

**BANDARANAYAKE**  
**v**  
**JUDICIAL SERVICE COMMISSION**

COURT OF APPEAL  
SRIPAVAN, J.  
C.A. 652/2003  
JUNE 8, 2003

*Writ of Certiorari – Judicial Service Commission – Constitution Articles 111(K), 112(g) – 17th Amendment – Committee appointed by J.S.C. to inquire into charges against a Judicial Officer – Is the petitioner entitled to a copy of the reasons ? – Long delay – Mala fides – should it be pleaded and enumerated in detail ?*

**Held :**

- (i) The petitioner's explanation that he went before the Human Rights Commission to obtain redress for the violation of his fundamental rights is not an excuse for instituting the application after 2 years and 4 months of making the Order challenged. The court has a discretion to deny the petitioner relief, having regard to his conduct and laches which stand against the grant of discretionary remedy.
- (ii) The petitioner is not entitled to a copy of the reasons, in terms of Rule 18.
- (iii) Court will not in general entertain allegations of bad faith made against the repository of a power, unless bad faith has been expressly pleaded and properly enumerated in detail.

- (iv) The members of the Judicial Service Commission are immune from legal proceedings.

**APPLICATION** for a *Writ of Certiorari*.

**Cases referred to :**

1. *Jayaweera v Asst. Commissioner of Agrarian Services* 1996 2 SRI LR 70.
2. *President of Malalgodapitiya Co-operative Society v Arbitrator of Co-operative Societies* 51 NLR 167.
3. *Gunasekera v Weerakoon* 73 NLR 262.
4. *Ratnayake v Jayasinghe* 78 NLR 35.
5. *Gunasinghe v Hon. Gamini Dissanayake* 1994 2 SRI LR.

*Elmo Perera* for petitioner.

*Uditha Egalahewa S.C.* for 9th respondent (Attorney-General).

*Cur. adv. vult*

July 17, 2003.

**SRIPAVAN, J.**

The petitioner joined the Judicial Service on 1st November 1988 and served in various stations as Magistrate, Additional Magistrate, Additional District Judge and District Judge until dismissed from service with effect from 7th November 2000. The petitioner seeks a writ of certiorari to quash the impugned order dated 7th November 2000 marked P18 and a *writ of mandamus* to direct the first respondent Commission to reinstate the petitioner in service. 01

The petitioner filed this application on 8th April 2003. Learned counsel for the petitioner submitted that the delay in invoking the *writ jurisdiction* of this court was due to the fact that the petitioner made a complaint to the Human Rights Commission on the basis that the purported dismissal violated the petitioner's human rights. As averred in paragraph 34 of the petition, learned Counsel urged that the proceedings before the Human Rights Commission came to a standstill on 21st January 2002. The proceedings before the Human Rights Commission is fundamentally different from the proceedings before this court. The petitioner instituted actions in two different fora seeking two different reliefs on the same set of facts. Hence, the petitioner's explanation that he went before the Human 10

Rights Commission to obtain redress for the violation of his fundamental right is not an excuse for instituting this application after two years and four months of making the order challenged. Even if one goes by the date on which the proceedings before the said Commission came to a halt, there is a delay of almost fourteen months which has not been satisfactorily explained. This court has a discretion to deny the petitioner relief, having regard to his conduct and laches which stand against the grant of discretionary remedy. [Vide *Jayaweera v Assistant Commissioner of Agrarian Services*<sup>(1)</sup> *President of Malalgodapitiya Co-operative Society v Arbitrator of Co-operative Societies*<sup>(2)</sup> *Gunasekera v Weerakoon*<sup>(3)</sup> *Ratnayake v Jayasinghe*<sup>(4)</sup>] 20 30

On a direction issued by court, the learned State Counsel tendered the rules made by the Judicial Service Commission in terms of Article 112 (8) of the Constitution and the file relating to the findings of the inquiry of the petitioner. Rules 18 and 20(c) provide, *inter alia* as follows :

"Copies of reports or reasons for findings relating to the inquiry or of confidential office orders or minutes, will not, however be issued."

"If the officer replies to the charges, the Secretary will place the charges and the reply before the Commission. If the Commission is not satisfied with the explanation or if the officer has failed to reply to the charges, the Commission will either inquire into the matter itself or will appoint a committee of such persons as it shall specify, not less than three in number to inquire into the matter." 40

Perusal of the inquiry file relating to the petitioner shows that the first respondent Commission appointed a committee consisting of the third, fourth and fifth respondents to inquire into the charges against the petitioner. By a majority decision of the committee, the petitioner was found guilty of all three charges referred to in P6. The first respondent Commission having considered the findings of the committee and the previous conduct of the petitioner as a judicial officer, decided to dismiss him from service and directed the tenth respondent to serve the order of dismissal marked P18 setting out the circumstances under which the first respondent 50

Commission came to the conclusion. It would appear that the petitioner was represented by a President's Counsel at the aforesaid inquiry. It also appears from the letter dated 3rd February 2003 marked P23 that the proceedings of inquiry were furnished to the petitioner at the time the said inquiry was held. 60

The allegation contained in paragraph 46 of the petition that the first respondent Commission deliberately, unreasonably and maliciously refused to issue to the petitioner certified copies of the inquiry is factually incorrect in view of the contents of P23. The petitioner is not entitled for a copy of the reasons for findings relating to the inquiry in terms of the express provision contained in Rule 18. Learned Counsel also urged bad faith on the part of the first respondent Commission. "The plea of *mala fides* is raised often but it is only rarely it can be substantiated to the satisfaction of Court. Merely raising doubt is not enough. There should be something specific, direct and precise to sustain the plea of *mala fides*. The burden of proving *mala fides* is on the individual making allegation as the order is regular on its face and there is a presumption in favour of the administration that it exercises its power in good faith and for the public benefit." Principles of Administrative Law (Jain & Jain, 4th Edition 1988 Page 564) Accordingly, the court will not in general entertain allegations of bad faith made against the repository of a power, unless bad faith has been expressly pleaded and properly enumerated in detail. [*Vide Gunasinghe v Hon Gamini Dissanayake*<sup>(5)</sup>] The petition however did not set out in detail the allegations of *mala fide* against the first respondent Commission. Thus, in terms of Article 111K of the 17th amendment to the Constitution, the members of the first respondent Commission are immune from legal proceedings. The petitioner has failed to establish want or excess of jurisdiction on the part of the first respondent, denial of natural justice or error of law on the face of record which are generally considered as grounds on which the writ lies. Accordingly, this court does not see any legal basis on which the decision contained in P18 could be interfered with. 70 80 90

For the reasons stated, I am not inclined to issue notice on the respondents. Notice on the respondents is accordingly refused.

*Notice refused.*