

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

In the matter of an application under Article 154P(4)(b) of the Constitution of the Democratic Socialist Republic of Sri Lanka read with Section 7 of the Act No. 19 of 1990 for a mandate in the nature of Writ of certiorari.

Court of Appeal Case No.
CA/PHC/62/2018

Galukagama Lekamge Pradeep Kumara
No. 190, Godigamuwa,
Ratnapura.

High Court Case No.
HCR/WA/14/2015

Petitioner

Vs.

1. Ratnapura Municipal Council, Ratnapura.
2. The Commissioner, Ratnapura Municipal Council, Ratnapura.
3. G.W. Amarasena
Investigation Officer,
No. 09, Bandarawatta Batuhena,
Hidellana.
4. The Commissioner of Local Government,
Sabaragamu Provincial Council,
New Town, Ratnapura.
5. S. W. S. N. Amarasinghe,
Inquiry Officer,
Provincial Commissioner Office,
New Town, Ratnapura.

6. The Secretary,
Provincial Service Commission,
Sabaragamu Provincial Council,
New Town, Ratnapura.

Respondents

And between

Galukagama Lekamge Pradeep Kumara
No. 190, Godigamuwa,
Ratnapura.

Petitioner- Appellant

Vs.

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Council, Ratnapura.
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Respondents - Respondents

And now between

Galukagama Lekamge Pradeep Kumara
No. 190, Godigamuwa,
Ratnapura.

Petitioner – Appellant - Petitioner

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New Town, Ratnapura.

Respondents -Respondents- Respondents

Before: **Damith Thotawatte, J.**
K.M.S. Dissanayake, J.

Counsel: K. G. Jinasena with C. Abeywickrama and I. Dissanayake for the Appellant.
Kalana Tillekeratne for the 1st to 3rd Respondents.
Shemanthi Dunuwille, SC for the 4th to 6th Respondents.

Written submissions tendered on: 07.09.2023 & 24.09.2026 by 1st to 3rd Respondent- Respondent - Respondents.
12.07.2023 and 18.09.2026 by Petitioner – Appellant.
31.08.2026 by 3rd to 5th Respondent- Respondent- Respondents.

Judgment 20.10.2026
Delivered:

Thotawatte, J.

Introduction

The Petitioner-Appellant (hereinafter referred to as the "Appellant") appeals against the Order dated 06.03.2018 of the learned Judge of the Provincial High Court of the Sabaragamuwa Province holden at Ratnapura in Application No. H.C.R.W.A. 14/2015, by which the learned Judge refused the Appellant's application for a Writ of Certiorari seeking to quash the disciplinary order dated 16.06.2015 marked "ඉ 06", made by the 2nd Respondent-Respondent, the Commissioner of the Ratnapura Municipal Council (hereinafter sometimes referred to as the "2nd Respondent").

Factual Background

The material facts are briefly stated as follows.

The Appellant was appointed as the Town Hall Keeper of the 1st Respondent-Respondent, the Ratnapura Municipal Council (hereinafter sometimes referred to as the “Municipal Council”) and it was alleged that on 28.04.2014 he abused the then Mayor, Mr. Victor Kapila Abeyratne, in the Mayor's official chamber and conducted himself in a manner obstructive of the Mayor's official duties. For that misconduct the Appellant had been interdicted by letter dated 29.04.2014 (annexed to the Writ petition as “ඉ 02”).

Following a preliminary investigation, the 2nd Respondent issued a charge sheet dated 02.10.2014 (annexed to the Writ petition as “ඉ 03”) containing two charges:

- (I) misconduct by abusing the Mayor at the Mayor's Office on or about 28.04.2014 and obstructing his official duties; and
- (II) bringing disrepute upon his post and the public service by that conduct.

The disciplinary inquiry had commenced on 27.01.2015 (annexed to the Writ petition as “ඉ 04”). The Mayor, Mr. Abeyratne, had passed away in the interim, and his statement recorded at the preliminary investigation was marked in evidence. Two persons present at the incident, the Office Assistant to the Mayor Weerathunga Damith Miyuru Bhashitha and the Computer Operator in the Mayor's office J. A. Chanaka, testified for the Disciplinary authority. The Appellant gave evidence and had called a Contract Audit Officer of the Council as a witness.

The Inquiring Officer found the Appellant guilty of both charges. As punishment by the disciplinary order dated 16.06.2015 (annexed to the Writ petition as “ඉ 06”), made under Section 24:3:10 of Chapter XLVIII of Volume II of the Establishments Code, the 2nd Respondent reinstated the Appellant and deferred the two salary increments due on 15.03.2014 and 15.03.2015, subject to two conditions:

- 1) that he be attached to another post in Category PL 1, other than the posts of Town Hall Keeper, Public Market Keeper and Bus Stand Keeper; and
- 2) that the period of interdiction be treated as no-pay.

After the disciplinary order dated 16.06.2015, the Appellant appealed to the Provincial Public Service Commission (hereinafter referred to as “the Commission”). While that appeal remained pending, he filed the writ application on 12.08.2015. The Commission subsequently issued its decision on 20.05.2016.

Proceedings before the Provincial High Court

Invoking Article 154P(4)(b) of the Constitution, the Appellant sought a Writ of Certiorari quashing “ଓଡ଼ିଆ 06” and an order for production of the disciplinary inquiry report. The Appellant contended, principally, that the deceased Mayor's statement could not lawfully be admitted, and that the evidence of the two witnesses was contradictory and partial, and that the evidence adduced on behalf of the defence had been disregarded.

While the application was pending, the Provincial Public Service Commission, by letter No. PPSC/ES/01/FI/08/831 dated 20.05.2016 (marked "X" and produced by the Appellant), having considered the fact that the complainant had passed away and could not be cross-examined, removed the deferment of the two salary increments and directed that Conditions 01 and 02 of “ଓଡ଼ିଆ 06” be implemented.

By Order dated 06.03.2018 the learned High Court Judge dismissed the application, holding that sufficient evidence had been clearly led against the Appellant and that, on the evidence of the other witnesses, the charges were proved. The learned High Court Judge further held that no prejudice resulted from the inability to cross-examine the deceased Mayor, and that the Commission had already afforded relief on that very ground.

By Order dated 06.03.2018 the High Court dismissed the writ application in H.C.R.W.A. 14/2015 on the following grounds:

1. **The evidence supported the finding of guilt.** The other witnesses clearly proved that the Petitioner obstructed the Mayor’s official duties, so the finding of guilt on both charges was correct.
2. **No prejudice was shown.** The Petitioner could not cross-examine the Mayor after his death, but this caused no prejudice because the other evidence established the charges.
3. **Relief had already been granted on appeal.** By letter dated 20.05.2016, the Provincial Public Service Commission removed the deferment of the salary increments. It kept Conditions 01 and 02 of “ଓଡ଼ିଆ 06” in force.

4. **No ground for intervention.** The Petitioner showed no basis for interfering with “ඔප 06”, so the application was dismissed.

The Order does not rule on the Respondents' objection that “ඔප 06”, once amended on appeal, no longer existed to be quashed. Nor does it deal with the alternative-remedy objection. It treats the amendment as a matter of fact showing that relief had been given, and decides the case on the merits.

It is pertinent to observe that, by the time the writ application was determined, the Commission had decided the Petitioner's appeal by letter dated 20.05.2016. The Commission removed the deferment of the two salary increments and directed that Conditions 01 and 02 in “ඔප 06” be implemented. The relief sought in the writ application was confined to quashing “ඔප 06”, the Petitioner did not amend his pleadings to seek relief against the Commission's determination. As the Commission's determination constituted a separate operative decision, quashing “ඔප 06” alone would leave it undisturbed and could therefore be futile. The principle is consistent with *Siddeek v. Jacolyn Seneviratne and Three Others*¹ and *Ratnasiri and Others v. Ellawala and Others*².

The Appeal to This Court

By petition of appeal dated 04.05.2018 the Appellant contends that the learned Judge;

- a. erred in law and against the weight of the evidence;
- b. misdirected himself in finding clear evidence against him;
- c. failed to consider that the prosecution evidence was contradictory;
- d. failed to consider that those witnesses were neither credible nor independent;
- e. neglected the evidence; and
- f. disregarded that the Mayor's statement was admitted without an opportunity for cross-examination. He prays that the Order be set aside, the reliefs prayed for in the High Court be granted, and costs.

The Appellant was absent and unrepresented when the appeal was argued on 08.07.2026. On 25.08.2026 upon a formal application being made, this Court permitted him to tender further written submissions, which were filed on 18.09.2026 (field in addition to the previous written submissions filed by the Appellant). All written submissions on record have been considered.

¹ [1984] 1 Sri LR 83 at 90 .

² [2004] 2 Sri LR 180 at 208–209.

The Statutory Framework

Article 154P(4)(b) of the Constitution confers upon every High Court established for a Province jurisdiction to issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under any law, or under any statute made by the Provincial Council established for that Province, in respect of any matter set out in the Provincial Council List. Local Government is a matter set out in Item 4 of List I (the Provincial Council List) of the Ninth Schedule to the Constitution. In terms of Article 154P(6) of the Constitution, read with section 9(b) of the High Court of the Provinces (Special Provisions) Act, No. 19 of 1990, any person aggrieved by a final order, judgment or sentence of such High Court made in the exercise of its jurisdiction under Article 154P(4)(b) may, subject to the provisions of the Constitution and any law, appeal therefrom to the Court of Appeal in accordance with Article 138.

Under Chapter XLVIII of Volume II of the Establishments Code, an officer aggrieved by a disciplinary order may appeal in writing under Section 26:3. Where the order was made by an officer exercising delegated authority from the Public Service Commission, Section 26:5 provides for one appeal to the Commission.

Section 2(1) of the Evidence Ordinance applies the Ordinance to judicial proceedings in or before a court. Strict rules of admissibility do not ordinarily govern a departmental disciplinary inquiry.

Analysis

At the outset, it must be borne in mind at the outset that the High Court exercised supervisory rather than appellate jurisdiction. Judicial review is concerned, not with substituting the Court's view on the merits for that of the decision-maker, but with examining the legality of the decision-making process. The classic grounds of review were described as illegality, irrationality and procedural impropriety³.

The Statement of the Deceased Mayor

The first issue that arises for determination is whether the admission of the Mayor's statement, without an opportunity to cross-examine him, amounted to a denial of natural justice.

³ *Chief Constable of the North Wales Police v. Evans* [1982] 1 WLR 1155 at 1173; *Council of Civil Service Unions v. Minister for the Civil Service* [1985] AC 374 at 410.

A disciplinary inquiry need not be conducted as a trial, but the person accused must know the nature of the accusation and have a fair opportunity to state his case and to correct or controvert relevant statements prejudicial to him. The tribunal must act in good faith⁴. Allowing flexibility does not give decision-makers a license to speculate. A decision needs to rest on material of logical probative value, meaning it has to have the quality of proving something logically. Conclusions must be grounded in logic and reliable facts.

The reception of the statement of a person who died before the inquiry, did not, by itself, vitiate the proceedings. The Mayor's death was not the doing of the disciplinary authority, and the law does not treat a charge as incapable of proof merely because the complainant cannot be called. Further in this case, the prosecution has not rest on that statement alone, two eye-witnesses testified in person and were open to cross-examination, and the Appellant gave and called evidence. It does not appear that any prejudice has been caused to the Appellant.

The Commission's removal of the deferment of increments does not amount to an acceptance that the inquiry was flawed. Although the Commission mitigated the punishment, it left the finding of guilt intact and directed that Conditions 01 and 02 be implemented.

Accordingly, under these circumstances, this Court finds no merit in ground (f) of the appeal.

The Evaluation of the Evidence

The second issue for determination is whether the learned High Court Judge misdirected himself in finding clear evidence against the Appellant as given in grounds (a) to (e).

The Appellant contends that the evidence of the two witnesses was contradictory, that they were subordinates of the Mayor and therefore lacked independence and that insufficient consideration was given to his defence that the Mayor was displeased with him for raising concerns regarding defective chairs supplied to the Council.

Certiorari does not lie to correct an error in the evaluation of evidence or to reassess credibility. A finding of fact may be disturbed only where there was no evidence for it, or where no tribunal properly directing itself could have reached it.

⁴ *University of Ceylon v. Fernando* (1960) 61 NLR 505 (PC).

In the present case, the Appellant's own written submissions acknowledge that both witnesses testified that he entered the Mayor's office, engaged in an argument and verbally abused the Mayor. The discrepancies relied upon is with regards to detail and not substance. This does not reduce the case to one of no evidence. The fact that the witnesses were the Mayor's staff, goes to weight, not admissibility. The defence evidence regarding the chairs, even if accepted, does not negate the conduct alleged, at most it explains the background to the confrontation. Its weight was a matter for the Inquiring Officer.

The remaining complaints made in the High Court, including those as to the witnesses reading their earlier statements, the description of the Appellant's post and the issue of the charge sheet, have not been pursued in this appeal. The charge sheet was, in any event, issued by the 2nd Respondent as the disciplinary authority.

In the circumstances, this Court is of the view that the conclusion of the learned Judge was properly open to him, and grounds (a) to (e) is accordingly rejected.

The New Contentions

A further issue is whether the Appellant may advance, for the first time in his written submissions dated 18th September 2026, the contentions that the punishment was disproportionate and that his attachment to another post amounted to a demotion and constructive termination of his employment.

These contentions were neither pleaded nor urged in the High Court, nor included in the petition of appeal. A new point not raised in the Court below cannot be taken for the first time in appeal unless it is a pure question of law determinable on the existing record⁵. The alleged demotion turns on disputed facts, sought to be proved by a letter dated 23.06.2015 tendered for the first time with written submissions dated 18.09.2026 as “Annexure 1” more than eleven years after the impugned Order. This Court declines to entertain those contentions.

In any event, these contentions are without merit. Condition 01 of “06” assigned the Appellant to another post within the same PL 1 category, and the Appellant concedes that neither his salary nor his grade changed. The assignment therefore did not amount to a demotion. The private-law doctrine of constructive termination does not determine the validity of a disciplinary order made in the exercise of public authority. Further, the

⁵ *Setha v. Weerakoon* (1948) 49 NLR 225.

punishment, as modified on appeal, cannot be characterized as one that no reasonable authority could have imposed.

In the circumstances, this Court is of the view that the new contentions afford no ground for interference.

Conclusion

In view of the foregoing analysis, this Court is unable to find fault with the Order of the learned Judge of the Provincial High Court of the Sabaragamuwa Province holden at Ratnapura.

Accordingly, the appeal is dismissed subject to cost fixed at Rs. 50,000/-. To be paid by the Appellant to the State. The Order dated 06.03.2018 in Application No. H.C.R.W.A. 14/2015 is affirmed.

The Registrar is directed to transmit a copy of this judgment, together with the original record, to the Provincial High Court of the Sabaragamuwa Province holden at Ratnapura.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal