

**MAHANAYAKE
VS
CHAIRMAN CEYLON PETROLEUM CORPORATION AND OTHERS**

COURT OF APPEAL
WIJEYARATNE J.
SRISKANDARAJAH J.
CA 1323/2002
JANUARY 10, 2005
MARCH 24, 2005

Writs of certiorari/Mandamus – on an order of the Human Rights Commission Does Writ lie? – Termination – Contractual – Alternate remedy? – availability of a Writ to reinstate – Natural Person holding public office – Recommendation of Human Rights Commission – Does it create a legal right?

The petitioner sought a writ of Certiorari to quash the Order of the 2nd Respondent Corporation terminating her services and a writ of Mandamus to compel the 01st and 02nd Respondents to reinstate the Petitioner as directed by the 03rd Respondent – Human Rights Commission.

HELD

- (i) The order arises out of a contract of employment and the termination complained of is based upon a breach of her contract of employment. Where the relationship between the parties is purely contractual one of commercial nature neither Certiorari nor Mandamus would lie.
- (ii) When a specific remedy is given by a statute (Industrial Disputes Act), deprives the person who insists upon a remedy of any other form of remedy than that given by the statute.
- (iii) A Writ of Mandamus could only issue against a natural person, who holds public office. Petitioner cannot seek a writ of mandamus against the 03rd Respondent the Human Rights Commission is not a natural person, the Petitioner has failed to name the Members of the Commission to seek this remedy.
- (iv) The Human Rights Commission is a body which can only make a recommendation. This recommendation neither creates a legal right for the Petitioner to claim re-instatement nor does it create a legal duty for Respondent Corporation to reinstate the Petitioner.

Per Sriskandarajah J.

"A Writ of Mandamus would lie where a statute mandates certain action, in defined circumstances and despite the existence of such circumstances, the required action has not been performed."

Cases referred to :

1. *Jayaweera vs Wijeratne* – 1985 2 Sri LR 413
2. *Hendrick Appuhamy vs Johan Appuhamy* - 69 NLR 32
3. *Haniffa vs Urban Council, Nawalapitiya* - 66 NLR 48
4. *Mageswaran vs UGC & others* – 2003 – 2 Sri LR 282, 285

Rohan Sahabandu for Petitioner.

Varuna Basnayake P. C., with Ms Yamuna Kuruppu for 1st and 2nd Respondents

Ms Yuresha de Silva S. C., for 3rd Respondent

MAY 25, 2005

cur adv vult

SRISKANDARAJAH J.
WJAYARATNE J.

I agree.

Application dismissed.

S. SRISKANDARAJAH. J

The Petitioner in this application has sought a writ of Certiorari to quash the order of the 02nd Respondent terminating the services of the Petitioner on 29.08.2000. The Petitioner has also sought a writ of mandamus to compel the 01st and 02nd Respondents to reinstate the Petitioner with back wages or in the alternative to compel the 01st and 02nd Respondents to reinstate the Petitioner as directed by the 03rd Respondent or in the alternative to compel the 03rd respondent to this matter to Her Excellency the President.

The Petitioner with a reference letter of Dr. Chandiana de Mel, the then Chairmen of the 02nd Respondent Corporation applied on 25.07.2000 for a

suitable job in the 02nd Respondent Corporation. The Petitioner was informed by P1 that her application would be considered when an opportunity arises. Subsequently she was called for an interview and after an interview on 11.08.2000, she was appointed as a Record Keeper, Grade B4 from 15.08.2000 by the letter of appointment P3. Her service was terminated by letter dated 29.08.2000 P4 on the basis that she has misrepresented and misled the interview board by suppressing her personal data.

The Petitioner in this application is seeking to quash the aforesaid order of termination of her employment P4. The order is arising out of a contract of employment and the termination complained of based upon a breach of her contract of employment. In *Jayaweera v Wijeratne*²¹, G. P. S. de Silva J held where the relationship between the parties is a purely contractual one of a commercial nature neither certiorari nor mandamus will lie. On the other hand the petitioner had effective alternate remedies such as seeking redress before a Labour Tribunal under the Industrial Dispute Act. In *Hendric Appuhamy v Johan Appuhamy*²² the court held where a specific remedy is given by a statute thereby deprives the person who insists upon a remedy of any other form of remedy than that given by the statute. Under these circumstances a writ of certiorari will not be available to quash the order of termination dated 29.08.2000 or a writ of Mandamus to compel the 01st and 02nd Respondents to reinsate the Petitioner with back wages.

The Petitioner had decided to seek the intervention of the Human Rights Commission in this matter and the Human Rights Commission after an inquiry recommended that the Petitioner should be re-instated. The 02nd Respondent Corporation did not act upon this recommendation and the chairman of the 02nd Respondent by his letter dated 21.05.2001, 2R14 informed the Human Rights Commission as to why he was not implementing the recommendation. The Petitioner by this application seeking a writ of mandamus to compel the 01st and 02nd Respondents to reinstate the Petitioner as directed by the 03rd Respondent or in the alternative to compel the 03rd respondent to refer this matter to Her Excellency the President to compel the 01st and 02nd Respondents to reinstate the Petitioner. A writ of mandamus can only issue against a natural person who holds a public office. In *Haniffa v Urban Counsel Nawalapitiya*²³, the Court held, that in an

application for a writ of mandamus against the Chairman of an Urban Council the Petitioner must name the individual person against whom the writ can be issued. Therefore The Petitioner in this application cannot seek a writ of mandamus against the 03rd Respondent the Human Rights Commission as it is not a natural person and the Petitioner has failed to name the members of the commission to seek this remedy. Further a writ of mandamus may issue to compel something to be done under a statute it must be shown the statute impose a legal duty. In *Mageswaran v University Grants Commission and Others*⁽⁴⁾, the court held "A writ of mandamus only commands the person or body to whom it is directed to perform a public duty imposed by law. In other words a writ of mandamus would lie where a statute mandates certain action in defined circumstances and despite the existence of such circumstances, the required action has not been performed." The human rights commission is a body, which can only make a recommendation. This recommendation neither creates a legal right for the petitioner to claim reinstatement in the 2nd Respondents Corporation nor does it create a legal duty for the Respondent Corporation to reinstate the petitioner. For the reasons stated above the Court dismiss this application without costs.

Judge of the Court of Appeal.

P. WIJAYARATNE J.

I agree.

Judge of the Court of Appeal.