ප්‍ර - තමුන්ගේ මේ සි-4 ආරක්ෂක සහකාර රාජකාරිවලට ගිනි අවි භාවිතා කිරීමේ රාජකාරියක් තමුන්ට තියෙනවා නේද?

පි- ඔව්.

ප්‍ර - එතකොට දැන් මේ ගිනි අවි ආජකාරි කරන කොට අවි තමන්ගේ භාරයේ තියා ගෙන රාජකාරි කරනට නාසිහි බුද්ධියකින් යුතුව තමයි තමුන් මෙම ගිනි අවිහසුර වන්න ඕනේ කියලා?

පි- දන්නවා

The 1st respondent himself has admitted that he was intoxicated and as such he was not in a position to handle the firearm at the time in issue.

The Service condition 25 of the appointment letter issued to the 1st respondent is as follows:

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2.10

(25) ඉහත ජේදයන්හි සඳහන් කරුණු කෙසේ වෙතත්, ඔබ අකීකරුකම, අශිෂ්ඨභාවය, අවනීතභාවය, වංකභාවය, වංචාසහගත භාවය, රාජකාරි පැහැර හැරීම, සංස්ථා මගින් පනවා ඇති නීතීරීති උල්ලංඝනය කිරීමය නාදී වැරදි කළහොත් කිසිම දැන්වීමක් නොකර ඔබගේ සේවය නතර කළ හැක. මෙම කරුණු වලදී අධිකෘත මණ්ඩලය විසින් ගනු ලබන තීරණය, ප්‍රශ්න කිරීමෙන් තොර අවසාන තීරණය වනු ඇත.

The Inquiring Officer of the domestic inquiry concluded that the 1st respondent had assaulted the security officer, Susantha, and that such conduct constituted gross misconduct. This finding was not contested before the Arbitrator. There was sufficient evidence to prove those 2 charges. This is a sufficient ground for interdiction. Therefore, the Arbitrators' decision that, without finding the 1st respondent guilty of charges 1, 2, and 3, the 4th and 5th charges could not have been proved, has no rational basis.

It is evident that the Arbitrator has acted in excess of his jurisdiction, awarding relief in excess of the reference to arbitration. Further, the decision that, without finding the 1st respondent guilty of the 1st, 2nd and 3rd charges, the 1st respondent cannot be found guilty of the 4th and 5th charges is unreasonable and irrational. Accordingly, a Writ of Certiorari is issued quashing the award dated 21-06-2023 marked as X10 in the Gazette

Notification dated 24-07-2023 containing the said award marked as X 10 (b) Application of the Petitioner-Corporation is allowed.

No Order for Costs.

Judge of the Court of Appeal

Dr. S. Premachandra J.

I agree.

Judge of the Court of Appeal.

