

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

In the matter of an Application under  
Article 140 of the Constitution seeking  
Mandates in the nature of Writ of  
*Mandamus*.

H.P.A.D.D.Sampath,  
No.241, Godewatte,  
Kapugama  
Devinuwara

**PETITIONER**

**Court of Appeal Case No:  
CA/WRIT/532/21**

**Vs.**

1. Ceylon Fisheries Harbour  
Corporation,  
Rock House Avenue,  
Colombo 15.
  
2. B. A. G. K. Bamunuarchchi,  
Chairman,  
Ceylon Fisheries Corporation,  
Rock House Avenue,  
Colombo 15.
  
3. Percy Amaradivakara Samarasinghe,  
Director.

4. K. A. Lakshan Dayaratne,  
Director.
5. Kalupahanage Sarath,  
Director.
6. Anuradha Meegahavarna Kadanhena,  
Director
7. R. M. K. S. Rajakaruna,  
Director,  
All of Ceylon Fisheries Corporation,  
Rock House Avenue,  
Colombo 15.
8. K. S. M. De Silva,  
Treasury Representative,  
Ceylon Fisheries Corporation,  
Rock House Avenue,  
Colombo 15.

**RESPONDENTS**

**Before:** Mayadunne Corea, J  
Mahen Gopallawa, J

**Counsel:** S. Kumarasingham for the Petitioner.  
Shemanthi Dunuwille, SC for the Respondents.

**Supported on:** 04.08.2025

**Decided on:** 29.08.2025

**Mayadunne Corea, J.**

The Petitioner has sought the following relief among other things:

*“a. The 03rd Respondent to take immediate steps to implement that part of the Cabinet Approval dated 2018.03.27 which relates to the Petitioner as a recommended person entitled for relief as contained under item 4 of document marked "P9" and forwarded to the 03rd Respondent and to restore the petitioner's employment with the 01st Respondent as per his letter of appointment dated 2004.01.29.”*

The facts of the case briefly are as follows. The Petitioner alleges that he was appointed as a Deputy Harbour Manager on 29.01.2004 and after a lapse of a few days he had reported to work. However, within 3 months of this appointment, his appointment had been cancelled on the basis that this appointment had been granted while an election was declared. Subsequently, a recommendation has been made to reinstate him by a Political Victimization Committee in 2018. The Petitioner contends that this recommendation has not been implemented. Hence, this Writ Application.

**The Petitioner’s contention.**

The Petitioner contends that pursuant to the Political Victimization Committee’s (දේශපාලන භේදන මත විවිධ ගැටළු වලට මුහුණ දුන් අයට සහන සැලසීමේදී නිදේශ ක්‍රියාත්මක කිරීමේ ගැටළු අධ්‍යයනය කොට නිදේශ ඉදිරිපත් කර පත් කරනු ලැබූ කමිටුව) (herein referred to as ‘Political Victimization Committee’ or ‘Committee’) recommendations, he should have been reinstated which the 3<sup>rd</sup> Respondent has failed to do so.

### **The Respondents' objections**

The Respondents have filed limited objections and submitted among other things, the following.

- The Petitioner is guilty of laches.
- The Petitioner is guilty of misrepresentation and suppression of material facts.
- The Petitioner has not come to Court with clean hands.
- The Petitioner is estopped from pursuing this Writ Application in pursuance of another Writ Application filed on the same grounds and was dismissed.
- Futility.
- Petitioner's Application is misconceived in law.
- There are no legitimate grounds to grant the relief prayed.

This Court will now consider the Petitioner's Application with the Respondents' objections.

### **The Misrepresentation and suppression of material facts**

The Petitioner contends that he had been appointed as Deputy Harbour Manager with effect from 29.01.2004 and to substantiate this, the learned Counsel brought to the attention of this Court the document marked as P1. I have considered the document marked P1 and find that there are two letters of appointment given to the Petitioner. The letters are dated 29.01.2004. However, both these letters state that the Petitioner is appointed as Deputy Manager of Puranawella Fishery Harbour from 02.02.2004. These letters establish that the Petitioner has not been appointed on the 29.01.2004 as was strenuously argued by the Petitioner but on 02.02.2004. Therefore, the Petitioner's submission on the date of appointment is a clear misrepresentation of facts.

Further, the letter marked as P2 clearly states that within 3 weeks from the acceptance of his appointment the Petitioner should tender his birth certificate, all his educational qualifications and certificates pertaining to his experience. However, the learned Counsel for the Petitioner conceded that the Petitioner had not tendered any of the certificates as requested by P2. Further, this Court observes that as per P1, when accepting the post, the Petitioner is required to sign the letter of appointment. The document P1, which the Petitioner alleges is his letter of appointment, is not signed. The learned Counsel of the Petitioner failed to explain how the Petitioner can hold the post without signing and acknowledging the acceptance of the letter which he alleges is his letter of appointment. Further, the letter of appointment is conditional as the said appointment obliges the Petitioner to submit his qualifications which he admits have not been complied with.

**The Petitioner's recruitment was in violation of the recruitment scheme.**

It was the contention of the Petitioner that at the time the Petitioner was appointed, there was no valid scheme of recruitment. This is also pleaded in paragraph 5 of the Petition. The Petitioner has substantiated his claim by pleading the same and contended that once an advertisement was published and an interview was held to fill the vacancy. It is his contention that he had faced an interview and was selected by the panel. This position of the Petitioner was denied by the learned State Counsel who appeared for the Respondents. However, upon being inquired by the Court, the learned Counsel for the Petitioner conceded that there was no paper advertisement advertising the post to which the Petitioner was appointed to. In any event, this Court observes that the Petitioner has failed to tender the advertisement calling for applications nor has he submitted his application for the said post. As per the submissions of the Petitioner and in the absence of material to substantiate, the only conclusion the Court can arrive at is that the Petitioner's recruitment process had violated the procedure the Petitioner himself says existed. Further, the Court observes, if the Petitioner had faced an interview there was no requirement to submit his educational qualifications upon being appointed as the interviewing panel would have gone through the said qualifications.

**The Petitioner has failed to come with clean hands.**

It was strenuously contended by the Respondents that the Petitioner has not come to Court with clean hands. It was their argument that what the Petitioner has pleaded in paragraphs 2 and 3 of the Petition was far from the truth. In denying the Petitioner's contention that there was no scheme of recruitment at the time of the Petitioner's recruitment, upon the Courts attention being drawn, I have considered the documents marked as R4 and R5 by the Respondents. Both R4 and R5 demonstrate the existence of a scheme of recruitment. The learned Counsel for the Petitioner was not in a position to give any explanation pertaining to the existence of the said two documents and also at the support stage did not deny the existence of the two documents.

As per the scheme of recruitment submitted by the Respondents, the qualifications enumerated therein are required for a person to be appointed to the post the Petitioner was appointed to. In response, the Petitioner submitted that the scheme of recruitment came into operation from 26.04.2018 onwards and the said scheme of recruitment has been marked P1a. Therefore, it was the Petitioner's contention that the scheme of recruitment marked as P1a would have no effect on the Petitioner's appointment which was made in 2004 prior to the said scheme of recruitment coming into effect.

This Court has considered the scheme of recruitment marked as P1a by the Petitioner and the schemes of recruitment marked as R4 and R5 by the Respondents. It is observed that the 3 schemes of recruitment are different.

The Petitioner without denying the existence of the documents R4 and R5, insisted that the only valid scheme of recruitment that was in existence was the document marked as P1a. In view of the documents marked by the Respondents and considering the fact that the Petitioner had failed to deny the same, this Court comes to the conclusion that there was in fact a scheme of recruitment in 2004.

The Courts have consistently held that a lack of clean hands or *uberrima fides* disentitles the Petitioner from seeking discretionary relief in the Writ Court. His Lordship Laffar J. P/CA (as he was then) in ***Mr. M. S. M. Rasheed v. Deputy Director, Muslim Mosque and Charitable Trusts or Wakfs CA Writ 160/2024 decided on 16.06.2025*** stated as follows:

*“I therefore hold that the deliberate suppression of the Constitution marked 3R1 is a fatal defect in the Petitioners’ application. The lack of clean hands reflects a lack of bona fides and disentitles the Petitioners from the grant of prerogative relief, which remains an extraordinary and discretionary remedy to be invoked only by parties who approach Court with clean hands.”*

### **The period of the Petitioner’s appointment**

The Petitioner himself submits that the Petitioner was appointed by the letter marked as P1 and P2. As stated above, on a plain reading of the said appointment, it is clear that the date of appointment is 02.02.2004. It is also not disputed that the Petitioner has not reported to work even on 02.02.2004 but has only reported to work on 20.02.2004. Though the Petitioner submits that he has requested that he be allowed to report to work from 20.02.2024, the Petitioner failed to tender any material to substantiate this contention. In the absence of such, it is pertinent to note that the Petitioner has failed to report to work as requested in the letter of appointment which he himself relies upon. It was also submitted that the Petitioner’s appointment had been made while a General Election had been declared. The Petitioner himself conceded that in the first half of February 2004, the Government in power was dissolved and a General Election has been called. He does not dispute the fact that he reported to work during this period.

However, he argues that as his letter of appointment is dated 29.01.2004, his letter of appointment is issued prior to the dissolution of the Government. In response, the Respondents contended that the Petitioner's purported letter of appointment had been backdated and he had been appointed only during the election. It is further argued that this was the reason for the Petitioner to report to work only on 20.02.2004. However, in the absence of any substantial material, to establish the said contention of the Respondents, this Court wishes to keep the said facts as it may. However, as stated above, the Petitioner's contention that he was appointed on 29.01.2004 is untenable as in the said letter it states that his appointment is with effect from 02.02.2004.

### **Recommendation to reinstate the Petitioner**

It is contended that in 2015, on a decision of the Cabinet, a Political Victimization Committee had been appointed. It is observed by P5 that the Petitioner has been called before the said Committee. The Petitioner failed to tender any application he has made to this Committee in order for the Committee to issue P5. Thereafter, the said Committee had deliberated, and its recommendation is marked as P9. In the said Committee recommendation, it is stated as follows:

“2004.04.04 දින අමාත්‍ය මණ්ඩල තීරණය මත රැකියාව අහිමි වූවෙකු බව පෙනේ. මෙය සියළුම...”

As per the recommendation made on 17.11.2017 by a Senior Officers Committee they have recommended to reinstate the Petitioner. However, the said Committee recommendation is not before this Court. This Court observes that what the Petitioner has marked as P9 is a part of another Committee that re-evaluate the recommendations of the Senior Officers Committee. However, the second Committee had recommended to act on the recommendations of the Senior Officers Committee. This has happened on 07.11.2017. The Petitioner by the application before me is attempting to get the said purported recommendation implemented. This takes me to consider the next objection raised by the Respondents.

### **Laches**

It is the contention of the Respondents that the Petitioner is seeking to enforce the second recommendation which is marked as P9. As per the prayer (a), the Petitioner himself has pleaded that the said recommendation has received Cabinet approval in 2018. However, the said recommendation has not been given effect to.

The Petitioner failed to demonstrate the steps he had taken from 2018 to 2021 to get the said recommendations enforced and it is also important to note that the Petitioner's appointment was cancelled in 2004 by letter dated 26.05.2004 marked as P3. Considering the above, it is observed by this Court, the Petitioner pursuant to his letter of appointment marked as P1 and P2 had in fact worked only for a period of 6 days as the Deputy Harbour Manager. Further, from 2004 to 2021 the Petitioner has failed to take any steps to canvas his termination. As per the documents tendered and the submissions made, the Petitioner has failed to demonstrate any meaningful legal steps he has taken to secure his reinstatement from the year 2004. In my view, this unexplained delay of nearly 2 decades amounts to laches. The said ground alone disentitles the Petitioner from succeeding in this Application.

In *Dissanayake v. Fernando* (1968) 71 NLR 356 His Lordship Weeramantry J., enunciated that "*where there has been a delay in seeking relief by way of certiorari, it is essential that the reasons for the delay should be set out in the papers filed in the Supreme Court*". Even in the case of *Gunasekera v. Weerakoon* 73 NLR 262 His Lordship Sirimane J., held that "*the application should be refused because the Petitioner was guilty of undue delay in making the application. In the said matter, a delay of 7 months was considered to be "too long"*".

### **Was there non-compliance with the Cabinet decision to reinstate the Petitioner?**

The Petitioner submits that though the Political Victimization Committee had sent several letters to implement its recommendations the Petitioner had not been reinstated by the 3<sup>rd</sup> Respondent. In response the attention of this Court was drawn towards the documents marked R1, R2 and R3. By R3 the then Chairman of the 1<sup>st</sup> Respondent had informed that in order for the Petitioner to be reinstated, he should possess certain educational qualifications and had stated that in the absence of the Petitioner tendering such educational qualifications the author of R3 had come to the conclusion that the Petitioner had failed to possess the requirement to hold the Deputy Harbour Manager's post. Further, by letters R1 and R2 the Human Resource Manager of the 1<sup>st</sup> Respondent had sent 2 letters to the Petitioner requesting him to send his educational qualifications in order to consider the steps that they could take pertaining to the Petitioner. It was the contention of the Respondents that the Petitioner has failed to respond and failed to tender any educational qualifications. This Court observes that as per the requirements in P2, within 3 weeks of the Petitioner accepting his appointment he should have tendered all his educational certificates and the birth certificate. At the support stage, the learned Counsel for the Petitioner conceded that the Petitioner had not tendered any of the educational qualifications as requested and had not replied to R1 and R2.

Let me now revert to prayer (a) where the Petitioner is seeking for a Writ of *Mandamus* to implement the recommendations in P9. This Court observes that the Petitioner himself has failed to submit the requirements the 1<sup>st</sup> Respondent had sought, in order to implement the recommendation sought in P9. In my view, by not tendering his certificates and qualification the Petitioner himself has prevented the Respondents from acting in pursuant to the recommendation in P9. These acts of the Petitioner himself disentitle the Petitioner from seeking the relief in prayer (a).

The learned State Counsel appearing for the Respondents also argued that a Writ of *Mandamus* should not be granted to enforce a mere recommendation. It is also argued that the Petitioner is estopped from seeking any relief in the present Application before me as the Petitioner on a previous occasion had filed a Writ Application seeking the same relief. The said Application has been dismissed. As this Court has already come to the conclusion that the Petitioner is not entitled to the relief that he has prayed for in the Petition, this Court will not consider the said objections.

### **Conclusion**

Accordingly for the aforesaid reasons this court is not inclined to issue formal notice on the respondents and proceeds to dismiss this application.

**Judge of the Court of Appeal**

**Mahen Gopallawa, J**

I agree

**Judge of the Court of Appeal**