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

Captain M.B.A. Dissanayake,
No. 126/5A,
Old Puttalam Road,
Tisa Wewa,
Anuradhapura.
Petitioner

SC APPEAL NO: SC/APPEAL/15/2021
SC LA NO: SC/SPL/LA/147/2019
CA APPLICATION NO: CA/WRIT/299/2013

Vs.

1. General Jagath Jayasooriya,
   Chief of Defence Staff,
   Block 05, BMICH,
   Colombo 07.
2. Lieutenant General R.M.D. Ratnayake,
   Army Headquarters,
   Colombo 03.
3. Brigadier D.D.U.K. Hettiarachchi,
   Army Headquarters,
   Colombo 03.
4. Colonel S.S. Waduge,
   Army Headquarters,
   Colombo 03.

5. Colonel H.G.P.M. Kariyawasam,
   Office of Chief of Defence Staff,
   Block 05, BMICH,
   Colombo 07.
   Respondents

AND NOW BETWEEN

Captain M.B.A. Dissanayake,
No. 126/5A, Old Puttalam Road,
Tisa Wewa, Anuradhapura.
Petitioner-Appellant

Vs.

1. General Jagath Jayasooriya,
   Chief of Defence Staff,
   Block 05, BMICH,
   Colombo 07.
2. Lieutenant General R.M.D. Ratnayake,
   Army Headquarters,
   Colombo 03.
3. Brigadier D.D.U.K. Hettiarachchi,
   Army Headquarters,
   Colombo 03.
4. Colonel S.S. Waduge,
   Army Headquarters,
   Colombo 03.
5. Colonel H.G.P.M. Kariyawasam,
   Office of Chief of Defence Staff,
   Block 05, BMICH,
   Colombo 07.
   Respondent-Respondents

Before: Buwaneka Aluwihare, P.C., J.
A.H.M.D. Nawaz, J.
Mahinda Samayawardhena, J.

Counsel: Faisz Musthapha, P.C., with Ranil Samarasooriya, Thushani Machado, Didula Rajapaksha and Madhava de Alwis for the Petitioner-Appellant.
Chaya Sri Nammuni, D.S.G., for the Respondent-Respondents.

Argued on: 20.06.2022

Written submissions:
by the Petitioner-Appellant on 09.08.2022.
by the Respondent-Respondents on 15.06.2022.

Decided on: 05.09.2023

Samayawardhena, J.

Factual matrix

The Appellant was a captain in the Sri Lanka Army attached to the 5th Sri Lanka National Guard at the time material to this appeal. Some members of the 12th Gajaba Regiment of the Sri Lanka Army were reportedly involved in the illegal activity of removing a large quantity of gold from a safe in the Puthukudirppu area in the Northern Province during humanitarian operations in March 2009. The Appellant was indirectly implicated in this act. He is alleged to have been given some gold in recognition of his knowledge of the illegal transportation of the said gold on a subsequent occasion. The Appellant totally denies this.

A Court of Inquiry comprising the 3rd-5th Respondents as members had been appointed to inquire into this matter and report. They found eight Army personnel including the Appellant involved in this illegal activity.

At last, the Court of Inquiry recommended that a complaint be made to the Special Investigation Bureau of the Criminal Investigation Department of the Sri Lanka Police to conduct a formal investigation into this matter and to produce suspects in Court to deal with them under the normal law.

Thereafter, the 2nd Respondent, the Commander of the Army, upon the evidence led before the Court of Inquiry, made the order dated 13.08.2012 that the Appellant (along with others involved in the act) be decommissioned and disciplinary action be taken.

The Appellant filed an application in the Court of Appeal dated 01.10.2013 naming the Chief of Defence Staff, the Commander of the Army, and the three members of the Court of Inquiry as the 1st to 5th Respondents respectively, seeking to quash the aforesaid determination of the Commander of the Army dated 13.08.2012 marked P3 by a writ of certiorari.

The Respondents filed a statement of objections dated 20.07.2015 stating *inter alia* that the Commander of the Army sent his opinion and recommendation dated 18.10.2013 for the withdrawal of the commission to the secretary of the Ministry of Defence to be communicated to the President (R14); the commission of the Appellant was withdrawn by the President by letter dated 28.11.2013 (R15); in terms of section 9(1) of the Army Act, No. 17 of 1949, as amended, the officers shall be appointed by commissions under the hand of the President; in terms of section 10 of the Army Act, every officer shall hold his appointment during the President's pleasure; in view of R15, the application to quash P3 is futile; and the President has immunity under Article 35(1) of the Constitution. On this basis, they sought dismissal of the Appellant's application.

After hearing, the Court of Appeal dismissed the application of the Appellant with costs.

The main basis of the judgment of the Court of Appeal is that "*although the 1st Respondent has in P3 dated 13.08.2012 directed that the commission of the Petitioner be withdrawn, no further action has been taken thereon. Hence the question of quashing P3 by way of a writ of certiorari does not arise*." As I will demonstrate below, this finding of the Court of Appeal is erroneous.

Thereafter the Court of Appeal stresses the "pleasure principle" embodied in section 10 of the Army Act and concludes that in view of R15 since the President has approved the withdrawal of the commission of the Appellant, an order to quash P3 by a writ of certiorari is futile.

This Court granted leave to appeal against the Judgment of the Court of Appeal on the following questions of law:

(a) Did the Court of Appeal fall into substantial error by failing to consider that the decision contained in P3 could not have been made on the basis of the findings of the Court of Inquiry?
(b) Did the Court of Appeal err by failing to appreciate that the withdrawal of the commission of the Appellant stems from the decision contained in P3?
(c) Did the Court of Appeal fail to appreciate that the determination R15 made by the President does not preclude the grant of relief prayed for by the Appellant?
(d) Did the Court of Appeal err in the application of the pleasure principle inasmuch as the withdrawal of the commission had been effected for cause in pursuance of the findings of the Court of Inquiry?

The scope of the Court of Inquiry

The Army Courts of Inquiry Regulations of 1952 made by the subject Minister in terms of section 155 of the Army Act are found in Chapter 357 in the Subsidiary Legislation of Ceylon 1956.

Regulation 2 thereof reads as follows:

> *A court of inquiry means an assembly of officers, or, of one or more officers together with one or more warrant or non-commissioned officers, directed to collect and record evidence and, if so required, to report or make a declaration with regard to any matter or thing which may be referred to them for inquiry under these regulations.*

Regulation 16 states:

> *Every court of inquiry shall record the evidence given before it, and at the end of the proceedings it shall record its findings in respect of the matter or matters into which it was assembled to inquire as required by the convening authority.*

In terms of Regulation 15, there is no necessity to require the officer under investigation to be present when proceedings are in progress and also to allow the witnesses to be cross-examined unless such inquiry affects the character or reputation of the officer. Regulation 15(1) reads as follows:

> *Whenever an inquiry affects the character or the military reputation of an officer or soldier, the officer or soldier concerned shall be afforded the opportunity of being present throughout the inquiry. He shall also be allowed to make a statement, to adduce evidence on his behalf and to cross-examine any witnesses whose evidence is likely to affect his character or his military reputation.*

One cannot deny that this inquiry relates to the character and reputation of the Appellant. Learned President's Counsel for the Appellant submits that, out of the seven witnesses who testified before the Court of Inquiry, three witnesses testified implicating the Appellant but the Appellant was allowed to cross-examine only one witness and it was also confined to only three questions.

There is no dispute that a Court of Inquiry is nothing but a fact-finding inquiry. It is part of the investigation process. There is no accused tried on a charge sheet before a Court of Inquiry. Hence a person cannot be found guilty and punished either by the Court of Inquiry or upon the recommendations or findings of the Court of Inquiry by another. *Vide Boniface Perera v. Lt. General Sarath Fonseka and Others* [2009] BLR 44 at 46, *Lokuhennadige v. Lt. General Sarath Fonseka and Others* [2010] 2 Sri LR 85 at 93-94, *Colonel Fernando v. Lt. General Fonseka and Others* [2010] 2 Sri LR 101, *Lt. Harischandra v. Commander of the Army and Others* [2012] 1 Sri LR 416.

The true nature of the proceedings before the Court of Inquiry is discernible when one reads the recommendation made by the Court of Inquiry at the end of the proceedings. After identifying the officers who have been involved in the illegal activity based on the evidence presented before it, the final recommendation of the Court of Inquiry reads as follows:

> සමස්ථයක් වශයෙන් මෙම මුපළ සඳහා ඉදිරිපත් වී ඇති සියලුම සාක්ෂි අනුශංගික ලේඛන සහ වක්‍රකාර සාක්ෂි සියල්ල අධ්‍යනය කිරීමේදී මෙම වංචාව දැනට හඳුනාගෙන ඇති ප්‍රමාණයට වඩා බෙහෙවින් බරපතල විය හැකි බවත්, මෙම වංචාවෙන් රජයට හෝ ජාතියට අහිමි වී ඇති ස්වර්ණාභරණ, මුදල් හෝ දේපල අතුරින් මෙතෙක් කිසිවක් සොයා ගැනීමට නොහැකි වී ඇති බවද, යන කරුණු සැලකිල්ලට ගෙන මෙම වංචාව සබැඳිව විදිමත් පරීක්ෂණයක් සිදුකර වුදිතයින් අධිකරණය වෙත ඉදිරිපත් කිරීම සඳහා මෙම වංචාවට අදාළ කරුණු අපරාධ විමර්ශන දෙපාර්තමේන්තුවේ විශේෂ විමර්ෂණ ඒකකය වෙත පැමිණිල්ලක් ලෙස ඉදිරිපත් කිරීම වඩාත් සුදුසු බවට මණ්ඩලය වැඩිදුරටත් නිර්දේශ කරයි.

This conclusion of the Court of Inquiry itself indicates that no regular and complete investigation was conducted by them.

The decision of the Commander of the Army is *ultra vires*

Upon receipt of the recommendation, what did the Commander of the Army do? He ordered (not recommended or opined) *inter alia* that the commission of the Appellant be withdrawn and disciplinary action be taken. I must stress that this he did purely on the evidence led and the findings made by the Court of Inquiry and not on any other basis.

> 12. **මුපදා වෙත ඉදිරිපත් වී ඇති සාක්ෂි සමස්තය සලකා බැලීමේදී** පහත නම් සඳහන් නිලධාරීන්/සෙනින් විසින් මහජනතාවට අයත් අනාරක්ෂිතව තිබූ විශාල වටිනාකමකින් යුක්ත දේපලක් තමන් සන්තකයට ගෙන කිසිදු වගකිවයුතු නිළධාරියෙකුට හෝ උසස් මුලස්ථානයකට දන්වා ඒ සබැඳි සුදුසු ඉදිරි ක්‍රියාමාර්ග නොගෙන තම අභිමතය පරිදි සිවිල් අයවළුන්ට විකුණා මුදල් ලබාගෙන ඒවා තම පෞද්ගලික කාර්යන් සඳහා යෙදවීමෙන් වරදක් සිදුකර ඇත. වන්නි මානුෂිය මෙහෙයුම සමයේ යුද්ධ හමුදා සාමාජිකයන් හට සිවිල් වැසියන් තුළ තිබූ ගෞරවාදරය අහිමි වන අන්දමේ ක්‍රියාවන් සිදුකිරීම මගින් තත් නිලධාරීන්/සෙනින් විසින් යුද්ධ හමුදාව අපකීර්තියට පත්වන ආකාරයේ වරදක් සිදුකිරීම සබැඳිව **මෙහි පහත නම් සඳහන් නිලධාරීන් අධිකාරියෙන් ඉවත් කළ යුතු බවත් සෙනින් ගේ සේවය අනවශ්‍ය හේතූන් මත යුද්ධ හමුදාවෙන් ඉවත් කළ යුතු බවට විධානය කරමි**.
>
> 13. **මීට අමතරව ඉහත නම් සඳහන් නිලධාරීන්/සේනින්ට එරෙහිව විනය පියවර ගත යුතු බවට ද විධානය කරමි**.

He cannot take such a decision on the evidence led and the findings made by a fact-finding mission. This decision is *ultra vires* because the decision maker did not have legal authority to make the decision.

The Army Commander's letter to the Secretary to the Ministry of Defence

What did the Commander of the Army write to the secretary of the Ministry of Defence to be communicated to the President by R14? The relevant part of the letter (paragraphs 2 and 3) reads as follows:

2. This Officer was found guilty of fraudulently acquiring gold jewellery belonging to internally displaced persons at Puthukkudiyiruppu area while serving in 5 Sri Lanka National Guard. A Court of Inquiry had been appointed to inquire into the said incident and as per the findings of the Court of Inquiry dated 13 August 2012 it is recommended that the Officer's Commission be withdrawn.

3. Considering the above facts, I am of the opinion that further employment of this Officer in service would not be in the best interest of the Army. Therefore, as the Commander of the Army, I am compelled to seek the direction of His Excellency the President regarding the further employment of this Officer in service in terms of the Army Discipline Regulations 1950.

It is a misrepresentation of facts to state that the Appellant was found guilty of fraudulently acquiring gold jewellery belonging to internally displaced persons at Puthukudirppu area while serving in the 5th Sri Lanka National Guard. He was never found guilty of such an offence. He could not have been found guilty without charges being framed against him.

The President's decision is predicated on the Commander's letter

It is based on this letter that the President decided to withdraw the commission of the Appellant. The relevant portion of the letter sent by the secretary of the Ministry of Defence to the Commander of the Army marked R15 reads as follows:

This has reference to your letter of even No. dated 18.10.2013.
His Excellency the President has approved the withdrawal of commission of the following officer from the Sri Lanka Army Volunteer Force with effect from 22.07.2010.

As stated on the face of the document, the President's decision was entirely predicated upon the contents of the letter of the Commander of the Army marked R14 quoted above. It was not an independent decision of the President but purely an approval of the decision made by the Commander of the Army. For all intents and purposes, the withdrawal of commission was done by the Commander of the Army and the President merely approved it.

The Pleasure Principle has no applicability

I agree with learned President's Counsel for the Appellant that the Court of Appeal was not correct when it applied the pleasure principle to the facts of this case. Although section 10 of the Army Act states that every officer shall hold his appointment during the President's pleasure, it is crystal clear that the President did not exercise his discretion on that basis.

Regulation 2 of the Army Discipline Regulations and the discretion of the Commander

Learned Deputy Solicitor General in drawing attention to Regulation 2 of the Army Discipline Regulations of 1950 (Chapter 356) found in the Subsidiary Legislation of Ceylon 1956 which states that "*The Commander of the Army shall be vested with general responsibility for discipline in the army*", contends that the Commander was well within his powers when he made the recommendation to the President regarding the service of the Appellant and withdrawal of his commission. In this regard, the learned Deputy Solicitor General strongly relies on the judgment of this Court in *Major K.D.S. Weerasinghe v. Colonel G.K.B. Dissanayake and Others* (SC/FR/444/2009, SC Minutes of 31.10.2017), which was cited by the Court of Appeal in the impugned judgment. Learned President's Counsel for the Appellant strenuously submits that the said judgment of

this Court is clearly distinguishable as the petitioner in that case unlike in the instant case had pleaded guilty to all charges he faced in the summary trial. I am inclined to agree with the learned President's Counsel.

It is also important to note that the above-mentioned case was not a writ application but a fundamental rights application whereby an officer of the Army complained of violation of his fundamental rights guaranteed under Articles 12(1) and 13(3) of the Constitution on the discharge of the said officer from service by the Commander of the Army after a Court of Inquiry. Malalgoda J. (with the agreement of Wanasundera J. and Aluwihare J.) held:

> *Regulation 2 of the Army Disciplinary Regulations 1950 provides that "the Commander of the Army shall be vested with the general responsibility for discipline in the Army" and in the case in hand the Commander acting under the above provision had sought a direction from His Excellency the President regarding the further retention of Petitioner. As revealed before us, the above conduct of the Commander of the Army when seeking a directive from His Excellency the President was an independent act and was done for the best interest of the Army in order to maintain the discipline of the Army.*

It is on that basis Malalgoda J. held that there was no violation of Articles 12(1) and 13(3) of the Constitution.

However, in the instant case, as I have already stated, the decision P3 was made on findings of the Court of Inquiry, not in the proper invocation of Regulation 2 of the Army Disciplinary Regulations. The direction sought from the President by R14 was not an independent act of the

Commander but intrinsically interconnected with the findings of the Court of Inquiry.

For completeness, let me also add that although Regulation 2 of the Army Discipline Regulations of 1950 states that the Commander of the Army shall be vested with general responsibility for discipline in the army, there is no unfettered, untrammeled and unbridged discretion in the modern administrative law. Our system of government is founded on the rule of law, and unfettered discretion cannot exist where the rule of law reigns. Discretion is subject to judicial review.

In *Premachandra v. Major Montague Jayawickrema and Another* [1994] 2 Sri LR 90 at 105, G.P.S. De Silva C.J. held:

> *There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted.*

In the case of *Munasinghe v. Vandergert* [2008] 2 Sri LR 233 at 232, Bandaranayake J. (later C.J.) observes:

> *Considering the present day administrative functions, there is no doubt that it is necessary to confer authority on administrative officers to be used at their discretion. Nevertheless, such discretionary authority cannot be absolute or unfettered as such would be arbitrary and discriminatory, which would negate the equal protection guaranteed in terms of Article 12(1) of the Constitution.*

Further in *Rajavarothiam Sampanthan and Others v. Attorney General and Others* (SC/FR/351-356, 358-361/2018, SC Minutes of 13.12.2018), H.N.J. Perera C.J. held at 67:

> *A related principle is that our Law does not recognize that any public authority, whether they be the President or an officer of the State or an organ of the State, has unfettered or absolute discretion or power.*

Lord Wrenbury in the celebrated House of Lords decision in *Roberts v. Hopwood* [1925] AC 578 at 613 articulated this in the following manner:

> *A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by the use of his reason, ascertain and follow the course which reason directs. He must act reasonably.*

Lord Denning, M.R. in *Breen v. Amalgamated Engineering Union* [197I] 2 Q.B. 175 at 190 stressed the importance of the public authority exercising discretion being focused on considerations only relevant to the matter at hand without being strayed into irrelevant considerations. Exercising discretion in good faith alone is not sufficient. Discretion must be exercised according to law.

> *The discretion of a statutory body is never unfettered. It is a discretion which has to be exercised according to law. That means at least this: the statutory body must be guided by relevant consideration and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless, the decision will be set aside. That is established by Padfield v. Minister of*

> *Agriculture, Fisheries and Food [1968] A.C. 997 which is a landmark in modern administration law.*

Professor Paul Craig, in *Administrative Law* (4th Edition, 1999) at page 507 explains how the Courts can shape the proper exercise of discretion by public bodies.

> *First, the courts can impose controls on the way in which the discretion is exercised, with the objective of ensuring that there has been no failure to exercise the discretion. Limitations on delegation, and on the extent to which an authority can proceed through policies or rules, are the two main controls of this type. Secondly, constraints can be placed upon an administrative authority in order to ensure that there has been no misuse of power. The judiciary can impose substantive limits on the power of an administrative body on the ground that it is thereby ensuring that the body does not act illegally, outside the remit of its power. Thirdly, the court can develop principles to make sure that administrative authority does not misuse its power by acting irrationally, thereby placing substantive limits on the power of that authority.*

Is the President's decision a stumbling block to grant relief to the Appellant?

The main argument of learned Deputy Solicitor General is that, in view of the President's decision contained in R15, the Appellant's application must be dismissed on futility because even if P3 and R14 are declared null and void, R15 will survive. I am unable to agree with this argument on several reasons.

What is the relief sought by the Appellant from the Court of Appeal? The Appellant sought only to quash P3 by a writ of certiorari. Even if R14 and

R15 survive, there is no impediment for the Court to quash P3 by way of a writ certiorari.

In *Flying Officer Ratnayake v. Commander of Air Force and Others* [2008] 2 Sri LR 162, after a Court of Inquiry, the Commander of the Air Force recommended that the commission of the petitioner who was an officer of the Air Force be withdrawn, and the President approved it. The petitioner filed an application in the Court of Appeal seeking to quash the recommendation by certiorari and to compel the respondents by mandamus to hold a Court Martial in respect of the charges levelled against him. De Abrew J. with the agreement of Sripavan J. (later C.J.) quashed the recommendation by certiorari since a recommendation to withdraw the commission of the petitioner could not have been made upon findings of a Court of Inquiry but declined to issue mandamus.

Rights of the parties shall be determined at the commencement of the action

Firstly, it is well settled law that rights of the parties shall be determined at the time of the institution of the action. The Appellant filed the application in the Court of Appeal on 01.10.2013 seeking to quash the decision of the Commander of the Army contained in P3. Subsequent to the filing of this application, the Commander of the Army wrote R14 to the secretary of the Ministry of Defence on 18.10.2013. Based on R14, the decision contained in R15 dated 28.11.2013 was taken by the President. R14 and R15 came into being after the Appellant had filed the application in the Court of Appeal.

Decision as a deterrence

Secondly, if a decision of a public authority is plainly *ultra vires*, even if quashing it would not give any relief to the suiter, but would only be an academic exercise, the Court would not act in vain by formally quashing

the said decision by certiorari as it would *inter alia* impress upon the other bodies who discharge functions of public nature that the same fate will befall on them if they also behave in the same manner. It will act as a deterrence.

Clive Lewis in *Judicial Remedies in Public Law* (2nd Edition, London Sweet & Maxwell, 2000) at page 342 states:

> *Even if there is no point in granting remedies such as certiorari, so far as the particular applicant is concerned, there may still be a need to clarify the law or give guidance for decision-makers in the future. A court may grant a declaration setting out the true legal position, or may give judgment clarifying the law but without making a formal declaration.*

In the case of *Sundarkaran v. Bharathi* [1989] 1 Sri LR 46, the petitioner-Appellant filed an application seeking certiorari and mandamus after being denied a liquor license for the year 1987. However, by the time the matter reached the Supreme Court, it had become purely academic since the year 1987 had already passed. Nonetheless, whilst allowing the appeal, Amarasinghe J. took the view that "*The court will not be acting in vain in quashing the determination not to issue the licence for 1987 because the right of the petitioner to be fully and fairly heard in future applications is being recognised*." Similar conclusion was reached by Sripavan J. (later C.J.) in *Nimalasiri v. Divisional Secretary, Galewela* [2003] 3 Sri LR 85.

Are recommendations amenable to writ jurisdiction?

Learned Deputy Solicitor General further submits that R14 contains a recommendation and not a decision, and recommendations are not amenable to writ jurisdiction. The Court of Appeal has also held that "*In any event, R14 is only a recommendation which is not subject to a writ of*

certiorari." As I have already stated the decision in R15 is based on the misleading recommendation contained in R14.

In *Flying Officer Ratnayake v. Commander of Air Force and Others (supra)*, De Abrew J. with the agreement of Sripavan J. (later C.J.) quashed the recommendation of the Commander of the Air Force to the President by a writ of certiorari.

In *Captain Nawarathna v. Major General Sarath Fonseka and Others* [2009] 1 Sri LR 190 at 202, Ratnayake J. (with S.N. Silva C.J. and Tilakawardane J. agreeing) upheld the decision of the Court of Appeal to issue writs of certiorari to quash the recommendations:

> *I note that the Court of Appeal had decided to grant partial relief by issuing writ of certiorari to set aside the recommendation made by the 1st Respondent to withdraw the commission and discharge the Petitioner from the army and a writ of certiorari to quash the recommendation to dismiss the Petitioner, which decisions will stand.*

The frontiers of the administrative law have expanded over the years. Hence even recommendations of public authorities can be subject to writ jurisdiction provided they make serious inroads into the rights of the people.

In *Sri Lanka Telecom Ltd. v. Human Rights Commission of Sri Lanka* [2020] 1 Sri LR 212, the Supreme Court held that recommendations of the Human Rights Commission attract writ jurisdiction. In the course of the Judgment, De Abrew J. at page 220 declared:

> *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.

In furtherance of this positive development in law, it was held in *David Raja v. Minister of Fisheries and Aquatic Resources Development and Others* [2020] 1 Sri LR 310 at 314 that:

if a recommendation of a public body protects the rights of an individual, the superior Courts, in the exercise of writ jurisdiction, have the power to compel the enforcement of such a recommendation by issuing a writ of mandamus, if the Court is satisfied that the recommendation is made on compelling grounds.

Conclusion

I answer the questions of law on which leave to appeal was granted in the affirmative and set aside the judgment of the Court of Appeal dated 25.03.2019. The decision of the Commander of the Army contained in P3 dated 13.08.2012 is quashed by a writ of certiorari. The petitioner is entitled to costs of this Court and the Court of Appeal.

Judge of the Supreme Court

Buwaneka Aluwihare, P.C., J.
I agree.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.
I agree.

Judge of the Supreme Court