

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and
Mandamus under Article 140 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.*

CA (Writ) App. No. 055/2024

M.W.M. Afham,
No. 112/36A, Moris Road,
Mildduwa, Galle.

PETITIONER

Vs.

1. Channa Upuli Weerasekara,
Director,
Department of Education – Southern
Province,
Upper Dickson Road, Galle.
2. Wasana Madushrini,
Zonal Director,
Zonal Education Office,
Kalegana, Galle.
- 2A. Nisanka Nirmani,
Zonal Director,
Zonal Education Office,
Kalegana, Galle.
- 2B. W.A. Madushika Wasana,
Zonal Director,
Zonal Education Office,
Kalegana, Galle.

3. Aseni Damayanthi Paranawithana,
Deputy Director of Education
(Admin),
Zonal Education Office - Galle,
Kalegana, Galle.

3A. Jumana Sadeek,
Deputy Director of Education
(Admin),
Zonal Education Office – Galle,
Kalegana, Galle.

3B. Ms. Lakmali Tharangani,
Deputy Director of Education
(Admin),
Zonal Education Office – Galle,
Kalegana, Galle.

4. Ranjith Yapa,
Secretary,
Ministry of Education, Land & Land
Development, Highways &
Information,
Ground Floor, “Dakshina Paya”,
Labuduwa, Galle.

4A. A.U. Welarathne,
Secretary,
Ministry of Education, Land & Land
Development, Highways &
Information,
Ground Floor, “Dakshina Paya”,
Labuduwa, Galle.

5. Mr. G. Hewawitharana,
Chairman,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

5A. R.H. Kamal,
Chairman,
Provincial Public Service
Commission, Southern Province,

District Secretariat, 6th Floor,
Kaluwella, Galle.

6. K.K.G.J.K. Siriwardhene,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

6A. Dr. Mahayahage Sirisena
Deshapriya,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

7. Daya Witharana,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

7A. Mrs. T.D. Munasinghe
Wickremarahna,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

8. Srimal Wijesekara,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

8A. Mr. Gunarathna Mapalagama,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,

Kaluwella, Galle.

9. Sunil Dahanayake,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

9A. Mr. G. Wickremasinhe,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

10. L.K. Ariyaratne,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

11. Munidasa Halpandeniya,
Member,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

12. Gamini Wirawickrema,
Secretary,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

- 12A. C.P. Rajakaruna,
Secretary,
Provincial Public Service
Commission, Southern Province,
District Secretariat, 6th Floor,
Kaluwella, Galle.

13. Mr. Willy Gamage,

Governor – Southern Province,
Governor’s Office,
Southern Province,
Lower Dickson Road, Galle.

13A. Bandula Harischandra,
Governor – Southern Province,
Governor’s Office,
Southern Province,
Lower Dickson Road, Galle.

14. W. Weerakoon,
No. 51/8A, Dambahena Road,
Maharagama.

15. H.M. Dissanayaka,
No. 6, Napana,
Madawala Kadaweediya.

RESPONDENTS

Before: M.C.B.S. Morais, J.

Dr. D. F. H. Gunawardhana, J.

Counsel:

Sanjeewa Jayawardena, P.C., with Ranmalee Meepagala for the Petitioner.

Prabhashanee Jayasekara, S.C., for the Respondents.

Argued on: 06.07.2026

Delivered on: 30.09.2026

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner was acting as the Principal of Bataduwa Sri Rathnajothei Nawodya Vidyalaya, Bataduwa, Galle, at the time of his interdiction in October 2018. The said interdiction had taken place pursuant to a letter sent by the Auditor General's Department to the 1st Respondent. The Petitioner alleges that no explanation was called for, from him prior to the service of the letter of interdiction (**P11**); in addition to that, no statement was recorded prior to the interdiction.

However, after interdiction, it took more than twenty-three months to start the preliminary investigation against the Petitioner. Thereafter, the Petitioner was charge-sheeted after the preliminary investigation, and after being charge-sheeted, it also took several months to conclude the inquiry, where the Petitioner was found guilty at the end of the inquiry. However, the matter proceeded *ex parte*, in the absence of the Petitioner and his representative, despite the serious objections raised by the Petitioner against the 14th Respondent on the basis of bias. In addition to that, the Petitioner was not paid his monthly salary since his interdiction.

In those circumstances, the Petitioner challenges the letter of interdiction **P11**, the preliminary investigation report (**P20**), the charge sheet (**P21**), the amended charge sheet (**P25**), the proceedings of the inquiry, the final report containing the said decision (**P34(ee)**), and the final disciplinary order (**P34(gg)**) by this Application.

The 1st Respondent is the Director of the Southern Province Department of Education, the 2nd Respondent is the Zonal Director, and the 3rd Respondent is the Deputy Director of Education (Administration). The 4th Respondent is the Secretary of the Ministry of Education, while the 5th Respondent is the Chairman of the Southern Province Public Service Commission, where the 6th to 11th Respondents are its members and the 12th Respondent is its secretary. The 13th

Respondent is the Governor of the Southern Province. The 14th and 15th Respondents are the Inquiring Officer appointed by the Southern Province Public Service Commission to conduct the disciplinary inquiry and the officer representing the Petitioner at the disciplinary inquiry, respectively.

After issuance of formal notice on Support, the Respondents have filed their respective Objections and denied the allegations made by the Petitioner in the Petition and sought the dismissal of this Application.

Thereafter, this was argued before my brother Justice Morais and myself on 06.07.2026; hence, this judgement.

The following arguments were advanced at the hearing by the counsel, and in addition to that, the Counsel for the Petitioner has filed her Written Submissions, further elaborating the oral submissions advanced at the hearing.

Arguments

Ms. Meepagala, the Counsel for and on behalf of the Petitioner attacks the letter of interdiction marked as **P11** on the basis that it is *ultra vires* as it is authored by a subordinate officer, being the Director, who does not have any authority to take any disciplinary action against the Petitioner. Thus, the letter of interdiction itself is *ultra vires*. In addition to that, the said interdiction was effected without any payment of salary or half-salary. Therefore, it is argued for and on behalf of the Petitioner that the letter of interdiction is, on the face of the record, *ultra vires* and irrational.

Secondly, Ms. Meepagala attacks the conduct of the preliminary investigation, and since during the course of the preliminary investigations, it was believed that the accountant was also responsible for the misappropriation of money, and settled by him, this directs that the total

responsibility cannot be levelled against the Petitioner. In addition to that, it is attacked on delay as well, since it took several years to conclude the preliminary investigations.

Furthermore, the Petitioner also attacks the manner in which the final inquiry was conducted, particularly in his absence, and the conclusion arrived at by the Inquirer.

Therefore, on all three grounds, the Petitioner attacks the entire process of the disciplinary inquiry and sought writs accordingly.

On the other hand, the learned State Counsel, Ms. Jayasekara, argues on behalf of the Respondents that the Petitioner has already admitted that he is guilty by writing the document marked as **1R1** to the 1st Respondent and agreeing to pay the relevant amount in instalments; therefore, she argues that this itself shows the Petitioner as guilty.

Secondly, she argues that the Petitioner has not cooperated right throughout, to conduct the disciplinary inquiry by constantly obtaining dates and postponements instead of diligently attending them; thereby, caused the delay of the inquiry. Therefore, he cannot complain against the delay.

Thirdly, she argues that in any case, the Petitioner's guilt is proven, and therefore, the Petitioner is not entitled to obtain any discretionary remedy from this Court.

The Petitioner's position

The Petitioner asserts that he is a married person having three children; to establish the same the Petitioner has marked and annexed his Marriage Certificate as **P1(a)** and the birth certificates of his children as **P1(b)** to **P1(d)**, respectively.

Further, he asserts that he was appointed as a primary teacher by the letter dated 01.08.1992, which is marked as **P2(a)** annexed to the Petition. Thereafter, in 2012, he was promoted to the Principal's Grade Class 3 by letter dated 14.09.2012, which is marked as **P2(b)** annexed to the

Petition; to establish that he was permanently appointed to the Class 3 Principal's Grade, he has also annexed the document marked as **P2(c)**. Further, he asserts that by the time he was working as a teacher at St. Aloysius' College, Galle, he was placed in the Principal Grade Class 3 – Principal Service Officer, and this is reflected in the log entry of the principals, made by the Principal, marked and annexed as **P2(d)**.

However, later, he was absorbed into the Provincial Public Service, as established in **P3**, and by **P4(a)**, he was appointed as the Deputy Principal of Sulaimaniya Central College; thereafter, by **P4(b)**, he was transferred to Sri Rathnajothi Nawodya School, Bataduwa, Galle as a Deputy Principal.

While he was serving as a principal, he had completed the three-year Teacher Training Course in Primary Education at the National Institute of Education, as well as obtained a Bachelor's Degree in Education. Further, he has obtained several other qualifications, including a leadership qualification in a principals training course as reflected in **P5(f)**, and General Information Technology (Part One) Examination as reflected in **P5(e)**. In addition to that, he is involved in extra-curricular activities, including scouts as reflected in **P5(g)**.

His services were made permanent by **P6(a)**. There are other certificates given to him for his service which is marked as **P6(b)** to **P6(d)**. His service record is also marked as **P6(e)** to **P6(i)**.

In the meantime, he had obtained sabbatical leave for further studies which is reflected in **P8(a)**. However, there had been two letters, marked as **P8(b)** and **P8(c)**, directing him to hand over the responsibilities as principal of Sri Rathnajothi Nawodya Vidyalaya to the successor during his sabbatical leave.

In the meantime, the Petitioner alleges that there had been an audit inquiry, and an audit query had been forwarded to the Department of Education by the Auditor General's Department, which is marked as **P10**, where it refers to certain embezzlement of money from the bank

account maintained by the School Development Society. Based on the said report, the Petitioner's service had been interdicted by **P11**, and later confirmed by the Provincial Education Secretary by **P12**. Further, the Petitioner had been asked to participate in the investigation, as reflected in the documents marked as **P13(a)** and **P13(b)**.

The Petitioner further annexed to the Petition, certain circulars and amendments to the said circulars, where it refers to matters relating to disciplinary inquiries conducted expeditiously against those interdicted from service.

Thereafter, the Petitioner claims that one Mr. Welarathna, had been appointed as a member of the Panel of Inquiry and had written to the Petitioner, asking him to come for an investigation. Two of such letters have been marked as **P16(a)** and **P16(b)**. However, it is his position that no preliminary investigation had been conducted, or charge sheet had been framed against him, nor had there been any preliminary inquiry carried out by the relevant parties up until 2021, which is more than twenty-three months.

Thereafter, there had been a preliminary inquiry; the report of the said preliminary inquiry is marked as **P20**, by which it was recommended to charge sheet the Petitioner. Accordingly, the Petitioner had been charge-sheeted, and the Petitioner alleges that after several days of inquiry, and sometimes even without the Petitioner's presence or representation, the Panel of Inquiry had inquired into the allegations levelled against the Petitioner, and thereafter, reported against him by the report marked as **P20**.

Thus, the Petitioner challenges the letter of interdiction (**P11**), the report of the preliminary inquiry marked as **P20**, the amended charge sheet **P25**, the final report **P34(ee)**, the final disciplinary order **P34(gg)**, and the proceedings of the final disciplinary inquiry made against him on the basis of violation of the rules of natural justice, as well as not following the Establishment Code and Rules and Regulations reflected in the circulars, particularly relating

to the timeframe within which an inquiry against an interdicted person has to be concluded. Accordingly, the Petitioner challenges the said documents and findings by this Application.

Objections

The 1st Respondent has filed separate Statement of Objections while the 4th Respondent had filed a separate Statement of Objections, while the 5th to 12th Respondents have filed a joint Statement of Objections.

All the Respondents take up the position that inter alia the Petitioner is guilty of laches, not cited the necessary parties before this Court, and since the Petitioner is seeking a discretionary remedy, the Petitioner has not come with clean hands before Court, nor invoked available alternative remedies; additionally, since there are disputed facts asserted and alleged by the respective parties, the Petitioner cannot have and maintain this Application.

In addition to that, the 1st Respondent has taken up the position that the Petitioner had admitted as guilty by the letter marked as **1R1** and sought permission to settle the due amount in instalments; therefore, sought the dismissal of this Application.

The 4th Respondent has annexed the document **4R1**, by which the Petitioner's sabbatical leave had been cancelled and directed him to report to work due to the fact that there was an embezzlement of money from the funds of the Development Society. In addition to that, the proceedings and charge sheet are annexed to the Statement of Objections marked as **4R2** and **4R3**, respectively. The document marked as **4R4** annexed to the Objections is the interim report on the preliminary inquiry.

On the other hand, the 5th to 12th Respondents have also filed certain documents along with their Statement of Objections, which are marked as **12R1** to **12R25**. I will refer to them in the course of my judgement, when necessary, as they mostly contain documents on certain

correspondence between the parties, the relevant circulars, and certain proceedings of the inquiry.

In view of the matters pleaded in the Petition, objections pleaded in the respective Statement of Objections, Counter Affidavits, as well as the arguments advanced orally and in writing, it is my view that the following questions arise for my consideration;

- (i) Whether the disciplinary action initiated by interdicting the Petitioner by **P11** is *ultra vires* and unreasonable;
- (ii) Whether the delay of the preliminary investigations vitiates the preliminary investigations and charge sheet based thereupon;
- (iii) Whether the disciplinary inquiry conducted against the Petitioner after charge-sheeting him was conducted properly, or whether there was a violation of the rules of natural justice in conducting the same;
- (iv) If the above is answered in the affirmative, whether the final conclusion arrived to is vitiated;
- (v) Whether finding the Petitioner guilty in any case is justified.

Now I will consider each issue segment-by-segment.

Letter of interdiction

On a perusal of the document **P11**, it shows that the disciplinary authority has not taken the decision contained therein; it was by the 1st Respondent, the Zonal Director, who is not the disciplinary authority. Therefore, **P11** itself had to be ratified, which the Southern Provincial Public Service Commission had done by **P12**.

In addition to that, the Petitioner has been placed after interdiction without any salary, which also in itself is unreasonable.

Despite the ratification of **P11** by **P12**, the Public Service Commission of the Southern Province did not make any direction as to the Petitioner's salary which is in violation of Clause 13:12 of the Establishment Code.

For further clarity, the relevant provision of the Establishment Code reads thus;

*13:12. In the case of instances not falling under subsection 31:11 above the **disciplinary authority** may decide either not to pay the emoluments or to pay ½ of the emoluments in consideration of the seriousness of the charge, period prior record of service of the officer, his financial needs etc.*

However, it was argued on behalf of the Respondents that in terms of Section 31:12 of the Establishment Code, the disciplinary authority may decide the sort of emoluments should be paid; nevertheless, the non-payment of salary to the Petitioner in the said letter of interdiction marked as **P11** was authored not by the disciplinary authority, but by a subordinate officer. Thus, **P11** is *ultra vires*. In addition to that, even by **P12**, the disciplinary authority has not taken a decision in terms of Clause 13:12 of the Establishment Code to pay any emoluments; therefore, **P12** is also *ultra vires* and irrational.

Accordingly, it is my view that a writ lies against **P11** and **P12**, as sought by the Petitioner, because when considering both of the said documents together, they are *ultra vires* and unreasonable.

It is further noted that when **P11** and **P12** are considered together, **P11** had been ratified by **P12** in terms of Clause 31:1 of the Establishment Code which reads thus;

31:1. Where it is disclosed, prima facie, that a public officer has committed either one or some or all of the following acts of misconduct, the relevant disciplinary authority, or the relevant disciplinary authority, or the relevant secretary to the ministry or Head of Department not holding disciplinary authority, may forthwith interdict the officer

concerned subject to the covering approval of the Disciplinary Authority. However as soon as the letter of interdiction is issued by the disciplinary authority should be informed sending also a copy of such letter to the purpose of obtaining covering approval. [Emphasis is mine]

However, it must be noted that the 1st Respondent, being the Department Head or acting in the capacity of the Department Head, could not have interdicted the Petitioner by **P11** because there could not have been any *prima facie* offence supposed to have been committed by the Petitioner without even recording a statement from the Petitioner or any other witness.

Thus, without conducting any preliminary investigations, the decision taken by the 1st Respondent to interdict the Petitioner by **P11**, and later to be ratified by **P12**, is irrational and *ultra vires*.

Delay of the Preliminary Inquiry

The next question to be decided is whether there was an inordinate delay on the part of the investigators to complete the preliminary investigation to ascertain whether there is a maintainable charge of allegation against the Petitioner.

After the interdiction by letter marked as **P11**, dated 11.10.2018 and ratified by **P12**, the Petitioner's first statement was recorded on 10.09.2020, as reflected in **P13(a)**, which is after one year eleven months and several days later. Thereafter, the Preliminary Investigation Report came on 14.10.2021, which is three years and five months after the interdiction. The date of the first charge sheet is 31.03.2022, which is after three years and five months, and the amended charge sheet is dated 02.11.2022, which is four years after the interdiction. The inquiry commenced on 22.09.2023, which is exactly four years and eleven months from the date of the interdiction.

Therefore, the Petitioner challenges the lackadaisical way in which the investigation process was conducted by the investigating officers to frame a charge sheet and the service of the amended charge sheet.

It must be noted that the Petitioner was interdicted with effect from 11.10.2018 by **P11**, and the Respondents, as argued by the Petitioner, have not adhered to the relevant procedure or the provisions of the Establishment Code which was also cited to us in the course of the arguments as well as in the Written Submissions.

Clause 13:2 of the Establishment Code as it stood at the time of the interdiction of the Petitioner by **P11**, ratified by **P12**, reads thus;

*13:2. An Authority ordering a preliminary investigation into an act of misconduct should, at the same time that such order is issued, **specify the time limit within** which the officer or committee of officers of the preliminary investigation to complete the preliminary investigation **taking into consideration the nature of each act of misconduct, as the case may be.** However, where the officer conducting the preliminary investigation adduces reasons that there are valid obstacles to completing the investigation within the specified time limit, the relevant authority may grant an appropriate extension of time. Nevertheless, all relevant parties should ensure that such preliminary investigations are carried out and are completed with the least possible delay. [Emphasis is mine]*

Although it is later amended by a Public Administration Circular No. 30/2019, marked as **P15**, I only rely on the original Clause 13:2 as cited above, as it stood as the Rule at the time of the Petitioner's interdiction.

According to it, a time period should be specified when ordering a preliminary inquiry to conclude the investigation or preliminary inquiry; and if there is any time extension to be made, it must be done only after application to the Public Service Commission.

However, there is no direction of any timeframe, nor is there any evidence to show that such application has been made to extend the time period or that such timeframe has been adhered to by the Respondents.

The investigators have failed to adhere to the strict principles of conducting or carrying out the investigations within a reasonable time frame. In fact, the Provincial Public Service Commission is also responsible for not giving proper guidance to investigators to complete it within a reasonable period.

Therefore, there is an inordinate delay, and such inordinate delay has caused tremendous hardships to the Petitioner, who is a married man having three school-going children under his care, and without his salary for five years; thus, the hardships so caused are grave. As such, the Petitioner was subject to undue punishment.

In this regard, I wish to cite a proposition of law in the judgement of His Lordship Justice Mark Fernando in the case of *Jayasinghe v. Attorney General*,¹ where in a very much similar circumstances, His Lordship has held with authority as thus;

I therefore hold that there has been a denial of one important protection which the law provided for the Petitioner, upon interdiction without pay, in respect of his livelihood: that disciplinary proceedings, which could have resulted in depriving him of his livelihood, should have been completed without inordinate delay. I make no attempt to demarcate the dividing line, between permissible and unacceptable delay: howsoever

¹ [1994] 2 Sri L.R. 74.

that boundary is demarcated, in this case it is clear - as night from day - that the delay of 16 years which had occurred when the Petitioner came into Court was manifestly excessive. As to the effect of that delay, it will be seen that the Petitioner when interdicted was yet in his prime, and will have passed the normal age of retirement by the time the validity of his dismissal is determined in a court or tribunal of first instance. Delay has robbed him, and his family, of half his working life (at pages 87 – 88).

This long-drawn preliminary inquiry has taken place while the Petitioner was under interdiction, despite his repeated requests to be reinstated, as borne out by the document marked as **P35(a)**, **P35(b)** and **P37**.

Therefore, I wish to also follow the following dictum of His Lordship Justice Prasanna Jayawardana in the case of *T.G.J.L. Amarasinghe v. Dr. N.C.D. Ariyaratna and Others*,² which reads thus;

When seeking to determine the point at which the Disciplinary Authority and the respondents lost the right to claim the benefit of the aforesaid first exception to the second limb of section 22:1:1 of the Code, it is my view that by 05th May 2015 at the very latest - ie: when the Disciplinary Authority ignored the petitioner's request that he be reinstated in service in view of the very long delay in even commencing the disciplinary inquiry and the very substantial prejudice caused to the petitioner by his being kept on interdiction without pay for many years - the Disciplinary Authority and the respondents had lost the entitlement to rely on the first exception to the second limb of section 22:1:1 and keep the petitioner under interdiction and without pay. The unreasonable delay on the part of the Disciplinary Authority and the respondents to commence the disciplinary inquiry was painfully clear by then and was inexcusable,

² SC/FR/15/2017 (SC Minutes 02.09.2019).

and stripped them of any right to claim that the first exception to the second limb of section 22:1:1 entitled the Disciplinary Authority to continue to keep the petitioner under interdiction and without pay. The fact that the Charges against the petitioner were of misconduct involving dishonesty falling within the ambit of section 31:11 of the Code does, where necessary and particularly where the collation and production of comprehensive evidence at the disciplinary inquiry is time consuming, give a Disciplinary Authority a reasonable period time beyond the usual twelve months to conclude disciplinary proceedings. However, in the present case, the delay in even commencing the disciplinary inquiry by 05th May 2015 was manifestly unreasonable and unjustified (at pages 25 – 26).

Therefore, I hold that the inordinate delay in conducting the investigations and having the preliminary inquiry to ascertain whether the Petitioner is charge-sheeted or not, have caused tremendous hardship to the Petitioner because after the interdiction, without reinstating him or payment of a proper salary, he has suffered a lot.

However, after the inquiry, there is an amended charge sheet served on him; therefore, I am not going to set aside or quash the said charge sheet, solely on the grounds of delay. Nevertheless, I wish to indicate the serious concern of the delay caused by the lackadaisical manner in conducting the preliminary inquiry.

Such delay shocks the conscience of this Court on what sort of relief should be granted to the Petitioner. I will discuss this matter towards the end of this judgement.

Unfairness of the disciplinary inquiry

The Petitioner's next allegation is based on bias of the Inquirer, the 14th Respondent, based on the procedure adopted by the 14th Respondent.

On 24.10.2023, when the evidence of the witness, Ms. Kalupahana, was recorded and after the contradiction was marked in the course of the cross-examination, her evidence in re-examination was recorded in a bias manner, where she was permitted to give evidence looking at the documents and her notes which had not been referred to. Therefore, an objection was raised by the 15th Respondent on the manner in which it was recorded.

Thereafter, the Petitioner walked out with the 15th Respondent. Only thereafter did the Petitioner and the 15th Respondent make a formal complaint to the Southern Provincial Public Service Commission by letters marked as **P31(a)** and **P31(b)**. Having accepted the said complaint, the Southern Provincial Public Service Commission has commenced an inquiry into the complaint, while allowing the 14th Respondent to proceed with the inquiry against the Petitioner. Therefore, this itself shows that the entire inquiry procedure is tainted with bias.

Since thereafter, the Petitioner and the 15th Respondent did not participate in the inquiry, the 14th Respondent proceeded with inquiry *ex parte*.

Accordingly, the Petitioner and the 15th Respondent had not participated in the inquiry, namely, on the following dates;

(a) 23.11.2023

(b) 05.12.2023

(c) 19.12.2023

(d) 09.01.2024

Thus, the Petitioner was deprived of observing whether the evidence against him was recorded properly, and whether there is any objection to be raised on the evidence recorded on those dates of the inquiry; in addition to that, the witnesses were never subjected to cross-examinations during the said dates.

Therefore, this shows not only bias on the part of the 14th Respondent, but also a serious violation of the rules of natural justice for having conducted the proceedings from the point the Petitioner and 15th Respondent walked out of the inquiry proceedings up until the final determination of the 14th Respondent against the Petitioner.

In addition to that, I wish to rely on the following passages found in the classic textbook, "Administrative Law" by Wade and Forsyth,³ with regard to the procedure to be followed by such panel of inquiry, in support of my conclusion on the manner in which the Inquirer (the 14th Respondent) had conducted the disciplinary inquiry against the Petitioner, in the absence of proper cross-examination and in the absence of proper representation of the Petitioner where oral hearings took place;

Where an oral hearing is given, it has been laid down that a tribunal must (a) consider all relevant evidence which a party wishes to submit; (b) inform every party of all the evidence to be taken into account, whether derived from another party or independently; (c) allow witnesses to be questioned; (d) allow comment on the evidence and argument on the whole case. Failure to allow the last two rights, which include the right of cross-examination, has led to the quashing of punishments awarded by prison visitors in a series of cases. In one, the visitors refused to allow prisoners to call witnesses because of the administrative inconvenience of bringing them from distant prisons to which they had been dispersed after a riot, and for other inadequate reasons. In another, a prisoner was not allowed to question his own witness or to comment on the evidence. In a third, there was a witness unknown to the prisoner but known to the investigating officer, who failed to inform the visitors. This last case shows that natural justice may be violated by the conduct of those who bring forward the accusation as

³ Wade, W., & Forsyth, C. (8th Edition, Oxford University Press 2000). *Administrative Law*, Part VI Chapter 15.

well as by that of the tribunal - as also does a later case, where a prosecution was instigated by a detective who concealed his own criminal record. But a mistake by the applicant's own advisers, even though it deprives him of the opportunity to be heard in an appeal against deportation, will not entitle him to relief, since he has not been the victim of unfair procedure. Where there is a charge of serious misconduct it is especially important, as the Court of Appeal has emphasised, that procedural fairness should be carefully observed. In various other contexts, however, it is scarcely less important.

Failure to allow cross-examination by an objector at a statutory inquiry has led to the quashing of the Secretary of State's decision, ... (at pages 512 – 513).

Thus, the entire proceedings is tainted and liable to be quashed; in addition to that, the conclusion arrived at, by the 14th Respondent, based on the evidence so recorded after the objection was raised, is also tainted with bias and is liable to be quashed.

However, the Respondents are at liberty to hold a fresh inquiry with minimum delay. Nevertheless, due to the delays on the part of the Respondents, particularly the Public Service Commission of the Southern Province and those who conducted the preliminary investigations and preliminary inquiry before the charge sheet was prepared, I further direct the Respondents that the Petitioner can be charged on the same amended charge sheet, but if there is any disciplinary inquiry, it must be conducted without any undue delay.

Accordingly, it is my view that the Petitioner should be reinstated as the delay was not caused by him since the delays of the preliminary investigation, followed by the disciplinary inquiry, service of the charge sheet and amended charge sheet, amount to the delay of more than four years (closer to five years) from the date of interdiction to come to the final conclusion. Therefore, the delay was caused solely due to the lackadaisical manner of conduct of the

proceedings by the Respondents, and not due to any delaying tactics of the Petitioner. Thus, it is my view that the Petitioner should be immediately reinstated, pending the final inquiry.

In that regard, I wish to cite the following proposition of law by His Lordship Justice Prasanna Jayawardana in the judgement of *T.G.J.L. Amarasinghe v. Dr. N.C.D. Ariyaratna and Others*, which reads thus;

In these circumstances, I hold that, in terms of the provisions of the Establishments Code, the Disciplinary Authority was bound and obliged to reinstate the petitioner and pay his monthly salary from 05th May 2015 onwards until the conclusion of the disciplinary inquiry and the making of the disciplinary order. If the Disciplinary Authority was of the view that reinstating the petitioner to service and permitting him to exercise the functions of his office was not in the interests of the disciplinary inquiry, the Disciplinary Authority was entitled to act on the lines of section 31:16 of the Code which provides for placing the petitioner on compulsory leave or attaching the petitioner to another suitable post pending the conclusion of the disciplinary inquiry (at pages 26).

'1R1' and the guilt of the Petitioner

Furthermore, it is argued for and on behalf of the Respondents that though there may be certain flaws in the procedure, even due to delay and *ex parte* proceedings, no writ should lie in view of the fact that by **1R1**, the Petitioner has admitted that he had misappropriated a certain sum of money belonging to the School Development Society.

However, countering that argument, it was argued on behalf of the Petitioner that even the worst criminal should be accorded with the proper procedure and due process of law, unless the rules of natural justice is also observed in conducting investigations, inquiry, and finally in

arriving at a conclusion, according to the law; otherwise, the justice system will end up in a chaotic situation if this is not done.

In fact, it is my view that if the argument of the Respondents is accepted without any reservations, since the so-called admission by **1R1** made by the Petitioner amounts to an admission which involves moral turpitude; in addition to that, **1R1** is addressed to a person in authority. Therefore, if the guilt of a person is sealed based on such an admission, which amounts to confession in terms of Section 17(2) of the Evidence Ordinance, and if a confession is made to a person in authority, it is not acceptable in Criminal Law.

Further, I wish to state that based on **1R1**, if the writ is denied, it amounts to a further denial of his justice, which may fall into the category of another worse scenario conduct to achieve so-called justice without following the proper Procedural Law, as that of *Sir Walter Raleigh's* trial.⁴

⁴ Rt Hon Lord Denning, *Landmarks in the Law* (First Edition 1984, Aditya Books Private Limited 1993), 4 –27.

Conclusion

In light of the above-mentioned reasons, I issue *Writs of Certiorari* to quash the letter of interdiction **P11**, the ratification to **P11** done by **P12**, the proceedings of the inquiry, the final decision of the disciplinary inquiry **P34(ee)**, and the final disciplinary order contained in **P34(gg)**. Accordingly, I grant relief as prayed for in prayers *(b)*, *(c)*, *(h)*, *(i)*, *(l)*, *(m)*, and *(n)* of the Amended Petition.

Furthermore, I issue a *Writ of Mandamus* to compel the Respondents to take the necessary actions to reinstate the Petitioner in service, grant the Petitioner his monthly salary, and conduct the formal disciplinary inquiry expeditiously on the amended charge sheet, in terms of the above-mentioned directions. Accordingly, I further grant relief as prayed for in prayers *(p)*, *(q)*, and *(s)* too of the Petition.

JUDGE OF THE COURT OF APPEAL

M.C.B.S. Morais, J.

I agree.

JUDGE OF THE COURT OF APPEAL