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

I. M. D. Illangasinghe *alias* I. M. Dhammika,
Temple Road, Thibbatuwewa,
Kekirawa.

PETITIONER

C.A. Case No. WRT/0146/22

Vs.

1. Hon. Chief Justice Jayantha Jayasuriya, PC,
   Chairman,
2. Hon. Justice Buwaneka Aluwihare, PC,
   Member,
3. Hon. Justice Sisira de Abrew,
   Former Member,
4. Hon. Justice L.T.B. Dehideniya,
   Member,
5. H. Sanjeewa Somarathna,
   Secretary,

   1st to 5th Respondents of;
   The Judicial Service Commission,
   Judicial Service Commission Secretariat,
   No. 573, Hulftsdorp, Colombo 12.

RESPONDENTS

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

COUNSEL : Faisz Musthapha, PC, with Bishran Iqbal, instructed by Sanjeewa Kaluarachchi, for the Petitioner.

Kanishka De Silva DSG, for the Respondents.

ARGUED ON : 28.08.2025

WRITTEN SUBMISSIONS ON : 18.09.2025 and 16.10.2025

DECIDED ON : 03.12.2025

JUDGEMENT

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

1. The petitioner was a Judicial Officer who was terminated upon an inquiry, for disciplinary reasons, by the Judicial Service Commission ("JSC"). The said dismissal and termination were communicated to the petitioner by P-13 dated 10.07.2020. The petitioner, by this application filed on 08.04.2022, is seeking a writ of *certiorari* to quash P-13, by prayer *(c)*. The petitioner has also, by prayer *(d)*, sought a writ of mandamus, but at the commencement of the argument, Mr. Faisz Musthapha, P.C., informed Court that the petitioner is not pursuing with the relief as prayed for by prayer *(d)* and would limit this application to the relief prayed for by prayer *(d)*.

Facts.

2. The petitioner was served with two separate charge sheets, and two inquiries were conducted against her. The charge sheet P-8(b) is in respect of certain alleged acts of misconduct based on the disposal of confiscated sand in a manner contrary to the applicable Circular issued by the JSC. The second charge sheet, marked P-9(a), with 4 charges, was in respect of an incident in which the petitioner is alleged to have

ordered the continuous remand of a suspect, notwithstanding the receipt of a psychiatrist's report, which was called for. All these allegations pertain to the period the petitioner served as the Magistrate of the Magistrate's Court of Minuwangoda. According to the petitioner, these two inquiries were conducted by two separate inquiring officers, and the respective reports have been submitted to the JSC upon the inquiry according to the relevant rules of procedure. The said inquiry reports are not annexed nor made available during the course of the hearing of this application. However, according to P-13, it is apparent that the petitioner has been found guilty in respect of 14 charges, preferred by the charge sheet dated 16.05.2018, under JSC Reference No. JB/10/I/05/J10. Upon considering the said report, the JSC has also found the petitioner guilty of the said charges. Then, the petitioner has also been found guilty of charges 1 and 2 but not guilty in respect of counts 3 and 4 of the charges preferred by the charge sheet dated 31.05.2017 under JSC Reference No. JB/10/I/05/J10. The JSC has, upon considering the said report, found the petitioner guilty of the said counts 1 and 2. Thereafter, the JSC, upon considering especially count no. 3 of the charge sheet dated 31.05.2017, in view of the said acts of misconduct, determined that the petitioner is not a fit and proper person to hold judicial office, and accordingly decided to dismiss and terminate the services of the petitioner.

3. The petitioner had been a Judicial Officer since 2010, for 10 years, until the termination on 10.07.2020. At the time of her interdiction in 2016, she was the Magistrate of the Polgahawela Magistrate's Court. All 14 charges in P-8(b) were in relation to the handing over of forfeited sand to the Urban Council of Minuwangoda, in violation of JSC Circular 288, dated 24.09.2004. It is submitted that the second charge sheet was in respect of remanding a suspect named Jayawardena, in Case No. B/658/16, notwithstanding the receipt of a favourable psychiatrist's report.

The arguments advanced.

4. The relevant findings, as well as the JSC determination and decision to terminate the petitioner, are based on the two reports. The said reports have not been made available to this Court. The learned President's Counsel submitted that the charges based on the disposal of sand and the remand of a suspect are described on the face of the two charge sheets, and on the said charges, the disciplinary sanction was imposed by P-13. Hence, P-13 is a speaking order, and the petitioner could rely on the matters stated therein and requires no other material or reports, so to say. In support of this submission, the petitioner relied on the decision of ***Manickam vs. The Permanent Secretary, Ministry of Defence and External Affairs*** 62 NLR 204, at page 208.

5. Then, it was argued that the acts on which the disciplinary action is based are judicial decisions, and even if they be erroneous, the remedy is not disciplinary but appellate. As such judicial decisions cannot be the subject matter of discipline, the taking into consideration of such decisions amounts to taking into account irrelevant considerations, and such decision is thus illegal.

6. Finally, it was argued that the termination of services is grossly excessive and disproportionate to the alleged offences. In these circumstances, the petitioner submits that these are errors on the face of the record, which can be determined without the reports of the inquiring officers.

7. As opposed to this, the learned Deputy Solicitor General appearing for the respondents raised the following grounds of objections:
    a. laches;
    b. failure to name necessary parties;
    c. that the petition is filed in violation of the provisions of Article 111K of the Constitution; and
    d. that relief sought by the petitioner is futile.

Laches.

8. It is common ground that this application was filed approximately two years after the receipt of P-13. The petitioner puts forward certain reasons to explain the delay. They are that the said Order was made during the height of the Covid-19 lockdown, and during that period and also the period following thereafter (during 2020 and 2021), the country was in lockdown and government offices were not functioning as usual. Further, after the receipt of the letter of termination, the petitioner made several attempts to obtain the said reports from the JSC, and despite several requests, up until 19.04.2021, the JSC refused to issue the said reports.

9. It is trite law that unexplained delay is reason for a Court to reject granting of the discretionary relief of writs. In ***Bisomenike vs. C. R. de Alwis*** (1982) 1 SLR 368, Sharvananda, J. (as His Lordship then was), observed as follows:

> *"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."*

In ***Jayaweera vs. 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."

10. The learned President's Counsel submitted that as the delay is explained and also as the impugned decision is demonstrably and manifestly erroneous and without jurisdiction, delay would not defeat the remedy by way of writ, as P-13 is a nullity. It has been held time and again by this Court that delay by itself does not prevent the exercise of the Court's writ jurisdiction in judicial review. In ***Biso Menika vs. Cyril de Alwis and Others*** [1982 (1) SLR 368], Sharvananda J., held as follows:

"When the Court has examined the record and is satisfied the order complained of, is manifestly erroneous or without jurisdiction the Court would be loathed to allow the mischief of the order to continue and reject the application simply on the ground of delay, unless there are very extraordinary reasons to justify such rejection. Where the authority concerned has been acting altogether without basic jurisdiction, the Court may grant relief in spite of the delay unless the conduct of the party shows that he has approbated the usurpation of jurisdiction. In any such event, the explanation of the delay should be considered sympathetically."

11. The above was followed and cited with approval in ***Paudgalika The Kamhal Himiyange Sangamaya also known as The Private Tea Factory Owners Association vs. H. D. Hemaratna, Tea Commissioner and Others*** (SC/Appeal/47/2011, decided on 09.03.2015), where K. Sripavan, C.J., held,

"The Court may therefore in its discretion entertain an application in spite of the fact that a petitioner comes to Court late, especially where the order challenged is a nullity. The conduct of the petitioner cannot be branded as unreasonable to disentitle it to a Writ especially when the decisions contained in the letters marked P12 and P13 are ultra vires the powers of the Tea Commissioner."

> *"There has undoubtedly been great delay in challenging the validity or legality of the said circulars. However, the rule of laches or delay is not a rigid rule which can be cast in a straightjacket formula, for there may be cases where despite delay and creation of third-party rights, the Court may still in the exercise of its discretion interfere and grant relief to the petitioner."*

12. As I see, P-13, the decision to terminate the services made upon the consideration of two inquiry reports, may be voidable but is certainly not a nullity. The JSC did have the authority and the power to determine the sanction upon considering the said inquiry reports. The fact that the disciplinary action was based on what the petitioner referred to as judicial orders does not make the process or the finding a nullity. In certain circumstances, a judicial order, though amenable to review or appeal, can also be the subject matter of discipline. There is no absolute legal or other bar preventing or prohibiting judicial decisions from being the subject of discipline.

Are judicial orders amenable to discipline?

13. In the normal course of events, certainly, judicial decisions will be amenable and can be corrected by appeal, review, or revision. However, if a particular kind of erroneous decision is continued, it can be the subject matter of discipline on the basis of egregious conduct. Further, if the judicial decision is patently wrong and demonstrably made in extreme ignorance or innocence of the basic law or legal provisions, which will demonstrate a total lack of basic competence and knowledge, that by itself will make such person unfit to hold judicial office due to incompetence. Similarly, if a person holding judicial office is seen to have made a decision or order contrary to an obvious or basic legal provision, either he is innocent and ignorant of the law or he has acted dishonestly and maliciously; in whichever event, such person becomes unfit to hold judicial office. In these circumstances, though the order is a judicial order, it may be the subject of discipline. Therefore, the mere fact that

the disciplinary action is based on a judicial order does not make such inquiry or order illegal or *ultra vires*.

14. Mr. Mustapha submitted that these orders, if at all, are erroneous orders which are amenable to the appellate jurisdiction of a higher forum. It was his submission that such errors cannot be the basis or the subject matter of a disciplinary inquiry. There is the view that where a judge wrongly exercised his/her discretion and erred, such an act cannot be the subject matter of misconduct. Dr. A. R. B. Amerasinghe, in 'Judicial Conduct, Ethics, and Responsibilities', at page 69, refers to the following dicta with approval:

> *"It is where the judge has wrongly exercised his/her discretion or was guilty of a mere error of law, there can be no question of misconduct."*

15. That being so, similarly, there is now the acceptance and development of the concept of "**egregious conduct**". This concept is now accepted in the United States, where, in re ***Fuselier*** [837 So. 2d 1257 (La. 2003)], the Supreme Court of Louisiana held that judicial misconduct can be established by a pattern of repeated legal errors even if the errors are not necessarily the same. The pattern in that case involved three distinct types of legal errors: abuse of the contempt power, conducting arraignments and accepting guilty pleas with no prosecutor present, and establishing a worthless cheques programme that did not meet statutory requirements. The court stated that the errors separately were not egregious or made in bad faith but that together, they were part of the same pattern or practice of failing to follow and apply the law. Even though it noted there was no evidence that the judge had an improper motive, the commission concluded that *"even the most broad assessment of respondent's failure to observe basic due process in conducting the hearing causes us to conclude his conduct undermined confidence in the integrity and impartiality of the judiciary."* The commission also stated that "*while the conduct was confined to a single hearing in a single case*," it "*was egregious and deserving of discipline.*"

16. "Egregious" legal errors have been identified as a type of error that justifies both disciplinary as well as appellate review. "Egregious" implies something different than bad faith or a pattern of error, as those are listed as separate grounds for departing from the mere legal error rule. "Egregious" is a subjective term. The Supreme Court of Louisiana in the above matter adopted egregious legal error as one of the exceptions to its general rule that legal error is not sanctionable, and the court also opined that even a single instance of serious legal error, particularly one involving the denial to individuals of their basic or fundamental rights, may amount to judicial misconduct [Judicial conduct and ethics, § 2.02 (3rd Ed., 1995)].

17. In a similar vein, Indian and Canadian authorities also recognise that whilst an isolated judicial error may be corrected on appeal, a pattern of persistent or repeated errors may attract and justify disciplinary sanction on the basis of recklessness, bias, or incapacity. In ***Krishna Prasad Verma vs. State of Bihar*** (AIR 2019 Supreme Court 4852), the Supreme Court of India explained that although wrong orders by themselves cannot form the basis of initiating disciplinary proceedings, nevertheless "*…in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules.*" In ***Ramesh Chander Singh vs. High Court Of Allahabad and Another*** (2007 AIR SCW 2251), the Supreme Court of India, while acknowledging that a mere wrong exercise of jurisdiction or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceedings, however held that:

> "*Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is [a] prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the Constitution may exercise its supervisory jurisdiction.*"

This approach was also followed in the decision of ***Union of India vs. K. K. Dhawan*** (1993 AIR 1478), where, at para 1.03, the Court held that disciplinary proceedings are justified if –

> "*[T]he officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person, is not acting as a judge.*"

18. The Canadian Judicial Council has applied a similar threshold in inquiries. In the **Justice Robin Camp Inquiry**, the Council concluded that while individual misapplications of law could normally be corrected on appeal, Justice Camp's **repeated statements and rulings** in a sexual-assault trial demonstrated a *"profound lack of understanding of the law"* and held as follows:

> *"In this instance, the Judge's misconduct was evidenced over a continued period during the trial. Some of the Judge's most egregious comments were repeated in his reasons for decision, issued much later. The reasonable person's confidence in the Judge's ability to discharge the duties of office is seriously undermined. Considering all the circumstances of this case, we reject the notion that removal is a disproportionate sanction."*
>
> (Canadian Judicial Council, *Report to the Minister of Justice in the Matter of Justice Robin Camp*, 8 March 2017, para 50-51).

Likewise, in the **Justice Paul Cosgrove Inquiry**, the Council emphasised that it was not a single erroneous ruling but a sustained pattern of improper use of judicial powers that justified a recommendation for removal, and –

> "*…constitute a failure in the due exercise of his office by abusing his powers as a judge.*"
>
> (Canadian Judicial Council, *Report to the Minister of Justice in the Matter of Justice Paul Cosgrove*, 2009, para. 189).

Consideration of the merits.

19. Disciplinary action was taken against the petitioner upon two separate inquiries and reports. The said inquiry reports have not been made available to this Court; however, from the documents filed by both

parties, I am able to ascertain the nature of the allegations made. In the first instance, 14 charges were preferred, as reflected in P-8(b). Charges 1–13 are in respect of 13 orders by which confiscated sand had been handed over to the Minuwangoda Municipal Council. The allegations are that the petitioner has caused the productions in certain cases being sand, had been handed over to the Minuwangoda Municipal Council in violation of the JSC Circular No. අධිසේකොස/විවිධ/2010, dated 10.06.2010. The said Circular was produced by the respondent with their objections marked X-2, which reads as follows:

> "අධිකරණයන් විසින් රාජසන්තක කරන ලද වැලි සම්බන්ධයෙන් පහත සඳහන් ඕනෑම ක්‍රියාමාර්ගයක් අනුගමනය කළ හැකි බව ඔබට දන්වන මෙන් අධිකරණ සේවා කොමිෂන් සභාව මට නියම කර ඇත.
>
> 01. අධිකරණ සේවා කොමිෂන් සභා චක්‍රලේඛ අංක 288 හි සඳහන් ආකාරයට රාජ්‍ය ඉංජිනේරු සංස්ථාවට භාරදීම.
>
> 02. වෙන්දේසි කිරීම.
>
> මෙහිදී අවම මිල ගණන් තීරණය කිරීම අදාල විනිශ්චයකාරවරයා විසින් සිදු කල හැක."

20. According to which, the Secretary of the JSC has informed the Judicial Officers as to how they should dispose of confiscated sand. Two options are provided: (1) it may be handed over to the State Engineering Corporation; or (2) it may be auctioned by the respective judicial officer. As opposed to this, the petitioner is alleged to have handed over the same to the aforesaid Municipal Council. The petitioner admits making the said Order. The position of the petitioner is that since her predecessor had done so, she herself had followed the same procedure. The petitioner admits that there may have been such a directive or a circular. However, it was argued that the JSC cannot give or issue directives as to the exercise of the judicial power. Alternatively, it was argued that this circular was not an Order, but merely informing and intimating the two options. What is relevant and important is that upon the conclusion of certain trials and matters, the subject matter of such offence may be confiscated. The quantities of sand in these 13 instances have been so confiscated. The issue is the disposal of the said productions thereafter.

21. According to the provisions of the Code of Criminal Procedure Act, a Judicial Officer is empowered under Section 425 to hold production inquiries upon the conclusion of the trial for the disposal of productions. However, as in the present instance, the disposal of such productions upon confiscation is not governed by the said provision. Once a confiscation order is made, such property becomes the property of the state, and the respective judge is required to sell it by public auction and credit the proceeds to the State. This is the practice and function that all Judges of the Courts of First Instance are required to attend to in the course of their functions *qua* Judicial Officer. Until the confiscation of such thing, the function is no doubt strictly judicial. Upon such confiscation, the sale by auction of such thing and the depositing of the proceeds to the State, are of an administrative nature. It is a consequential act upon confiscation. Though it be administrative in nature, such functions are required to be performed by the respective Judicial Officer of such Court.

22. The duties of a judicial officer include judicial as well as administrative functions. Dealing with confiscated property and the sale and crediting of such proceeds thereof are some such administrative functions. It is correct that the JSC may not have the authority to give directives to judicial officers as to the exercise of judicial functions. The JSC consists of the Chief Justice of the day and generally the two seniormost Judges of the Supreme Court. However, when they function *qua* members of the JSC, they perform a function of an administrative nature. In that context, the submission of the learned President's Counsel that the JSC does not have the power to give directives as to the specific nature and mode of making and performing judicial orders is correct. However, as dealing with confiscated property, sale by auction and connected matters are of an administrative nature, the JSC may issue directives. To that extent, the instructions or advice given by the said circular are lawful. In the normal course of events, judicial officers are required to

comply and carry out such instructions or directives, as judicial officers come within the administrative and other controls of the JSC.

23. The petitioner has clearly admitted that she had acted in violation of circular X-2. Her position is that she was not personally aware of X-2, as well as Circular No. 288 (marked X-1). These Circulars have been in operation since 2004 and 2010. She had been in service for almost 9 to 10 years. As observed above, the disposal of confiscated items is somewhat of a routine function, and the petitioner claiming ignorance, by itself, demonstrates a lackadaisical, nonchalant and cavalier attitude in performing her duties. Sale and dealing with confiscated property is an extremely important and serious function, even though it is administrative. Such auction, sale, and matters connected with confiscated property are required to be done under the direct supervision of the relevant judicial officer. In any event, it is a plain and obvious fact that once productions are confiscated, the property in goods vests with the State, and proceeds should go to the State, unless there be some specific arrangement of a legal basis made to enable the handing over of such property so confiscated to any other agency of the State. In the normal course of events, such arrangements may require being made through the Secretary of the Ministry of Justice. In this backdrop, what is apparent from the material placed before this Court is that the petitioner has been absolutely ignorant of the serious administrative function she was required to perform *qua* judicial officer. The only explanation for so acting is her assertion that her predecessor did so. To my mind, a responsible judicial officer should be mindful of the basic principles in dealing with confiscated property. Even if the predecessor did so, it is not justifiable to follow a practice which is not lawful or not permitted and sanctioned.

24. This conduct of the petitioner clearly demonstrates the extreme ignorance and innocence which makes such an officer incompetent to hold judicial office, or that she had acted with a callous disregard to

basic principles and directives she was required to follow. This conduct certainly brings the judicial office to disrepute, on one hand, and also makes such individual totally unfit to hold such responsible office. This had been repeated at least on 13 occasions. These directives given to so handover the sand to the Municipal Council are not amenable to appeal or revision as judicial orders, but, if at all, administrative orders amenable to discipline.

25. The second disciplinary inquiry was in respect of remanding a person for almost a month, from 22.06.2016 until 20.07.2016. The alleged suspect had been produced before the petitioner for alleged drunken and disorderly behaviour at a public place. Initially, a remand order has been made, and on 22.06.2016, when the matter was mentioned, an Order was made to call for a psychiatrist's report. Once again, when this was mentioned on 18.07.2016, a report was called for. Finally, on 20.07.2016, the said suspect had been enlarged on bail upon the receipt of the said psychiatrist's report. No doubt, these are all judicial acts and orders.

26. Remanding of a person is one of the most serious acts, with serious consequences to such person so remanded. As held time and again, a judicial officer who makes an Order of remand on an application by the Police, should not act as a mere rubber stamp and is required to consciously consider the facts and make the order if necessary. This suspect has been remanded, and the remand has been extended. In the periodical reports filed, there has been no fresh material provided as regards the progress of the investigation or as to a particular complaint. In these circumstances, continuous remanding for a mere alleged misbehaviour cannot be justified by any standard. The petitioner has not called for a psychiatrist's report at the outset, but it was only subsequently that a report was called for. On the third occasion, the petitioner claims such report was not available. The suspect has been represented by a counsel. The petitioner has routinely remanded the

suspect. This conduct, certainly, causes grave prejudice and brings the judiciary into disrepute, as it unjustly impacts upon the general public. Considering the attitude of the petitioner, as evident from the previous 13 charges, and continuing to remand a person for merely acting in a disorderly manner shows the extreme callous disregard and the failure to appreciate the seriousness of the functions of a judicial officer.

27. The sum total of the orders made by the petitioner in respect of the release of sand is that the petitioner has continuously released property that was confiscated and forfeited to the State. It may be to a local authority; however, once the property is so confiscated, the property in goods becomes State property. The petitioner has claimed ignorance of the circular which contains specific directions as to the manner of dealing with such confiscated sand. By the arbitrary release of the sand, the petitioner exhibited an alarming degree of ignorance as to the legal effect and import of such confiscation. The continuous and repeated orders so made confirm the degree of ignorance. This conduct will undermine the confidence, integrity, and impartiality and bring disrepute to the judiciary. This conduct is thus necessarily egregious and most certainly deserves and warrants disciplinary action.

28. The charges based on remanding the suspect appear to be a series of acts. Even with no credible report, information, or material that was forthcoming from the Police, except the belief of the Police Officer, the petitioner has continued to remand the suspect. When the psychiatric report was called for, and if such report was not brought to the notice of the petitioner, the judicial officer ought to have made a much more diligent inquiry to ascertain if in fact such report had been received. In fact, there are two reports in the record. The psychiatric report is dated 27.06.2016, which is a date preceding the date on which it was mentioned in Court. It is found in the certified copy of the record. A conscious inquiry would have certainly revealed its existence or the fact that it was sent to the Magistrate's Court by the psychiatrist. The

petitioner, without any such conscious act, has remanded the suspect for 14 days once again, notwithstanding an application being made seeking bail.

29. This conduct, even if it is considered a single instance, I would consider it to be a serious legal error, which, in particular, has led to the denial of the suspect's basic fundamental rights of freedom. It is universally accepted that conduct by a Judicial Officer, negligently or recklessly, or with a total disregard and without being conscious of the onerous duty, will certainly fall far short of such person acting as a judicial officer. This conduct certainly attracts and warrants discipline.

Is the sanction disproportionate?

30. The petitioner also urged that the extreme and ultimate sanction of termination of services and dismissal is disproportionate *vis-à-vis* the crude allegations. Of course, in the context of employment and discipline, termination and dismissal is the ultimate sanction. However, in the context of the nature and function of a judicial officer, it cannot be evaluated or considered in the same plane as any other service or profession when it comes to issues of misconduct and discipline. This was clearly articulated in ***R. C. Chandel vs. High Court of Madhya Pradesh*** AIR 2012 Supreme Court 2962, where the Supreme Court of India opined that the standard of conduct expected of a judge was much higher than an ordinary man. R.M. Lodha, J., held that:

> *"Judicial service is not an ordinary government service and the Judges are not employees as such. Judges hold the public office; their function is one of the essential functions of the State. In discharge of their functions and duties, the Judges represent the State. The office that a Judge holds is an office of public trust. A Judge must be a person of impeccable integrity and unimpeachable independence. He must be honest to the core with high moral values. When a litigant enters the courtroom, he must feel secured that the Judge before whom his matter has come, would deliver justice impartially and uninfluenced by any consideration. The standard of conduct expected of a Judge is*

much higher than an ordinary man. This is no excuse that since the standards in the society have fallen, the Judges who are drawn from the society cannot be expected to have high standards and ethical firmness required of a Judge. A Judge, like Caesar's wife, must be above suspicion. The credibility of the judicial system is dependent upon the Judges who man it. For a democracy to thrive and rule of law to survive, justice system and the judicial process have to be strong and every Judge must discharge his judicial functions with integrity, impartiality and intellectual honesty."

31. The efficacy of the judiciary primarily depends on the public confidence in the judiciary and the judicial system. The conduct of the petitioner as alleged will directly affect the public confidence, especially the remanding and depriving a person of his liberty in gross violation of the basic fundamental rights of such person. In this context, I once again would refer to the **Justice Robin Camp Inquiry**, where it was held that, when the conduct alleged leads to a loss of confidence in the system and seriously undermines the judicial office, such officer who so conducts deprives him/herself of the legitimacy to hold such office. Similarly, even a single allegation involving the denial of an individual's basic or fundamental right is also such misconduct. In these circumstances, I am of the view that it is the duty of the regulatory authority to remove such persons from judicial office.

Conclusion.

32. In the above circumstances, I find that the petitioner is guilty of laches, and upon considering this application on its merits, I also see no basis in law or otherwise that warrants the interference with P-13. Accordingly, I find that the petitioner is not entitled to the relief as prayed for. As such, I find that the consideration of the objections (b), (c), and (d) raised by the learned Deputy Solicitor General, and referred to at paragraph 7 above is now not necessary.

33. Accordingly, the application is dismissed. However, I make no order as to costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL