THE

Sri Lanka Law Reports

**Containing cases and other matters decided by the**

**Supreme Court and the Court of Appeal of the**

**Democratic Socialist Republic of Sri Lanka**

**[2011] 2 SRI L.R. - PART 8**

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**Consulting Editors** : HON J. A. N. De SILVA, Chief Justice

 (retired on 16.5.2011)

 HON. Dr. SHIRANI A. BANDARANAYAKE

 Chief Justice (appointed on 17.5.2011)

 HON. SATHYA HETTIGE, President,

 Court of Appeal (until 9.6.2011)

 HON S. SRISKANDARAJAH President, Court of Appeal

 (appointed on 24.6. 2011)

**Editor-in-Chief** : L. K. WIMALACHANDRA

**Additional Editor-in-Chief** : ROHAN SAHABANDU

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constructed in the said land regarding which there was no

objection by the Defendants. There was also evidence that the

2nd Defendant had visited the Plaintiff from time to time to

collect interest in respect of the loan given by him. It is in these

circumstances that the Learned District Judge had come to

the conclusion that there had been no absolute transfer of

the property in question by the Plaintiff.

In the present case there are two Transfer Deeds which

have to be considered as to whether they have been absolute

transfers or conveyances creating constructive trusts. It

would be apparent from the evidence that the frst transac-

tion was not an absolute transfer as seen from the evidence

but the question arises as to what was conveyed by the trans-

feree on the frst transaction to the transferee on the second

transaction since the frst transferee that is Dharmalatha

did not have absolute title to the property. What she could

convey to the 2nd defendant was only the right she had in

respect of the said property which was not absolute title. In

these circumstances it would be necessary to conclude that

both transfers did not convey absolute title to the transferees

and that they held the property in trust for the transferor as

the transferor in both instances had not intended to convey

the benefcial interest in respect of the property. This is in

line with the principle laid down in Section 83 of the Trusts

Ordinance which states that –

*“Where the owner of property transfer or bequeaths it,*

*and it cannot reasonably be inferred consistently with the*

*attendant circumstances that he intended to dispose of the*

*benefcial interest therein, the transferee or legatee must hold*

*such property for the beneft of the owner or his legal represen-*

*tative.”*

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In *Muttamma v. Thiagaraja*(1) Basnayake CJ held

referring to Section 83 of the Trusts Ordinance that, “The

section is designed to prevent transfers of property which

on the face of the Instrument appear to be genuine trans-

fers, but where an intention to dispose of the benefcial

interest cannot reasonably be inferred consistently with

the attendant circumstances. Neither the declaration of

the transferor at the time of the execution of the instru-

ment nor his secret intentions are attendant circumstances.

Attendant circumstances are to my mind circumstances

which precede or follow the transfer but are not too far or

removed in point of time to be regarded as attendant which

expression in this context may be understood as “accom-

panying” or “connected with”. Whether a circumstance is

attendant or not would depend on the facts of each case.”

The above principle has been illustrated in the

case of *Dayawathie v. Gunasekera*(2) where similar

circumstances were dealt with by the Court and where

Dheeraratne J held that if the relevant “attendant circum-

stances” were suffcient to demonstrate that the Plaintiff

hardly intended to dispose of his benefcial interest then it

would be logical to elucidate that the benefcial interest of

the property was not parted with by the Plaintiff. Most of the

attendant circumstances referred to in the Dayawathie

case are very similar to the present case which the Learned

District Judge had adequately considered.

The Civil Appellate High Court was in error in conclud-

ing that the Plaintiff had failed to establish that he reserved

the benefcial interest when effecting the conveyances, where

as the Learned District Judge had arrived at the conclusion

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on the abundance of evidence placed before Court that the

transactions effected by the Plaintiff had been loan transac-

tions.

The Civil Appellate High Court in the course of its

judgment had stated that the Defendant had inspected the

title relating to the land prior to the transaction and that was

the correct procedure to be followed prior to the transfer of a

property and that thereafter the deed had been executed and

registered in the Land Registry inclined that following such

a procedure would tantamount to a transfer which would

confer absolute title to the transferee. This by itself would not

confer title to a transferee as it would be prudent to check the

title by inspecting the Land Registry before entering in to a

loan transaction. Therefore the above conclusion of the Civil

Appellate High Court does not appear to be sound.

The Civil Appellate High Court went on to state further

that the Plaintiff should have deposited the money that he

claimed to have borrowed with the interest due thereon when

instituting his action in order to show his bona fdes. The

case that was fled by the Plaintiff was on the basis of creation

of a constructive trust although there was a transfer of the

property on the face of the deed that was executed in favour

of the 1st Defendant. It is usual to deposit the money in a

matter relating to specifc performance of a sales agreement,

it is necessary to deposit the money agreed upon for the pur-

chase by the buyer in Court when instituting action. It would

appear that the High Court was drawing a parallel to such

a transaction in stating that the Plaintiff should have depos-

ited the money in Court as aforesaid. The mere fact that the

Plaintiff has sought in his prayer in his Plaint for execution

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of a deed in favour of the Plaintiff after cancelling the Deeds

that are in favour of the Defendants does not necessitate the

depositing of such monies when he initiated the action. The

High Court has therefore erred in that respect.

In the above circumstances the judgment of the Civil

Appellate High Court is set aside and the questions of law set

out above are answered in favour of the Plaintiff.

It is a matter of general observation that this case is yet

another demonstration of a practice prevalent in many parts

of the country where unoffcial money lenders lend money to

persons who seek the assistance when in need of money and

the borrowers have very often no option but to agree to very

high rates of interest for which no document is given and

further they are compelled to effect transfers of the property

in order to obtain such loans. In addition they resort to

obtaining signed blank cheques from the borrower, post dated

cheques, promissory notes, powers of attorney and sometimes

rental agreements or lease agreements to give the impression

that the borrower is permitted to be in possession regarding

such properties. Very often such borrowers have no choice in

the matter but to agree to such terms and sign documents

which are detrimental to them. However in most of these in-

stances the borrower remains in possession of the property

throughout. When the borrower is unable to settle the loan

and the interest during the agreed period of time (which is

generally not specifed in any document) disputes arise be-

tween them as the lenders thereupon seek to claim title to the

property which is really kept as security on the strength of

the Deed of Conveyance which on the face of it would appear

to be an outright transfer. Such lenders dislike the execution

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of mortgage bonds or entering into agreements to reconvey as

they would have to resort to litigation to recover their mon-

ies and also they would not be in a position to put down in

writing the exorbitant rate of interest that they would charge.

This trend appears to have evolved over the years as it is not

easy to obtain loans from recognised fnancial institutions

and banks. Banks generally impose stringent conditions for

borrowers and also require satisfactory credit worthiness

of the borrowers, a regulated income, the requirement of

being tax payers, and the capacity to repay etc. in addition

to the formal procedures that have to be followed which is

not sometimes affordable and also the delay in going through

such processes. If such institutions adopt much more fexible

measures in respect of granting loans it would have the

impact of preventing the occurrence of the type of transac-

tions which take place which beneft unoffcial money lenders.

Further if such fnancial institutions and banks carry out

awareness measures among specially the rural folk about the

facilities that can be made available to them by reaching out

to them it would help such persons from being victims at the

hands of unoffcial money lenders.

The Plaintiff in the prayer to his Plaint which was fled on

22nd June 1993 prayed that he be allowed to deposit the sum

of Rs. 75,000 that he borrowed together with the interest at

36% per annum to the Defendants and obtain a conveyance

in his favour. The Deed in favour of the 1st Defendant

No. 581 had been executed on 16.12.1987 and the action

had been fled in 1993 in the District Court of Panadura. The

District Court proceedings were concluded with the entering

of the judgment dated 07.07.2001 in favour of the Plaintiff.

The Appellate procedure has taken a further 10 years and

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now reached the culmination point in 2011. 24 years have

lapsed since the execution of Deed No. 581 infation rates

have varied and are very much on the rise in the present era.

The District Court had given judgment in favour of the

Plaintiff as prayed for in his Plaint this would mean that he

would have to pay Rs. 75,000 together with interest at 36%.

It would not appear to be reasonable in these circumstances

of this case to subject the Plaintiff to pay the interest of 36%

to cover the entire period that the matter was under litiga-

tion which would come to a period of 18 years. It would be

reasonable to subject him to pay the said sum of Rs. 75,000

together with interest at 36% per annum for a period of 10

years in order to get the Deed executed in his favour.

The appeal of the Plaintiff Appellants is allowed and

the judgment of the District Court of Panadura is affrmed

subject to the aforesaid variation.

**J.A.N De SilvA CJ** – I agree.

**AmArAtuNgA. J.** – I agree.

*Appeal allowed.*

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**ASRIN vS. UNIvERSITY GRANTS COMMISSION AND OTHERS**

COuRT Of APPeAL

SATHyA HeTTIge PC. J. [P/CA]

gOONeRATNe, J.

CA 1013/08

CA 1014/08

CA 1015/08

APRIL 1, 29, 30, 2009

MAy 21, 25, 2009

JuNe 12, 2009

***Writ of Certiorari – Students of Eastern University – Temporary***

***registration at the Faculty of Medical Services, Sri Jayewarde-***

***nepura University – Decision to cancel the temporary registration***

***– Legality – Judicial review – Who could effect the transfer?***

The petitioners – all Muslim students were originally selected by the

university grants Commission [u.g.C] to a course of study in Medicine

in the eastern university and registered themselves with the university.

Before the commencement of the scheduled academic year to Colombo

universities, they were transferred by the u.g.C. to universities in

Colombo.

The petitioners complain that they were informed by the Sri

Jayewardenepura university, that the transfers were canceled on

the basis that the permanent residence of the petitioners is in the

eastern Province – this act of retransfer of the petitioners, it was contend-

ed that, was arbitrary and illegal; further, that the only body who could

effect the transfers [if any] is the u.g.C.

The respondent contended that the Sri Jayewardenepura university

cancelled the temporary transfers as a step in the executory process

of re-transfer and was deliberated before the ugC – university grants

Commission.

**Held**

(1) The decision to temporarily transfer the petitioners was taken by

the ugC and whether it is a temporary or permanent transfer of

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students the decision affects the students academic rights thereby

a legal right or interest appears to have accrued to the petitioners

to be at the respective universities to which they were assigned in

terms of the law.

(2) According to Section 15 of the university Admissions Hand Book

inter-university transfers of students can be made only by the

ugC.

Per Sathya Hettige PC, J [P/CA]

 “I am of the view that the only authority to make such decision

to re-transfer the petitioners is the ugC . . . . the reasons given

when cancelling the registration of the petitioners, which is a

critical issue in these applications, on the basis that their

permanent residence is in the eastern/Northern Province and

requiring the petitioners to report to the universities is unaccept-

able to this Court.

**AppliCAtioN** for a Writ of Certiorari/Mandamus.

*Sanjeewa Jayawardene* with *Abdul Najeem* and *Senani Dayaratne* for

petitioners.

*Priyantha Nawana SSC* with *Hajaz Hisbullah SC* for respondents.

*Nimal Weerakkody* for intervenient petitioner

August 07th 2009

**SAtHyA Hettige p.C. J. p/CA**

The petitioners in Application No. 1013/08 and the

Intervenient – Petitioner, the petitioners in application

No. 1014/08 and the petitioner in application No. 1015/08

are seeking Writs of Certiorari to quash the decisions

contained in documents marked P5 dated 05/11/2008 and

the document marked P3 dated 04/11/08.

The petitioners are also seeking Writs of Mandamus

directing the 1st to 10th respondents to permit the petitioners

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to engage in studies at the faculty of Medicine of the 6th

respondent’s university.

In order to determine the issues involved in these

applications it is necessary to consider the facts of each case

which are of similar nature.

These applications were taken up together on 27/02/2009,

19/03/2009, 01/04/2009, 30/04/2009, 21/05/2009,

25/05/2009 and 12/06/2009 for hearing and all parties

agreed to combine all three applications and one judgment

would bind the parties in all three applications.

The petitioners in all three applications are Muslim

students originally selected by the 1st respondent Commis-

sion to a course of study in medicine for the academic year

2007/2008 in the faculty of Health Care Sciences of the

3rd Respondent namely the eastern university of Sri Lanka

by the letter dated 12/06/2008. The petitioners and the

Intervenient petitioner further state that they registered them-

selves with the 3rd respondent university by sending their

applications before 28/07/2008.

It is stated that before commencement of the scheduled

academic activities in the 3rd respondent university, the 1st

respondent Commission transferred 195 students includ-

ing one Sinhala student and 27 Muslim students from the

faculty of Health Care Sciences of the 3rd respondent due to

the security situation in the eastern university of Sri Lanka

that existed in August 2008.

It was further submitted that the petitioners and the

intervenient petitioner were transferred out of the 3rd

university to universities of Colombo, Sri Jayawardanapura

and Kelaniya.

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The petitioners in CA application 1013/08 were

transferred to university of Colombo, the petitioners in CA

application No. 1014/08 were transferred to university of Sri

Jayawardanepura and the petitioners in CA application no.

1015/08 were transferred to university of Kelaniya by the 1st

Respondent Commission.

The learned counsel for the petitioner submitted that the

transfers were effected by formal letters dated 27/08/2008

individually addressed to each petitioner. It was strong-

ly submitted that the said letters were issued by the 1st

respondent Commission in its capacity as the supreme

governing authority under the provisions of the university

Act.

It was further submitted that the said transfer was

subject to certain conditions and the said transfer letters

were marked 4 (a) to 4(e).

The learned counsel drew the attention of court to the

conditions and the entire contents of the said letter marked

P4 (a) transferring the petitioners which reads as follows.

*“As already informed you have been selected to follow a*

*course of study in medicine at the University at the Eastern*

*University, Sri Lanka for the academic year 2007/2008.*

*I wish to inform, you that the University Grants Commission*

*has decided to transfer you to the Faculty of Medicine*

*University of Sri Jayawardanapura with the concurrence of*

*Vice Chancellors of the University of Sri Jayawardanapura*

*and the Eastern University Sri Lanka considering existing situ-*

*ation in the Eastern University Sri Lanka. . . . .*

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***(5) The UGC shall be at liberty to send you back to the***

***University which you have been originally assigned when***

***situation in the Eastern University, Sri Lanka becomes***

***normal. . . .”***

On perusal of the condition no. 5 above mentioned, it

appears that the ugC had reserved the right and power

to send the students back to the eastern university once

the situation becomes normal and the ugC had taken the

decision to transfer the petitioners and the intervenient

petitioner with the concurrence of the relevant Vice Chancel-

lors of the universities.

The petitioners complain that on 31.10.2008 the

petitioners were informed by the 9th respondent who is the

Senior Assistant Registrar of Sri Jayawardanapura university

stating that the Senate at the meeting held at the 257th meet-

ing on 30.10.2008 decided to cancel the temporary registra-

tion of the faculty of Medical Sciences of the university of

Sri Jayawardanapura with effect from 31st October 2008 on

the basis that the permanent residence of the petitioner is in

the eastern/Northern province and informing them to report

to Vice Chancellor of the eastern university. The petitioners

state that similar letters were received by each petitioner from

the Senior Assistant Registrar of the respective university.

The petitioners have annexed to the petition a copy of the

letter dated 31/1/2008 marked P5.

The petitioners and the Intervenient Petitioner in these

applications are seeking a Writ of Certiorari to quash the

unlawful decision of the 6th respondent university to cancel

the registration of the petitioners contained in the said letter

dated 31/10/2008 marked P5 on the basis that the decision

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of the 6th respondent is unlawful, arbitrary, *ultra vires* and of

discriminatory nature. The petitioners further state that they

are entitled in law to engage in their academic activities in the

faculty of Medical Sciences of the 6th respondent university

and other respective universities where they are currently

studying until the decision of respondent cancelling the

registration is reviewed by the 1st respondent Commission.

*The issue to be determined by this court is whether the*

*6th respondent had power or authority to make inter-univer-*

*sity transfers of students whereas the temporary transfer of*

*the petitioners had already been done by the 1st respondent*

*Commission which reserved the right to re-transfer them by*

*the UGC.*

The learned counsel for the petitioner strenuously

argued that the 6th respondent and the 9th respondent had no

power or authority to cancel the registration of the petition-

ers and direct them to back to the 3rd respondent university

in terms of the universities Act. And if at all, the power of

transferring the petitioners are only with the 1st respondent

Commission. Therefore the decision of the 6th respondent

to cancel the registration of the petitioners is unlawful and

without jurisdiction.

The learned counsel submitted that the decision to

cancel and transfer the petitioners back to the 3rd respon-

dent university had not been taken with the concurrence of

the 1st respondent and the copy of the letter transferring the

petitioners has not even been sent to the 1st respondent

Commission. It was submitted that the highly pernicious and

precipitous decision of the Senate of the 6th and 9th respon-

dent to re-transfer the petitioners has completely over-ridden

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the authority, power, jurisdiction and sole prerogative of the

university grants Commission.

It was the contention of the learned counsel for the

petitioners that the case of the petitioners is not that they

must be permanently at their new universities but only that

they are entitled in law to remain in the new universities if

and until the ugC makes an informed decision in accordance

with the due process and the law.

I have considered carefully the submissions of the learned

counsel for the petitioner and agree with him that the Senate

of the 6th university is obviously subordinate to the Council

and at the very apex is the Council and the Council shall be

the *exclusive body and governing authority* of the university

and the decision to re-transfer could only have been taken

by the university grants Commission on the basis that this

is clearly an **“inter university transfer”** which is common

ground of the parties.

The learned Senior State Counsel for the respondents

objecting to the application and relief sought by the peti-

tioners, admitted in the course of his submissions that the

faculty of Medicine of Sri Jayawardanapura cancelled the

temporary transfers of the petitioners as a step in the execu-

tor process of re-transfer which was deliberated before the 1st

respondent Commission.

It was further submitted that all other students except

the petitioners and the Intervenient petitioner went back and

commenced their studies at their originally assigned eastern

university consequent to the cancellation of the temporary

transfers.

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The learned SSC submitted that, for the purpose of

judicial review of a decision the issue of *ultra vires* should

not be considered on the basis of superfcial perusal of two

documents in relation to the sources of origin. The court

must consider the amenability of the impugned decision to a

prerogative writ and the petitioners do not have a legal right

or interest to remain in the universities they were temporarily

transferred because there is no legal provisions in the law

governing the temporary transfers of students.

I do not agree with the submissions of the learned SSC

on the above position.

The decision to temporarily transfer the petitioners was

taken by the 1st respondent Commission and whether it is

temporary or permanent transfer of students that decision

affects the students’ academic rights thereby a legal right

or interest appears to have accrued to the petitioners to be

at the respective universities to which they were assigned

in terms of the law. The learned counsel for the petitioners

vehemently opposed the contention of the 6th respondent

that the reason given for the retransfer of the petitioners was

the petitioners’ permanent residence was in a district in the

eastern/Northern province. The ugC as the supreme

authority had transferred the petitioners out of the eastern

university on the basis of security situation in the 3rd

respondent’s university. The petitioner’s counsel contend

that the Senate which is a subordinate authority within the

university structure had completely ignored condition 5 in

the document marked P5 and the jurisdiction of the ugC

under the provisions of the university Act in relation to inter-

university transfers.

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It should be noted that the 2nd respondent in his aff-

davit (Statement of objections) dated 6th february 2009 in

paragraph 18 unambiguously states as follows.

***“. . . . I state that I am not aware of such com-***

***munications being addressed to the 5th respondent. The***

***respondents state further that, as the universities have***

***no authority to effect inter-university transfers of the***

***students the 1st respondent decided to convene a meeting***

***to discuss the above matter to take appropriate action***

***with regard to the re transfer these students. . . .”***

I take the above position of the 2nd respondent as an

admission on the part of the ugC that universities had no

authority to effect inter-university transfers of the students.

The learned Senior State Counsel strongly argued with

emphasis and submitted that the university Act does not

provide for and or contain provisions empowering the ugC to

transfer students from one university to another.

I do not agree with the above contention of the Learned

Senior State Counsel that the ugC too had no power to effect

transfers of students.

It should be further noted that in paragraph 28 of the 2nd

respondent’s affdavit (statement of Objections) it is stated

that according to section 15 of the university Admissions

Hand book that inter-university transfers of students can

be made only by the 1st respondent Commission. In fact it

can thus be seen that the correct position has been stated to

court by the 2nd respondent **under oath**.

It is the argument of the learned counsel for the petition-

ers that due to decision of the 6th respondent to retransfer the

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petitioners having cancelled the registration, the petitioners

have been deprived of their university education in respect of

medical faculties from the time the application was fled for

the last 8 months and unable to sit for the future examina-

tions.

It is the view of court that the petitioners and the interve-

nient petitioner have been deprived of the academic activities

as a result of the action of the 6th respondent in canceling their

temporary registration in the respective universities to which

they were transferred by the 1st respondent Commission.

I agree with the submissions of the learned counsel for

petitioners that the 6th respondent (Senate) in application no.

CA 1013/08 and 9th respondent who decided to cancel the

registration of the petitioners in application Nos. CA 1014/08

and CA 1015/08 had no legal power or authority to take that

decision to cancel the registration and issue letter marked

P5.

I am of the view that the only authority to make such

decision to re-transfer the petitioners is the university grants

Commission in terms of the provisions in the universities Act

and the university Admissions Hand book.

even though the learned Senior State Counsel demon-

strated to court that the petitioners are not entitled to the

beneft of the discretionary relief in the form of a prerogative

writ to be exercised by this court I hold that the petitioners

are entitled to the relief in the circumstances of these cases.

I further hold that the reasons given in P5 by the 6th

respondent when cancelling the registration of the petitioners,

which is a critical issue in these applications, on the basis

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that their permanent residence is in the eastern/Northern

province and requiring the petitioners to report to the 3rd

respondent university is unacceptable to this court.

In the circumstances of these applications I hold that

the discretionary remedy vested in this court should be

determined in favour of the petitioners and the intervenient

petitioner in granting relief as per paragraphs (a), (b) and (c)

of the prayers of the petition.

However, the judgment of this court will not affect the

rights of the university grant Commission to take steps in

accordance with due process and law regarding inter-uni-

versity transfers of the students. The judgment is also not

applicable to those petitioners if any, who have already

commenced academic activities in the 3rd Respondent

university.

Accordingly I allow the application of the petitioners as

per paragraphs (a) (b) and (c) as above of the petition. I order

no costs in the circumstances.

**gooNArAtNe J.** – I agree.

*Application allowed.*

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**INTERNATIONAL DRESSES PvT. LTD vS.**

**MINISTER OF LABOUR AND OTHERS**

COuRT Of APPeAL

SRISKANDARAJAH J.

CA 417/2007

JuNe 6, 2008

JuLy 2, 2008

AuguST 25, 2008

***Section 4 [1] Industrial Disputes Act – Settlement by way of***

***arbitration – Termination of services of twenty two employees –***

***One workman dies during arbitration – Could the arbitrator give***

***the beneft that would have accrued to the workman at the time***

***of his death to his heir? – Just and equitable order – Remedy by***

***way of Writ of Certiorari – Availability – Judicial Review***

**Held:**

(1) It is just and equitable in the given circumstances to give the

beneft that would have accrued to the workman at the time of his

death to his heir – as if his services were not terminated.

(2) Remedy by way of Certiorari cannot be made use of to correct

errors or to substitute a correct order for a wrong order – Judicial

review is radically different from appeals.

**Cases referred to:-**

(1) *Municipal Council of Colombo vs. Munasinghe* 71 NLR 223 at 225

(2) *R. vs. Deputy Industrial Inquiries Commissioner ex parte Moore* –

1965 – 1 All eR 81 at 84.

(3) *Best Footwear (pvt) Ltd., and Two Others v. Aboosally, former*

*Minister of Labour & Vocational Training and Others* – 1997 2 Sri.

L.R. 137

*S.L. Gunasekera* for petitioner.

*Kanishka Witharana* for 6 – 27 respondents.

(1-4 respondents discharged from the proceedings)

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June 28th 2010

**SriSkANDArAJAH J.**

The Petitioner in this application has sought a writ of

certiorari to quash the Award made by the 5th Respondent

the Arbitrator dated 10th January 2007. The arbitrator in his

award decided after an inquiry that the termination of the

services of the 6th to 20th Respondents by the Petitioner was

unjustifed and the 21st to 26th Respondents had not vacated

their posts as contended by the Petitioner. Arbitrator after

coming to this conclusion in his award has directed the

Petitioner to reinstate the said 6th to 26th Respondents with

back wages.

It is common ground that the Petitioner terminated the

service of the 6th to 20th Respondents and served vacation of

post notice on the 21st to 26th Respondents.

The Petitioner submitted that around 4.14 p.m. on 23rd

April 1999 the 13th Respondent an executive of the Petitioner

Company and the Manager of the Cutting Section entered

the offce of the Accountant and demanded his salary ad-

vance. He was under the infuence of liquor and he turned

abusive when the Accountant informed him that the salary

advance cannot be paid on that day. At that time the Personal

Manager entered the offce of the Accountant and requested

the 13th Respondent to leave the offce. He refused to leave and

continued to use abusive language. The Accountant, in an

attempt to defuse the tense situation, paid the salary advance

due to the 13th Respondent out of his own funds. Having left

the offce of the Accountant the 13th Respondent abused the

Personal Manager and this compelled the security offcers to

escort him out of the factory premises. The 13th Respondent

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was interdicted in view of his conduct by letter dated 26th

April 1999.

Thereafter 6th to 12th and 14th to 20th Respondents were

interdicted as they were involved in threatening the manage-

ment and creating disturbances on 26th April 1999 requesting

the reinstatement of the 13th Respondent. The 6th to 12th and

14th to 20th Respondents and the 13th Respondent were served

with charge sheets and disciplinary inquiries into the charges

were conducted by an inquirer. Separate inquiries were held

by Mr. f. N. D. Silva Retired President of the Labour Tribunal

into the charges against 6th to 12th and 14th to 20th Respondents

and the 13th Respondent. The inquiring offcer found the 13th

Respondent quilty to the charge against him and his service

were terminated by letter dated 29.07.1999. The 6th to 12th

and 14th to 20th Respondents were also found guilty by the

inquiring offcer and their services were also terminated by

letters dated 29.07.1999.

On the issue of interdiction of the 6th to 12th and 14th

to 20th Respondents the employees of the Petitioner went on

strike. On a discussion held at the Department of Labour a

settlement was reached and the employees other than the

employees those who were interdicted were requested to

report for work. As the 22nd to the 26th Respondents failed to

report for work they were served with vacation of post.

Consequent upon the afore said termination of services

of the 6th to 26th Respondents and one other employee now

dead, the 1st Respondent made a reference under Section 4(1)

of the Industrial Dispute Act to the 5th Respondent for settle-

ment of dispute by way of arbitration.

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The reference is as follows:

*“Whether the termination of the services by the man-*

*agement of International Dresses (Private) Limited of the*

*following twenty two (22) employees of its factory includ-*

*ing the branch union offcers of the All Ceylon Commercial &*

*Industrial Workers Union is justifed and to what relief each of*

*them is entitled".*

After an inquiry the arbitrator delivered his award and it

was published in government gazette No 1487/21 dated 7th

March 2007. The arbitrator has observed that both parties

exaggerated facts in favour of them. After making this obser-

vation he has come to the conclusion that while money for the

payment of advance on the 24th April has been brought to the

factory on the 23rd the Accountant did not pay the advance to

the 13th Respondent on the 23rd despite the general Manager

having ordered him to do so. This payment was made only

after a problem arose and there was an exchange of words

between Darmasundara and the 13th Respondent. The 13th

Respondent who was an executive was more popular among

the workmen than the other executives. On 26.04.1999 a

group of workmen including the 6th to 12th and 14th to 20th

Respondents had a heated discussion inside the Board Room

about the suspension of the 13th Respondent consequent

to which they were taken to the Moratuwa Police and MC

Moratuwa Case No. 22887 was instituted against them, there-

after they were discharged by court. The services of these 15

workmen were terminated after a domestic inquiry conducted by

Mr. f.N.D. Silva.

The arbitrator after analyzing the facts relevant to the

issues ordered that the workmen numbered 1 to 15 (6th to the

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20th Respondent be re-instated in service with back wages

and other allowances from the date of termination because

their services had been terminated unfairly.

The Petitioner’s contention is that the arbitrator did not

determine the issues and or considered the evidence led in

respect of whether the 13th Respondent came into the

Accountant’s offce under the infuence of liquor or after

consuming alcohol and whether he abused the Personal

Manager or the general Manager and the 13th Respondent

behaved in a manner unbecoming of an executive. The

Petitioner further contended that the arbitrator has failed to

consider whether the workmen who entered the Board Room

on the 26th threatened the management.

The arbitrator in considering the evidence has observed

that it appears that the parties have presented facts

after exaggerating them in their favour. This shows that the

arbitrator has considered the concerns of the Petitioner

mentioned above and rejected that those allegations are not

serious enough to terminate the services of the employment

of the employees.

The arbitrator in his award has also made order to

reinstate the 22nd to 26th Respondents on the basis that

the termination of their service were on the basis that they

had vacated post but that there is no evidence to show that

they had the required mental element to vacate their post.

The evidence revealed that there was a strike consequent to

the interdictions of the 6th to 12th and 14th to 20th Respon-

dents. Thereafter the matter was settled consequent to dis-

cussions at the Department of Labour. In terms of the said

settlement the union agreed to end the strike on 24.05.1999

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and the Petitioner agreed to let the workmen return to work

and to take them back in batches over a period of one week.

This arrangement caused confusion on the date of reporting.

The Petitioner claimed that it requested certain employees to

report on a particular date but the relevant employees claim

that they were requested to report on a different date and they

reported on the date but they were told that they have vacat-

ed post as they have not reported for work on the date that

they should have reported for work. In these circumstances

the arbitrator has correctly concluded that the said employees

had no mental element to vacate post and ordered reinstate-

ment.

The Petitioner contended that the order of the arbitrator

that the heir of the workmen Karunadasa who died during

the arbitration should be paid the beneft due to him after

examining the death certifcate, marriage certifcate and other

relevant documents is erroneous in law as the arbitrator has

no jurisdiction to make such an order. The arbitrator under

the Industrial Disputes Act has the power to make an award

which is just and equitable; *Municipal Council of Colombo*

*v. Munasinghe*(1) at 225. It is just and equitable in the given

circumstances to give the beneft that would have been

accrued to the workmen at the time of his death to the heir of

the said workman as if his services were not terminated.

In *R. v. Deputy Industrial Injuries Commissioner ex parte*

*Moore* (2) at 84 Diplock, L.J. held:

“The requirement that a person exercising quasi-judicial

functions must base his decision on evidence means no more

than that it must be based on material which tends logically

to show the existence or non-existence of facts relevant to the

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issue to be determined, or to show the likelihood or unlikeli-

hood of the occurrence of some future event the occurrence

of which would be relevant. It means that he must not spin a

coin or consult an astrologer; but he may take into account

any material which, as a matter of reason, has some proba-

tive value, the weight to be attached to it is a matter for the

person to whom Parliament has entrusted the responsibility

of deciding the issue. The supervisory jurisdiction of the High

Court does not entitle it to usurp this responsibility and to

substitute its own view for his.”

The remedy by way of certiorari cannot be made use of

to correct errors or to substitute a correct order for a wrong

order. Judicial review is radically different from appeals.

When hearing an appeal the Court is concerned with the

merits of the decision under appeal. In judicial review the

court is concerned with its legality, on appeal the question is

right or wrong. On review, the question is lawful or unlawful.

Instead of substituting its own decision for that of some other

body as happens when an appeal is allowed, a court on

review is concerned only with the question whether the act

or order under attack should be allowed to stand or not;

*Best Footwear (pvt) Ltd., and Two Others v. Aboosally, former*

*Minister of Labour & Vocational Training and Others*(3).

The arbitrator after giving due consideration to the

evidence placed before him has arrived at the conclusions

mentioned in the said award. The Petitioner has failed to

establish any ground on which this court could issue a

writ of certiorari to quash the said award. Hence this court

dismisses this application without costs.

*Application dismissed.*

*Edirisooriya and others vs. National Salaries and Cadre Commission and others*

CACA 221

**EDIRISOORIYA AND OTHERS vS. NATIONAL SALARIES AND**

**CADRE COMMISSION AND OTHERS**

COuRT Of APPeAL

SATHyA HeTTIge, PC J. [P/CA]

gOONeRATNe, J.

CA 417/2008

feBRuARy 19, 2009

OCTOBeR 16, 2009

***Writ of Certiorari – Placement in a segment of a Technical grade –***

***Unreasonable, arbitrary – Legitimate expectation? – Locus standi***

***– Central Principles of Administrative Law – Ultra Vires – Could a***

***writ of certiorari be issued as a matter of course? – Wage Policy.***

The petitioners challenged their placement in grade MT/1/2006 as

wrongful on the basis that the appropriate categorization is grade

MT-2-2006 as per the circulars.

**Held:**

(1) Wage policy of public offcers can be decided by the Cabinet under

the provisions of the Constitution and the Court cannot interfere

with the policy decision in relation to restructure of salaries of

public offcers unless it can be established that the policy decision

is *ultra vires*.

Per Sathya Hettige PC P/CA:

 “It can be seen that the National Salaries and Cadre Commission

[NS and CS] has recommended to restructure and re-categorize

and or to regroup the public offcers having considered all the

relevant facts and the policy decision of the government and

therefore I do not think that this Court should interfere with the

recommendations of the NS and CS and or the decision taken in

the Circular”.

(2) A prerogative writ is not issued as a matter of course and it is in

the discretion of Court to refuse to grant it if the facts and circum-

stances are such as to warrant a refusal.

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(3) While legitimate expectation gives an applicant *locus standi* to ask

for judicial review it differs from wrongful or *ultra vires* action.

It is wrongful or *ultra vires action* which justifes the granting of

judicial review and that too only if all the circumstances point to

an exercise of the Courts discretion that way.

(4) The Central principle of Administrative Law, - *ultra vires* - simply

means acting beyond one's power or authority.

**AppliCAtioN** for a Writ of Certiorari.

**Cases referred to:-**

1. *Sudhakaran vs. Barathi* 1987 2 Sri LR 243

2. *P. S. Bus Company vs. Ceylon Transort Board* 61 NLR 491.

*Manohara de Silva PC* with *Nimal Hippola* for the petitioner

*Milinda Gunatilaka SSC* with *Ruwanthi Herath Gooneratne* SC for

respondent.

June 21st 2011

**SAtHyA Hettige pC. J (p/CA)**

1stto 3rdpetitioners are Technical education Demonstrators

attached to the Department of Technical education and

Training headed by the 16th respondent.

1st and 2nd petitioners are grade 1 and the 3rd petitioner

is in grade 11. The petitioners state that the technical edu-

cation Demonstrators are members of the academic staff in

Technical colleges located in different districts in the country

and their function is to teach /instruct the practical aspects

of studying to the students who are engaged in courses in the

felds of

(a) Masonry

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(b) Carpentry

(c) Motor Mechanism

(d) Metal Craft

(e) electrical/ electronic Technology

The petitioners were appointed as Technical education

Demonstrators on different dates prior to the year 2000 and

in the year 2000 the Ministry of Vocational Training and

Rural Industries with concurrence of the Department of Man-

agement Services of the Ministry of finance and Planning pre-

sented to Cabinet a Memorandum for Revision of salaries and

and granting a graded promotion scheme for demonstrators

serving in the Technical Colleges and the Cabinet approval

was granted on 14/06.2000 to create two grades in the post

of Technical education Demonstrators namely Demonstrator

class 1 and Demonstrator class 11 as per the Cabinet deci-

sion marked P4.

It is stated in the petition that consequent to the said

Cabinet decision an amended scheme of recruitment came

in to effect and interviews were held at different intervals and

eligible candidates were absorbed accordingly. The 1st and

2nd petitioners were absorbed to grade 1 and 3rd petitioner to

grade II which is supported by the promotion letters marked

P6(1) and P6(2)

It was submitted that in addition to the educational

qualifcations stated in the scheme of recruitment marked

P5, as per paragraph 5 (ii) there is a prerequisite qualifcation

to possess at least a two year certifcate from a Technical

College.

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It was also submitted that in addition to the OL and AL

qualifcations, paragraph 3.2.2.2 of the circular marked P8

wherein the employees have been classifed according to their

qualifcation, the offcers who have a certifcate or diploma

in proof of undergoing a course of vocational or professional

Training of 13 to 24 months would fall in to segment 2 of the

Management Assistant Technical grade. The said paragraph

is as follows:-

The petitioners complain that by the letter dated

05.05.2006 marked P10 the 15th respondent informed the

16th respondent to adopt the salary structure MT-1-2006

enumerated in Public Administration Circular 6/2006 marked

P8 for the petitioners. It was further submitted that the

15th respondent has no power or authority to categorize the

petitioners under category MT-1-2006

Petitioners also submit that by the letter dated 19-11-2007

the 15th respondent informed the 16th respondent that

the salary scale MT-1-2006 allocated to the petitioners

cannot be changed and by the letter dated 29-11-2007 marked

P13 that information was communicated to the principals of

all Technical Colleges.

By P13 which was addressed to all the Technical College

principals, instructions had been given to prepare the

salaries of the petitioners according to paragraph 8 of the

Circular No. 6/2006 (11) by placing the offcers who are in

Grade 11 in Grade 111 and offcers in Grade 1 in Grade 11

deduct the salaries that had been overpaid.

The grievance of the petitioners is that the placement of

the petitioners in MR-1-2006 is wrongful on the basis that