

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

S.C (FR) Case No. 118/2013

In the matter of an Application under
and in terms of Articles 17 and 126 of
the Constitution of the Republic

Wijekoon Herath Mudiyansele Nimal
Bandara
No. 20/4, Thekkawatta Road,
Thennekumbura, Kandy.

PETITIONER

Vs.

1. National Gem and Jewellery Authority
No. 25, Galle Face Terrace,
Colombo 3.
2. Prasad Galhena
- 2A. Amitha Kumara Gamage
- 2B. Anura Gunawardena
- 2C. Asanaka Sanjeewa Welagedara
Chairman and Chief Executive Office
National Gem and Jewellery Authority
No. 25, Galle Face Terrace, Colombo 3.

SUBSTITUTED 2ND RESPONDENT

3. Sarath Samarakoon
- 3A. D.M Rupasinghe
- 3B. B.M.P.N.M. Wickramasinghe
4. Janaka Ratnayake
- 4A. A.K. Seneviratne
5. Chandra Ekanayake
- 5A. Bandula Egodage
- 5B. Ajith Perera
6. Nalaka Thiyambarawatta

- 6A. A.M. Puviharan
 6B. Upali Suraweera
 7. R.M Jayathilaka
 7A. Navaratne Bandara Alahakoon
 8. A.K Seneviratne
 8A. Raja Pieris
 9. T.H.O Chandrawansha
 9A. Nevi Bandara Wegodapola
 10. Dr. Nevi Gunawardena
 10A. N. Godakanda

Board of Directors
 National Gem and Jewellery Authority
 No. 25, Galle Face Terrace, Colombo 3.

11. Hon Attorney General
 Attorney General's Department
 Colombo 12.

- 12B. B.G Indika Kumudu Samaraweera
 13. Chandra Kanthi Indira Malwatta
 14. C.M.J.Y.P. Fernando
 15. W. A. Chulananda Perera

Board of Directors
 National Gem and Jewellery Authority
 No. 25, Galle Face Terrace, Colombo 3.

RESPONDENTS

BEFORE: S. E. Wanasundera P.C., J.
 Anil Gooneratne J. &
 Vijith K. Malalgoda P.C., J.

COUNSEL: Nigel Hatch P.C. with S. Galappaththi and S. Illangage
 for the Petitioner

Kushan D'Alwis P.C with Kaushalya Nawarathna and
 Rajiv Wijesinghe for the 1st, 2C, 5th, 6th, 8th & 9th Respondents

Ms. Yuresha de Silva S.S.C for the Attorney General

ARGUED ON: 30.11.2017

DECIDED ON: 13.12.2017

GOONERATNE J.

The Petitioner in this application was the Director General of the 1st Respondent Authority. He was appointed to the said post on 11.08.2011. (vide P4, P5 & P6). In paragraph 8 of the petition it is pleaded that the 1st Respondent Authority was running at a loss and the Petitioner was responsible for curbing such a loss and bring it to be a profitable organisation, as he introduced several progressive changes in the business. As such by letter P7 the 2nd Respondent allocated further duties to the Petitioner. In this case the main issue, is that the Petitioner was sent on vacation of post in the manner pleaded in paragraph 9 to 15 of the petition and in the corresponding affidavit. The Supreme Court on 05.10.2013 granted Leave to Proceed in terms of Articles 12(1) and 14(1)(g) of the Constitution.

The Respondents have taken up the following preliminary objections in their statement of objections.

- (1) Petitioner does not disclose an infringement or an imminent infringement of a fundamental right.
- (2) Mala fides of Petitioner
- (3) Misrepresentation of material facts

(4) Suppression of material facts

(5) Lack of Uberrima Fides

No doubt the Respondents pleadings refer to same but unfortunately none of the above was substantiated to court on behalf of Respondent in an acceptable manner. It is also pleaded that the Petitioner whilst discharging his official duties acted in a harmful and prejudicial manner which is harmful to the interest of 1st Respondent Authority. It is stated that the Petitioner failed and neglected to discharge the official duties diligently and as a result of irresponsible and negligent conduct of the Petitioner an internal panel of inquiry was held (X1 & annexure to same marked X2). In the objection of the Respondent at paragraph 13(a) it is pleaded that Petitioner whilst abusing the power of office wrongfully obtained possession of his personal file and removed the documents in the file. In the same sub paragraph (e) document X3 is annexed and pleaded as part and parcel of the paragraph thereof. It is stated X3 is a letter issued on behalf of the 1st Respondent to the Secretary of the Ministry of Environment and Renewable Energy. Perusal of X3 does not indicate that it has anything to do with the contents of sub paragraph (e) and that it was addressed to the said Secretary. X3 is a letter addressed to the Petitioner by the 2nd Respondent regarding absentism of attendance, by the Petitioner. Paragraph 14 of the objections refer to voluntarily refraining from reporting for

work. In fact the Petitioner has been terminated from service on that account and nothing else. In this regard X4 a Disciplinary Code (X4) has been submitted along with the objections.

Our attention was drawn to Clause 2:8 and 2:10 of the Disciplinary Code which deals with notice of absence and vacation of post, due to absence. According to Clause 2:10 he should have informed the Chairman of his absence. Petitioner has failed to do so. In this way the Respondents seek to justify the termination.

Article 14(1)(g) confers on a citizen the right to engage with any lawful trade, business, occupation or profession subject to the restrictions contained in Article 15(5) and (7) of the Constitution. Article 23(1) of the universal declaration of Human Rights provides “everyone has the right to work, to free choice of employment. This article protects the right to work for a living which is the very essence of personal freedom”.

The Petitioner assumed duties in the 1st Respondent Authority on or about 11.08.2011. The 2nd Respondent has by letter marked P7 allocated certain responsible duties to the Petitioner. That was by January 2013. This is an indication of the fact that the Petitioner had diligently performed his duties, It appears to this court that all troubles started for the Petitioner with the matters highlighted in document P8, wherein the Commission to investigate Bribery or

corruption required certain details from the Petitioner regarding a consultant of the 1st Respondent. Authority called Krish Weerasinghe. This way a request for details from another important State Agency, which the Petitioner had to comply within his official capacity. As such the version of the Petitioner becomes more probable, and there is justification for the Petitioner to act accordingly. I accept the position that from then onwards the 2nd Respondent became hostile towards the Petitioner and the Petitioner fell so ill as a result. This can be so when a head of the organisation is hostile towards the Petitioner who also hold a responsible position in the 1st Respondent Authority. In this regard letter P10 sent by the Petitioner to the Secretary of Ministry of Environment support the Petitioner's version, which is more probable.

I have also examined all the notes pertaining to Petitioners absence (P8 (a) to P8 (e)). These notes are addressed to Senior Manager called (P &A) Acting P8 (d) has in fact been submitted to the Chairman 1st Respondent Authority. All these notes have been acknowledged in the note itself. P9 is a medical certificate. Leave has been recommended form 22.02.2013 to 01.03.2013. This court has no reason to dispute any of the above. The 2nd Respondent the then Chairman has acted with Malice where the Petitioner is concerned. Material made available to court by either party is sufficient to come to a conclusion that the then Chairman of the 1st Respondent Authority has due

to his own reasons which is tainted with malice has taken the step to discontinue the Petitioner's employment. This court having weighed the pros and cons of the case in hand has to make a just and equitable order, and as such need to intervene in the circumstances of the case. I am convinced with the Petitioner's version.

Lord Denning observed that "a man's right to work at his trade or profession is just as important to him as, perhaps more important than his right to property. Just as the courts will intervene to protect his rights to property, so they will also intervene to protect his right to work" 1966 (1) AER 689 at 694.

In all the circumstances of this case I grant the relief as prayed for in sub paragraphs (b) and (c) of the prayer to the petition. The petitioner will be entitled to compensation in a sum of Rs. 400,000/- payable by the 1st Respondent Authority and cost in a sum of Rs. 100,000/-.

Application allowed with costs.

JUDGE OF THE SUPREME COURT

S.E. Wanasundera P.C. J.

I agree.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda P.C. J.

I agree.

JUDGE OF THE SUPREME COURT