

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

In the matter of an Application under Article
140 of the Constitution for a mandate in the
nature of Writs of *Certiorari*, Prohibition
and *Mandamus*.

Court of Appeal Case No:
CA/WRIT/658/2023

N.P.C. Ekanayake,
No. 245/8,
Hill House Gardens,
Galle Road,
Dehiwala.

PETITIONER

Vs.

1. Ceylon Fertilizer Company Ltd,
Lakpohora Swarnajanthi Mawatha,
Hunupitiya,
Wattala.

- 1A. State Fertilizer Company Ltd
(Colombo Commercial Fertilizers
Ltd having been amalgamated with
Ceylon Fertilizer Company Ltd),
Lakpohora Swarnajayanthi
Mawatha,
Hunupitiya,
Wattala.

2. Dr. Jagath K. Perera,
Chairman/Director,
Ceylon Fertilizer Company Ltd,
Lakpohora Swarnajayanthi
Mawatha,
Hunupitya,
Wattala.

2A. Mr. Thilak Chandrakumara Waligath
Sethuge,
Chairman,
State Fertilizer Company Ltd
(Colombo Commercial Fertilizers
Ltd having been amalgamated with
Ceylon Fertilizer Company Ltd),
Lakpohora Swarnajyanthi
Mawatha,
Hunupitiya,
Wattala.

3. Mr. S.L.J. Rohana,

3A. Mr. P. Ariyasena,

4. Mr. D.P. Tennekone,

4A. Mr. Wasantha Kumara,

4B. Mr. T.M.D.P. Tennakoon,

5. Mr. M.G.N. Priyankara,

5A. Mr. Chanaka Ekanayake,

6. Mr. Chandana Lokuhewage,

3A, 4B, 5A, and 6th Respondents

All being

Directors of State Fertilizer
Company Ltd

(Colombo Commercial Fertilizers
Ltd having been amalgamated with
Ceylon Fertilizer Company Ltd),

Lakpohora Swarnajyanthi

Mawatha,

Hunupitiya,

Wattala.

7. Mr. G.G.K. Jayawardena,

Director of State Fertilizer Company
Ltd,

Lakpohora Swarnajyanthi

Mawatha,

Hunupitiya,

Wattala (ceased to hold office).

8. Mr. W.G. Ranathunge,
Director of State Fertilizer Company
Ltd,
Lakpohora Swarnajayanthi
Mawatha,
Hunupitiya,
Wattala (ceased to hold office).

9. Mr. Gunadasa Samarasinghe,
Secretary,
Ministry of Agriculture,
No.80/5,
“Govijana Mandiraya”,
Rajamalwatta Lane,
Battaramulla.

- 9A. Mr. D.P. Wickremasinghe,
Secretary,
Ministry of Agriculture, Livestock,
Land and Irrigation,
No.80/5,
“Govijana Mandiraya”,
Rajamalwatta Lane,
Battaramulla.

10. Mr. W.P.C. Wickramaratne,
Auditor General,
No. 306/72, Polduwa Road,
Battaramulla.

RESPONDENTS

Before: Mayadunne Corea, J
Mahen Gopallawa, J

Counsel: Sanjeewa Jayawardena, P.C. with Lakmini Warusawithana for the
Petitioner.
S. Dunuwille, S.C. for the Respondents.

Argued on: 10.09.2025, 22.10.2025 and 02.12.2025.

Written Submissions: For the Petitioner on 11.07.2025.
For the 1st to 9th Respondents on 06.02.2026.

Decided on: 27.05.2026.

Mayadunne Corea J

The Petitioner in this application sought, *inter alia*, the following reliefs:

- “b) *Grant and issue a mandate in the nature of Writ of Mandamus, directing the 1st to the 7th Respondents, and/or any one or more of them, and/or their servants and agents, to forthwith implement and give effect to the direction issued by the Additional Secretary (Administration) of the Fertiliser Division of the Ministry of Agriculture, issued for and on behalf of the Secretary, Ministry of Agriculture, being the 8th Respondent, in the letter dated 26/07/2023, produced and marked as P115, and to accordingly, duly and forthwith re-instate the Petitioner in the post of Manager-Finance, of the 1st Respondent institution, together with all emoluments, benefits and privileges, which he was lawfully entitled to prior to the purported wrongful termination and to accordingly, duly re-instate the status quo ante- that prevailed prior thereto*
- c) *Grant and issue a mandate in the nature of Writ of Certiorari quashing the decision of the 2nd Respondent dated 04/08/2023 produced marked P118*
- And/or*
- d) *Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to the 7th Respondents, and/or any one or more of them to forthwith re-instate in the post of Manager-Finance, with all emoluments, benefits and privileges, which he was lawfully entitled to prior to the purported termination*

- e) *Grant and issue a mandate in the nature of a Writ of Mandamus directing the Auditor General to conduct a detailed audit with regard to the financial affairs of the 1st Respondent for in respect of the years 2021, 2022 and 2023*
- f) *And/or grant and issue a mandate in the nature of Writ of Certiorari quashing the decision to terminate the services of the Petitioner as reflected in the letter produced marked P16*
- g) *Call for and grant and issue a mandate in the nature of a Writ of Certiorari quashing all decisions, if any, that have been taken by the 1st to 7th Respondents, refusing to reinstate the Petitioner and/or confirming his termination and/or terminating the services of the Petitioner”*

The facts of the case briefly are as follows. By an appointment letter dated 29.03.2021, the Petitioner was appointed as the Manager (Finance) of the 1st Respondent company. The appointment was subjected to a probationary period. Subsequently, by a letter dated 04.10.2022, the 2nd Respondent terminated the services of the Petitioner (P16). At the time of termination, the Petitioner was still within his probationary period. Being aggrieved by the said decision, the Petitioner submitted an appeal to the Secretary of Ministry of Agriculture. The Additional Secretary (Administration), Fertiliser Division of the Ministry of Agriculture appointed a committee to hear the appeal submitted by the Petitioner.

Following an inquiry, the committee found that the termination of the Petitioner’s services was neither fair nor transparent and directed the 1st Respondent to make a proper and lawful decision in that regard. Further, by letter dated 26.07.2023 (P115), the Additional Secretary (Administration), Fertiliser Division, Ministry of Agriculture informed the 2nd Respondent to reinstate the Petitioner. However, in response to that letter, the 2nd Respondent, by letter dated 04.08.2023 (P118), stated that the Petitioner’s services were unsatisfactory. Subsequent to this letter, the sender of P115 changed her letter and informed the board of the 1st Respondent company to take a decision as it is within their purview. Hence, this Writ application.

The Petitioner’s contention

The Petitioner challenges the acts of the Respondents on the following grounds:

- The Petitioner’s services were terminated without conducting an inquiry or affording the Petitioner an opportunity to show cause.

- The letter of termination does not provide any reasons justifying the termination of the Petitioner's services.
- The termination of the Petitioner's services is tainted by collateral purposes and *mala fide* intent.
- The Respondents have acted contrary to the directions to reinstate the Petitioner.
- The acts of the Respondents are illegal, arbitrary, capricious, *ultra vires*, irrational, unreasonable, unfair and vexatious.

At the hearing, the Petitioner confined his grounds of contention to two main issues, namely, that he had not been afforded a fair hearing and that no reasons had been given to him explaining the termination.

The Respondents' contention

The Respondents raised the following objections:

- The Petitioner's employment was subject to a mandatory probationary period, and if the Petitioner's performance does not meet the required standards, as per the provisions in the letter of appointment, the employer was empowered to terminate his services without prior notice.
- The Petitioner is guilty of laches.
- The Petitioner has failed to seek alternative remedies.
- The Petitioner has failed to disclose all material facts and is guilty of wilfully suppressing and misrepresenting material facts.
- The Petitioner has failed to come to Court with clean hands.
- The Petitioner's application is futile, vague and unfounded.
- The Petitioner has violated the terms of the letter of appointment.

The Respondents also submitted that, in any event, the Respondents had the right to terminate the Petitioner upon a violation of the conditions of the letter of appointment, which the Respondents had exercised.

Both parties agreed that the Court should consider the preliminary objections first. However, the Court invited the parties to make submissions on the preliminary objections and on the main merits of the case.

Let me consider the Petitioner's contention with the objections raised by the Respondents.

Analysis

The following facts were not in dispute:

- The 1st Respondent company is a company incorporated under the Companies Act.
- The 1st Respondent company is governed by an independent board of directors and not by officers of the Ministry of Agriculture.
- The Petitioner was appointed to the 1st Respondent company by letter of appointment marked and tendered as P2 on 29.03.2021.
- The relationship between the parties is based on the letter of appointment marked as P2.
- The Petitioner's appointment was subject to a probationary period of 3 years from the date of appointment.
- The Petitioner had agreed upon the terms of the letter of appointment and accepted the employment with the 1st Respondent.
- The Petitioner's services had been terminated by the letter marked as P16.

It is observed that the Petitioner had been issued with letter of appointment by the 1st Respondent. The Petitioner's job description is marked as P3. It is also observed that the paper notice advertising the post has been placed by the 1st Respondent and not by the Ministry. Further, the Petitioner had been interviewed by the board of directors of the 1st Respondent. As per the document marked as P5, the Petitioner upon accepting his duties has reported to work to the Chairman of the 1st Respondent. The document P6 demonstrates that he had been paid by the 1st Respondent and not by the Ministry.

The Petitioner's appointment

The Petitioner has been appointed to the 1st Respondent company by letter of appointment marked as P2. Clause 2 of the said letter stipulates the probationary period and sets out the provisions relating to absorption into the permanent cadre or termination during the said probationary period. Clause 2 of the letter of appointment reads as follows:

“02. ඔබගේ තනතුර ස්ථිර එකකි. එහෙත් පත්වීම භාරගන්නා දිනයේ සිට වසර තුනක් (03) ගතවන තුරු මෙම පත්වීම පරිවාස පරීක්ෂණ කාලයකට යටත් වේ. පරිවාස/ පරීක්ෂණ කාලය

තුලදී ඔබගේ සේවය හා හැසිරීම සෑම අතින්ම සතුටුදායක බව පෙනී ගියහොත්, අධ්‍යක්ෂ මණ්ඩලය විසින් තීරණය කරන දිනයක සිට ඔබගේ පත්වීම ස්ථිර කරනු ලැබේ. ඔබගේ සේවය හා හැසිරීම අසතුටුදායක බව පෙනී ගිය හොත් මෙහි අංක 20 දරණ වගන්තියේ කිසිවක් නොසලකාම, කලින් දැනුම් දීමක් නොමැති වුවද, ඔබගේ සේවය අවසන් කළ හැකිය.”

The learned State Counsel drew our attention to clauses 11,18, 19 and 20 of the said letter of appointment. For ease of reference, the said clauses are reproduced below;

“11. අධ්‍යක්ෂ මණ්ඩලයේ (ලියවිල්ලකින් ලබාගත්) පූර්ව අවසරයක් නොමැතිව, සමාගමේ සේවය කිරීමේදී හෝ එම සේවයේ ප්‍රතිඵලයක් වශයෙන් හෝ ඔබට දැන ගැනීමට ලැබෙන, සමාගමේ ව්‍යාපාරික හා අනෙකුත් කටයුතු සම්බන්ධ රහස් හෝ වෙනත් තොරතුරු කිසිම අවස්ථාවකදී පිටතට හෙළි නොකළ යුතුය. මෙම වගකීම පැහැර හැරීම සමාගමේ සේවයෙන් ඔබ වහා පහකර දැමීමට තරම් බරපතල වරදකි.

18. සැමවිටම හා සෑම ස්ථානයන්හිදීම සංයමයෙන් හා සන්සුන්ව හැසිරිය යුතු අතර, ඔබගේ උසස් නිලධාරීන්ටද, සමාගම ඇතුළු එහි සියලු උපකාරක හා අනුබද්ධ ආයතන සමඟ සම්බන්ධකම් ඇති සියලු අයටද නිසි ගෞරවය හා විනිත භාවය දැක්විය යුතුය. අධ්‍යක්ෂ මණ්ඩලය විසින් හෝ ඒ වෙනුවෙන් කටයුතු කරන සමාගමේ යම් ජ්‍යෙෂ්ඨ නිලධාරියෙකු විසින් නිකුත් කෙරෙන නියමයන් හෝ උපදේශයන් ඔබ විසින් පිළිපැදිය යුතුය.

19. දෙපක්ෂයෙන් පක්ෂයකට වුවද, එක් ලිත් මාසයකට කලින් දැනුම් දීමකින් හෝ කලින් දැනුම් දීමට හිලවී වශයෙන් මාසයක වැටුප් ප්‍රමාණයක් ගෙවීමෙන් හෝ ඔබගේ සේවය අවසන් කළ හැකිය.

20. යටෝක්ත ජ්‍යෙෂ්ඨයන්හි සඳහන් දෑ කුමක් වුවද, අකීකරු බව, අවිනය, බීමත්කම, අශීෂ්ඨ බව, අණ නොපිළිපැදීම, වංක බව, වංචනික බව, රාජකාරිය පැහැර හැරීම, සමාගම මගින් පනවා ඇති නීති රීති කිසිවක් කඩ කිරීම යන බරපතල විෂමාචාර හා හෝ වරදවල් පිළිබඳව හෝ සමාගම අපකීර්තියට හෙලීමට හේතු විය හැකි කවර අන්දමේ ක්‍රියාවක් පිළිබඳව හෝ වරදකරු බව තහවුරු වුවහොත් කලින් දැනුම් දීමකින් තොරව ඔබගේ සේවය අවසන් කළ හැකිවේ.”

The Court observes that the Petitioner, agreeing to abide by the said clauses, has placed his signature on page 5 of the document marked P2. Hence, it is clear that the Petitioner’s employment and working conditions are all governed by the said letter of appointment which is also the contract of employment.

The Petitioner’s conduct

It is alleged by the Respondents that, subsequent to the appointment of the Petitioner, the Petitioner had, on various occasions, ignored the directions given by the board of directors and had communicated directly with the Ministry. The Petitioner too does not deny that on many occasions he had directly communicated and had obtained instructions or advice from the Ministry without recourse to the board of directors or

the Chairman of the 1st Respondent company. As submitted by the learned State Counsel, it appears that this conduct is a direct violation of the conditions of the letter of appointment, especially the clauses reproduced above.

The Petitioner's response to this allegation seems to be that he had identified several irregularities in the conduct of the 1st Respondent company and had sought to rectify the same by communicating directly with officials of the Ministry, thereby circumventing the board of directors and the Chairman. It is the contention of the State Counsel that these acts of the Petitioner had occurred during the period of probation and as a result, it appears the relationship between the employer and employee had completely broken down. Consequently, the Petitioner was issued with a show-cause letter, to which he responded, following which a letter of warning was issued, ultimately culminating in the termination of his employment. It is pertinent to note that the Petitioner has failed to adduce any material to establish that he had, in the first instance, brought the purported irregularities alleged by him to the attention of the higher authorities within the 1st Respondent company. Furthermore, he has failed to explain his omission in not reporting such alleged irregularities to the said higher authorities prior to bringing it to the attention of the Line Ministry.

Let me now consider the preliminary objections raised by the Respondents.

Laches

It is common ground that the Petitioner's services had been terminated by the letter of termination marked as P16 dated 04.10.2022. With this letter of termination, it appears that the contractual relationship between the employer and employee had come to an end as at 04.10.2022. However, the Petitioner has instituted this application to quash the said letter of termination only on 31.10.2023, which is after the expiry of one year.

The Petitioner contended that subsequent to his termination he had appealed to the Ministry and the Ministry had conducted a separate investigation and a recommendation had been made to reinstate the Petitioner. Hence, it is his contention that the delay in invoking the jurisdiction of this Court was due to the said appeal.

However, the Petitioner failed to demonstrate to this Court any provision that enables him to appeal to the Ministry against the termination of his employment with the 1st Respondent company. In the absence of such a provision, the question arises as to under

what authority the Petitioner had acted in directly appealing to the Ministry, when no such right of appeal was available. Further, the Petitioner has failed to explain the basis upon which the Ministry was entitled to intervene in a decision of the board pertaining to a contract of employment entered into between the Petitioner and the 1st Respondent. In these circumstances, it is my view that the Respondents' objection on the ground of laches must succeed and the Petitioner's explanation for preferring an appeal to the Ministry cannot purge the delay. In arriving at this conclusion, our Courts have consistently held that delay in seeking redress by way of judicial review is detrimental to a Petitioner.

In the case of *Sarath Hulangamuwa v. Sriwardena, Principal Vishaka Vidyalaya 1986 (1) SLR 275*, the Court held:

“the Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the application.... The laches of the petitioner must necessarily be a determining factor in deciding the application for writ as the Court will not lend itself to making a stultifying order which cannot be carried out”.

The next objection of the Respondents was that the Petitioner had an alternative statutory remedy which had not been exhausted. Let me now examine the said objection.

The Petitioner's failure to exhaust the statutory remedies available

The relationship between the Petitioner and the 1st Respondent is governed by the letter of appointment/contract of employment (P2). The said letter contains, *inter alia*, the responsibilities of the Petitioner, the working conditions, the salary and even the behaviour expected from the Petitioner. The learned State Counsel submitted that the 1st Respondent being a company limited registered under the Companies Act, which has its own board of directors and Chairman, cannot be considered as a government department. Hence, the argument the employer-employee contracts of the 1st Respondent are subject to the Industrial Disputes Act. The Petitioner had been appointed subsequent to an interview and the letter of appointment is given on the approval of the board of directors signed by the Chairman of the 1st Respondent, Ceylon Fertiliser Company Limited.

The question before this Court is the termination of the Petitioner's services. While the Petitioner submits that he was unjustly terminated, the Respondents contend that, as he

was a probationer and his services were unsatisfactory, his employment was terminated in accordance with the contract of employment (P2).

As submitted, the said issue is governed under the Industrial Disputes Act, No. 43 of 1950 as amended. Section 31B clearly vests in the labour tribunal the power to inquire into termination of services of employees by the employer. Section 31B(1)(a) of the Industrial Disputes Act reads as follows:

“31B. Applications to a labour tribunal.

(1) A workman or a trade union on behalf of a workman who is a member of that union, may make an application in writing to labour tribunal for relief or redress in respect of any of the following matters—

(a) the termination of his services by his employer;”

Hence, the Petitioner is provided with a remedy to redress his termination by a statute itself. However, in the instant case before this Court, it appears that the Petitioner has failed to exercise the statutory remedy available to him. The Petitioner in his Petition has failed to explain why he had failed to utilise the alternative remedy provided by the Industrial Disputes Act within the time period stipulated.

The learned Counsel for the Petitioner contended that even though the labour tribunal is granted jurisdiction, it does not preclude the Writ jurisdiction of this Court. I have considered the judgment of *Sumbukkuttarchchi v. Construction Industry Development Authority and 19 others* CA Writ 40/2022, CA Minutes 29.07.2022 cited by the Petitioner and find that the facts and circumstances of the case differ from those of the present case, since the present case concerns the termination of an employment contract by a **fully State-owned company registered under the Companies Act**. Further, in the instant case before us, the termination is based on the violation of the terms of contract which had resulted in the board of directors forming the opinion, *inter alia*, that his services were unsatisfactory.

The 1st Respondent company

The 1st Respondent, the Ceylon Fertiliser Company Limited, was formerly known as the Ceylon Fertiliser Corporation. The Corporation was transformed into a public limited company under the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act, No. 23 of 1987. Upon perusal of the provisions of the said Act, it is evident that the State intended to create an independent corporate entity. Section 3(2)(d) and (e) of Act No. 23 of 1987 appears as follows:

“3.

(2) ...

- (d) *all contracts and agreements entered into for the purposes of the corporation or the business undertaking, as the case may be, and subsisting on the day immediately preceding the relevant date, and specified in the Order made under section 2(2) shall be deemed to be contracts and agreements entered into by that company;*
- (e) *all actions and proceedings instituted by or against-*
 - (a) *the corporation;*
 - (b) *the Attorney General representing the undertaking,**and pending on the day immediately preceding the relevant date, and specified in the Order made under section 2 (2) shall be deemed to be actions and proceedings instituted by or against the company”*

Subsequently, the Ceylon Fertiliser Company was registered under the Companies Act, No. 07 of 2007 and comes under the purview of the Ministry of Agriculture. According to section 2 of the Companies Act, a company incorporated under the Act is vested with the legal status of a body corporate. Accordingly, although the 1st Respondent is a fully State-owned company, it possesses the capacity to enter into contracts independently of the State.

The Petitioner is seeking the relief of a Writ of Certiorari to quash the decision contained in P16. P16 is the decision of the Chairman of the 1st Respondent company, registered under the Companies Act, terminating the services of the Petitioner, who was serving under probation. In doing so, the Chairman has resorted to the clause 2 of the contract of employment/letter of appointment. Even though the Ceylon Fertiliser Company Limited is a fully state-owned company, it is an independent company which is empowered to recruit and terminate its staff and is governed by a board of directors presided by the Chairman. The letter of appointment marked as P2 has been issued subsequent to an interview by the Chairman of the 1st Respondent company and the said letter specifically states that the appointment is based on a decision of the board of directors of the company. Hence, as I stated above, the relationship between the employer and employee is contractual in nature. Further, the letter of appointment marked P2 or the letter of termination marked P16 do not reflect an iota of evidence to demonstrate any statutory flavour in either of the documents. Hence, in my view, I cannot find any statutory flavour in the document sought to be quashed (P16).

In fact, the appointment and termination pursuant to the clauses of the letter of appointment can be considered only as a contract between the employer and employee. In my view, the mere fact that the employer is State-owned does not, in itself, establish that the decision to terminate the Petitioner's services carries a statutory flavour independent of the contract of employment. It appears in taking the decision to terminate the Petitioner, the 1st Respondent is not performing a duty of public nature. It is done pursuant to the contract of employment. Hence, it is a contractual duty which falls outside the ambit of Writ jurisdiction.

In coming to this conclusion, I have considered the decision of ***Biyanwillage Don Rohan Lalith Perera v. National Gem and Jewellery Authority and another CA Writ 320/2016, CA Minutes 28.09.2016***, where the identical question arose pertaining to the termination of a probationer and whether a service contract carries a statutory flavour, the Court held as follows:

“We observe that the termination of the petitioner was purely contractual since he had a service contract with the employer 1st respondent authority and during his probation period the employer has terminated his service. Therefore it is our considered view that this decision is taken purely on the service contract between the employer and employee. The petitioner's position before this Court is that the respondent being a State agency there is a statutory flavor in to the decision taken by the 1st respondent authority. However, this matter had been looked into in several decisions by this Court and the learned Deputy Solicitor General submits before us a recent unreported decision of 183/2010 where H/L Justice Chitrasiri has clearly discussed this issue and decided that the contractual obligation between State agency and an employee does not come under the writ jurisdiction. In this regard we are also mindful of the famous case of Gawarammana vs. Tea Board where H/L Justice Sripavan had held that the powers derived from the contract are matters of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power.”

Further, as stated above, the appointment of the Petitioner was made pursuant to a decision of the board of directors, following an interview conducted by the Chairman, without any involvement of the Ministry of Agriculture. In my view, this does not demonstrate “deep and pervasive control” exercised by the Ministry or the State, which is an essential characteristic in identifying a corporate body as an agency or instrumentality of the State and in attributing the actions of the company to the State.

On this point the Supreme Court, in the case of *Trade Exchange (Ceylon) Ltd v. Asian Hotels Corporation Ltd 1981 (1) SLR 67*, held as follows:

“The respondent was a public commercial company incorporated under the Companies Ordinance and the fact that most of the capital was contributed by the Government or that shares were controlled by the Government did not make it an agent of the Government. The incorporated Company was recognized by the law as a juristic person separate and distinct from its members and was an independent body-corporate carrying on commercial activities. Its decisions, made in the course of its business, cannot be reviewed by a superior court by way of writ and the petitioner's application must therefore fail.”

Secondly, in my view, the conduct of the 1st Respondent company does not disclose any arbitrariness or unreasonableness of such nature as would warrant judicial review. An employer has the right to terminate the services of a probationer on the grounds of unsatisfactory conduct or performance, without the necessity of providing prior notice or assigning reasons.

Further, in the case of *University of Sri Lanka (Now the University of Kelaniya) v. Ginige 1993 (1) SLR 362*, the Court held:

“During the period of probation, the employer has the right to terminate the services of the employee if he is not satisfied with the employee's work and conduct. Where the employee is guilty of misrepresentation of facts, use of unbecoming language and misconduct, the termination is justified and bona fide.”

This issue will be revisited and considered more fully later in this judgement.

Accordingly, in my view, the Petitioner's failure to explain why he did not avail himself of the remedy provided under the Industrial Disputes Act, coupled with his decision to invoke the discretionary Writ jurisdiction of this Court, militates against him, particularly in light of the objection raised by the learned State Counsel regarding the availability of an alternative remedy. Having said that, I also observe that where an authority exercises statutory powers and purports to terminate the services of an employee *ultra vires*, in circumstances where it lacks the legal authority to do so, such action may properly be amenable to Writ jurisdiction. However, I am unable to extend that principle to a situation where the relationship between the employer and employee is purely contractual, and the termination of employment has been affected in accordance with a clause of the contract governing the parties.

Fair hearing

It is common ground that, on the date of termination, the Petitioner was serving within his probationary period. His letter of appointment is dated 29.03.2021. As per clause 2 of the letter of appointment, he is subject to a probationary period of three years and the board of directors has the right to terminate his services without prior notice. As evidenced by P16, the Petitioner's services have been terminated on 04.10.2022, after approximately one and a half years of service with the 1st Respondent. This establishes the Respondent's position that the Petitioner's services were terminated during the probationary period, in exercise of the employer's power under clause 2 of P2, which permits such termination for the reasons set out in the letter of appointment.

The learned Counsel for the Petitioner contends that, before the issuance of P16, he has not been given a fair hearing. However, this submission is disputed by the learned State Counsel who contends that, there was an inquiry and a fair hearing prior to the decision to terminate the Petitioner's services. In paragraph 21 of the written submissions, learned State Counsel submits that an inquiry had in fact been conducted, although the holding of a disciplinary inquiry prior to the termination of a probationary employee is not mandatory, and further refers to the existence of an inquiry report dated 28.06.2022. This contention was not challenged by the Petitioner's Counsel.

The learned State Counsel also drew the attention of this Court to the document marked as P11, whereby the Petitioner has been issued with a show cause letter pertaining to the conduct of the Petitioner where he has directly contacted the Secretary of the Line Ministry circumventing the board of directors of the 1st Respondent company. The Petitioner's response to the show-cause letter is marked as P12. Thereafter, the Petitioner has been issued with a warning letter marked and tendered as P13, whereby the Petitioner has been advised to work within the limits of his office and informed of the responsibilities vested with him.

As per the submissions of the learned Counsel for the Petitioner, the Petitioner in various occasions pertaining to various administrative affairs of the institution, had directly consulted the Line Ministry without consulting the board of directors and the senior management. The Petitioner, while acknowledging this fact himself, has highlighted several instances where he had acted in such a way in paragraphs 9 and 17 of the Petition. Although the Petitioner contended that he bypassed the senior management on the basis that he was under the impression that the purported grounds on which he consulted the Line Ministry were unlawful or illegal. As observed above in this judgment, and as submitted by the learned State Counsel, the Petitioner's

conclusion regarding the purported illegality of the decisions was a conclusion arrived at by the Petitioner himself. If there was an illegal decision, the Petitioner could have pointed out the said decisions to the higher authorities, board of directors, or even the Chairman, which he had not done. He has also failed to provide an explanation as to why he has not done so.

However, such conduct, as submitted by the learned State Counsel, is clearly in violation of clauses 11, 18 and 20 of the letter of appointment marked P2. It was submitted on behalf of the Respondents that, by these acts, the Petitioner had violated the above-mentioned clauses in his contract of employment. Further, it was submitted that this resulted in a show cause letter being issued and the Petitioner being given an opportunity to express himself. Hence, this Court cannot agree that the Petitioner has not been given a fair hearing.

The Petitioner's appeal to the Ministry

Upon receiving P16, the Petitioner has preferred an appeal to the Secretary to the Ministry (P17). As observed above by this Court, the Petitioner has failed to demonstrate any provision under which he was entitled to prefer an appeal to the Secretary of the Line Ministry pertaining to termination of employment, particularly in view of the fact that he was an employee of a company owned by the State, albeit one incorporated under the Companies Act. This appeal itself demonstrates that, by this stage, there was no longer a working relationship or mutual trust between the Petitioner and the management of the company.

Be that as it may, upon receiving the said appeal which is dated 05.10.2022, the Secretary of the Line Ministry had decided to appoint a committee, which thereafter submitted an inquiry report dated 28.06.2023 marked P24 addressed to the Secretary to the Ministry. Upon receipt of this inquiry report, the Additional Secretary (Administration) of the Fertiliser Division of the Ministry of Agriculture had written to the Chairman of the 1st Respondent company by letter dated 26.07.2023 marked as P115 informing the 1st Respondent to reinstate the Petitioner. This letter has been followed by the Petitioner's letter to the 1st Respondent inquiring the date on which he will be reinstated. This raises the question as to whether the conduct of the officers of the Ministry constitutes undue influence exerted upon a company, being a body corporate, in matters relating to its contracts of employment with its employees. It appears that thereafter, there had been several communications between the 1st Respondent and the Secretary to the Ministry.

On 04.08.2023, by P118, the 2nd Respondent had written to the Additional Secretary of the Ministry and tendered with the said letter, two reports that had been compiled by the 1st Respondent to demonstrate their dissatisfaction with the manner of discharge of the Petitioner's duties. The reports marked as P119 and P120 highlight the allegations against the Petitioner.

Upon receipt of this letter, it appears that the author of P115, the Additional Secretary (Administration) of the Fertiliser Division of the Ministry of Agriculture had understood the legality of a body corporate and had written to the 1st Respondent on 21.08.2023 (P121), acknowledging that the discretion to reinstate the Petitioner is with the board of directors of the 1st Respondent and that the 1st Respondent should act in accordance with the decision of its board of directors. Further, it appears that by this letter, the Additional Secretary (Administration) of the Fertiliser Division of the Ministry of Agriculture has withdrawn her earlier letter marked P115, by which she had initially directed the reinstatement of the Petitioner. Hence, it was contended by the learned State Counsel that the letter P115 has no validity and that letter P121 prevails. It is also observed by this Court that P121 had referred to the previous letter (P115), whereby 1st Respondent was directed to reinstate the Petitioner, and has changed it to state that the decision to reinstate the Petitioner is vested with the board of directors. The said clause in the second letter (P121) of the Additional Secretary reads as follows;

04. කරුණ එසේ වුවද මෙම නිලධාරියා නැවත සේවයේ පිහිටු වීම හෝ එසේ නොකිරීම සම්බන්ධව තීරණය කිරීමේ බලය අධ්‍යක්ෂ මණ්ඩලය සතු වන බව නිරීක්ෂණය වන බැවින්. මේ පිළිබඳව ඔබ ආයතනයේ අධ්‍යක්ෂක මණ්ඩලයේ අභිමතය අනුව කටයුතු කිරීම සුදුසු බවත් මෙයින් කාරුණිකව දන්වා සිටිමි.

Be that as it may, I will now consider the second ground that the Petitioner argues to demonstrate that the decision to terminate him is bad in law on the basis that no reasons were provided.

No reasons given for termination

The Petitioner submitted that in the purported letter of termination marked P16, there were no reasons given for termination. In response, the learned State Counsel submitted that as per clause 4 of P2, the 1st Respondent has the right to terminate the services of the Petitioner. He further submitted that, having regard to the Petitioner's alleged conduct in violating clauses 11, 18 and 20 of his letter of appointment, the 1st Respondent had, in any event, furnished reasons for the termination. It was brought to the attention of this Court that the reasons for termination are given in clause 2 of the letter of termination. Clause 2 of the letter of termination reads as follows;

“02. සීමාසහිත ලංකා පොහොර සමාගමේ ජ්‍යෙෂ්ඨ කළමනාකාර සේවා ගණයේ නිලධාරියෙකු ලෙස ඔබගේ සේවය හා හැසිරීම අපේක්ෂිත මට්ටමින් පවත්වා ගෙන ගත යාමට අපොහොසත් වීමේ හේතුව මත, පරිවාස කාලයකට යටත් කර තිබූ ඔබගේ සේවය, ඉහත කී පත්වීම් ලිපියෙහි අංක 02 වගන්තිය ප්‍රකාරව වි ක්‍රියාත්මක වන පරිදි අවසන් කරන බව මෙයින් දන්වමි”

It was submitted that, under the said clause, the reason for termination is that the Petitioner’s conduct is inconsistent with that expected of a person holding a senior management position. Accordingly, being a probationer, the Petitioner’s services were terminated under clause 2 of the letter of appointment marked P2.

It is observed in this second paragraph that the Respondents have come to the conclusion that the services and the conduct of the Petitioner who holds a senior managerial position is not up to expectation. As submitted, upon a plain reading it is clear that the reason for termination is the unsatisfactory conduct and services of a person holding such a position, which in my view, is a sufficient reason, and especially since the said clause refers to clause 2 of the letter of appointment. In my view, this reasoning cannot be read in isolation as it has to be read with the circumstances that prevailed, especially the conduct of the Petitioner in violating the clauses of his letter of appointment and the resulting show-cause letter.

It was argued by the Petitioner that the Respondents have failed to express or define what the expectation of the company was. In addition to the observations made above, in my view, this reasoning is sufficient for a person to understand the basis on which his services are being terminated since the said letter also refers to clause 2 of the contract of employment. In my view, the word “expectation” does not stand alone and it has to be read in conjunction with the clauses of the letter of appointment as the said termination is a termination pursuant to the said letter of appointment. Hence, the letter P16 contains sufficient reasons for the termination.

The purpose of placing an employee on a period of probation

It is also pertinent to note that, in my view, the purpose of employing a person on probation is to enable the employer to assess whether such employee possesses the requisite capacity, sense of obligation, and responsibility necessary for the proper discharge of the duties of his employment. This has been observed by the Indian Supreme Court in the case of *Ajit Singh v. State of Punjab (1983) 2 S.C.C. 217* as follows:

“To guard against human error of judgment in selecting suitable personnel for service, the new recruit was put on test for a period before he is absorbed in service or gets a right to the post. A period of probation gave a locus poenitentiae to the employer to observe the work, ability, efficiency, sincerity and competence of the servant and if he is found not suitable for the post the master reserved a right to dispense with his services without anything more at the end of the period which is styled as a period of probation. A period of probation may vary from post to post or from master to master, and it is not always obligatory on the master to prescribe a period of probation. It is always open to the employer to employ a person without putting him on probation. The power to put the employee on probation for watching his performance and the period during which the performance is to be observed are the prerogative of the employer.”

Further, our Courts in the case of ***Mosajees Limited v. Rasiah 1986 (1) SLR 365***, held as follows:

“A probationer has no right to be confirmed in his post and the employer is not bound to give any reason as to why he does not confirm the probationer. The employer is the sole judge to decide whether the services of a probationer are satisfactory or not. The employer is not bound to show good cause where he terminates the services of a probationer at the end of the term of probation or even before the expiry of that period. The tribunal cannot sit in judgment over the decision of the employer. It can examine the grounds of termination only for the purpose of finding out whether the employer had acted mala fide in doing so.”

Prayers of the Petitioner

The Petitioner, by prayer (b), is seeking a Writ of Mandamus to direct the 1st to 7th Respondents to act pursuant to P115 and to forthwith reinstate the Petitioner. However, as observed above the letter P115 has been subsequently changed by P121. By letter P121, the Additional Secretary to the 8th Respondent has changed her stance and informed that the decision to reinstate the Petitioner is vested with the board of directors and has distanced herself from taking a decision in respect of the Petitioner’s termination. It appears that P115 is no longer valid upon the issuance of P121. Hence, prayer (b) has to fail.

By prayer (c), the Petitioner is seeking to quash the decision contained in P118. Upon perusing P118, I find that there is no decision contained in the said letter. The said letter only forwards two reports compiled by the 1st Respondent. Hence, prayer (c) has to fail.

The Petitioner, by prayer (f), is seeking a Writ of Certiorari to quash the decision in P16, the letter of termination. However, for the reasons stated in this judgment, this Court cannot agree with the Petitioner's contention of any illegality in the letter P16. Hence, prayer (f) has to fail.

By prayer (d), the Petitioner is seeking a Writ of Mandamus for his reinstatement in the post of Manager (Finance) with back wages. However, in view of this Court holding that prayer (f) has to fail, prayer (d) too has to fail.

Prayer (e) of the Petition must accordingly fail, as the Petitioner, having been terminated from service, lacks *locus standi* to seek the said relief.

Prayer (g) too has to fail as the said prayer is vague and it appears that the Petitioner himself is unaware of the existence of any decisions that he seeks to quash.

It is observed by this Court that as per the prayers of the Petition, the Petitioner is seeking to quash his letter of termination by way of a Writ of Certiorari, and is seeking a Writ of Mandamus to reinstate him with all emoluments, benefits and privileges which he would have been entitled to. As submitted by the learned State Counsel, in summary, the Petitioner is seeking for a Writ to quash his termination and reinstate him on the basis that his termination is illegal. These are the very grounds that a labour tribunal is empowered to determine and grant under the Industrial Disputes Act, and it was her contention that the remedy available under the Industrial Disputes Act is the most efficient, efficacious and least expensive way to obtain the relief, which the Petitioner has decided not to avail himself of, and has failed to express in this application as to why he did not wish to avail himself of the remedy provided by the statute.

Conclusion

I have considered the extensive and lengthy submissions made, and all the material submitted to this Court. Accordingly, for the above-stated reasons in this judgment, I am not inclined to grant the reliefs prayed for by the Petitioner and proceed to dismiss this Writ application. The costs are to be borne by the parties.

Judge of the Court of Appeal

Mahen Gopallawa, J

I agree

Judge of the Court of Appeal