

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC**

**OF SRI LANKA**

In the matter of an application for Special Leave to appeal under Article 128 of the Constitution.

Sri Lanka Telecom Ltd.,

Head Office,

Lotus Road,

Colombo 01.

**PETITIONER-PETITIONER-APPELLANT**

**SC. Appeal No. 215/12**

SC (Spl) L.A. Application No. 47/2012

C.A. (Writ) Application No. 519/08

**-Vs-**

1. Human Rights Commission of Sri Lanka,  
No. 36, Kynsey Road,  
Colombo 08.
2. Justice S. Anandacoomaraswamy,  
Former Chairman,
- 2A. Dr. Deepika Udagama,  
Chairperson,
3. Justice D. Jaywickrama,

Former Member,

3A. Ghazali Hussain,

Member,

4. M.T. Bafiq,

Former Member,

4A. Saliya Peiris

Member,

5. N.D. Abeywardena,

Former Member,

5A. Ambika Sathkunanadan,

Member,

6. Mahanama Thilakaratne,

Former Member,

6A. Dr. Upananda Vidanapathirana,

Member,

7. Nimal G. Punchihewa,

Former Additional Secretary,

7A. S. Jayamanna,  
The Secretary,

All of the Human Rights Commission of Sri Lanka,  
No. 36, Kynsey Road,  
Colombo 8.

8. M.M.M. Zaheed,  
585/1/A, 2<sup>nd</sup> Division,  
Maradana,  
Colombo 10.

**RESPONDENT-RESPONDENT-REAPONDENTS**

Before : Sisira J.De Abrew, J  
Upaly Abeyratne, J &  
Nalin Perera, J

Counsel : Sanjeewa Jayawardena, PC with Pubuduni Wickramaratne for  
the Petitioner-Petitioner-Appellant.  
Parinda Ranasighe Senior DSG for 1<sup>st</sup> – 7<sup>th</sup> Respondent-Respondent-Respondent  
W.Jayarathne , PC with R. Jayawardena for 8<sup>th</sup> Respondent-Respondent-  
Respondent

Argued on : 25<sup>th</sup> November 2016  
Written Submission  
tendered on : 20.2.2013 By the Petitioner  
6.11.2013 by the 8<sup>th</sup> Respondent  
Decided on : 1.3.2017

Sisira J De Abrew

This is an appeal against the judgment of the Court of Appeal wherein the Court of Appeal refused to issue a writ of certiorari sought by the Petitioner-Petitioner-Appellant (hereinafter referred to as the Petitioner-Appellant) to quash the recommendation of the Human Rights Commission ( hereinafter referred to as the HRC). This court by its order dated 6.12.2012, granted leave to appeal on questions of law set out in paragraphs 19(b) to (g), (i) and (j) of the Petition of Appeal dated 12.3.2012 which are set out below.

1. Did the Court of Appeal err in holding that the recommendation of the Human rights Commission cannot be quashed by a Writ of Certiorari, when in fact, it is a distinct step in a statutory process as known to administrative law and is in any event, a finding that generates an affectation of rights and interests and is therefore, clearly justiciable?
2. Did the Court of Appeal err in holding that the Petitioner's acts at the material time amounted to executive or administrative action and that the Human Rights Commission had the jurisdiction to inquire into the 8<sup>th</sup> respondent's complaint and grant him relief?
3. Did the Court of Appeal err in failing to consider the most significant fact that the Labour Tribunal had dismissed the 8<sup>th</sup> Respondent's claim of

termination and that the 8<sup>th</sup> Respondent had not appealed against the said Order?

4. In any event, without prejudice thereto, did the Court of Appeal fall into grave error by failing to consider that the Human Rights Commission, after having significantly ignored the Labour Tribunal order, thereafter proceeded to grant relief to the 8<sup>th</sup> Respondent, without first making a determination as to whether there was in fact an unlawful termination of the 8<sup>th</sup> Respondent's employment by the Petitioner?
5. Without prejudice thereto, did the Court of Appeal fail to consider that the relief of compensation granted to the 8<sup>th</sup> respondent, was devoid of any objective or lawful basis?
6. In any event, did the Court of Appeal err by failing to consider that the recommendation of the Human Rights Commission is totally flawed in that the relief recommended by the Commission is irreconcilable and mutually exclusive in as much as one relief proceeds on the premise of continuing employment and the other proceeds on the premise of a terminal situation?
7. Did the Court of Appeal misdirect itself in failing to consider that the 1<sup>st</sup> to 6<sup>th</sup> Respondents acted arbitrarily in adopting the previous recommendation which was also made without holding an inquiry into the substantive matter and especially in view of the supervening circumstances?
8. Did the Court of Appeal err by holding that the impugned recommendation does not attract the writ jurisdiction, when in fact the said recommendation is a step in a prescribed statutory process as known to administrative law and leads to the affectation of rights and in the interest and is clearly justiciable?

The Petitioner-Petitioner-Appellant (hereinafter referred to as the Petitioner-Appellant) in the petitions filed in this court and the Court of Appeal states that the 8<sup>th</sup> Respondent-Respondent-Respondent (hereinafter referred to as the 8<sup>th</sup> Respondent) who was an employee of the Department of Telecommunication became a clerk in Class 11A in Sri Lanka Telecom Ltd in 1996 with the conversion of the Department of Telecommunication into Sri Lanka Telecom Ltd. On 26.4.1999, he was transferred to the Marketing Division as Assistant Sales Manager. The Petitioner-Appellant further states in the said petitions that in August 1999 on a complaint received from one SHM Rishan to the effect that the 8<sup>th</sup> Respondent had solicited a bribe to provide telephone facilities, a preliminary investigation was conducted; that on the recommendation of the investigating officer, the 8<sup>th</sup> Respondent was transferred to the Commercial Section by letter dated 4.11.1999; that the 8<sup>th</sup> Respondent refused to report to the Commercial Section; that a formal inquiry into the complaint against the 8<sup>th</sup> Respondent was held but the 8<sup>th</sup> Respondent did not attend the inquiry and as such the inquiry was laid by; that the 8<sup>th</sup> Respondent filed an application in the Labour Tribunal on 5.1.2000 against the Petitioner-Appellant on the basis of constructive termination of his employment by the Petitioner-Appellant; that the 8<sup>th</sup> Respondent also filed an application in the HRC alleging violation of his fundamental rights guaranteed by Article 12(1) of the Constitution by the Petitioner-Appellant; and that HRC delivered its decision on 3.3.2008.

The HRC, in its letter marked 'G' stated as follows:

*“Therefore it is recommended*

1. *to grant the salary scale of A6 from 22.6.1999 and place at appointment with all allowances and other payment which are not less than of his colleague V Niles, Neteunam and PMW Kumara and*
2. *to pay reasonable compensation for the full loss of his carrier.*

*Further as empowered by Section 15 of the Human Rights Commission Act No.21 of 1996, the Commission recommends the Respondent to send a report back to the Commission on or before 15.5.2008. This report should contain the steps that have been taken with regard to this recommendation.”*

The HRC delivered the above decision on 3.3.2008. At this stage it is interesting to find out as to what happened to the application filed by the 8<sup>th</sup> Respondent in the Labour Tribunal. The learned President of in the Labour Tribunal on 3.3.2005 dismissed the application filed by the 8<sup>th</sup> Respondent on the ground that there was no constructive termination of services of the 8<sup>th</sup> Respondent by the Petitioner-Appellant and that the 8<sup>th</sup> Respondent on his own conduct left the services.

The Petitioner-Appellant filed a writ application in the Court of Appeal seeking to quash the said decision of the HRC. The Court of Appeal by its judgment dated 30.1.2012, dismissed the application of the Petitioner-Appellant on the ground that what is found in the letter of the HRC dated 3.3.2008 was only a recommendation and that recommendation could not be quashed by a writ of certiorari. The most important question that must be decided in this case is whether what is found in the letter of HRC marked ‘G’ is only a recommendation. I now advert to this question.

Learned President's Counsel (PC) who appeared for the 8<sup>th</sup> Respondent contended that the decision in the letter marked 'G' was only a recommendation which could not be enforced and that there were no provisions in the Human Rights Commission Act (hereinafter referred to as the HRC Act) to implement it. If the above contention of learned PC is accepted as correct, then the authority or the person who is expected to give effect to the recommendation of the HRC can keep quiet and nothing could be done against such an authority or a person. Further if the above contention of learned PC is correct, then purpose of establishing the HRC would be rendered nugatory. In considering the above contention of learned PC, it is relevant to consider Section 15(7) of the HRC Act which reads as follows.

*“ The Commission shall require any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed to report to the Commission, within such period as may be specified in such recommendation, the action which such authority or person has taken, or proposes to take, to give effect to such recommendation and it shall be the duty of every such person to report to the Commission accordingly.”*

When one considers the above section, it is clear that the authority or the person to whom the recommendation of the HRC is addressed cannot keep quiet and that he cannot ignore the recommendation of HRC. He or the authority has to report to the HRC as to what steps he or authority had taken or propose to take. In the present case the Petitioner-Appellant has to act according to Section 15(7) of the HRC Act. It is also pertinent to consider Section 15(8) of the HRC Act which reads as follows.

*“Where any authority or person or persons to whom a recommendation under the preceding provisions of this section is addressed, fails to report to the Commission within the period specified in such recommendation or where such person reports to the commission and the action taken, or proposed to be taken by him to give effect to the recommendations of the Commission, is in the view of the Commission, inadequate, the Commission shall make a full report of the facts to the President who shall, cause a copy of such report to be placed before Parliament.”*

According to Section 15(8) of the HRC Act, the authority or the person to whom the recommendation is addressed fails to report to the HRC or has taken inadequate steps in the opinion of the commission has to face consequences discussed in this section. The Petitioner-Appellant would have to face the consequences discussed in Section 15(8) of the HRC Act if he fails to comply with the recommendation of HRC. When I consider all the aforementioned matters, it is clear that the decision of the HRC in document marked ‘G’ would affect the rights of the Petitioner-Appellant. For the above reasons, I am unable to agree with the above contention of learned PC for the 8<sup>th</sup> Respondent.

Learned PC for the Petitioner-Appellant submitted that the Petitioner-Appellant is a public listed company and a pioneer in telecommunication industry in Sri Lanka and that if the Petitioner-Appellant does not comply with the recommendation of the HRC, there would be criticism that this company is a violator of fundamental rights of the people and thereby the Petitioner-Appellant would face serious repercussion. He therefore contended that his rights had been affected by the decision of the HRC in the document marked ‘G’. I now advert to

this contention. What would happen if the Petitioner-Appellant does not comply with the recommendation of the HRC? As I pointed out earlier, this company would have to face the situation discussed in Section 15(8) of the HRC Act. Further the Petitioner-Appellant has a right to maintain the reputation that he respects the Rule of Law and does not violate the laws of the country. If the recommendation of the HRC is not implemented, he would lose this reputation. For the aforementioned reasons, I am of the opinion that the decision contained in document marked 'G' would affect the rights of the Petitioner-Appellant. For the above reasons, I hold that the decision of the HRC found in the document marked 'G' is not only a recommendation but a decision that would affect the rights of the Petitioner-Appellant. The Court of Appeal has failed to consider the above matters.

If a decision of a Public Body affects the rights of an individual, can such a decision be quashed by issuing a writ of certiorari? In this connection, I would like to consider a passage of the judgment of Lord Justice Atkin in *Rex Vs Electricity Commissioner* (1924) 1 KB 171 at 205 which reads as follows:

*“Whenever anybody of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these writs.”*

In *B Sirisena Cooray Vs Tissa Dias Bandaranayake and Two others* [1999] 1SLR 1 this court issuing a writ of certiorari quashed the determination of the Presidential Commission. His Lordship Justice Dheeraratne in the said judgment observed as follows:

*“The determinations and recommendations of the Commission are flawed firstly as being unreasonable in that the Commissioners did not call their own attention to the relevant matters; secondly as they are not based on evidence of any probative value; and thirdly because those determinations and recommendations have been reached without giving the petitioner a right of hearing in breach of the principles of natural justice.”*

HWR Wade & Forsyth in the book titled ‘Administrative Law’ 10<sup>th</sup> Edition page 518 discussing the question of issue of writ of certiorari states as follows:

*“They will lie where there is some preliminary decision as opposed to a mere recommendation which is a prescribed step in a statutory process which leads to a decision affecting rights even though the preliminary decision does not immediately affect rights itself.”*

In GPA DE Silva Vs Sadique [1978-79-80] page166 at page 171-172 this court observed thus:

*“The circumstances in which a Writ of Certiorari will issue have been the subject of judicial pronouncements. Brett L.J. in R. v. Local Government Board [1982] Vol: 10 QBD 309,321 said.*

*“Wherever the Legislature entrusts to anybody of persons other than to the superior Courts the power of imposing an obligation upon individuals the Courts ought to exercise as widely as they can the power of controlling those bodies if they attempted to exceed their statutory powers.”*

*That this principle applies not merely to statutory bodies is clear. In Wood v. Wood, [1874] LR Vol: 9 Ex 170 it was said -*

*"this rule is not confined to the conduct of strictly legal tribunals but is applicable to every tribunal or body of persons invested with authority to adjudicate upon matters involving civil consequences to individuals."*

*It appears to be clear that certiorari will also lie where there is some decision, as opposed to a recommendation, which is a prescribed step in a statutory process and leads to an ultimate decision affecting rights even though that decision itself does not immediately affect rights."*

Considering the above legal literature, I hold that if a recommendation of a Public Body affects the right of an individual, Superior Courts, in the exercise of their writ jurisdiction, have the power to quash such a recommendation by issuing a writ of certiorari.

For the above reasons, I hold that the Court of Appeal was in grave error when it decided that the recommendation found in the document marked 'G' could not be quashed by a writ of certiorari. The Court of Appeal due to the above wrong conclusion failed to consider the merits of the case. I reproduce below the questions of law set out in paragraphs 19(b) and 19(h) the Petition of Appeal dated 12.3.2012.

Did the Court of Appeal err in holding that the recommendation of the Human rights Commission cannot be quashed by a Writ of Certiorari, when in fact, it is a distinct step in a statutory process as known to administrative law and is in any event, a finding that generates an affectation of rights and interests and is therefore, clearly justiciable?

Did the Court of Appeal err by holding that the impugned recommendation does not attract the writ jurisdiction, when in fact the said recommendation is a step in a prescribed statutory process as known to administrative law and leads to the affectation of rights and in interest and is clearly justiciable?

For the above reasons, I answer the above question of law in the affirmative. The other questions of law do not arise for consideration

For the aforementioned reasons, I set aside the judgment of the Court of Appeal and direct the Court of Appeal to rehear the case on its merits.

*Judgment of the Court of appeal set aside.*

*Re-hearing ordered.*

Judge of the Supreme Court

Upaly Abeyratne J

I agree.

Judge of the Supreme Court

Nalin Perera J

I agree.

Judge of the Supreme Court

