

**TIN 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.*

Dodampahalage Primal Gerard
Fernando,
No 224, 1st Lane, Kalapaluvawa,
Rajagiriya.

CA (Writ) App. No. 675/2025

PETITIONER

Vs.

1. The Employee's Trust Fund Board,
19th and 23rd Floors,
Mehewara Piyasa Building,
Kirula Road, Colombo 05.
2. Somasiri Ekanayake,
Chairman / Chief Executive Officer /
Disciplinary Authority,
The Employee's Trust Fund Board,
19th and 23rd Floors,
Mehewara Piyasa Building,
Kirula Road, Colombo 05.
3. Sampath Gunawardena,
Deputy General Manager,

Administration and Human Resources,
The Employee's Trust Fund Board,
19th and 23rd Floors,
Mehewara Piyasa Building,
Kirula Road, Colombo 05.

4. Wanniarachchi Kankanamage Suraj
Dilantha,
No. 252/1, Sooriya Uyana,
Horana Road, Kiriwaththuduwa.
5. Maha Marakkalage Ravindra Kumara,
No. 28/A, Rohana Mawatha,
Sri Subothipura, Battaramulla.
6. L. A. Nuwan Chamara,
No. 102/02, Mithu Mihiri,
Meda Mulana, Weeraketiya.
7. N. Ranga Jeeva Vidanapathirana,
No. 11/14, Soma Thalagala Mawatha,
Pangiriwaththa, Delkanda.
8. Jayawardna Pathirana Mahinda,
No. 582/7, Nadungamuwa, Gampaha.
9. M. G. Rukman Saman Kumara,
No. 60/08, Kalinga Mawatha,
Polhengoda.
10. Liyana Arachi Pathirage Don Harrison
Manapriya,
No. 38/3, Devala Road, Nadurupitiya,
Kandana.

RESPONDENTS

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

Counsel:

Rochelle Ariyawansa with Imesha Fernando instructed by Amal Rajapaksha for the Petitioner.

Dr Peshan Gunaratne, SC, for the 1st to 3rd for the Respondents.

Thenuka Nandasiri with M. Pandithage for the 7th to 10th Respondents.

Argued on: 08.12.2025 and 13.02.2026

Delivered on: 02.06.2026

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

Judgement

Introduction

Since 2020, the Petitioner functioned as the General Manager of the 1st Respondent. The 2nd Respondent thereof is the Chairman, and the 3rd Respondent is the Deputy General Manager, the 4th to 10th Respondents are employees thereof who are said to be office bearers of a certain trade union.

On or around 01.02.2023 and 06.02.2023, the 4th to 10th Respondents, followed by several other employees, acted as a mob violently and illegally within the premises of the 1st Respondent, where they broke a door pane and stormed into the office of the Petitioner General Manager of the 1st Respondent and demanded his resignation. Thereupon a commotion erupted, resulting in lodging a complaint against the perpetrators in the Police Station of Narahenpita. Consequently, the police having investigated into the matter, have reported the facts to the Colombo Magistrate's Court, where the 4th to 10th Respondents are cited as accused; there is a case pending against them.

Thereafter, the Petitioner has made a request to the 1st to 3rd Respondents to inquire into the incident and take disciplinary actions against the 4th to 10th Respondents. Pending the inquiry, the Petitioner also moved them to invoke the clauses 20.7 and 20.8 of the Administrative and Disciplinary Procedure of the Employees Trust Fund Board, which so far the 1st to 3rd Respondents have failed to do; therefore, the Petitioner has sought the intervention of this Court, invoking the writ jurisdiction under Article 140 of the Constitution, moving for *Writ of Mandamus* in terms of prayers (b) and (c), which reads thus;

“(b) Issue a mandate in the nature of a Writ of Mandamus directing the 1st, 2nd and 3rd Respondents above-named to interdict/suspend the 4th to 10th Respondents from their services in terms of Chapter III of the Administrative and Disciplinary Procedures Code of Employees Trust Fund Board at page 82 and the Section 27.11 of Chapter XLVIII of Establishment Code with immediate effect;

(c) Issue a mandate in the nature of a Writ of Mandamus to initiate the disciplinary proceedings against the 4th to 10th Respondents in terms of Chapter III of the Administrative and Disciplinary Procedures Code of Employees Trust Fund Board at page 82 and the Section 27.11 of Chapter XLVIII of Establishment Code;”

After issuance of formal notice, the 1st to 3rd Respondents have not filed their Objections, and they agreed to abide by any judgement of this Court. However, the 4th to 10th Respondents have filed their respective Objections, and denied any personal allegations made against them as well as denied any unruly or violent behaviour except for the admission of their presence in the venue and at the time the said commotion took place. However, according to them, though they were produced as suspects before the Magistrate’s Court, now the matter has been referred to the Attorney General for his opinion; therefore, the Petitioner cannot have and maintain this Application and thus, it should be dismissed.

After filing Counter Affidavits by the Petitioner, this came up before me for Arguments on 11.05.2026, and the following arguments were advanced by the counsel; hence, this judgement.

Arguments

Ms. Rochelle Ariyawansa Counsel for the Petitioner contends that the 1st to 3rd Respondents’ failure to take actions in terms of clauses 20.7 and 20.8 to interdict the 4th to 10th Respondents for

their unruly and violent behaviour within the premises belonging to the 1st Respondent where the Petitioner was once employed, despite the provisions available in the document marked as **P20**, the Petitioner is entitled to obtain relief as prayed for in prayers (b) and (c) of the Petition.

On the other hand, Mr. Thenuka Nandasiri argued that the Petitioner cannot invoke the jurisdiction of this Court since the matter is now referred to the Attorney General.

In addition, he contended that no interdiction order can be made, as even in the event of initiating interdiction proceedings, the use of the word “may” indicates that the provision is merely directory. Since the term “shall” is not used, there is no mandatory obligation to take a decision in terms of Clauses 20.7 and 20.8.

Further he argued that even if they have to take it, they have to take up the matter within two months; now the two months period has lapsed.

The Petitioner’s position

According to the Petition, the Petitioner being a qualified person, was once employed as a general manager of the 1st Respondent, and while he was functioning as a general manager, he was issued with a charge sheet on a fabricated case and later served with an amended charge sheet; however, he asserts that he was exonerated from all charges in and around the year of 2023 after inquiry as reflected in **P12**.

The Petitioner further asserts that in the meantime, on 1st February 2023, a mob of about hundred people, led by the 4th to 10th Respondents, having come to the 23rd Floor where the office of the Chairman of the 1st Respondent is situated, broke open a glass door and had barged into the said chambers and demanded the resignation of the Chairman and certain other officials. Thereafter, on the 6th of the same month, they had barged into the Petitioner’s office cubicle and demanded

his resignation and kept him under unlawful restraint and wrongful confinement as well. However, with the intervention of the Narahenpita Police, the Petitioner was able to manage escape and later even received death threats from the 4th to 10th Respondents. This had recurred on several occasions, and on each and every occasion, the Petitioner has made complaints to the police. To establish those facts, the Petitioner annexed the complaint made by him as **P13**, since there was no progress, he had to make further complaints to the Police Commission as well as complaints to the Human Rights Commission. This is reflected in the documents marked as **P15(2)** to **P17(9)** annexed to the Petition.

In the meantime, the police have belatedly taken steps to institute proceedings against the 4th to 10th Respondents in terms of the Criminal Procedure Code by filing a B-report in the Magistrate's Court. The 4th to 10th Respondents were also produced before the Magistrate and bailed out on the same day. In the meantime, the Petitioner had requested the 1st to 3rd Respondents to take actions against the 4th to 10th Respondents in terms of the Disciplinary Code of the Employees Trust Fund (ETF) which has been followed and adopted in terms of the Establishment Code. However, the 1st to 3rd Respondents, having shown a lukewarm attitude, had never taken any disciplinary actions against the 4th to 10th Respondents.

Accordingly, the Petitioner's complaint is that he seeks *Writs of Mandamus* to compel the 1st to 3rd Respondents to take disciplinary actions against the 4th to 10th Respondents, pending inquiry in terms of the said Disciplinary Code which is pleaded part and parcel of this Application.

The Respondents' Objections

The 4th to 10th Respondents have filed their respective Objections, and according to them, they admitted that there were incidents that took place on the dates as referred to by the Petitioner.

However, they assert that the Petitioner was not present on the 1st of February, 2023, when the said incident took place, as well as on the other dates that such incidents took place; therefore, they denied any immediate bodily harm or threat was caused to the Petitioner.

They further deny any violent conduct on their part, except the mere fact of their presence as office bearers of a certain trade union which they represent along with other members of the said trade union.

They also assert that there were only certain discussions between the officials and the trade union leaders and its members; therefore, they deny any unruly incidents or conduct on the part of the 4th to 10th Respondents.

Further, they assert that the police had not taken any actions against them since there was no evidence to implicate them in any incident that the Petitioner alleges to have taken place. In proof of that, they annexed documents marked as **R1** to **R4** along with their Statement of Objections, including the objections filed by the Narahenpita police to the Human Rights Commission in response to the application made by the Petitioner.

In view of the facts pleaded in the Petition, the Statement of Objections, the arguments advanced at the hearing, and the Written Submissions, the following matters arise for my consideration;

- (i) In view of the allegations made in the Petition, were the 4th to 10th Respondents involved in such incidents?
- (ii) If so, are the 1st to 3rd Respondents under a duty to inquire into the same and take actions in terms of the Disciplinary Code of the 1st Respondent which has been adopted and followed?

(iii) If the answer is in the affirmative to the second question mentioned above, do the writs sought by the Petitioner lie?

Presence of the 4th to 10th Respondents in the alleged incidents

The Petitioner asserts in his Petition that the mob of about hundred people were led by the 4th to 10th Respondents, who had barged into the Petitioner's office cubicle and threatened him with death and demanded his resignation. This has later continued, and in fact, he claims that he was subject to unlawful restraint and wrongful confinement. Thus, violated his rights.

In fact, the 4th to 10th Respondents, in answering the said paragraph in the Petition, replied as follows in their Statement of Objections;

*“9. The Respondents vehemently deny the averments contained in paragraph 18 and 19 of the Petition and state that as employees of the institution, **they entered the official cubicle with the intention of discussing the situation that had arisen in the administration of the institution and there was no any forcible entry, taking over, threat, detention, or intimidation made. The Respondents merely requested the Petitioner in our capacity as employees to extend support for the relevant inquiry. The Respondents further state that the Petitioner has fabricated a false and vexatious case against the Respondents given that entering into the official cubical of any official in the organisation is normal.**” [Emphasis is mine]*

They have not denied their participation and presence in the office cubicle of the Petitioner. Therefore, it is very clear that the 4th to 10th Respondents were present within the office cubicle of the Petitioner, surrounded by the other participants of the mob, and that they had led the said mob

on the day of the incident, only a proper inquiry will reveal whether the 4th to 10th Respondents acted in a manner complained of by the Petitioner or not.

In fact, the police have also investigated into the incident and later filed a B report. Now, the matter is before the Magistrate's Court, pending the advice of the Honourable Attorney General.

As such, it is my view that the 4th to 10th Respondents were involved in the incident complained of by the Petitioner.

Accordingly, the answer to the first question that I have raised above should be answered in the affirmative.

Inaction of the 1st to 3rd Respondents

The second question that I have raised is whether the 1st to 3rd Respondents have not taken any actions and thereby, liberally treated the incident in which they should have taken actions according to the Disciplinary Code that has been adopted and followed by the 1st Respondent.

According to the Petitioner, this is a serious incident, and the 4th to 10th Respondents are now suspects before the Magistrate's Court, but there is no disciplinary action taken against them in respect of the said incident because they are union leaders of the trade union where the employees of the 1st Respondent are its members.

As such, the 1st to 3rd Respondents have taken a lukewarm attitude and probably, their inaction is attributable to the 4th to 10th Respondents being leaders of the said trade union, and therefore, this leads to the indiscipline of the establishment.

The said Disciplinary Code has been adopted and followed by the 1st Respondent in disciplinary matters to take actions when such actions are required, which the 1st to 3rd Respondents have failed in this instance.

In the recent past, as argued by Ms. Ariyawansa, there are allegations against trade unions and its leaders for creating conditions which lead to indiscipline and adversely affecting the management of establishments. Unless and until the 1st to 3rd Respondents take strict actions against the perpetrators, there will not be any discipline within establishments which are owned and managed particularly by the Government and operate with the money of the people of this country.

Accordingly, it is my view that the 1st to 3rd Respondents have failed to take actions against the 4th to 10th Respondents in terms of the Disciplinary Code.

Writ lies

On a perusal of the document marked as **P20(1)**, it is my view that according to the extracts of the Board Minutes of the meeting of the Employers' Trust Fund held on 07.06.1999, the Board had decided to adopt the Administrative and Disciplinary Procedures of the ETF Board prepared by the SLIDA. I will reproduce the same for the purpose of further clarity;

“Board Paper No:431/01 submitted by the General Manager, Addl. General Manager and the Deputy General Manager (A & H R) was tabled. The General Manager said that the Sri Lanka Institute of Development Administration (SLIDA), had been engaged by the ETFB for the preparation of the Manual Administrative and Disciplinary Procedures for the STFB and that he was satisfied with the product. Board approval was on granted to formally adopt the Administrative and Disciplinary Procedures of the ETFB prepared by the SLIDA. The Chairman requested that a copy of the Manual be sent to each Director.”

Accordingly, the same will be applied to the disciplinary matter in this present Application. Therefore, as referred to in the Statement of Objections filed by the Respondents themselves in document marked as **R1**, they have thereby adopted Section 27.10 of the Establishment Code as well; hence, it will be applicable in this matter.

For further clarity, the relevant part of Section 27.10 reads as thus;

“27:10:1 එනෙකුදු චූචත්, අල්ලස් ගැනීමක් හෝ රාජ්‍ය විරෝධී ක්‍රියාවක් හෝ ත්‍රස්තවාදී ක්‍රියාවක් නොවන දුෂණ හෝ සාපරාධී වරදක් සම්බන්ධයෙන් රජයේ නිලධරයෙකුට විරුද්ධව අධිකරණයේ නඩු පවරා ඇති අවස්ථාවකදී එම නිලධරයා සම්බන්ධයෙන් මාස 02 කට නොවැඩි කාලයක් තුළදී විනය බලධරයා/ පරිපාලන බලධරයා විසින් මූලික විමර්ශනයක් පැවැත්විය යුතුය. අදාළ මූලික විමර්ශන වාර්තාව විනය බලධරයා/ පරිපාලන බලධරයා විසින් රාජ්‍ය සේවා කොමිෂන් සභාවට ඉදිරිපත් කළ යුතු අතර, එම වාර්තාවෙන් අනාවරණය වන කරුණු අනුව නිලධරයා නැවත සේවයේ පිහිටුවීම රාජ්‍ය සේවයේ යහපතට හානිකර නොවන්නේ යැයි රාජ්‍ය සේවා කොමිෂන් සභාව තීරණය කරන්නේ නම් එවැනි නිලධරයකු නැවත සේවයේ පිහිටුවිය හැකිය.”

However, certain disciplinary action must be initiated within two months. Thereby, as argued by the Respondents, the two-month period has expired.

Nevertheless, the 1st to 3rd Respondents are under a duty to undertake other disciplinary actions. Accordingly, I will limit the relief sought and issue a *Writ of Mandamus* as sought in prayer (c) of the Petition. Therefore, I am compelled to issue a *Writ of Mandamus*, compelling the 1st to 3rd Respondents to undertake the necessary disciplinary actions against the 4th to 10th Respondents.

In support of this, I rely on the following passage in the classic book, “Administrative Law” of Wade and Forsyth;

“*MANDAMUS*

Nature of this remedy:

The prerogative remedy of mandamus has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another. The commonest employment of mandamus is as a weapon in the hands of the ordinary citizen, when a public authority fails to do its duty by him. ...

Mandamus reached the zenith of its utility in the eighteenth century, when as well as protecting the citizen it played a conspicuous part in the machinery of government. It proved to be one of the few effective instruments of public policy in the era between the abolition of the Star Chamber in 1640 and the creation of the modern system of local government in the nineteenth century. During that interregnum the business of administration was mainly in the hands of local magistrates and other authorities who enjoyed an extraordinary measure of independence.”¹

¹ Wade, W., & Forsyth, C. (8th Edition, Oxford University Press 2000). *Administrative Law*, Part VII Chapter 17, p. 604-605.

Conclusion

For the reasons adumbrated above, *Writ of Mandamus* is issued as prayed for in prayer (c) of the Petition, compelling the 1st to 3rd Respondents to take disciplinary actions against the 4th to 10th Respondents.

No writ lies in terms of relief as sought in prayer (b) of the Petition.

Accordingly, the Application is allowed, without costs.

JUDGE OF THE COURT OF APPEAL