

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

**CA (Writ) No : 55/2023**

*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.*

Prabuddha Athukorala  
536/30, Weerasinghe Gardens,  
Kotte Road, Pita Kotte,  
Kotte.

**PETITIONER**

**Vs.**

1. The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.
2. Anusha Pelpita  
Chairman & Managing Director  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.
- 2(a) Prof. Harendra Kariyawaasam  
Chairman & Managing Director

The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

2(b) Mr.Gamini Warushamana  
Chairman & Managing Director  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

3. Sisira Paranathanthri  
Director (Editorial)  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

3(a) Mr. Sisira Yapa  
Director (Editorial)  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

4. Janaka Ranathunga  
Director (Legal and Administration)  
The Associated Newspapers of Ceylon  
Limited

No.35, Lake House,  
Newspapers  
D.R. Wijewardena Mawatha,  
Colombo 10.

4(a) Mr.Chamara Nanayakkarawasam  
Director (Legal and Administration)  
The Associated Newspapers Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

5. Manjula Makumbura  
Director (Operations)  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

5(a) Mr. Chamara Janaraj Peiris  
Director (Operations)  
The Associated Newspapers Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

6. Prof. Harendra Kariyawasam  
Director (Finance)  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,

D.R. Wijewardena Mawatha,  
Colombo 10.

6(a) Mr. Channa Kevitiyagala  
Director (Finance)  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

7. S.J. Kothalawala  
General Manager  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

8. Saman Galappaththi  
(inquiry Officer)  
26/19, Emerald Park,  
Samarakoon Mawatha,  
Piliyandala.

9. Amitha Kanthilatha  
Head of Human Capital  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

10. N.G.K.K. Senevirthna  
(Complaint leading officer)  
95A, Veera Mawatha,  
Bokundara,  
Piliyandala.
11. Sisiranath Adhikari  
DGM Sales (Interdicted)  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.
12. H.W.S. Prasanga  
Company Secretary  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.
- 12(a). Mrs. Sudarshi Hewawasam  
Company Secretary  
The Associated Newspapers of Ceylon  
Limited  
No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.
13. Thilini Shamali  
Chief Internal Auditor  
The Associated Newspapers of Ceylon  
Limited

No.35, Lake House,  
D.R. Wijewardena Mawatha,  
Colombo 10.

**RESPONDENTS**

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**  
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Nuwan Bopege, AAL with Hansaka  
Chandrasinghe, AAL for the Petitioner instructed  
by Lalith N. Gunarathne, AAL

Sanjeewa Dasanayake, AAL with Nivanthi  
Thilakarathne, AAL for the 1<sup>st</sup> to 9<sup>th</sup> and 12<sup>th</sup>, 13<sup>th</sup>  
Respondents

Written Submissions on : 14.11.2025 for the 1<sup>st</sup>, 2b, 3a, 4a, 5a, 6a, 7<sup>th</sup> to  
9<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents.  
17.11.2025 for the Petitioner.

Supported on : 15.10.2025

Decided on : 27.03.2026

**K. Priyantha Fernando, J. (CA)**

1. The Petitioner, a Manager of Digital Operations at The Associated Newspapers of Ceylon Limited (1<sup>ST</sup> Respondent) ("Lake House"), by the Petition dated 01.02.2023 invoked the writ jurisdiction of the Court challenging the decisions of the 1<sup>th</sup> to 13<sup>th</sup> Respondents regarding his transfer, interdiction, and conditional reinstatement.

POSITION OF THE PETITIONER:

2. The Petitioner joined the 1<sup>st</sup> Respondent Company in 2009 as a Management Trainee after a competitive selection process and was subsequently promoted through various ranks, including Senior Executive Officer, Assistant Production Manager, and Deputy Production Manager, eventually becoming the Manager of Digital Operations in 2018 due to his excellent performance and contributions, such as introducing digital revenue streams and mobile apps. However, he was abruptly informed of his transfer to the Nugegoda Ad Centre by a letter dated April 11, 2019, and was subsequently interdicted on no-pay by a letter dated June 19, 2019, based on an internal audit report, without immediate reasoning provided.
3. He has been served with a charge sheet on August 2, 2019, alleging violations of the disciplinary code, to which he pleaded not guilty. A formal disciplinary inquiry commenced on September 16, 2019, spanning over two and a half years with approximately 32 sessions, which the Petitioner claimed was unduly delayed. Following the inquiry, the Petitioner received a letter on September 28, 2022, stating he was found guilty of 5 out of 8 charges and would be reinstated subject to conditions, including a transfer to the Printing Department, deferral of increments for two years, and no back wages for the interdiction period.
4. The Petitioner contested this decision, **arguing that no reasons were given for the findings of guilt and that the decision was arbitrary, unreasonable, and contrary to the rules of natural justice.** Consequently, the Petitioner sought Writs of *Certiorari* to quash the transfer, interdiction, and reinstatement letters, and a Writ of *Mandamus* to compel his reinstatement as Manager of Digital Operations without conditions and with full back wages.

THE POSITION OF THE 1<sup>ST</sup> TO 9<sup>TH</sup> AND 12<sup>TH</sup>, 13<sup>TH</sup> RESPONDENTS:

5. The 1<sup>st</sup>-9<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents (hereinafter referred to as Respondents) filed a Limited Statement of Objections on 16.03.2023 primarily to resist the interim reliefs sought by the Petitioner, while reserving their right to file a comprehensive statement later. The Respondents denied the averments in the Petition, except for those

specifically admitted, and raised several preliminary objections to the Petitioner's application. They contended that the application was misconceived in law, that the Petitioner was guilty of *laches* and suppression of material facts, and that the Petitioner failed to come to Court with clean hands.

6. Furthermore, the Respondents argued that the Writ of *Mandamus* was misconceived, that no demand was made, and crucially, that the subject matter related to a private contract of employment for which writ jurisdiction did not lie, as alternative remedies were available under the Industrial Disputes Act.
7. Regarding the substantive allegations, the Respondents denied the Petitioner's claims about the unfairness of the disciplinary process. They asserted that a disciplinary inquiry was held after giving due notice via a charge sheet, and that the Petitioner participated in the inquiry with a preventive officer. The Respondents maintained that the inquiry was conducted in accordance with the principles of natural justice, giving the Petitioner a fair hearing, and that the final decision was made after considering all material facts. Consequently, the Respondents prayed for the dismissal of the application *in limine*, the refusal of interim relief, and costs.
8. The 1<sup>st</sup>, 2A, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6A, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents (hereinafter referred to as Respondents) filed their Statement of Objections on 22.03.2023 and raised several preliminary objections, asserting that the Petitioner's application was misconceived in law, that the Petitioner was guilty of *laches* and suppression of material facts, and that the Petitioner had not come to court with clean hands.
9. Furthermore, the Respondents argued that the matter related to a contract of employment, which is a private law matter for which writ jurisdiction does not lie, and that alternative remedies were available under the Industrial Disputes Act. They maintained that the disciplinary inquiry was conducted fairly, following the principles of natural justice, and that the decision was made after considering all material facts, with the Petitioner found guilty.
10. The Respondents further stated that by a letter dated September 28, 2022, the Petitioner was informed of his reinstatement subject to certain conditions, which he acknowledged.

However, the Respondents noted that the Petitioner failed and neglected to report to the Printing Department as instructed on October 3, 2022, and did not seek any extension to report for service. Consequently, the Respondents asserted that the Petitioner's conduct amounted to a vacation of post. A formal letter of vacation of post was dispatched to the Petitioner, which was returned with endorsements stating "නිවස වසා ඇත" and "නිවසේ නිමියා විසින් බාර ගැනීම ප්‍රතික්ෂේප කළා" . Subsequently, the Respondents sent letters informing the Petitioner of the due payment of gratuity, to which the Petitioner replied through his lawyer seeking clarification on the termination. The Respondents replied to this clarification, maintaining that the Petitioner had failed to recourse to available legal remedies and prayed for the dismissal of the application.

11. The Respondents contended that the Petitioner had alternative and equally efficacious remedies available, such as appealing to the Labour Tribunal. The Respondents relied on the case of *Ishak v. Lakshman Perera, Director of Customs and Others* (2003) 3 Sri LR 18, where the Court held that:

*"where there is an alternative procedure which will provide the applicant with a satisfactory remedy the Courts will usually insist on an applicant exhausting that remedy". This position was supported by Tennakoon v. The Director-General of Customs [2004 (1) SLR 53], which established that where a specific course of action is provided by statute, "the petitioner is not entitled to invoke writ jurisdiction".*

12. The Respondents further argued that the dispute was a matter of private law arising from a contract of employment, for which writ jurisdiction does not lie. They cited *Lanka Marine Services (Pvt) Ltd v. Sri Lanka Ports Authority* [2010] BLR 187, where Sripavan J. stated that *Certiorari "does not lie to remedy grievances arising from an alleged breach of contract"*. Similarly, in *Jayaweera v. Wijerathne* (1985) 2 Sri LR 413, the Court of Appeal held that *"neither Certiorari nor Mandamus will lie to remedy grievances arising from an alleged breach of contract"*. This principle was reinforced by *Hakmana Multi-Purpose Co-operative Society Ltd v. Fernando* (1985) 2 Sri LR 272, where the Supreme Court held that enforcing a private duty arising from a contract *"is outside the scope of Mandamus"*.

13. Finally, the Respondents submitted that the Petitioner failed to present a demand for the performance of a public duty, a prerequisite for *Mandamus*. They relied on *Ranaweera v. Mahaweli Authority of Sri Lanka and Another* [2004] 2 Sri L.R. 346, in which it was held that, "*an applicant for mandamus must have first made an express demand to the defaulting authority*".

14. Regarding the alleged lack of reasons for the decision, the Respondents cited *Samalanka Limited v. Weerakoon, Commissioner of Labour and Others* [(1994) 1 Sri L.R. 405], which observed that, "*in the absence of a statutory requirement, there is no general principle of administrative law that natural justice requires the authority making the decision to adduce reasons*". Consequently, the Respondents prayed for the dismissal of the application on preliminary grounds.

#### ANALYSIS:

15. The 1<sup>st</sup> Respondent, Associated Newspapers of Ceylon Limited ("Lake House"), is a state-controlled entity amenable to writ jurisdiction. In *Wijewardhana v. Kurunegala Plantations Ltd* [S.C.F.R. 24/2013], it was held that the government's majority shareholding (over 75% vested in the Public Trustee) and the power to appoint the Board of Directors established deep and pervasive state control, thereby classifying it as an instrumentality of the State.

16. In the case of *Kumudini Madugalle v. National Housing Development Authority* [CA/WRT/540/2019] it was held that violations based on contracts by public bodies were not totally outside writ jurisdiction, as "*the existence of a possibility of a private law claim does not by itself however, make judicial review inappropriate*".

17. On the strength of the above cited case law, I find that the 1<sup>st</sup> Respondent is a public body and thus amenable to writ jurisdiction. This provides the answer to the point of issue whether there is a public duty towards the Petitioner. There is, clearly a public duty towards the Petitioner emanating from the Respondents.

18. Regarding the objection on the availability of alternative remedies, the Petitioner submitted that the existence of a remedy under the Industrial Disputes Act was not an absolute bar to writ jurisdiction, particularly when the impugned decision was vitiated by patent errors and violations of natural justice.
19. The said argument is tenable since in Pinnaduwege Baby Mallika Chandraseena v. C.W. Abeysuriya [CA/WRT/457/2019], where Justice Laffer affirmed that if the alternative remedy is inadequate or the order is without jurisdiction, the Petitioner is permitted to invoke writ jurisdiction before exhausting other remedies.
20. Additionally, the Petitioner referred to Amarasingh v. Azath Sally [2004] 2 SLR 159, which held that statutory remedies cannot be considered a limitation on other legal remedies in the absence of specific exclusion. The Petitioner further argued that the Labour Tribunal decided cases on equity rather than administrative law principles, citing Sri Lanka State Plantation Corporation v. Dharmawansa and Others (2006) 1 SLR 346.
21. On the merits of the case, the Petitioner contended that the 1<sup>st</sup> Respondent acted unlawfully by **failing to provide reasons** for the transfer, interdiction, and the finding of guilt.
22. As per the decisions in Piyasena De Silva and Others vs. Ven. Wimalawansa Thero (2006) 1 Sri LR 200 and Central Bank of Sri Lanka & 3 Others v. Lanka Tea and Rubber Plantations (Pvt) Ltd (2009) BLR 101, the failure to give reasons renders administrative decisions devoid of legal validity.
23. The Petitioner also challenged the fairness of the inquiry, asserting that the proceedings were biased and based on fabricated evidence. Specifically, regarding Charge No. 6 (alleged falsification of petty cash bills), the Petitioner pointed out inconsistencies in the video evidence and the testimony of the witness Gayan Ratnayake, who admitted to memory loss. The Petitioner also highlighted the testimony of the shop owner, Rangika Madura Wasantha, who confirmed the authenticity of the bill and the transaction.

24. Finally, the Petitioner refuted the claim of vacation of post, stating that the purported letter of vacation was never received and was likely fabricated after the institution of the case, **as no postal article was produced to prove its dispatch**. The Petitioner argued that the entire disciplinary process was tainted with malice and discrimination against a high-performing employee who had introduced significant digital innovations to the company. Citing Sundkaran v. Bharathi [1989] 1 SLR 46, the Petitioner maintained that the violation of natural justice rendered the decision a nullity. Consequently, the Petitioner prayed for the reliefs sought in the petition, including reinstatement without conditions and back wages.

25. Firstly, I will deal with the preliminary objection regarding whether an alternative remedy was available, and if so, whether this Court should insist on the Petitioner exhausting that remedy before seeking judicial review. It was contended for the Respondents that the Petitioner is required to seek resolution of the dispute through alternative statutory remedy provided by the Labour Tribunal under the Industrial Dispute Act. The Petitioner either has had the opportunity of appealing against the decision before the relevant authority itself or going before the Labour Tribunal, a fact which is also acknowledged by the Petitioner himself before this Court. “Therefore, the Petitioner does not accept the above decision and is willing to file an appeal including the reasons for not accepting the decision”. (paragraph 44 of the Petition) Furthermore, by the letter dated 02.10.2022 marked **X19**, the Petitioner intimated that he was expecting to appeal to the authorities for not accepting the finding of guilty.

26. There are decisions for both ways, i.e. either disallowing judicial review on this basis or allowing judicial review despite there being alternate remedy. It is important to identify the determining factor. As observed in the Indian case of Whirlpool Corporation vs. Registrar of Trademarks, Mumbai (1998) 8 SCC 1, writ jurisdiction can be exercised even if there are alternative remedies available in certain well-defined instances. The judgment reads as follows:

*“Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has the discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is*

*that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”* (emphasis added)

27. The Petitioner had to satisfy this Court that his application has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or that the order or proceedings are wholly without jurisdiction. The only basis on which the Petitioner is harping on is that following a disciplinary inquiry, he was purportedly found guilty and convicted without adducing any reasons.
28. In the case of *Piyasena De Silva and Others vs. Ven. Wimalawansa Thero* (2006) 1 Sri LR 220, Shirani Bandaranayake J. (as Her Ladyship then was) held that, “*Although the law is quite clear on the general rule pertaining to the duty to state reasons for judicial or administrative decisions, I am of the view that mention should be made of the usefulness in giving reasons as it could create a ‘sound system of judicial review’.*” (emphasis added)
29. Furthermore, the judgment in the case of *Central Bank of Sri Lanka & 3 Others vs. Lanka Tea and Rubber Plantations (Pvt) Ltd.* 2009 BLR 101 reads as follows: “*Changes taking place in other jurisdictions have also had their influence on our courts, and a strong trend of insistence on a statement of reasons is discernible in Sri Lankan judicial decisions. In the circumstances of this case, in the decisions contained in P10 and P14 cry out for reasons, and the failure to give any, render them devoid of any legal validity”.*

ARE THERE REASONS GIVEN FOR THE DECISION?

30. The main contention of the Petitioner is that he was not informed of the charges he was found guilty of. Only upon the request of the Petitioner, was it conveyed to him that he was found guilty of charges 3,4,6,7 and 8 of the charge sheet.
31. The Respondents drew the attention of the Court to the case of Dinga Thanthirige Jayalath Perera vs Vice Admiral W.K.J. Karannagoda SC/Appeal 11/2017 decided on 11.01.2023 in which the case of Regina v. Ministry of Defence, Ex parte Colin James Murray [(1998) COD134] was cited with approval as follows:

*“Judicial review was unlikely to succeed, for example, where the **reasons were easily discernible albeit not expressed or where no other conclusion than the one reached was realistically possible**, I have concluded that that the ratio of this judgment has high persuasive impact on the determination of the instant Appeal”.*

32. In the same case, Justice Jayantha Jayasooriya, P.C., CJ (as he was then) went on to observe that,

*“In Samalanka Limited v. Weerakoon, Commissioner of Labour and Others, [(1994) 1 Sri LR 405], Justice K.M.M.B. Kulathunga has commented on whether the Commissioner of Labour acting in terms of section 2 of the Termination of Workmen (Special Provisions) Act No. 45 of 1971, was required to give reasons for his decision to grant permission to an employer (Appellant) to terminate the employment of workmen of the company, subject to terms specified relating to the payment of compensation and gratuity. His lordship has observed that the impugned judgment of the Court of Appeal could not be faulted, in that, **while it is desirable to give reasons for a decision, for example where a right of appeal is provided against such decision**, in the absence of a statutory requirement, there is no general principle of administrative law that natural justice requires the authority making the decision to adduce reasons, **provided that the decision is made after holding a fair inquiry. It appears that in that matter, though the reasons for the decision had not been***

*given by the Commissioner, the Supreme Court had, in view of the attendant circumstances of the case, been satisfied that a fair inquiry had been conducted by the Commissioner and that in the circumstances his decision was not arbitrary, and therefore not unlawful.”*

33. The ‘Disciplinary Rules of Associated Newspapers of Ceylon Limited’ is annexed marked X13 and it provides at page 17 as follows:

“සාක්ෂි සටහන් කර ගැනීමෙන් පසු අනුගමනය කළ යුතු ක්‍රියා මාර්ග

I) දෙපක්‍ෂයේම ලිඛිත සැලකිලිම් පරීක්ෂණ නිලධාරී වෙත ඉදිරිපත් කිරීමට පරීක්ෂණය නිම වී සති දෙකක කාලයක් ලබා දෙනු ඇත.

II) ඔහු මෙම පරීක්ෂණය පැවැත්වූ ආකාරය සම්බන්ධයෙන් ඔවුන් සැහීමකට පත් වන්නේදැයි දෙපක්‍ෂයෙන්ම පරීක්ෂණ නිලධාරී විමසමින් ඔවුන්ගේ එම පිළිතුරු සටහන් කළ යුතුය.

III) අවසාන පරීක්ෂණ නිලධාරී විසින් විනය බලධරයා මවන වාර්තාවක් සපයමින් එක් එක් චෝදනා සම්බන්ධයෙන් ඔහුගේ සොයා ගැනීම කවරේද යන්න පෙන්වුම් කළ යුතුවේ. පරීක්ෂණයේදී ලකුණු කරන ලද ලේඛණ හා පරීක්ෂණ අවසානයේදී දෙපසක්ෂය විසින් ඔහු වෙත ඉදිරිපත් කර ඇති සැලකිලිමකද විනය බලධරයා වෙත එම වාර්තාව සමඟ ඉදිරිපත් කළ යුතුය.

IV) ඔහුගේ වාර්තාවෙන් පරීක්ෂණයේදී මෙහෙය වන ලද සාක්ෂි එක් එක් චෝදනාව යටතේ විග්‍රහ කරමින් ඔහුගේ සොයා ගැනීම් වලට එළඹීමට තුඩු දෙන ලද හේතූන් සහ තර්ක විතර්ක ද පරීක්ෂණ නිලධාරී විසින් පෙන්වුම් කළ යුතුවේ. එම සොයා ගැනීම (අ) චෝදනාවක් ඔප්පු වී ඇත. (ආ) අසත්‍ය බවට ඔප්පු වී ඇත. හෝ (ඇ) ඔප්පු ට නොමැත. යනුවෙන් විය යුතුය.

V) පරීක්ෂණ නිලධාරී විසින් ඔහුගේ අභිමතය පරිදි පරීක්ෂණයේ ප්‍රතිඵලයක් වශයෙන් පැමිණවිය යුතු විනය නියෝගයේ ස්වභාවය කවරේද යනුවෙන් නිර්දේශයක් කළ හැක.”

34. Furthermore, at page 19, it provides rules relating to order made by Disciplinary Officer as follows:

“විනය බලධාරියාගේ නියෝගය

14.1 පරීක්ෂණය අවසානයේදී එක් එක් චෝදනාව සම්බන්ධයෙන් ඔහුගේ සොයා ගැනීම් කවරේදැයි පරීක්ෂණ නිලධාරී පෙන්වුම් කළ යුතුය.

14.1 පරීක්ෂණ නිලධාරියෙකුගේ සොයා ගැනීම් වනුයේ චෝදනාවක් සත්‍ය බැව් ඔප්පු වී ඇත්තේ ද අසත්‍ය බැව් ඔප්පු වී ඇත්තේද හෝ ඔප්පු වී නොමැත්තේද යනුවෙන්ය.

14.2 විනය බලධාරියා වෙත පරීක්ෂණ නිලධාරියාගේ වාර්තාව ලැබුණු විට කිසියම් තීරණයක් හෝ සොයා ගැනීමක් ගැන විනය බලධාරියාට එකඟ නොවීමට හැක. එසේම කිසියම් චෝදනාවක් හෝ චෝදනාවට සම්බන්ධයෙන් පරීක්ෂණ නිලධාරීන්ගේ සොයා ගැනීම් පිළිගැනීමට හෝ ප්‍රතික්ෂේප කිරීමට ප්‍රතිශෝධනය කිරීමට විනය බලධාරියාට පුළුවන විනය බලධාරියා එසේ එකඟ නොවීමට හේතුවන් නිශ්චිතව අදාළ ලිපි ගොනුවේ සටහන් කළ යුතුය.

14.3 යම් කරුණක් ගැන විනය බලධාරියාට පැහැදිලි කිරීමක් අවශ්‍ය වූ විට එම කරුණ වාර්තා කිරීම සඳහා හෝ අවශ්‍ය පරිදි වැඩිදුරටත් පරීක්ෂා කර බැලීම සඳහා පරීක්ෂණ නිලධාරී වෙත එය යොමු කළ හැක. සාධාරණ යයි සැලකිය හැකි අවස්ථාවකදී පරීක්ෂණ කටයුතු නිශ්චයා කරමින් අළුත් පරීක්ෂණයක් පැවැත්වීමට විනය බලධාරියාට නියෝග කළ හැක එසේ කටයුතු කිරීමකදී ඊට හේතුවන් අදාළ ලිපි ගොනුවේ සටහන් කරමින් පෙන්වුම් කළ යුතුය.

14.4 විනය බලධාරියා විසින් විනය නියෝගයක් නියම කිරීමට මෙම විනය රීති වල 15 වෙනි කොටසේ දඬුවම් සම්බන්ධයෙන් දැක්වෙන විධිවිධානයන් සැලකිල්ලට ගතයුතුය.

14.5 වැඩ තහනම යටතේ සිටින ලද සේවකයෙකුගේ වෙන නියම කෙරෙන දඬුවම සේවයෙන් පහකිරීමට වඩා අඩු තත්ත්වයක දඬුවමක් නම්, ඔහු නැවත සේවයේ පිහිටුවීමේදී වැඩ තහනම යටතේ සිටි කාලය තුළදී ඔහුගෙන් අත්හිටුවන ලද පඩි නඩි

වලින් කොටසක් (හෝ) සම්පූර්ණයෙන් ගෙවීම දැක්වෙන නියමයන් විනය නියෝග තුළ අඩංගු විය යුතුය. එවැනි නියෝගයක් තීරණය කිරීමේදී සේවකයා වැඩ තහනමේ සිටින ලද කාලය සඳහාද, එවැනි යම් කාලයක් තුළ චූදිතයා වැඩ තහනම් යටතේ පැවතුනේ ඔහු වෙත කෙලින්ම පැවරිය නොහැකි හේතූන් මතදැයි යන කරුණු සැලකිල්ලට ගත යුතුය.

14.6 විනය නියෝගය සේවයෙන් පහකිරීමක් නම් ඒ බව ඔහුට වහාම දැන්විය යුතුය ඊට පසු ඔහුට කිසියම් පඩි නඩි ගෙවනු නොලැබේ.”

35. These rules clearly mandate that the inquiring officer should submit a report to the Disciplinary Officer showing findings on each charge. It further provides that such report should include the analysis of evidence under each charge with the reasons and arguments leading to such findings.
36. In the instant case, the Petitioner was informed of the decision of him having been found guilty by the letter dated 28.09.2022 (X18) without complying with any of the mandatory requirements elaborated above. Only upon the request made by the Petitioner dated 02.10.2022 (X19), did the General Manager of the 1<sup>st</sup> Respondent provide the Petitioner with information as to which charges the Petitioner has been found guilty of by a letter dated 21.10.2022 (X20).
37. Even in X20, no reasons for the decision have been conveyed to the Petitioner. According to X20, the report on briefing of evidence had been handed over only to the authorities alleging it is a confidential report. It further stated that the inquiring officer had not consented to release it to a third party. As a result, the main affected party who is the Petitioner has been left without reasons for finding him guilty for 5 out of 8 charges.
38. The entire proceedings of the domestic inquiry conducted by the 1<sup>st</sup> Respondent comprising of 330 pages is produced marked as X15. At the date of instituting this application on 1<sup>st</sup> of February 2023, the Petitioner was not aware of the reasons for his finding of guilt for the charges.

39. However, after a lapse of more than a year, **on 22<sup>nd</sup> of March 2024**, the Respondents produced the final report of the Formal Inquiry marked R01 comprising of 28 pages which includes detailed reasons for the decision. None of those reasons have been communicated to the Petitioner who was and is directly affected, before the filing of this application. It shows that at the time of institution of this application; the Petitioner had a strong case to come before this Court. It is my view that this factor is sufficient enough for the Petitioner to come before this Court as it was the most effective remedy.
40. The reason for such view is well expounded by Sunil F. A. Cooray in his book titled *Administrative Law* (4th ed., Vol. II, p. 574) as follows,

*“It was held that although there may not be a duty owed to a party to disclose reasons for the exercise of power, “once leave to apply for judicial review had been given, then it is the duty of the authority to make a full and fair disclosure, ‘to explain fully what has occurred and why’.” But the **more recent view seems to be that the disclosure of reasons to court will not do, and the failure to give and communicate the reasons for decisions to affected parties before they seek reliefs in court renders such decisions “null and void” (Sirimasiri Hapuarachchi v Commissioner of Elections 2009 BLR 34,40 Also reported as Hapuarachchi v Commissioner of Elections (2009) 1 SLR 1,17).”***

The argument in relation to the existence of alternative remedies is thus rejected.

41. At the same time there is a clear devoid of reasons. This is not an instance where the reasons were easily discernible albeit not expressed or where no other conclusion than the one reached was realistically possible. The proceedings running to more than 300 pages and spanning the course of over two years show that the Petitioner had heavily contest the charges filed against him.

#### IS THERE A BREACH OF THE PRINCIPLES OF NATURAL JUSTICE?

42. It is revealed that a proper disciplinary inquiry had been held after giving due notice to the Petitioner by presenting a charge sheet. The Petitioner had participated in this inquiry together with his preventive officer where he was given a due hearing. However,

I have clearly observed that the Respondents have distinctly failed to adduce reasons for their findings or rulings and after protracted inquiry spanning more than two and a half years period with 32 sessions. It is imperative for the Respondents to inform reasons for their decision to the Petitioner. On this ground alone the decision becomes null and void as per the judgment in Sirimasiri Hapuaracchchi v Commissioner of Elections 2009 BLR 34,40 Also reported as Hapuarachchi v Commissioner of Elections (2009) 1 SLR 1,17.

43. Be that as it may, I find that the since the disciplinary authority has adduced detailed reasons for their decision to this Court at least belatedly and satisfied the Court as to the fairness of their findings they have reached, the *certiorari* quashing X18 should only be issued formally with regard to the 1<sup>st</sup> condition therein. The reason being that when reinstating the Petitioner, the respondents have failed to follow mandatory provision relating to back wages in their own disciplinary guidelines. This factor has been analysed under paragraphs 50 to 55 of this judgment.

#### HAS THE PETITIONER FAILED TO MAKE A DEMAND?

44. In order to claim for *mandamus*, there should be a demand made and failure to comply with a corresponding public duty. Marsoof J. (P/C/A) in the case of Ranaweera v Mahaweli Authority of Sri Lanka and another [2004] 2 Sri L.R. 346 observed as follows:

*“In this context, it is necessary to quote from H.W.R. Wade and C.F. Forsyth, Administrative Law, 8<sup>th</sup> Edition, page 615 in which the authors have succinctly stated the law in the following words: ‘It has been said to be an ‘imperative rule’ that an applicant for mandamus must have first made an express demand to the defaulting authority, calling upon it to perform its duty, and that the authority must have refused. But these formalities are usually fulfilled by the conduct of the parties prior to the application, and refusal to perform the duty is readily implied from conduct. The substantial requirement is that the public authority should have been clearly informed as to what the applicant expect it to do, so it might decide at its own option whether to act or not”.*

45. It was further observed by Marsoof J., that, *“The Petitioner has failed to produce evidence to show that he had demanded compliance with the Order of the Labour Tribunal and the High Court from the 1<sup>st</sup> respondent Authority - this by itself is sufficient to dis-entitle the petitioner to any relief prayed for by him.”*

46. In the instant case, the only writ of *mandamus* prayed for is by prayer (iv) of the Petition dated **1<sup>st</sup> of February 2023** and it is a Writ of *Mandamus* directing the Respondents to reinstate the Petitioner in the Manager - Digital Operations post without any condition with back wages, annual salary increments and allowances.

47. Prior to the institution of this application, by the letter addressed to the Chairman (2<sup>nd</sup> Respondent) of the Associated Newspapers of Ceylon Limited (1<sup>st</sup> Respondent) dated 5<sup>th</sup> August 2022 (produced marked as X17), the Petitioner had **categorically demanded to reinstate him in the service** after delivering the order of the disciplinary inquiry. It is my considered view that by sending X17 to the 2<sup>nd</sup> Respondent, the Petitioner has adduced required evidence to show that he had promptly demanded reinstatement.

48. Thereafter only, the 1<sup>st</sup> Respondent replied to the Petitioner by the letter dated 28<sup>th</sup> September 2022 (vide X18) informing that the Petitioner has been found guilty for 05 charges out of 08 charges leveled against him. The letter further states as follows:

*“Although there is a provision to terminate your services, the Management has decided to terminate you under the following conditions with immediate effect:*

- 1. Re-instate in service without service break and without back wages for the interdicted period.*
- 2. Transfer you to the Printing Department (Commercial Printing Section) as Manager - External Printing.*
- 3. Defer annual increments for the years 2023 and 2024.*

*“You are severely warned that if such incident happen again in future, serious disciplinary actions will be initiated against you. Please report to the undersigned on 03.10.2022 if you agree to the aforesaid conditions”.*

49. The Petitioner replied to the above X18 by a letter dated 2<sup>nd</sup> October 2022 and demanded that he be reinstated without any conditions. Thus, there is sufficient evidence adduced as to a formal demand before praying for the writ of *mandamus*. Hence, the contention that there is no formal demand before praying for *mandamus* is untenable.

HAS THE PETITIONER BEEN DENIED HIS RIGHTFUL CLAIM TO THE BACK WAGES?

50. In order to answer the question posed above it is necessary to refer to the ‘Disciplinary Rules of Associated Newspapers of Ceylon Limited’ marked X13 which states as follows at page 19:

14.5 වැඩ තහනම යටතේ සිටින ලද සේවකයෙකුගේ වෙන නියම කෙරෙන දඬුවම සේවයෙන් පහකිරීමට වඩා අඩු තත්ත්වයක දඬුවමක් නම්, ඔහු නැවත සේවයේ පිහිටුවීමේදී වැඩ තහනම යටතේ සිටි කාලය තුළදී ඔහුගෙන් අත්හිටුවන ලද පඩි නඩි වලින් කොටසක් (හෝ) සම්පූර්ණයෙන් ගෙවීම දැක්වෙන නියමයන් විනය නියෝග තුළ අඩංගු විය යුතුය. එවැනි නියෝගයක් තීරණය කිරීමේදී සේවකයා වැඩ තහනමේ සිටින ලද කාලය සඳහාද, එවැනි යම් කාලයක් තුළ චුදිතයා වැඩ තහනම යටතේ පැවතුනේ ඔහු වෙත කෙලින්ම පැවරිය නොහැකි හේතූන් මතදැයි යන කරුණු සැලකිල්ලට ගත යුතුය. (emphasis added)

51. From the above and upon a perusal of the decision arrived at in X19 it is clear that the 1<sup>st</sup> Respondent Company has blatantly violated one of its own mandatory rules.

52. The Rule 14.5 clearly states that either the total back wages or a portion of it is necessary to be paid to the employee in question upon reinstatement (“ඔහුගෙන් අත්හිටුවන ලද පඩි නඩි වලින් කොටසක් (හෝ) සම්පූර්ණයෙන් ගෙවීම”). However, it is clear that as per X19, the Petitioner was given neither the total back wages nor a portion of back wages, violating the Code of Rules which are binding on the Respondents.

53. Such conduct is clearly *ultra vires*, illegal and unlawful. Hence, this Court is of the view that the total back wages ought to be awarded to the Petitioner so as to fall in line with Rule 14.5 of the ‘Disciplinary Rules of Associated Newspapers of Ceylon Limited’.

54. As such, this court decides to vary the writ of *mandamus* sought by the Petitioner to mandate and compel the 1st Respondent to pay total back wages to the Petitioner keeping in line with the Rule 14.5 of the Disciplinary Rules of ANCL.
55. On the totality of circumstances of this case, I am inclined to grant writ of *Mandamus* re-instating the Petitioner in service with back wages for the interdicted period.
56. The writ of *Certiorari* prayed for in prayer (iii) is also granted quashing the decisions contained in the documents marked as 'X10' and 'X11'.
57. The writ of *Certiorari* prayed for in prayer (ii) is formally issued quashing only the 1<sup>st</sup> condition contained in X18.
58. For the avoidance of doubt this Court wishes to emphasize that it is not interfering with the 2<sup>nd</sup> and 3<sup>rd</sup> conditions in the said letters with regard to the transfer and increments of 2023/2024.
59. I make no order with regard to costs of this Application.

**Judge of the Court of Appeal**

**Hon. Rohantha Abeysuriya PC, J.(P/CA)**

I agree.

**President of the Court of Appeal**