

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

In the matter of an application for Mandates in the nature of *Writs of Certiorari* and *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

CA/WRT/0024/2025

1. Nambukara Appukapuge Hudson Kumara,
No. 338/5, Temple Road,
Dalugamagoda,
Kelaniya.
2. Yapa Mudiyanseelage Sumith Nishantha,
No. 292, Walihena,
Kochchikade.
3. Rajanga Panikkiyalage Lasantha Rajapaksha,
No 598/2,
Unagolla, Heelogama,
Nikaweratiya.

PETITIONERS

Vs.

1. Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street,
Colombo 02.

2. Mr. Hemantha Samarakoon,
Chairman,
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street,
Colombo 02.
3. Mr. J.M. Thilakarathna Banda,
Director General,
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street,
Colombo 02.
- 3A. Mrs. M.M.S.K. Karunarathne,
Director General (Acting),
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street,
Colombo 02.
4. Mr. K.A.R. Sampath Angulugaha,
Director (Administration & Human Resources),
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street,
Colombo 02.

- 4A. Mrs. D.N. Rupasinghe,
Director (Administration & Human Resources)
(Acting),
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street,
Colombo 02.
5. Mr. W.M. Priyantha,
Director (Finance),
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street,
Colombo 02.
- 5A. Mr. A.W.A.Y.G. Abeysekara,
Director (Finance) (Attending to the duties),
Consumer Affairs Authority,
1st and 2nd Floor,
C.W.E. Secretariat Building,
No: 27, Vauxhall Street, Colombo 02.
6. Mr. K.M. Mahinda Siriwardana,
Secretary to the Treasury and the Secretary to
the Ministry of Finance,
The Secretariat, Colombo 01.
7. Hon. Attorney General,
Attorney Generals' Department, Colombo 12.

RESPONDENTS

Before : B. Sasi Mahendran, J.
Adithya Patabendige, J.

Counsel : Thanuka Nandasiri with Wasala Bandara instructed by Wasala Bandara
for the Petitioner.
Jayakith Mathuratne, SC for the State.

Argued on : 24.08.2026

Written Submission

Tendered on : 06 .10.2026 by the Petitioner
07.10.2026 by the Respondents

Decided on : 30.10.2026

Adithya Patabendige, J.

The Petitioners, Nambukara Appukapuge Hudson Kumara (hereinafter referred to as the 1st Petitioner), Yapa Mudiyanseelage Sumith Nishantha (hereinafter referred to as the 2nd Petitioner), and Rajanga Panikkiyalage Lasantha Rajapaksha (hereinafter referred to as the 3rd Petitioner), have invoked the writ jurisdiction of this Court under Article 140 of the Constitution, seeking, *inter alia*, *writs of certiorari* and *mandamus* against the Consumer Affairs Authority (hereinafter referred to as the CAA), the 1st Respondent, in respect of its refusal to pay the salary and other emoluments withheld during their period of compulsory leave and interdiction, its failure to grant annual salary increments, its decision to conduct a preliminary disciplinary inquiry concerning the allegations that gave rise to the criminal proceedings instituted against them and certain other incidental reliefs as prayed for in the Petition dated 16th January 2025.

The application arises from the Petitioners' employment with the CAA, their arrest and interdiction following allegations of bribery, their subsequent acquittal by the High Court of Colombo, their reinstatement to service and the decision to hold a disciplinary inquiry.

The principal questions for determination are whether the prolonged and unexplained delay on the part of the Respondents in initiating disciplinary proceedings against the Petitioners

renders the subsequent decision to conduct a preliminary inquiry unlawful, and whether the Respondents were justified in continuing to withhold the Petitioners' salary and other emoluments following their acquittal and reinstatement, notwithstanding the absence of a concluded disciplinary inquiry and the advice of the Hon. Attorney-General recommending payment of salary arrears.

The application also raises questions concerning the Petitioners' entitlement to annual salary increments, and the extent to which this Court may exercise its discretionary writ jurisdiction to grant the relief sought.

Factual Background

The 1st Petitioner joined the CAA as a Consumer Empowerment Assistant on 15th November 2005 and was subsequently confirmed in service on 21st November 2005. His appointment letter dated 08th November 2005 and confirmation letter dated 24th November 2008 have been produced and marked as **P1(a)** and **P1(b)**, respectively. Thereafter, he was promoted to the post of Investigation Officer (MA 5-2) with effect from 01st January 2009, as evidenced by the letter of promotion produced and marked as **P1(c)**. He was subsequently promoted to Senior Investigation Officer (JM 1-1) with effect from 03rd November 2014. However, as the 1st Petitioner did not accept the promotion, the appointment was cancelled, and he was reverted to his previous post of Investigation Officer II (MA 5-2). The promotion letter dated 03rd January 2015 and the letter cancelling the appointment dated 10th March 2015 have been produced and marked as **P1(d)** and **P1(e)**, respectively.

The 2nd Petitioner joined the CAA as a Consumer Redress Assistant with effect from 15th November 2005, pursuant to the appointment letter dated 08th November 2005, produced and marked as **P2(a)**. Subsequently, he was promoted to the post of Investigation Officer in the CAA with effect from 01st January 2009, by letter dated 23rd December 2008, produced and marked as **P2(b)**.

The 3rd Petitioner joined the CAA as an Investigation Officer with effect from 01st September 2010, pursuant to the appointment letter dated 31st August 2010, produced and marked as **P3(a)**. Subsequently, he was promoted to the post of Investigation Officer Grade II with effect from 08th August 2012, as evidenced by the letter dated 23rd December 2013, produced and marked as **P3(b)**.

On 01st September 2016, Petitioners, along with another officer, were arrested by officers of the Commission to Investigate Allegations of Bribery or Corruption in connection with allegations of soliciting and accepting a bribe of Rs. 125,000.

Following their arrest, they were produced before the Chief Magistrate's Court in proceedings bearing Case No. B 59432/1/2016 and remanded.

Consequent to their arrest and remand, the Petitioners were placed on compulsory leave with effect from 01st September 2016 under Paragraph 27:7 of Chapter XLVIII of the Establishments Code, Volume II. The letters dated 09th September 2016 communicating this decision have been produced, marked **P4(a)** and **P4(b)**.

Thereafter, by letters dated 03rd October 2016, marked **P5(a)** and **P5(b)**, the Petitioners were informed that the Board of Directors of the CAA, at its meeting held on 30th September 2016, had decided to take action under Paragraphs 27:9 and 31:1:10 of Chapter XLVIII of the Establishments Code. The letter also communicated the Board's decision to initiate disciplinary action against them.

Subsequently, an indictment containing eleven charges relating to allegations of soliciting and accepting a bribe was filed against the Petitioners and the other officer before the High Court of Colombo in Case No. HCB 94/2021. The indictment dated 02nd March 2021 has been produced, marked **P6**.

On 18th May 2023, the learned High Court Judge of Colombo, acting under Section 200(1) of the Code of Criminal Procedure Act, acquitted the Petitioners, along with the other officer, of all charges without calling defence. A copy of the judgement has been produced and marked as **P7**.

Following their acquittal, the Petitioners made representations seeking reinstatement in service. Copies of the letters submitted by the Petitioners in this regard have been produced and marked as **P8(a)** to **P8(d)**.

By letters dated 28th July 2023, marked **P9(a)** - **P9(c)**, the Petitioners were informed that the Board of Directors, at its meeting held on 28th June 2023, had decided to reinstate them in service with effect from 01st August 2023.

The 1st, 2nd and 3rd Petitioners were initially attached to the District Offices in Kalutara, and Hambantota, respectively. Subsequently, following appeals made to the 2nd Respondent, they

were transferred to their current places of work in Colombo, Puttalam and Kurunegala, respectively. The transfer letter has been produced and marked as **P11**.

The Petitioners state that, notwithstanding their acquittal and subsequent reinstatement, the CAA failed to pay the salary and other emoluments withheld during the period commencing on 01st September 2016 and ending upon their reinstatement.

They further complain that the CAA did not grant annual salary increments for the period commencing on 01st September 2016 to the present.

The 1st Petitioner lodged a complaint with the Commissioner-General of Labour on 06th September 2023.

The documents related to that complaint have been produced and marked as **P15(a)** to **P15(c)**.

Of particular significance is the letter dated 17th October 2023, marked **P15(b)**, addressed by the Chairman of the CAA to the Labour Officer, Colombo South.

In that letter, the Chairman stated that the officers, including the Petitioners concerned, had not performed their duties from 01st September 2016 to 31st July 2023 and that the CAA therefore decided not to pay remuneration for that period. For ease of reference, attention is drawn to paragraph 7 of the letter marked **P15(b)**.

“7. ඉහත මහාධිකරණ නඩු තීන්දුව අධිකාරිය විසින් කිසිදු ආකාරයකින් අභියෝගයට ලක් නොකරන අතර, ඔවුන්ව වැඩ තහනමට ලක්ව සිටි 2016.09.01 දින සිට 2023.07.31 දින දක්වා කාලය සඳහා ඔවුන් සේවයට පැමිණ වැටුප් උපයා ගැනීම සිදුකර නොමැති බැවින්ද, එම කාලයට අදාළව වැටුප් වර්ධක උපයා ගෙන නොමැති බැවින් ද එම සේවය නොකළ කාලය සඳහා වැටුප් නොගෙවීමට අධිකාරිය ගෙන තිබූ තීරණය සම්බන්ධයෙන් නීතිපති දෙපාර්තමේන්තුව වෙත අධිකාරියේ සභාපති ශ්‍රේෂ්ඨාධිකරණයේ නීතිඥ ශාන්ත නිරිඇල්ල මහතා විසින් නීතිමය උපදෙස් ලබාගැනීමට යොමුකර ඇති අතර නීතිපති උපදෙස් අනුව ඉදිරි කටයුතු සිදු කරනු ඇත. එම ලිපියේ පිටපතක් මේ සමඟ අමුණා ඇත (ඇමුණුම 03).”

The letter further stated that the CAA had sought advice from the Hon. Attorney-General on the matter.

The 1st Petitioner lodged a complaint to the Human Rights Commission of Sri Lanka, bearing No. HRC/HO/3532/23, marked **P16**.

The Respondents produced the Attorney-General's advice dated 06th December 2024, marked **R1**.

According to **R1**, the Hon. Attorney-General advised that, since the High Court acquitted the Petitioner, the Disciplinary Authority reinstated them in service, and no appeal had been preferred against the acquittal, arrears of salary should be paid for the period from 01st September 2016 to 01st August 2023. Attention is drawn to the last paragraph of the letter marked **R1**.

“ඒ අනුව අදාළ නිලධාරීන් අංක HCB/94/2021 දරන මහාධිකරණ නඩු තීන්දුවෙන් නිදහස් කොට නිදහස් කිරීම, එකී නඩු තීන්දුවට එරෙහිව අභියාචනයක් නොකිරීමට සහ විනය බලධරයා එකී නිලධාරීන් නැවත සේවයේ පිහිටිවීමට දැනටමත් කටයුතු කිරීම යන කරුණ මත 2016.09.01 දින සිට 2023.08.01 දින දක්වා හිඟ වැටුප් ගෙවිය යුතු බවට මාගේ මතය වේ.”

The Petitioners further state that, at a meeting held on 26th December 2024, the 3rd Respondent informed the officers concerned that the Attorney-General's advice had been submitted to the Board of Directors and that the Board had decided to conduct a preliminary inquiry concerning the incident.

According to the Petitioners, although the CAA communicated its intention to initiate disciplinary proceedings as far back as October 2016, no disciplinary inquiry has been initiated or concluded to date.

The Petitioners also rely upon the letter dated 06th July 2020, marked **P18**, alleging that the CAA had adopted a different approach in comparable circumstances.

By letter dated 07th January 2025, marked **P17**, the Petitioners and another officer again requested the CAA to resolve their grievances.

The Petitioners complain that they received no satisfactory response.

In these circumstances, the Petitioners seek *writs of certiorari* to quash the decisions refusing payment of withheld remuneration and annual salary increments, and *writs of mandamus* directing payment of salary arrears, the grant of increments, and placement on the appropriate salary scale based on seniority.

Position of the Respondents

The Respondents resist the application. Their principal contention is that the Petitioners' acquittal in criminal proceedings does not automatically entitle them to payment of the salary and other emoluments withheld during interdiction.

It is submitted that criminal proceedings and departmental disciplinary proceedings are distinct and that an acquittal by a criminal court does not necessarily amount to exoneration for disciplinary purposes.

The Respondents further maintain that the Petitioners did not perform duties during the period of compulsory leave and interdiction and were therefore not entitled to remuneration for that period.

It is also contended that annual salary increments are not automatic entitlements but are subject to the applicable conditions of service.

The Respondents raise a preliminary objection that the Petitioners have not identified, with sufficient certainty, the administrative decisions they seek to quash by *writs of certiorari*. They further submit that the Petitioners have failed to establish a clear legal right and a corresponding public duty sufficient to justify the issuance of *writs of mandamus*.

Issues for Determination

Having considered the pleadings, documents and submissions, the principal issues to be determined are;

- whether the decisions sought to be quashed have been sufficiently identified;
- whether the Petitioners' acquittal and reinstatement confer an entitlement to the withheld salary;
- whether the failure to conclude disciplinary proceedings affects the legality of the continued non-payment; and what significance should be attached to the Attorney-General's advice, marked **R1**.
- Whether the decision of the CAA to initiate a preliminary disciplinary inquiry concerning the allegations dating back to September 2016, after a prolonged and unexplained delay of more than eight years, notwithstanding the Petitioners'

subsequent acquittal and reinstatement in service, constitutes a lawful and reasonable exercise of disciplinary power.

It is also necessary to determine whether the Petitioners are entitled to annual salary increments during the period of compulsory leave and placement on the appropriate salary scales according to their seniority, and ultimately, whether the circumstances justify the issuance of the writs sought.

Preliminary Objection

Learned State Counsel submits that the application is not maintainable because the Petitioners have failed to identify the administrative decisions sought to be quashed, namely, the prayers (e), (f), (g), (h) and (i) refer generally without identifying the dates of those decisions or the persons responsible for making them.

Ordinarily, a *writ of certiorari* is directed against an identifiable administrative decision. The Court must be able to identify the challenged decision and the grounds on which its validity is questioned.

However, the absence of a formal decision addressed directly to an applicant does not necessarily establish that no administrative decision was made.

In the present application, **P15(b)** expressly records that the CAA had decided not to pay remuneration for the relevant period because the officers concerned had not performed duties.

The letter marked **P15(b)**, addressed by the Chairman of the CAA to the Labour Officer, Colombo South, expressly discloses the decision of the CAA not to pay remuneration to the officers concerned for the relevant period on the ground that they had not performed duties during their interdiction.

The Petitioners have also specifically complained of the continued refusal to pay their salaries and grant annual increments.

Furthermore, the Respondents have produced the Attorney-General's advice marked **R1**, which directly concerns the question of payment of salary arrears.

In these circumstances, I cannot accept the contention that the application must fail merely because the Petitioners have not produced a formal letter addressed to him communicating the refusal.

The material before this Court sufficiently discloses an administrative position concerning non-payment which is capable of judicial examination.

Nevertheless, the Court must maintain the distinction between the refusal of salary arrears and the alleged refusal of increments, as the evidentiary foundation for the two claims is not identical.

Accordingly, I reject the preliminary objection insofar as it seeks to dismiss the entire application without considering the merits.

The Relevant Provisions of the Establishments Code

The letters marked **P4(a)**, **P4(b)**, **P5(a)** and **P5(b)** expressly refer to Chapter XLVIII of the Establishments Code.

The Respondents have also relied upon the provisions of that Chapter in justifying the decisions concerning the Petitioners.

It is therefore necessary to examine the relevant provisions, while recognising that the CAA is a statutory authority and that the precise applicability of the Establishments Code must be determined in the light of the governing conditions of service.

Paragraph 31:10 provides that the non-payment of emoluments or payment of one-half of the emoluments of an officer under interdiction is to be decided by the Disciplinary Authority.

Paragraph 31:11 identifies circumstances in which an interdicted officer should not receive emoluments during interdiction.

Paragraph 31:11:1 specifically refers to circumstances where legal proceedings have been initiated for an offence of bribery or corruption.

The allegations against the Petitioners concerned bribery. Accordingly, if these provisions apply, the initial withholding of emoluments during interdiction cannot be regarded as unlawful merely because the Petitioners were subsequently acquitted.

However, the authority to withhold emoluments during interdiction must be distinguished from the ultimate determination of whether those emoluments should remain unpaid after the conclusion of the relevant proceedings.

Paragraph 31:14 provides that where a formal disciplinary inquiry results in the imposition of a punishment less than dismissal, the Disciplinary Authority should decide whether the full

emoluments withheld, or a percentage thereof, should be paid. Such determination forms part of the disciplinary order.

Paragraph 31:15 defines the expression “emoluments” by reference to the emoluments of the officer’s substantive post. It excludes allowances in the nature of duty allowances and reimbursements of expenditure incurred in the performance of official duties, including travel, transport, and combined allowances.

Paragraph 31:17 recognises that reinstatement of an officer who has not been found guilty, following interdiction without sufficient cause, may result in payment of emoluments for a period during which no work was performed. The provision therefore requires the appropriate authority to satisfy itself before interdicting an officer.

These provisions demonstrate that the initial withholding of emoluments and their ultimate payment are distinct matters.

Paragraph 31:11:1 cannot, by itself, be interpreted as authorising the permanent forfeiture of salary following acquittal and reinstatement, irrespective of the subsequent conduct of the Disciplinary Authority.

Equally, Paragraph 31:17 does not establish that every criminal acquittal automatically entitles an officer to full back wages.

The ultimate entitlement must be determined upon the applicable legal provisions and the particular circumstances of the case.

Effect of Criminal Acquittal and Reinstatement

The High Court acquitted the Petitioners on 18th May 2023 under Section 200(1) of the Code of Criminal Procedure Act, without calling the defence. That acquittal ended the criminal proceedings. Nevertheless, an acquittal in criminal proceedings does not necessarily prevent a disciplinary authority from conducting an independent inquiry into the same conduct.

The purposes and standards of proof applicable to criminal and disciplinary proceedings are different. Therefore, I do not accept the proposition that the Petitioners’ criminal acquittal, considered in isolation, automatically entitled them to recover the entirety of the salary withheld during interdiction.

However, the present case does not concern criminal acquittal alone. The CAA subsequently reinstated the Petitioners with effect from 01st August 2023. No material establishes that the

reinstatement was made subject to a concluded finding of disciplinary action or that the CAA imposed any disciplinary order on the Petitioners. More importantly, this Court has not been presented with any concluded disciplinary inquiry or final disciplinary order.

The legal effect of these circumstances must therefore be examined together, not separately.

The Decision in *Nandadasa v M.S. Jayasinghe*

In *Nandadasa v. M. S. Jayasinghe, Secretary, Ministry of Justice and Constitutional Affairs and Others (2001) 1 SLR 14*, the Supreme Court considered the legality of a disciplinary authority's decision to withhold permanently the salary of a public officer who had been interdicted following allegations of bribery.

The petitioner in that case was prosecuted for bribery and subsequently acquitted. Following his acquittal, he was reinstated subject to a disciplinary inquiry. The inquiring officer exonerated him of all charges. However, the disciplinary authority rejected those findings, found him guilty and directed that the salary withheld during interdiction should not be paid. The only other punishment imposed was a warning.

Justice Mark Fernando, examining the relevant provisions of Chapter XLVIII of the Establishments Code, drew a distinction between withholding salary during interdiction and subsequently deciding that the withheld salary should not be paid.

Justice Fernando observed at page 24 as:

“The initial withholding of salary during interdiction is not a punishment. It cannot be a punishment, because it is an order made before there is any finding of guilt.”

The Supreme Court then examined whether the subsequent non-payment could lawfully be imposed independently of a disciplinary punishment.

Under the provisions then applicable, the Court held that the order concerning withheld salary was a consequence of punishment and that, since the disciplinary authority had imposed only a warning, which was expressly excluded from the category of punishments, the order directing non-payment lacked the necessary legal foundation. The Supreme Court also found serious violations of natural justice in the manner in which the disciplinary authority rejected the inquiring officer's findings and in the subsequent consideration of the petitioner's appeal.

The Supreme Court quashed the impugned orders and held the petitioner entitled to the salary withheld during interdiction, together with interest.

The importance of the reasoning of *Nandadasa* lies in the distinction between provisional withholding of emoluments during interdiction and their ultimate deprivation.

The former does not necessarily establish the legality of the latter. However, a factual distinction exists between the *Nandadasa* judgement and the present application.

In *Nandadasa*, a disciplinary inquiry had been conducted and a final disciplinary order made, although that order was subsequently found to be unlawful.

In the present application, no concluded disciplinary inquiry or final disciplinary order has been established.

Nevertheless, the underlying principle remains relevant. The ultimate refusal to pay withheld emoluments must be supported by the applicable legal provisions and cannot be justified solely by reference to the original interdiction.

The Supreme Court also emphasised the importance of disclosing findings and reasons to an officer affected by an adverse disciplinary decision.

The Decision in *Don Karunasena Athukorala*

In *Don Karunasena Athukorala v. H. M. Gunasekera and Others (2016) 1 Sri LR 286*, the Supreme Court considered the withholding of emoluments during interdiction and the financial consequences of disciplinary proceedings against a public officer.

The petitioner, a school principal, had been interdicted following allegations of bribery and was subsequently acquitted in criminal proceedings.

However, an independent disciplinary inquiry was conducted, and he was found guilty of nine charges of misconduct.

The disciplinary authority thereafter determined that half wages should be paid during the period of interdiction.

Justice Prasanna Jayawardena, examining the relevant provisions of Chapter XLVIII of the Establishments Code, upheld the decision concerning payment of half wages.

The Supreme Court also considered the legality of deductions from the petitioner's pension and gratuity and set aside the pension deduction because the prescribed procedural requirements had not been complied with. The decision confirms that criminal acquittal does

not automatically invalidate an earlier interdiction or establish an unconditional entitlement to full emoluments.

It also demonstrates that the financial consequences of disciplinary proceedings must be determined in accordance with the applicable legal provisions.

The distinction between that case and the present application is significant.

In *Athukorala*, disciplinary proceedings had been concluded, and findings of misconduct had been made.

In the present application, the CAA communicated its intention to initiate disciplinary proceedings in October 2016 but did not establish that any disciplinary inquiry had been initiated or concluded to date.

Accordingly, *Athukorala* supports the Respondents' contention that criminal acquittal does not automatically entitle an employee to back wages.

However, it does not resolve the separate question whether the CAA may continue to deny payment indefinitely without concluding disciplinary proceedings or making a lawful determination concerning the withheld salary.

The Decision in *Rannulu Sugath Mohana Mendis*

In *Rannulu Sugath Mohana Mendis v. D. K. A. Sanath Kumara and Others, SC/FR/100/2022, decided on 06th October 2023*, the Supreme Court considered the prolonged interdiction of a police officer without the conduct of a preliminary investigation as required by the applicable provisions of Chapter XLVIII of the Establishments Code.

The petitioner in that case had been interdicted without pay following his arrest in connection with alleged criminal offences.

Although the relevant authority possessed the power to interdict him, no preliminary investigation had been conducted for more than two years.

Justice Thurairaja, examined Paragraphs 31:3, 31:4, 31:5:3, 31:7 and 27:10 of the Establishments Code and emphasised the duty of the disciplinary authority to comply with the prescribed procedural requirements.

Of particular relevance is the Supreme Court's consideration of Paragraph 27:10, as amended by Public Administration Circular No. 06/2004 dated 15th December 2004.

The provision required a preliminary investigation to be conducted within two months in the circumstances contemplated therein.

The Supreme Court also considered Paragraph 27:10:1, which permits the disciplinary authority, in the circumstances specified by that provision, to authorise payment of salary not exceeding one-half where the criminal proceedings remain unresolved beyond one year.

The Supreme Court strongly criticised the failure to commence a preliminary investigation even after the lapse of two years.

The petitioner was subsequently reinstated during the pendency of the fundamental rights application, and arrears of salary were paid.

The Supreme Court held that the petitioner's fundamental rights under Articles 12(1) and 14(1)(g) of the Constitution were violated.

Significantly, the Court directed the retrospective grant of salary increments, benefits and promotions, in addition to awarding compensation.

The decision demonstrates that the exercise of disciplinary powers is subject to the procedural safeguards prescribed by law and that prolonged administrative inaction may have consequences affecting an officer's financial entitlements.

It must nevertheless be recognised that *Rannulu Sugath Mohana Mendis* arose in the exercise of the Supreme Court's fundamental rights jurisdiction and concerned facts materially different from those in the present application.

Furthermore, the applicability of the precise procedural requirements considered in that case to employees of the CAA depends upon the governing service rules.

Nevertheless, the broader principle is relevant. A disciplinary authority must exercise its powers within the framework prescribed by law and cannot leave an employee's disciplinary position unresolved indefinitely.

Decision to Conduct a Preliminary Inquiry

The Petitioners have also sought, by prayer (f) of the Petition, a *writ of certiorari* to quash the decision of the CAA to conduct a preliminary inquiry concerning the incident which gave rise to the criminal proceedings instituted against them.

The Respondents have raised a preliminary objection that the Petitioners failed to identify or produce a specific decision that *certiorari* can quash. They further contend that a decision to conduct a preliminary investigation does not constitute a final determination affecting the Petitioners' rights and that challenging it is premature.

I cannot accept the proposition that a decision to initiate disciplinary proceedings is necessarily immune from judicial review merely because the proceedings have not concluded. Where such a decision is made without lawful authority, in breach of mandatory legal requirements, for an improper purpose, or in circumstances amounting to an abuse of administrative power, the supervisory jurisdiction of this Court may be invoked. Nevertheless, the Petitioners must establish an identifiable decision amenable to *certiorari* and demonstrate sufficient grounds to warrant judicial intervention.

Paragraph 22 of the Petition states that the Petitioners were informed by letters dated 03rd October 2016, marked **P5(a)** and **P5(b)**, that the CAA had decided to initiate disciplinary action against them. Although the CAA communicated its decision to initiate disciplinary action against the Petitioners in October 2016, no material has been placed before this Court establishing that any preliminary investigation or formal disciplinary inquiry was thereafter commenced.

The Petitioners were subsequently acquitted of the criminal charges by the High Court on 18th May 2023. Thereafter, the CAA reinstated them in service with effect from 01st August 2023, without imposing any express condition relating to disciplinary proceedings. The letters of reinstatement, marked **P9(a)** to **P9(c)**, do not refer to any pending or proposed disciplinary inquiry.

In paragraph 24 of the Petition, the Petitioners state that, at a meeting held on 26th December 2024 with the 2nd and 3rd Respondents, they were informed that the Board of Directors of the CAA had decided to conduct a preliminary inquiry concerning the same incident.

However, the Respondents denied the averments in paragraph 24 of the Petition in paragraph 14 of their Statement of Objections, insofar as they are inconsistent with the matters subsequently pleaded. Although the Respondents maintain that the CAA retains the authority to institute disciplinary proceedings notwithstanding the Petitioners' acquittal, they have not expressly admitted that the Board made the particular decision alleged to have been communicated on 26th December 2024.

It is relevant that, by prayer (d) of the Petition, the Petitioners have expressly sought a direction requiring the Respondents to produce the minutes of the Board of Directors recording the alleged decision to conduct a preliminary inquiry. Such records would ordinarily be within the possession or control of the CAA. Nevertheless, no Board resolution or other documentary material recording the alleged decision has been produced before this Court.

The failure to produce the relevant records must be considered in the light of the pleadings and the evidence. However, the mere absence of the Board minutes does not necessarily establish the alleged decision. The Petitioners must still establish a sufficient factual foundation for the issuance of *certiorari*.

Apart from the question of whether the alleged decision has been sufficiently established, the prolonged delay in taking disciplinary action requires careful consideration.

In ***Rannulu Sugath Mohana Mendis, Thurairaja, PC, J.***, considered the relevant authorities' prolonged failure to conduct a preliminary investigation in accordance with Chapter XLVIII of the Establishments Code. The Supreme Court emphasised the obligation of disciplinary authorities to comply with the prescribed procedures and to act without unreasonable delay.

Although that decision arose in the exercise of the Supreme Court's fundamental rights jurisdiction, the principles concerning prolonged administrative inaction and compliance with disciplinary procedures are relevant when examining the legality of the exercise of disciplinary powers.

I accept that an acquittal in criminal proceedings does not, by itself, extinguish the disciplinary jurisdiction of an employer. However, the question arising for determination is whether the CAA can lawfully exercise that jurisdiction after an inordinate and unexplained delay, particularly where the Authority had knowledge of the alleged misconduct from the outset and had already communicated its intention to initiate disciplinary action.

The ***Supreme Court of India*** has considered the principles governing prolonged delay in disciplinary proceedings in several decisions which, although not binding on this Court, provide persuasive guidance.

In ***State of Madhya Pradesh v. Bani Singh and Another, 1990 Supp SCC 738***, the ***Supreme Court*** considered disciplinary proceedings initiated more than twelve years after the alleged misconduct. In paragraph 4 of its judgement, the Court observed that the department had been

aware of the alleged irregularities for several years and had offered no satisfactory explanation for the delay. The Court upheld the decision quashing the disciplinary proceedings, holding that permitting the inquiry to proceed after such an unexplained lapse of time would be unfair.

The significance of the above judgement lies in the recognition that a disciplinary authority cannot indefinitely postpone proceedings concerning allegations already within its knowledge and then insist on proceeding as though the passage of time were legally irrelevant.

In *State of Andhra Pradesh v. N. Radhakishan*, (1998) 4 SCC 154, the Supreme Court examined the circumstances in which prolonged delay may vitiate disciplinary proceedings. In paragraph 19 of its judgement, the Court recognised that no inflexible rule could be prescribed for every case and that the relevant circumstances must be weighed, including the nature of the charges, their complexity, the reasons for the delay, the prejudice occasioned to the employee and the public interest in maintaining disciplinary standards.

The Court further recognised that where the delay is unexplained, prejudice to the employee may be inferred. It emphasised that disciplinary proceedings must be pursued with reasonable expedition and that delay may defeat justice. Applying those principles, the Supreme Court upheld the quashing of the relevant charge memorandum.

The decision in *P. V. Mahadevan v. Managing Director, Tamil Nadu Housing Board*, (2005) 6 SCC 636, is particularly relevant to the present application. In that case, disciplinary proceedings were initiated approximately ten years after the alleged irregularity. The Supreme Court considered the earlier decisions in *Bani Singh* and *N. Radhakishan* and examined whether the employer had offered a satisfactory explanation for the delay.

In the concluding portion of its judgement, the Supreme Court recognised that allowing disciplinary proceedings to continue after such a prolonged period would cause serious prejudice to the employee. The Court considered the mental distress associated with unresolved allegations concerning corruption and integrity and concluded that it was necessary to bring the proceedings to an end. Accordingly, the Court quashed the charge memorandum.

The reasoning in these decisions shows that disciplinary jurisdiction does not confer an unrestricted right to exercise it, regardless of the passage of time. Where the disciplinary authority remains inactive for an inordinate period without satisfactory explanation,

subsequent initiation of proceedings may constitute an unreasonable and unfair exercise of administrative power.

In the present application, the CAA was aware of the allegations against the Petitioners in September 2016. Indeed, it communicated its decision to initiate disciplinary action in October 2016. Nevertheless, no preliminary investigation or formal disciplinary inquiry commenced during the intervening period.

The criminal proceedings were concluded in May 2023, and the Petitioners were reinstated in August 2023. Even after their acquittal and reinstatement, the Respondents have not shown that they initiated any disciplinary proceedings before communicating the alleged decision in December 2024.

By December 2024, more than eight years had elapsed since the original allegations and the communication of the decision to initiate disciplinary action. The continued absence of a concluded disciplinary process must also be viewed against the further passage of time thereafter.

The Respondents have not furnished a satisfactory explanation for this prolonged inaction. Although the allegations are serious, their seriousness cannot, by itself, justify an indefinite failure to exercise disciplinary powers. Nor can the mere pendency of criminal proceedings automatically explain the failure to initiate disciplinary action, without evidence demonstrating why the Authority was unable or legally prevented from proceeding.

The opinion of the Hon. Attorney-General, marked **R1**, does not alter this conclusion. The Respondents' contention in paragraph 22 of their Statement of Objections, that the opinion does not prohibit disciplinary proceedings, may be accepted as a statement concerning the scope of that opinion. However, the absence of such a prohibition does not establish that disciplinary proceedings may lawfully be initiated after an inordinate and unexplained delay.

The Petitioners have already undergone a prolonged period of compulsory leave and interdiction, have faced criminal prosecution, and have subsequently been acquitted and reinstated. The continued uncertainty concerning disciplinary proceedings, together with the withholding of their financial entitlements, is relevant when assessing the prejudice arising from the Respondents' inaction.

I am mindful that the allegations concern bribery and that the public interest requires allegations of misconduct by employees of public authorities to be dealt with seriously.

Nevertheless, that public interest also requires disciplinary authorities to act diligently, fairly and within a reasonable period. The interests of sound administration are not served by allowing disciplinary proceedings to remain indefinitely unresolved.

Having considered the cumulative circumstances, I am of the view that the prolonged and unexplained delay in the present case is unreasonable and that the belated decision to conduct a preliminary inquiry concerning the allegations dating back to 2016 cannot be justified merely by reference to the CAA's continuing disciplinary powers.

There remains the question of identifying the particular decision sought to be quashed. The Petitioners allege that the Respondents communicated the decision to them on 26th December 2024. Although the Respondents have not produced the relevant Board resolution, the Petitioners have expressly sought its production by prayer (d) of the Petition. The failure to produce records ordinarily in the Respondents' possession is a relevant circumstance in evaluating the evidence concerning the alleged decision.

On considering the pleadings and the evidence regarding the communication of the decision and the Respondents' position, I find that the impugned decision to conduct the preliminary inquiry is sufficiently established.

For the reasons set out above, I hold that the decision to conduct the proposed preliminary inquiry, after such prolonged and unexplained delay, constitutes an unreasonable and unfair exercise of administrative power and is liable to be quashed.

Accordingly, a *writ of certiorari* is issued quashing the decision of the CAA to conduct the preliminary inquiry concerning the allegations which gave rise to the criminal proceedings against the Petitioners, as sought in prayer (f) of the Petition.

The Failure to Communicate Reasons

There is another significant aspect of the CAA's conduct.

Although the CAA had decided not to pay the withheld remuneration, no reasoned decision explaining the legal basis for such non-payment appears to have been communicated to the Petitioners.

The letter marked **P15(b)**, addressed to the Labour Officer in connection with another officer's complaint, states that the CAA had decided not to pay remuneration because the officers concerned had not performed duties during the relevant period. However, that letter

was not addressed to the Petitioners. Nor does it disclose any determination of their entitlement under the applicable provisions of the Establishments Code. It is particularly significant that the CAA had reinstated the Petitioners following their acquittal without having concluded disciplinary proceedings against them. In these circumstances, the CAA was required to address their claim in accordance with the applicable legal provisions and communicate a decision supported by lawful reasons.

The failure to communicate such a decision assumes greater significance when considered alongside the prolonged failure to conduct disciplinary proceedings.

The Petitioners were left without a determination of their disciplinary responsibility and without an adequate explanation of the legal basis upon which their financial claims were being denied.

An administrative authority cannot merely withhold financial benefits and leave the affected persons to ascertain the reasons for that decision from correspondence addressed to another institution concerning another employee.

The importance of communicating findings and reasons was emphasised by *Fernando J. in Nandadasa*, although the particular statutory context of that case differed from the present application.

In *Rannulu Sugath Mohana Mendis*, the Supreme Court likewise emphasised that administrative decisions must be supported by material capable of justifying them when challenged before a court.

In the present case, the failure to communicate a reasoned decision is a material consideration in determining whether the CAA acted lawfully and reasonably.

Legal Effect of the Attorney-General's Advice Marked R1

A further matter of considerable significance is the advice furnished by the Hon. Attorney-General dated 06th December 2024, which has been produced by the Respondents marked **R1**.

According to **R1**, the Attorney-General advised that, since the Petitioners had been acquitted by the High Court, the Disciplinary Authority had reinstated them in service, and no appeal had been preferred against the acquittal, arrears of salary should be paid for the period commencing on 01st September 2016 and ending on 01st August 2023.

Thus, the precise question concerning the payment of salary withheld during the period of compulsory leave and interdiction was considered by the Attorney-General.

The advice was not confined to a general observation concerning the Petitioners' acquittal. It addressed the financial consequences of the acquittal and reinstatement and identified the period for which salary arrears should be paid.

It is necessary to emphasise that advice furnished by the Attorney-General does not, by itself, constitute a binding administrative determination requiring payment.

The responsibility for making the relevant administrative decision remains with the authority upon which the law confers that power.

Nevertheless, advice furnished by the Attorney-General on a question of law is plainly a material consideration in determining whether the subsequent conduct of the Authority was lawful and reasonable.

The CAA was not entitled to disregard that advice arbitrarily.

If the CAA considered that the advice should not be followed, it was incumbent upon the competent decision-making body to identify a lawful basis for adopting a different position.

In the present application, the Respondents have not demonstrated that a reasoned determination rejecting the Petitioners' claim, notwithstanding the advice contained in **R1**, was communicated to them.

The explanation appearing in **P15(b)**, namely that the officers concerned had not performed duties during the relevant period, does not satisfactorily answer the question.

The Petitioners' absence from service resulted from compulsory leave and interdiction imposed upon them by the CAA itself.

Moreover, the Establishments Code expressly contemplates circumstances in which emoluments withheld during interdiction may subsequently become payable.

The mere fact that an officer did not perform duties during interdiction cannot therefore be treated as an absolute bar to the subsequent payment of withheld salary.

The significance of **R1** is further reinforced by the absence of a concluded disciplinary inquiry or an adverse disciplinary order.

The CAA had decided to initiate disciplinary proceedings in October 2016 but failed to bring those proceedings to a conclusion to date.

The Attorney-General's advice must therefore be considered together with the Petitioners' acquittal, reinstatement, the absence of an adverse disciplinary determination and the CAA's prolonged failure to conclude disciplinary proceedings.

In these circumstances, I am of the view that the continued refusal to pay the Petitioners' salary arrears, without identifying a lawful basis for departing from the advice contained in **R1**, cannot be justified merely upon the ground that they did not perform duties during the period of interdiction.

Unreasonableness and procedural unfairness

Having considered the cumulative effect of the foregoing circumstances, I am satisfied that the continued refusal of the CAA to pay the Petitioners' salary arrears, without identifying and communicating a lawful basis for that refusal, is unreasonable and procedurally unfair. The absence of a concluded disciplinary inquiry, the subsequent reinstatement of the Petitioners, and the failure to address the advice furnished by the Hon. Attorney-General are material considerations in reaching this conclusion. Accordingly, the continued refusal to pay the withheld salary, founded merely upon the ground that the Petitioners did not perform duties during the period of interdiction, cannot be sustained.

Meaning of Emoluments Under Paragraph 31:15

It is necessary to clarify the scope of the financial entitlement claimed by the Petitioners. Paragraph 31:15 of Chapter XLVIII defines the expression "emoluments" as the emoluments attached to an officer's substantive post. The provision expressly excludes allowances in the nature of duty allowances and reimbursements of expenditure incurred in the performance of official duties, including travel, transport and combined allowances.

Accordingly, an entitlement to recover withheld emoluments does not necessarily extend to allowances payable only upon the actual performance of official duties or the incurring of expenditure in connection with those duties.

Any amount payable to the Petitioners must therefore be calculated based on the salary and other emoluments lawfully attached to their substantive post, subject to the exclusions prescribed by the applicable provisions.

The Petitioners cannot claim reimbursement of expenses which were never incurred merely because they are entitled to recover salary withheld during interdiction.

Annual Salary Increments

The Petitioners also seek *writs of certiorari* and *mandamus* in respect of annual salary increments for the period of their compulsory leave commencing on 01st September 2016.

This claim requires separate consideration.

An annual salary increment is not necessarily an unconditional entitlement arising merely from the passage of time. Ordinarily, the grant of an increment depends upon the applicable conditions of service, satisfactory performance and eligibility under the relevant salary scheme. An employee claiming increments must therefore establish that the conditions governing their grant have been satisfied.

However, Paragraphs 24:6 and 24:7 of Chapter XLVIII of the Establishments Code make specific provision concerning salary increments in the context of disciplinary proceedings. Paragraph 24:6 provides that where deferment, reduction or stoppage of a salary increment is ordered as part of a disciplinary order, the order should be implemented with reference to the salary step last received by the officer. The provision further contemplates the grant of subsequent increments even where the officer was not in service. Paragraph 24:7 provides that where an order not to pay arrears of salary during interdiction forms part of a disciplinary order, the officer will not be entitled to arrears of salary increments for which he would otherwise have been eligible. However, the provision expressly requires that the officer be placed on the appropriate step of the salary scale, taking into account the increments for which he would have been eligible, notwithstanding the fact that he was not in service. These provisions demonstrate that the non-payment of salary arrears during interdiction does not necessarily justify the permanent denial of salary progression. It is important to distinguish between the actual payment of arrears of increments and the recognition of eligible increments for determining the appropriate salary step.

In the present application, no concluded disciplinary inquiry or final disciplinary order imposing stoppage, deferment or reduction of increments has been established.

The Petitioners were reinstated with effect from 01st August 2023 and thereafter continued in service to date.

The CAA cannot therefore rely merely upon their absence from service during interdiction as a sufficient basis for refusing to recognise increments for which they were otherwise eligible.

However, it does not follow that the Petitioners are automatically entitled to every increment claimed. The Petitioners must establish their eligibility under the applicable service rules. The position relating to the period following reinstatement is particularly significant. The Petitioners actually performed duties from 01st August 2023 to date.

If their salary upon reinstatement was fixed at an incorrect step because otherwise eligible increments had not been recognised, that error may have affected the salary payable during the subsequent period of actual service.

The decision in *Rannulu Sugath Mohana Mendis* is relevant in this context.

The Supreme Court directed the retrospective grant of salary increments, benefits and promotions upon finding that the relevant authorities had violated the petitioner's fundamental rights.

Nevertheless, that decision does not dispense with the requirement to establish eligibility under the governing service rules in every case.

Accordingly, I am of the view that the Petitioners are entitled to have their eligibility for annual increments determined in accordance with the applicable conditions of service and, where such eligibility is established, to have those increments recognised for the purpose of determining their appropriate salary step.

Any consequential arrears arising from an incorrect salary placement following reinstatement must also be addressed in accordance with law.

PAYE Tax

The Petitioners also seek a direction that PAYE tax should not be deducted from any lump-sum payment of salary arrears. I am unable to accept this claim as an unconditional entitlement. Any salary arrears or other remuneration payable to the Petitioners must be dealt with in accordance with the applicable provisions of the Inland Revenue Act and the statutory requirements governing deductions of income tax. The fact that remuneration is paid in a lump sum following a period of withholding does not, by itself, establish an exemption from taxation.

Accordingly, any payment made pursuant to this judgement shall be subject to such deductions as are required by law.

Conclusion

For the foregoing reasons, I am of the view that the Petitioners have established sufficient grounds for the exercise of the discretionary writ jurisdiction of this Court.

Accordingly, the application is allowed in part, and the following relief is granted.

A *writ of certiorari* is issued quashing the decision of the CAA to conduct a preliminary disciplinary inquiry against the Petitioners concerning the allegations which gave rise to the criminal proceedings instituted against them, as sought in prayer (f) of the Petition. Having regard to the prolonged and unexplained delay since the alleged misconduct in 2016, the subsequent acquittal and reinstatement of the Petitioners, and the principles discussed in this judgement, I am of the view that the belated decision to conduct such an inquiry constitutes an unreasonable and unfair exercise of administrative power.

A *writ of certiorari* is also issued quashing the decision of the CAA refusing payment of the Petitioners' salary arrears for the period commencing on 01st September 2016 and ending upon their reinstatement with effect from 01st August 2023, insofar as that refusal is founded upon the ground that the Petitioners did not perform duties during the relevant period.

A *writ of mandamus* is issued directing the CAA to calculate and pay the salary arrears lawfully due to the Petitioners for the said period, having regard to the applicable conditions of service and the advice of the Hon. Attorney-General dated 06th December 2024, marked **R1**.

In calculating the amount payable, the Respondents shall distinguish the salary and emoluments attached to the Petitioners' substantive posts from duty-related allowances and reimbursements excluded under Paragraph 31:15 of Chapter XLVIII of the Establishments Code, insofar as that provision governs their employment.

In respect of annual salary increments, the CAA is directed to determine the increments for which the Petitioners were eligible under the applicable service rules during the period commencing on 01st September 2016 to the date of this judgement.

In making that determination, the CAA shall distinguish between the payment of arrears of increments during interdiction and the recognition of eligible increments for the purpose of determining the appropriate salary step upon reinstatement.

Any increments for which the Petitioners were lawfully eligible shall be recognised in fixing their salaries, and any consequential arrears arising from an incorrect salary placement following reinstatement shall be calculated and paid in accordance with law.

The prayer seeking a direction prohibiting PAYE tax deductions is refused. Any payments made pursuant to this judgement shall remain subject to the applicable tax laws.

The Respondents shall take the necessary steps to give effect to the foregoing directions within three months from the date of this judgement.

Considering all the circumstances of this application, I make no Order as to costs.

JUDGE OF THE COURT OF APPEAL

B. Sasi Mahendran, J

I agree.

JUDGE OF THE COURT OF APPEAL