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

In the matter of an application for the grant of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution.

CA (Writ) Application No.280/2024

Jayasuriya Arachchige Gayathri
Sanjeewani Ranasinghe,
No.377/4,
Ratnarama Road,
Hokandara North,
Hokandara.

PETITIONER

Vs.

1. National Medicines Regulatory Authority
   2nd Floor,
   Engineering Corporation Building,
   No.130,
   W.A.D. Ramanayake Mawatha,
   Colombo 02.

2. Dr. Ananda Wijewickrama
   Chairman,
   National Medicines Regulatory Authority,
   2nd Floor,
   Engineering Corporation Building,
   No.130,
   W.A.D. Ramanayake Mawatha,
   Colombo 02.

3. Dr. Saveen Semage
   Director General/ Chief Executive Officer,
   National Medicines Regulatory Authority,
   2nd Floor,
   Engineering Corporation Building,
   No.130,
   W.A.D. Ramanayake Mawatha,
   Colombo 02.

4. Hon. Ramesh Pathirana

Minister of Health,
Suwasiripaya,
No.385, Rev. Baddegama Wimalawansa Thero
Mawatha,
Maradana,
Colombo 10.

4A. Hon. Nalinda Jayatissa
Minister of Health and Mass Media,
Suwasiripaya,
No.385, Rev. Baddegama Wimalawansa Thero
Mawatha,
Maradana,
Colombo 10.

5. Dr. P. G. Mahipala
Secretary,
Ministry of Health,
Suwasiripaya,
No.385, Rev. Baddegama Wimalawansa Thero
Mawatha,
Maradana,
Colombo 10.

5A. Dr. Anil Jasinghe
Secretary,
Ministry of Health and Mass Media,
Suwasiripaya,
No.385, Rev. Baddegama Wimalawansa Thero
Mawatha,
Maradana,
Colombo 10.

6. Hiransa Kaluthantri
Director General,
Department of Management Services,
No.325,
3rd Floor,
Ministry of Finance,
The Secretariat,
Colombo 01.

6A. Wimal S.K. Liyanagama
Director General,
Department of Management Services,
No.325,
3rd Floor,
Ministry of Finance,
The Secretariat,
Colombo 01.

RESPONDENTS

CA (Writ) Application No.281/2024

Rajapaksha Pathiranage Dona Dinuda
No.157/50/A,
Honnanthara,
Piliyandala.

PETITIONER

Vs.

1. National Medicines Regulatory Authority
   2nd Floor,
   Engineering Corporation Building,
   No.130,
   W.A.D. Ramanayake Mawatha,
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Director General,
Department of Management Services,
No.325,
3rd Floor,
Ministry of Finance,
The Secretariat,
Colombo 01.

RESPONDENTS

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

Counsel: Faiszer Musthapha, PC with Pulasthi Rupasinghe, Dananjaya Perera, Kevin Mihiral and Roshanara Fernando instructed by Sanjeewa Kaluarachchi for the Petitioners.

Ms. Nayomi Kahawita, Senior State Counsel with Ms. Rifana Mukthar, State Counsel for the Respondents.

Supported on: 25.09.2025

Decided on: 07.11.2025

Mahen Gopallawa, J.

Introduction

The Petitioners in both Applications, who were serving as Pharmaceutical Assessors-Grade II at the 1st Respondent National Medicines Regulatory Authority (NMRA) have impugned the decision contained in the letter dated 22.04.2024 ('P23' in both Applications) whereby they have been released from service of the NMRA back to their previous places of work under the Ministry of Health. The substantive reliefs sought in both Applications too are identical and are as follows;

> *c) Grant and issue a mandate in the nature of a **Writ of Certiorari** quashing all decisions and/or directives of contained in the letter produced marked **"P23"**;*
>
> *d) Grant and issue a mandate in the nature of a **Writ of Certiorari** quashing all decisions and/or directives of contained in the letter produced marked **"P21"**;*

*e) Grant and issue a mandate in the nature of a **Writ of Mandamus** compelling the Respondents, their successors in office and/or anyone acting under the said Respondents to continue to have the Petitioner in service at the 1st Respondent Authority in her position as a Pharmaceutical Accessor Grade II;*

*f) Grant and issue a mandate in the nature of a **Writ of Prohibition** preventing the Respondents, their successors in office and/or anyone acting under the said Respondents from releasing and/or removing and/or retrenching the Petitioner from her position at the 1st Respondent Authority as a Pharmaceutical Accessor Grade II;*

The Respondents have objected to the grant of the reliefs sought by the Petitioners by way of an affidavit filed by the 5th Respondent dated 03.02.2025. Since the factual circumstances were common to both Applications and the substantive and interim reliefs sought were identical, the learned President's Counsel for the Petitioners and learned Senior State Counsel for the Respondents urged that both Applications be taken up for consideration on the issuance of notice and grant of interim relief together. Accordingly, both Applications were considered for such purposes on 25.09.2025. The learned Counsel also agreed that both Applications may be determined by a single order.

Factual Background

In order to consider the grounds of review urged by the Petitioners in their proper perspective, I propose to set out a sequential narration of factual background to the instant applications, based on the pleadings filed, and, particularly the documents annexed thereto. A common factual narration will be provided and divergences in the facts and markings of documents will be noted, where necessary.

The Petitioners in both Applications had joined the public service as Pharmacists in Gade III of the Service of Supplementary Professions to Medicine with effect from 02.01.2008 ('P1(a)(i)'), and had been transferred and served in several stations within the Ministry of Health.

The Petitioners state that, pursuant to the establishment of the National Medicines Regulatory Authority (NMRA), they were informed by the 5th Respondent by letter dated 22.06.2015 ('P2') that functions hitherto performed by the Medical Technology and Supplies Division and the National Drugs Quality Assurance Laboratory would fall within the purview of the NMRA. Accordingly, based on whether they belonged to an all-island or transferable service or whether they were non-transferable employees of Ministry of Health, Nutrition & Indigenous Medicine (Ministry of Health), officers serving in such divisions were informed that they could either opt to obtain a release from the public service on temporary or permanent basis and join the service of the NMRA or to retire from the public service, as provided for in sections 17(1), 17(2), 17(3) and 17(4) of the National Medicines Regulatory Authority Act, No. 5 of 2015 ("the NMRA Act") and to indicate their preference in writing on or before 01.07.2015. Since the Petitioners have served in several stations,[1] they would appear to fall within the category

[1] Vide documents marked P1(b), (c) and (d).

of transferable employees in service in the Ministry of Health for purposes of the aforementioned categorization.

Thereafter, as evidenced by the Cabinet memoranda, notes and decisions annexed to the petition marked 'P1(g)- (j)', a considerable period of time appears to have been taken to obtain necessary approvals of the Cabinet of Ministers to give effect to the absorption of staff in the aforementioned divisions of the Ministry of Health to the NMRA contemplated in P2. It could be reasonably inferred from the production of the aforementioned documents with the petition that the Petitioners were fully aware of such process.

It is evident from the letter marked 'P3' to the petition that the Petitioners, on the requirements of the Government, had been temporarily appointed to the post of Pharmacist in the NMRA with effect from 01.07.2015. The said letter, *inter alia,* specifically refers to the fact that the Petitioners continue to remain as cadre of the Ministry of Health and will be entitled to benefits, privileges and allowances provided by the Government.

Whilst the Petitioners had been performing duties at the NMRA, a decision had been taken by the Board of Directors of the NMRA on 12.08.2020 to release them from service from the NMRA due to "administrative reasons" with immediate effect and such fact is reflected in the letter issued by the 2nd Respondents to the Petitioners dated 12.08.2020 ('P5' and 'P6' respectively).

It transpires from the appeals preferred by the Petitioners in respect of such decision ('P6' and 'P7') that the decision of the NMRA to release the Petitioners has been made due to an investigation conducted in respect of irregularities in the registration of Azacitidine powder for injection and Omeprazole Tablet 10 mg involving the Petitioners. This is confirmed by the Preliminary Investigation Report dated 10.08.2020 ('XI') submitted with the affidavit of the 5th Respondent.[2] The said preliminary investigation had been conducted by the Legal Officer of the NMRA during the period 6th to 8th August 2020 and the Report, *inter alia,* reflect the fact that statements had been recorded from the Petitioners and one of the recommendations made is that the Petitioners be transferred to the Ministry of Health with immediate effect. The response to the Petitioners' appeals (vide-attachment to 'P7' at page 56 of the Brief in CA Writ 280/24) also confirm such fact and that the Petitioners had been released for service under their Appointing Authority, namely, the Ministry of Health.

Pursuant to their return to the Ministry of Health, the Petitioner in CA Writ 280/24 had been attached initially to the State Ministry of Production, Supply and Regulation of Pharmaceuticals and thereafter to the De Soysa Maternity Hospital ('P1(m)-(o)'). Similarly, the Petitioner in CA Writ 281/24 had been initially attached to the aforementioned State Ministry and thereafter to the Castle Street Hospital for Women ('P7(a)-P7(c)').

Meanwhile, the Department of Management Services of the Ministry of Finance by letter dated 14.06.2021 ('P21') had informed the 5th Respondent of amendments to the salary code and designation of the post of Pharmacist approved for NMRA and the manner in which officers who had been serving in the Ministry of Health in such designation should be

[2] vide paragraph 4 of the 5th Respondent's affidavit dated 03.02.2025.

absorbed into service of the NMRA. For purposes of clarity, an extract of 'P21' is reproduced below;

<u>ජාතික ඖෂධ නියාමන අධිකාරිය සඳහා අනුමත ඖෂධවේදී තනතුරේ වැටුප් පරිමාණය සහ තනතුරු නාමය සංශෝධනය කර ගැනීම.</u>

උක්ත කරුණ සම්බන්ධව ඔබේ සමාංක හා 2021.03.08 දිනැති ලිපිය හා මගේ අංක DMS/1827/Vol. II හා 2020.12.21 මගේ අංක DMS/1827/SOR හා 2021.03.31 දිනැති ලිපි හා බැඳේ.

02. ජාතික වැටුප් කොමිෂන් සභාවේ අංක NPC/02/15/431/SR හා 2020.10.14 දිනැති ලිපිය මඟින් හා අංක NPC/02/15/431/SR හා 2021.05.18 දිනැති ලිපිය මඟින් ඉදිරිපත් කරන ලද නිර්දේෂයන් හා ගරු නීතිපතිතුමා විසින් අංක E/148/2021 හා 2021.05.13 ලිපියෙන් ඉදිරිපත් කරන ලද නිරීක්ෂණයන් සලකා බැලීමෙන් පසු 2015 අංක 05 දරණ ජාතික ඖෂධ නියාමන අධිකාරී පනතෙහි විධිවිධාන පරිදි එම අධිකාරිය ආරම්භක දිනට යටපත් කරන ලද ආයතනයන්හී සේවයේ යෙදී සිටි එමෙන්ම වර්තමානය වන විටද ජාතික ඖෂධ නියාමන අධිකාරියෙහි සේවයේ යෙදී සිටින ඖෂධවේදී නිලධාරීන් පහත පරිදි ඖෂධ ඇගයීම් නිලධාරී (MM 1-1) හා සහකාර ඖෂධ ඇගයීම් නිලධාරී (JM 1-1) තනතුර සඳහා අන්තර්ග්‍රහණය කිරීම/බඳවා ගැනීම කළ යුතු බව දන්වා සිටිමි.

a. දැනටමත් ඖෂධ නියාමන අධිකාරියේ සේවයේ නියුතු සහ එම අධිකාරිය ආරම්භ කරන ලද අවස්ථාවේදී අහෝසි වූ ආයතනයන්හී සේවයේ නියුතු ඖෂධවේදීන් අතරින් ඖෂධවේදය පිළිබඳව උපාධිය සහිත සේවා කාලය වසර 05 ක් සම්පූර්ණ කළ නිලධාරීන් MM 1-1 වැටුප් කේතය යටතේ ඖෂධ ඇගයීමේ නිලධාරී තනතුරට අන්තර්ග්‍රහණය කිරීම.

b. දැනටමත් ඖෂධ නියාමන අධිකාරියේ සේවයේ නියුතු සහ එම අධිකාරිය ආරම්භ කරන ලද අවස්ථාවේදී අහෝසි වූ ආයතනයන්හී සේවයේ නියුතු ඖෂධවේදීන් අතරින් ඖෂධවේදය පිළිබඳ ඩිප්ලෝමාව හෝ ඖෂධවේදය පිළිබඳ උසස් ඩිප්ලෝමාව සහිත සේවා කාලය අවම වශයෙන් වසර 10ක් සම්පූර්ණ කළ නිලධාරීන් MM 1-1 වැටුප් කේතය යටතේ ඖෂධ ඇගයීම් නිලධාරී තනතුරට අන්තර්ග්‍රහණය කිරීම.

c. දැනටමත් ඖෂධ නියාමන අධිකාරියේ සේවයේ නියුතු සහ එම අධිකාරිය ආරම්භ කරන ලද අවස්ථාවේදී අහෝසි වූ ආයතනයන්හී සේවයේ නියුතු ඖෂධවේදීන් අතරින් ඖෂධවේදය පිළිබඳ උපාධිය සම්පූර්ණ කළ එහෙත් එම උපාධියෙන් පසු වසර 05 ක සේවා කාලයක් නොමැති නිලධාරීන් JM 1-1 වැටුප් කේතය යටතේ සහකාර ඖෂධ ඇගයීම් නිලධාරී තනතුරට අන්තර්ග්‍රහණය කිරීම.

d. දැනටමත් ඖෂධ නියාමන අධිකාරියේ සේවයේ නියුතු සහ එම අධිකාරිය ආරම්භ කරන ලද අවස්ථාවේදී අහෝසි වූ ආයතනයන්හී සේවයේ නියුතු ඖෂධවේදීන් අතරින් ඖෂධවේදය පිළිබඳ උසස් ඩිප්ලෝමාව සහිත සේවා කාලය වසර 05-10 දක්වා සම්පූර්ණ කළ නිලධාරීන් JM 1-1 වැටුප් කේතය යටතේ සහකාර ඖෂධ ඇගයීම් නිලධාරී තනතුරට අන්තර්ග්‍රහණය කිරීම.

e. අන්තර්ග්‍රහණය කිරීමේදී ආයතන සංග්‍රහයේ VII පරිච්ඡේදයේ 4 වගන්තිය අනුව වැටුප් ගැලපිය යුතු ය.

03. ඉහත අන්තර්ග්‍රහණ විධිවිධාන ක්‍රියාත්මක වනුයේ බඳවා ගැනීමේ පටිපාටි අනුමත කළ දින සිට වන අතර, අනුමත තනතුරු සීමාව ඉක්මවා අන්තර්ග්‍රහණය හෝ බඳවා ගැනීම් කළ නොහැකි බවද කාරුණිකව දන්වා සිටිමි.

It is *ex facie* evident from the contents of the said letter that conditions of absorption set out therein had been formulated pursuant to a process of consultation among relevant public institutions and advice tendered by the Hon. Attorney General. Regarding the contents of 'P21', the learned Senior State Counsel for the Respondents explained that there were two common conditions for absorption set out therein: first, that the officer concerned should have been serving in an institution that was abolished by the establishment of the NMRA; and second, that the officer concerned should already have been deployed in service as at the date of the letter (i.e. 14.06.2021) at the NMRA. She further explained that the appropriate salary code would be applied based on the particular educational qualifications of an officer upon absorption subject satisfaction of the aforementioned conditions. The said letter had been copied to the 3rd Respondent as well and there is an acknowledgement of receipt by the 3rd Respondent on the face of 'P21'.

Thereafter, it transpires from the letter dated 19.05.2023 ('P8') that, upon considering the appeals submitted by the Petitioners, the Board of Directors of the NMRA had taken a decision on 17.02.2023 to offer them employment with the NMRA again, subject to agreement to the conditions set out therein. Such conditions include, *inter alia,* acceptance in writing by the Petitioners that they have acted negligently in respect of the matter they were released from the NMRA, the issuance of a letter of warning to the Petitioners in respect of such matter, and acceptance of the conditions under which the absorption of Pharmacists of the Ministry of Health to the NMRA was being effected and privileges of the NMRA. Although the said letter has been copied to the 5th Respondent, it does not indicate that prior concurrence of the Ministry of Health, which was the appointing authority in respect of the Petitioners, had been obtained before making such offer to the Petitioners. The Petitioners had accepted the aforementioned conditions set out by the NMRA ('P9') and a letter of warning dated 19.06.2023 relating to their conduct in the registration of Azacitidine powder for injection and Omeprazole Tablet 10 mg had been issued by the NMRA to the Petitioners ('P11').

Upon their request (unmarked letter at p 68 of the Brief),[3] the NMRA had served the conditions relating to the absorption of officers and statement of privileges provided by the NMRA upon the Petitioners on 13.06.2023 ('P10'). The Petitioner in CA Writ 281/24 has submitted the said conditions of absorption (pages 69-70 of the Brief) and the statement of privileges (pages 71-72 of the Brief) along with the cover letter of the NMRA ('P10'). It is pertinent to note that the letter containing the conditions of absorption attached to 'P10' appearing at pages 69-70 of the Brief, and the document marked 'P21' (in both Applications) is one and the same document. The receipt of such document along with 'P10' indicates that the Petitioners were in receipt of and fully aware of the contents of 'P21' as far back as 13.06.2023 and had further agreed to be bound by the contents thereof by 'P9' (in both Applications). I also wish to observe that the Petitioner in CA Writ 280/24 has only submitted the cover letter (P10) but not the aforementioned conditions of absorption and the statement of privileges. Neither has she offered any explanation for the failure to do so.

The Petitioners had been summoned for an interview to examine their eligibility to be permanently absorbed into the service of the NMRA, by the letter dated 27.06.2023 ('P12').

[3] Page 66 in the Brief in CA Writ 281/24

However, the said letter had neither been copied to the Ministry of Health nor indicated that the Ministry was informed of such action. Thereafter, a temporary letter of appointment dated 10.07.2023 had been issued by the 2nd Respondent to the Petitioners appointing them to the post of Pharmaceutical Assessor Grade II ('P13'). The said letter, which had been copied to the 5th Respondent, appears to indicate that the Petitioners were being "absorbed" into the post.

The Petitioners have annexed to the petition, a letter dated 14.07.2023 ('P14'), whereby the 5th Respondent had requested the 2nd Respondent to inform the Petitioners to submit their applications for release in terms of sections 166 and 178 of the Procedural Rules of the Public Service Commission (PSC Procedural Rules) in accordance with Appendix 12 and Appendix 13 forthwith to the Ministry of Health. Only the Petitioner in CA Writ 281/24 has submitted her application for release dated 17.07.2023 ('P14(b)' along with cover letter 'P14(a)') for the perusal of Court. In the said application, she has sought a permanent release from the public service. However, the part of the application where the consent of the 5th Respondent is to be indicated remains incomplete. The Petitioner in CA Writ 280/24 has neither tendered to this Court her application for release nor indicated that she had responded to 'P14'.

Thereafter, the 5th Respondent had directed the Directors of the De Soysa Maternity Hospital and the Castle Street Hospital for Women where the Petitioners were serving to release them from service to assume duties at the NMRA by letter dated 27.07.2023 ('P15'). The said letter *inter alia,* specifically states that the release was subject to the verification of information in terms of section 173 of the PSC Rules. Accordingly, the Petitioners had been released from their aforementioned respective stations in the Ministry of Health and had reported for service at the NMRA on 03.08.2023 and 18.08.2023 respectively and had been assigned duties in the NMRA, as evidenced by the documents 'P16' and 'P16(a)'. The Petitioners have also annexed a letter dated 23.08.2023 ('P17') whereby the 3rd Respondent had informed the 5th Respondent that the officers referred to therein, including the Petitioners, had reported for service to the NMRA and will be considered as having been appointed to permanent posts in the NMRA.

On 14.02.2024 ('P18'), the 5th Respondent informed the 2nd Respondent that a preliminary investigation against the Petitioners had been commenced by the Ministry of Health and had directed that they be released to their previous places of work with immediate effect. The said letter also refers to the fact the Petitioners had been temporarily released to the NMRA, subject to verification of information in terms of section 173 of the PSC Procedural Rules. The Petitioners had tendered a joint appeal in respect of this decision on 15.02.2024 ('P18(a)') and had also lodged a complaint at the Human Rights Commission ('P19') and served a letter of demand on the 2nd Respondent ('P20').

The Petitioners claim that they became aware of the directions issued by the Department of Management Services on 14.06.2021 ('P21') only on or about 01.03.2024. The Petitioners objected to the said directions by letter dated 01.03.2024 ('P22'), although the said letters do not refer to the date upon which they became aware of such directions. It is evident from the contents of 'P22', that they were aware that the reason why conditions of absorption were not applicable to them was because 14.06.2021 had been considered as the date of entitlement for absorption.

Thereafter, the Petitioners state that they had been informed by the 2nd Respondent by letter dated 22.04.2024 ('P23') that they were being released from service of the NMRA with effect from 24.04.2024. The said letter, *inter alia,* indicates that the 6th Respondent had informed the 5th Respondent that the conditions for absorption set out in 'P21' could not be applied to the Petitioners and the NMRA had been directed to act accordingly. It is the documents marked 'P21' and 'P23' that have been impugned in the instant Applications.

The Petitioners had filed action against the 1st and 2nd Respondents in respect of the aforementioned decision before the District Court of Colombo in Case Nos. DSP/211/2024 and DSP/212/2024 on 23.04.2024 and obtained enjoining orders on 25.04.2024 preventing their release, and copies of the plaint and enjoining order have been annexed to the petition,[4] as 'P25' and 'P26' respectively.

The affidavit filed by the 5th Respondent states that the preliminary investigation and a special audit query had been conducted by the Ministry of Health into the irregularities in the registration of the aforementioned medicinal drugs and has submitted a copy of the report thereof dated 02.07.2024 ('X2').[5] The said report, *inter alia,* indicates that statements from the Petitioners had been recorded on 17.01.2024 (CA Writ 280/24) and 28.02.2024 (CA Writ 281/24) respectively. The 5th Respondent's affidavit further states that, based on the findings of such preliminary investigation, charge sheets had been issued against the Petitioners and 2 others and copies of same have been attached ('X3').[6] This Court has been informed that the Petitioners have challenged the institution of such disciplinary proceedings in CA Writ Applications Nos. 480/2025 and 481/2025 respectively.

Grounds of Review and Analysis

The principal submission made by the learned President's Counsel for the Petitioners in assailing the decisions contained in the documents 'P21' and 'P23' was that the Petitioners had received permanent appointments at the NMRA, and, as such, they could not be released back into the service of the Ministry of Health. It was his position that in terms of sections 16 and 17 of the NMRA Act, the NMRA has the power and discretion to appoint its staff, and, accordingly, the Petitioners had been initially temporarily released for service to the NMRA with effect from 01.07.2015 ('P3') and thereafter had been "absorbed into permanent service" of the NMRA with effect from 11.07.2023 ('P17'). The learned President's Counsel submitted that the same issued had been revisited without just cause in the decision contained in P23 on the purported basis that conditions of absorption in P21 had no application to the Petitioners.[7]

I wish to commence the examination of the aforementioned position taken up by the Petitioner by considering the provisions of section 17 of the NMRA Act, which are as follows;

[4] The said documents are marked P25 and P26 in CA Writ 280/24 and P24 in CA Writ 281/24 respectively.
[5] vide paragraph 5 of the 5th Respondent's affidavit
[6] vide paragraph 6 of the 5th Respondent's affidavit
[7] Vide paragraphs 45-48 of the petition.

17. (1) ***At the request of the Authority any officer in the public service may, with the consent of that officer and the Secretary to the Ministry under which that officer is employed, and the Secretary to the Ministry of the Minister assigned the subject of Public Administration, be temporarily appointed to the staff of the Authority for such period as may be determined by the Authority or with like consent, be permanently appointed to such staff.***

(2) ***Where any officer in the public service is temporarily appointed to the staff of the Authority,*** *the provisions of section 14(2) of the National Transport Commission Act, No.37 of 1991 shall, mutatis mutandis, apply to and in relation to such officer.*

(3) ***Where any officer in the public service is permanently appointed to the staff of the Authority,*** *the provisions of section 14(3) of the National Transport Commission Act, No.37 of 1991 shall, mutatis mutandis, apply to and in relation to such officer.*

(4) ***Where any officer or employee of the Department of Health is appointed to the staff of the Authority,*** *the provisions of sections 16, 17, 18 and 19 of the National Aquaculture Development Authority of Sri Lanka Act, No. 53 of 1998 shall mutatis mutandis apply to and in relation to such officer or employee.*

(5) Where the Authority employs any person who has entered into a contract with the Government by which he has agreed to serve the Government for a specified period, any period of service with the Authority by that person shall be regarded as service to the Government for the purpose of discharging the obligations of such contract. (emphasis added)

It is evident that section of the NMRA Act empowers the NMRA to obtain the services of public officers. However, it is equally evident from the provisions of section 17(1) thereof, that the power to obtain the services of public officers cannot be unilaterally exercised by the NMRA and that to secure the release of the relevant public officer from the public service in accordance with the procedure set out therein. Thus, I am unable to accept the position taken up by the Petitioners that they should be considered as having been "absorbed into permanent service" of the NMRA with effect from 11.07.2023 merely or solely on account of the fact a letter of appointment to a permanent post has been issued by the NMRA ('P17').

In fact, the aforementioned section 17(1) of the Act contemplates a process whereby the consent of the officer concerned, the Secretary to the Ministry under which that officer is employed, and the Secretary to the Ministry of Public Administration is obtained for the release of the public officer from the public service, either on temporary or permanent basis. Therefore, it is incumbent upon this Court to ascertain whether such requirements have been met in the instant case.

Provisions governing the temporary and permanent release of officers from the public service were initially set out in clauses 1 (posts in the public service) and 2 (service outside the public service) of Chapter V of the Establishments Code (Volume 1). At present, provisions relating to the release of public officers to posts within and outside the public service are contained in Chapter XII of the PSC Procedural Rules (Sections 165-187). Although several provisions in

such Rules are referred to in the documents annexed to the petition, they were regrettably not adequately addressed by the learned Counsel in their submissions. However, in view of its direct applicability and relevance, I am obliged to consider such Rules to the extent required by the circumstances in the instant case.

In terms of Section 172 (VIII) in Chapter XII of the PSC Procedural Rules, an appointment to a post in a public corporation or statutory body constitutes service outside the public service. Since the NMRA has the status of a statutory body, it would appear that the Petitioners are required to obtain a release to hold a post outside the public service.

The consent of the Appointing Authority is required for the release of a public officer to serve in another post within and outside the public service and the relevant Sections in Chapter XII of the Rules are as follows;

> *165. If an officer holding an appointment in the public service wishes to obtain an appointment to another post in the public service, he should secure his release from the appointment he holds.*
>
> *166. The application to secure such release shall be made to the Appointing Authority through the Head of the Department or Head of the Institution in accordance with the Appendices 12 or 13, as the case may be.*
>
> ***176. An officer may be released for a post outside the public service only with the sanction of the Appointing Authority and any other authority whose concurrence is required by the law under which the Institution concerned is constituted.***
>
> *177. Every such release requires the concurrence of the Appointing Authority to ensure the preservation of pension rights of an officer during a period of temporary release to a post outside the public service and, in the case of permanent release, the conferment of benefits under the Minutes on Pensions in respect of services under the government.*
>
> ***178. Where the request for release is made by a public officer at his own instance, he shall apply to the Appointing Authority as per Appendix 12 and where it is made on the needs of the government or public policy, the Secretary to the Ministry to which the officer is proposed to be appointed shall make the request.*** (emphasis added)

In the instant Applications, the Petitioners had been initially released for service at the NMRA as a temporary measure but such release had come to an end with the decision of the NMRA to release them back to the Ministry of Health due to "administrative reasons." Thus, if the Petitioners wished to take up an appointment at the NMRA thereafter, they were obliged to obtain a release from the public service.

In such context, I wish to consider the evidence before this Court on this issue. The Ministry of Health had informed the Petitioners of the necessity of complying with the PSC Procedural Rules to obtain a release on 14.07.2023 ('P14'). Whilst the Petitioner in CA Writ 281/24 has submitted an application for release dated 17.07.2023 ('P14(b)'), there is no such evidence

available in respect of the Petitioner in CA Writ 280/24. The 5th Respondent's letter dated 27.07.2023 ('P15'), whereby the Petitioners were released to assume duties at the NMRA, specifically states that the release was subject to the verification of information in terms of section 173 of the PSC Rules. Thereafter, by letter dated 14.02.2024 ('P18'), the 5th Respondent had informed the 2nd Respondent that a preliminary investigation against the Petitioners had been commenced by the Ministry of Health and had directed that they be released back to their previous places of work with immediate effect. Subsequently, Petitioners had been informed by the 2nd Respondent on 22.04.2024 ('P23') that they were being released from service of the NMRA since conditions for absorption set out in 'P21' could not be applied to them. It is evident from the foregoing, that, irrespective of the reasons for recall, the unconditional and unequivocal consent of the Secretary, Ministry of Health, as the Appointing Authority, has not been given for the Petitioners' release from the public service. Hence, I am inclined to accept the position taken up by the learned Senior State Counsel on behalf of the Respondents that the Petitioners had not been released from the public service to take up employment in the NMRA.

The necessity to obtain the consent of the Appointing Authority for the release of a public officer to accept a post outside the public service was considered and affirmed by the Supreme Court in relation to the provisions contained in clause 2 of Chapter V of the Establishments Code (Volume 1), which are substantially similar in effect to Section of the PSC Procedural Rules, in ***Madurapperuma and others v. M.N. Junaid and others.***[8] The Court observed as follows (per Fernando, J.);

> *Section 2.5.1 grants a public officer an option - either to revert to the public service or to become a permanent employee of his new employer - and for the first alternative, no precondition is stipulated; and at first sight it seems that the only precondition for the second is the concurrence of his new employer. Expressio unius, exclusio alteris, and so this suggests that the concurrence of his substantive employer, the State, is unnecessary. However, the context prevents such an interpretation: the requirement in section 2.3, that the application for permanent release should be made "by the appointing authority of the officer's substantive post" through the Secretaries to the two Ministries concerned, indicates that the option which section 2.5.1 gives an officer is not entirely unfettered. Here no such application was made, and while the failure to use the prescribed form may not have been fatal by itself, yet here there has been substantial non-compliance with section 2.2. and 2.3.*
>
> *Thus at the end of the maximum permissible period of temporary release, the petitioners had not duly exercised their option under section 2.5.1. Did they continue as public officers, or did they become employees of the Trust? Quite apart from the submission which I have to consider in the succeeding part of this judgment, I hold that since they failed to change their status by a proper exercise of their option, the status quo continued, and they remained as public officers.*[9](emphasis added)

[8] [1997] 1 Sri L.R. 365
[9] Ibid at p 370.

In this regard, I also wish to state that no evidence has been placed by the Petitioners, or by the Respondents for that matter, indicating that the consent of the Secretary to the Ministry of Public Administration was sought or granted, as contemplated in section 17(1) of the NMRA Act. Hence, the most reasonable inference that may be drawn is that such consent has not been granted.

Thus, I am of the view that in order for a public officer to secure employment in the NMRA in terms of section 17(1) of the NMRA Act, it is necessary to for such officer to secure his/her release from public service in accordance with the provisions of Article 17(1), PSC Procedural Rules and any other applicable directions and to obtain a valid appointment from the NMRA. Both such requirements would have to be fulfilled in order to complete the change of status contemplated in the said section 17(1). It is observed that, as expressly stated in Section 177 of the PSC Procedural Rules, one of the principal objectives of rules and procedures regulating the release of public officers is to safeguard and ensure the smooth transfer of pension rights and other rights and interests of such officers. It is my view that due compliance of such provisions is crucial in order to ensure that such objective is achieved and also to maintain clarity and certainty in the legal regime.

The resultant position from the Petitioner's not being validly released from the public service is that they remain as officers in the public service attached to the Ministry of Health. Being officers in the public office, they would also not be entitled to concurrently hold any post in the NMRA, which is an institution outside the public service. In such circumstances, I am of the view that the decisions of the Ministry of Health to recall the Petitioners ('P18') and the NMRA to release them from service ('P23') are valid and justified in law.

Furthermore, in terms of the statutory scheme set out in section 17 of the NMRA Act, the provisions of section 17(2), 17(3) and 17(4) thereof, which deal with the status and rights and status of the officer vis-à-vis the public service and the new employer subsequent to the release, become applicable after a public officer has been duly appointed to the NMRA in accordance with the provisions of 17(1). Whilst section 17(4) refers to instances where an officer or employee of the Department of Health is appointed to the staff of the NMRA, it is observed that section 16 of the National Aquaculture Development Authority of Sri Lanka Act No. 53 of 1998 referred to therein appears to qualify its application to "every public officer …… not being any such officer in a transferable service of the Government." Hence, contrary to the position taken up by the Petitioners, it would not be applicable to them, since they belong to a transferable service. Furthermore, it is observed that since there is no valid release in the case of the Petitioners, the aforementioned provisions would not be applicable.

The next issue that warrants consideration is the conduct of the NMRA in offering employment to the Petitioners. As borne out by the factual narrative above, it appears that the NMRA had unilaterally decided to offer the Petitioners employment again after having released them back to the Ministry of Health on 12.08.2020 for "administrative reasons" and forwarding the preliminary investigation report against them. Thereafter, the NMRA had proceeded to appoint them to the post of Pharmaceutical Assessor Grade II with effect from 11.07.2023 ('P13').

The learned Senior State Counsel submitted that, at the time the aforementioned appointments were made, the NMRA was in receipt of the conditions relating to the absorption of Pharmacists in the Ministry of Health to the NMRA issued by the Department of Management Services of the Ministry of Finance by letter dated 14.06.2021 ('P21'). However, notwithstanding this, the Petitioners were unable to fulfil the condition precedent for absorption of having already been deployed in service at the NMRA as at 14.06.2021, the NMRA had proceeded to appoint them. Thus, it was her contention that the appointments of the Petitioners had been made in an irregular manner. She further submitted, upon seeking advice on the entitlement to absorption of the Petitioner and several other officers, the NMRA had been informed by the Department of Management Services that the conditions of absorption could not be applied to the Petitioners, and, as such, the letter dated 22.04.2024 ('P23') was issued informing the Petitioners of such position. The learned Senior State Counsel contended that the letter 'P23' reflected the correct legal position regarding the Petitioners' entitlement to absorption and had rectified the error committed by the NMRA in offering them employment.

The Petitioners have sought to assail the validity of 'P21' on several grounds in the petition, though some of them are not reflected in their letter of objection ('P22'). One such ground is that the Respondents were estopped from claiming that the conditions of absorption are not applicable to the Petitioners, since the effective date of the initial appointment of the Petitioners to the NMRA was 01.07.2015 ('P3'), which was also the date of constitution of the NMRA.[10] I am unable to accept such contention for several reasons. Firstly, such contention does not take into account the fact that the Petitioners did not have continuous and uninterrupted service in the NMRA from 01.07.2015, as they were released back to the Ministry of Health by the NMRA itself on 12.08.2020 and were only appointed again with effect from 11.07.2023. Secondly, since the Petitioners were admittedly not in service at the NMRA as at 14.06.2021, the said contention is contrary to the contents of 'P21' and has the effect of varying same. Thirdly, and most significantly, the Petitioners themselves are bound by the contents of 'P21'. When the Petitioners requested for the conditions of absorption from the NMRA, 'P21' was made available to them and the Petitioner in CA Writ 281/24 has submitted same to this Court (pages 69-70 of the Brief). Further, by the letter 'P9', the Petitioners had agreed to be bound by such conditions and estopped from denying same. Thus, their conduct in seeking to vary the contents of 'P21' in these proceedings amounts to "approbation and reprobation." As held in ***Ceylon Plywoods Corporation v. Samastha Lanka G.N.S.M. & Rajya Sanstha Sevaka Sangamaya***[11] and ***Ranasinghe v. Premadharma and others***,[12] approbation and reprobation is repugnant to the law and a ground for refusing relief in writ applications (vide ***T. M. Premadasa v. The Ceylon Electricity Board and others***).[13]

The Petitioners also contend that there is no finding that the Petitioners are excess to the cadre requirements of the NMRA and that the NMRA and the Ministry of Health has misinterpreted the findings of 'P21'. However, cadre requirements do not appear to have been

[10] vide paragraph 47 of the petition

[11] [1992] 1 Sri L.R. 157. See also ***Colombo Land and Development Company Limited v. Anglo Asian Supermarket Limited*** CA (Writ) Application No. 1572/2006, decided on 28.11.2013 (per Salam J).

[12] [1985] 1 Sri LR. 63.

[13] CA (Writ) Application No. 129/2013, decided on 22.01.2020.

a consideration in determining criteria for absorption in 'P21'. The Petitioners have further contended that there is an abdication of authority by the NMRA in giving effect to 'P21'.[14] In the first instance, no material has been submitted by the Petitioners in support of this contention. Secondly, there was no legal barrier for the NMRA to adopt the conditions for absorption in 'P21' and such conditions appear to have been adopted after a process of consultation involving relevant public institutions. Thirdly, no objection to such effect was raised by the Petitioners when 'P21' was initially shared with them by 'P10'.

With regard to the issue of disciplinary control over the Petitioners, the learned President's Counsel submitted that since the Petitioners were now employed at the NMRA, they were not subject to the disciplinary control of the Ministry of Health, and as such, they could not have been released back to the Ministry of Health for the purpose of facing disciplinary proceedings instituted by the Ministry of Health. Since I have concluded that the Petitioners have not been released from the public service and they remain public officers, they are amenable to the disciplinary control of the Ministry of Health. Thus, I hold that the Ministry of Health was entitled to institute disciplinary proceedings against the Petitioners and to recall them back into its service for such purpose. As described in the factual narrative above, the initial preliminary investigation had been conducted by the NMRA and submitted to the Ministry of Health in 2020, which had thereupon conducted a further preliminary investigation and proceeded to issue charge sheets against the Petitioners. Since such proceedings have been challenged by the Petitioners in separate proceedings before this Court, I do not intend to comment on the merits of same.

The learned President's Counsel further contended that the legitimate expectations of the Petitioners have been defeated by the conduct of the Respondents. It is evident in this case that the Petitioners have failed to secure a valid release from the public service, as required by section 17(1) of the NMRA Act and applicable PSC Procedural Rules. Therefore, it would not be lawful for the NMRA to retain them in employment, as prayed for by the Petitioners. I am of the view that no legitimate expectation can arise in such circumstances.

Such a conclusion is also in line with the observations made in the celebrated text ***Wade & Forsyth's Administrative Law,***[15] as follows;

> *Some points are relatively clear. First of all, for an expectation to be legitimate it must be founded upon a promise or practice by the public authority that is said to be bound to fulfil the expectation.*
>
> *…..*
>
> *Second, clear statutory words, of course, override any expectation howsoever founded. But this is simply a particular example of an ultra vires expectation discussed in Chapter 11.*

Another submission made by the learned President's Counsel was that the decision contained in 'P23' was tainted with malice. However, no material to substantiate such allegation was

[14] vide paragraph 46(d) of the petition

[15] C.F. Forsyth & I.J. Ghosh, *Wade & Forsyth's Administrative Law* (12th edn, Oxford University Press, 2023) pp 438-439

provided by the learned President's Counsel and nor does any evidence to such effect transpire in the petition. Thus, I am of the view that the Petitioner has failed to meet the threshold standard expected to establish *mala fides* in judicial review applications, as set out by this Court in ***Bandaranayake v. Judicial Service Commission***,***[16]*** (per Sripavan, J. (as he then was));

"Learned Counsel also urged bad faith on the part of the first respondent Commission. "The plea of mala fides is raised often but it is only rarely it can be substantiated to the satisfaction of Court. Merely raising doubt is not enough. There should be something specific, direct and precise to sustain the plea of mala fides. The burden of proving mala fides is on the individual making allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for the public benefit." Principles of Administrative Law (Jain & Jain, 4th Edition 1988 Page 564) Accordingly, the court will not in general entertain allegations of bad faith made against the repository of a power, unless bad faith has been expressly pleaded and properly enumerated in detail. [Vide ***Gunasinghe v Hon Gamini Dissanayake]***.[17] *The petition however did not set out in detail the allegations of mala fide against the first respondent Commission."*

Before I part with this judgment, I am compelled to state that that the Petitioners have failed to make a full and fair disclosure of certain material facts. The most serious matter relates to the failure to disclose the fact that conditions of absorption 'P21' had been made available to them as far back as 13.06.2023 and that they had agreed to be bound by them. Thus, the claim that the Petitioners became aware of the of 'P21' only on 01.03.2024 in paragraph 40 of the petition, appears to be palpably false. In addition, the Petitioner in CA Writ 280/24 has failed to submit the said conditions with the cover letter 'P10' and has not tendered her application for release or even indicated that she had responded to 'P14'.

The requirement to make a full and fair disclosure of material facts in granting relief in prerogative relief is well established in our law. In one of the leading authorities on the issue, ***Jayasinghe v. The National Institute of Fisheries and Nautical Engineering and others,***[18] the duty cast upon a party seeking relief from Court was explained by the Supreme Court in the following terms (per Yapa, J.);

"When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of ***Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others,***[19] *the Court highlighted this contractual obligation which a party enters into with the Court, requiring the need to disclose uberrima fides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts to Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been*

[16] [2003] 3 Sri L.R 101.

[17] [1994] 2 Sri L.R 132.

[18] [2002] 1 Sri L.R. 27.

[19] [1997] 1 Sri LR 360.

applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations. Vide ***Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac.***[20] *This principle of uberrima fides has been applied not only in writ cases where discretionary relief is sought from Court, but even in Admiralty cases involving the grant of injunctions."*

Conclusion and Orders of Court

For the reasons set out above, I hold that the Petitioners have failed to establish a *prima facie* case for the issuance of notice. The failure to make a full and fair disclosure of material facts, as determined by me, too, militate against the grant of prerogative relief to the Petitioners. Therefore, I decline to issue formal notice and both Applications are accordingly dismissed. No costs.

Applications are dismissed.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal

[20] [1917) 1 KB 486.