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

In the matter of an application for Special Leave to Appeal to the Supreme Court of the Democratic Socialist Republic of Sri Lanka under and in terms of Article 128 (2) of the Constitution read with Supreme Court Rules of 1990.

Lt. Col. R.D. Gamini Ranwela,
404-A,
Batuwatte,
Ragama.

S.C. Appeal No. 99/2018
S.C. (SPL) L.A. 76/2016
C.A. (Writ) Application No. 830/08

PETITIONER

Vs.

1. Lt. Gen. Sarath Fonseka,
   Commander of the Sri
   Lanka Army, Army Headquarters,
   Colombo.

2. Lt. Col. L.R. Illukkumbura, Army
   Headquarters, Colombo.

3. Major.C.C. Weeraratne, Sri Lanka
   Volunteer Force, Headquarters,
   Battaramulla.

4. Capt.P.A.S. Wijesinghe, Regimental
   Headquarters, Wijayabe Infantry
   Regiment, Boyagane, Kurunegala.

5. Major K.R.S.P.K. Kahagalle, 5th Batallion, Sri Lanka Light Infantry Army, Army Camp Nikaweva, Welioya, Parakramapura.

RESPONDENTS

AND NOW BETWEEN

1.Lt. General Crishantha de Silva,
Former Commander of the Sri Lanka Army, Army Headquarters, Colombo.

1(A) Mahesh Senanayake,
Present Commander of the Sri Lanka Army, Army Headquarters, Colombo.

1(b)Lieutenant General Lokugan Hewage Shavendra Chandana Silva,
Commander of the Army,
Army Headquarters, Colombo.

2. Lt.Col.L.R. Illukkumbura Army Headquarters, Colombo.

3. Major.C.C. Weeraratne
Sri Lanka Volunteer
Force Headquarters, Battaramulla.

4. Capt.P.A.S. Wijesinghe,
Regimental Headquarters, Wijayaba
Infantry Regiment, Boyagane,
Kurunegala.

Respondent-Appellants

Vs.

Lt. Col.R.D. Gamini Ranwela,
404-A,
Batuwatte,
Ragama

Petitioner-Respondent

Major K.R.S.P.K. Kahagalle,
5th Batallion,
Sri Lanka Light Infantry Army,
Army Camp Nikaweva,
Welioya, Parakramapura.

5th Respondent-Respondent

Before **: Hon. Janak De Silva, J.**
: Hon. Achala Wengappuli, J.
: Hon. Sampath K.B Wijeratne, J.

Counsel : Dr. Avanthi Perera DSG for the Respondents-Appellants.

Saliya Peiris, P.C. with Pasindu Silva, Nisal Dulmith and Andrea Wijewansha for the Petitioner-Respondent.

Argued on : 26.09.2025

Decided on : 30.01.2026

Janak De Silva, J.

At all times relevant to this application, the Petitioner-Respondent (Respondent) was a Lieutenant Colonel (Temporary) of the Sri Lanka Army Volunteer Force. Consequent to a Court of Inquiry (COI) findings, the Army Commander decided to make a recommendation (P10) that the commission of the Respondent be withdrawn. Aggrieved by this recommendation, the Respondent invoked the writ jurisdiction of the Court of Appeal, impugning the *vires* of the COI proceedings, its findings and the recommendation of the Army Commander.

The Court of Appeal issued a writ of *certiorari* quashing what it termed the *decision* of the Army Commander. However, the prayer for a writ of *certiorari* to quash the proceedings and findings of the COI was rejected.

Aggrieved by the judgement of the Court of Appeal, the Respondents-Appellants (Appellants) sought and obtained special leave to appeal on the following questions of law:

(i) Whether the Court of Appeal misdirected itself in law and in fact in failing to consider that a recommendation for the withdrawal of a commission by His Excellency the President need not necessarily be preceded by the findings of a Summary Trial or a Court Martial?

(ii) Whether the Court of Appeal erred in failing to appreciate that a recommendation by the Commander of the Sri Lanka Army to the President to withdraw an officer's commission does not amount to a punishment as contemplated under the provisions of the Army Act?

(iii) Whether the Court of Appeal failed to give due consideration to the statutory power vested in the Commander of the Sri Lanka Army to make

recommendations to His Excellency the President regarding the removal of the commission of any officer of the Army?

Version of the Respondent

The entire allegation levelled against the Respondent originated from a purported complaint made to the Human Rights Commission of Sri Lanka by the wife of one Samantha Ranasinghe who was a soldier serving under his command. The complaint alleged that the Respondent had forcibly granted leave without pay to the said Samantha Ranasinghe and had compelled him to work at an estate owned by the Respondent's wife.

Pursuant to the said complaint, the Sri Lanka Corps of Military Police had conducted what was described as an investigation, and based on the outcome thereof, a COI was convened. The findings of that COI ultimately led to the decision of the Commander of the Army. The entire sequence of events , beginning from the said complaint to the consequential actions were tainted with mala fides and procedural irregularity.

Version of the Appellants

The evidence recorded at the COI revealed that the Respondent had abused his powers as the Commanding Officer of the 5th Volunteer Battalion of the Sri Lanka Light Infantry and had attempted to mislead the COI by giving false evidence on oath and submitting unauthenticated documents.

The Army Commander is vested with the general responsibility for discipline in the Sri Lanka Army and is responsible for ensuring that the rules of the Sri Lanka Army are observed.

Considering the very serious nature of the breach of discipline, the Army Commander was of the view that retaining the Respondent in the service of the Sri Lanka Army would be detrimental to the best interests of the Sri Lanka Army. Accordingly, having considered all the relevant material, the Army Commander took the decision to

recommend to H.E. the President that the Respondent be requested to resign his Commission.

The Court of Appeal, while granting relief on other grounds, did not find the COI itself to be unlawful. Neither did it set aside its findings. Hence this appeal must be determined on the footing that the findings of the COI are lawful.

Before examining the three questions of law on which special leave to appeal has been granted, let me expound the pleasure principle enshrined in Section 10 of the Army Act No. 17 of 1949 as amended (Army Act) since it forms an important component of the case of the Appellants.

Pleasure Principle

This principle is reflected in the Latin maxim *durante bene placito* (during good pleasure) or *durante bene placito regis* (during the good pleasure of the King).

The pleasure principle is part of the prerogative power of the State **[*Abeywickrema v. Pathirana and Others* (1986) 1 Sri LR 120 at 139; *Chandrasiri v. The Attorney-General* (1989) 1 Sri LR 115 at 119]**.

The prerogative, in its classical form, referred to the special powers historically vested in the English Crown: powers exercised uniquely by the sovereign in matters lying beyond the reach of the ordinary common law. According to *Lewis*, the prerogative includes the powers, duties, rights and immunities of the Crown.[Clive Lewis, *Judicial Remedies in Public* Law, (South Asian, Sweet & Maxwell 2017), page 5]

As Blackstone famously described, the prerogative is "that special pre-eminence, which the King has, over and above all other persons, and out of the ordinary course of the common law, in right of his regal dignity." [Commentaries on the Laws of England (1765-1769), Sir William Blackstone, Book 1, Chapter 7: Of the King's Prerogative]

"Prerogative' power is, properly speaking, legal power which appertains to the Crown but not to its subjects. Blackstone explained the correct use of the term (Bl. Comm. 1.239). It signifies, in its etymology (from prae and rogo) something that is required or demanded before, or in preference to, all others… it must be in its nature singular and eccentrical; that it can only be applied to those rights and capacities which the king enjoys alone, in contradistinction to others…". [Wade and Forsyth, *Administrative Law* (8th ed., Oxford University Press 2000, page 222)*;* Joseph Chitty, *A Treatise on the Law of the Prerogatives of the Crown* (1820) page 4].

Over time, common law has recognized the evolution of these prerogative powers into a set of residual executive powers exercised for the public good, particularly in areas such as war, defence, external affairs, and governance.

A comparative examination reflects the recognition by courts of the application of the pleasure principle in relation to the civil and military service. The rationale is grounded on public policy. Since such employment is for public good, it is essential for the public good that it should be capable of being determined at the pleasure of the Crown, except in exceptional cases where it has been deemed to be more for the public good that some restriction should be imposed on the power of the Crown to dismiss its servants [See Wade and Forsyth, *Administrative Law*, 11th ed., page 49].

In ***Dunn v. The Queen*** **[(1896) 1 Q.B. 116]** it was held that the servants of the Crown, civil as well as military, except in special cases where it is otherwise provided by law, hold their offices only during the pleasure of the Crown **[See *In re Poe* (110 E.R. 942); *Dickson v. Viscount Combermere* (176 E.R. 236); *In re Tufnell* (1876) 3 Ch.D. 164; *Flynn v. The Queen* (1880) 6 V.L.R., L. 208; *Shenton v. Smith* (1895) AC 229]**.

In ***Laker Airways Ltd. v. Department of Trade*** **[(1977) Q.B. 643 at 705, (1977) 2 All E.R. 182 at 192]**, Lord Denning expounded the present constitutional position in England on the justiciability of prerogative power when he observed that:

> *"The prerogative is a discretionary power exercisable by the executive government for the public good, in certain spheres of governmental activity for which the law has made no provision, such as the war prerogative (of requisitioning property for the defence of the realm), or the treaty prerogative (of making treaties with foreign powers). The law does not interfere with the proper exercise of the discretion by the executive in those situations: but it can set limits by defining the bounds of the activity: and it can intervene if the discretion is exercised improperly or mistakenly. That is a fundamental principle of our constitution."* (emphasis added)

The pleasure principle was first incorporated into the constitutional framework of Sri Lanka (Ceylon as it was then) through Section 57 of the Ceylon (Constitution) Order in Council of 1946 (Cap. 379). It formed part of the regulatory framework of the public service in Sri Lanka and was recognized and given effect to in a long line of decisions [See ***Vallipuram v Postmaster-General*** **(50 N.L.R. 214);** ***Silva v. Attorney-General*** **(60 N.L.R. 14);** ***Kodeswaran v. Attorney-General*** **(70 N.L.R. 121 (SC), 72 N.L.R. 337 (PC);** ***Abeywickrema*** **(supra)]**.

Nevertheless, there was no constitutional ouster of jurisdiction of Court to review orders and decisions relating to the public service. The ouster came in the form of Article 106(5) of the 1972 Constitution. Article 106(5) of the 1972 Constitution was replaced by Article 55(5) of the 1978 Constitution. In ***Chandrasiri*** **(supra. at page 121)**, Fernando, J. held:

> *"The ouster clause was intended to give effect to the 'pleasure principle', and not to whittle it down. The application of the 'pleasure principle' prevents the ground of dismissal being questioned: the ouster clause complements that*

principle by taking away the jurisdiction of the courts to inquire into dismissal – on other grounds, such as that rules and procedures had not been complied with."

However, the pleasure principle that applied to the public service was whittled down in Sri Lanka. It does not vest unfettered power in the executive. Such power must not be exercised in violation of fundamental and language rights. Any such violation attracts the jurisdiction of this Court under Article 126 of the Constitution **[See *Elmore Perera v. Jayawickrema* (1985) 1 Sri. L.R. 28; *Chandrasiri* (supra. at page 120); *Bandara v. Premachandra* (1994) 1 Sri.L.R. 301; *Migultenne v. The Attorney-General* (1996) 1 Sri.L.R. 408; *Trinita Perera v. Jayaratne* (1998) 1 Sri.L.R. 372; *Maithripala Senanayake v. Gamage Don Mahindasoma* (1998) 3 Sri.L.R. 333; *Jayawardena v. Dharani Wijayatilake* (2001) 1 Sri.L.R. 132; *Karavita and Others v. Inspector General of Police* (2002) 2 Sri. L.R. 287]**.

The pleasure principle in relation to the public service was removed by the 17th Amendment to the Constitution.

The executive power of the executive presidency operates as the constitutional successor to the prerogative powers of the Crown. Powers that once arose solely from royal prerogative now derive their authority from explicit constitutional and statutory allocation.

Some of the prerogative powers of the Crown has been absorbed, transformed, and implanted within the constitutional framework of Sri Lanka through Articles 3 and 4(b) of the Constitution and other laws. The President, as the repository of executive power including defence, exercises some functions that are historically and conceptually derived from prerogative power.

For example, in terms of Article 33(g) of the Constitution, H.E. the President has the power to declare war and peace. The proviso to Article 35(1) states that the Supreme Court shall have no jurisdiction to pronounce upon the exercise of the powers of the President under Article 33(g).

Other examples are found in Section 10 of the Army Act, Section 10 of the Navy Act and Section 10 of the Air Force Act. All these three provisions provide that every commissioned officer shall hold his appointment during the President's pleasure. In ***Perera v. Attorney-General*** **[(1985) 1 Sri.L.R. 156]**, G.P.S. De Silva, J. (as he was then) held that the plaintiff, a commissioned Lieutenant in the Sri Lanka Volunteer Force, held office during pleasure and hence his contract of service with the State was terminable at will without any right to a prior hearing.

Courts in England, Canada and Australia have refrained from interfering in relations between the Crown and the military service **[See *In re Poe* (supra); *Dickson* (supra); *Dawkins v. Lord Rokeby* (176 E.R. 800); *Mitchell v. The Queen* (1896) 1 Q.B. 121; *Dunn* (supra), *Leaman v. The King* (1920) 3 K.B. 663; *Bacon v. The King* (1921) 21 Ex. C.R. 25; *Mulvenna v. The Admiralty* (1926) S.L.T. 568; *Cooke v. The King* (1929) Ex. C.R. 20; *McArthur v. The King* (1943) 3 D.L.R. 225; *Fitzpatrick v. The Queen* (1959) Ex. C.R. 405; *Gallant v. The Queen in Right of Canada* (91 D.L.R. (3d) 695); *Flynn* (supra)].**

However, the Indian Supreme Court has taken a contrary view. In ***Union of India and others v. Major S.P. Sharma and others*** **[Civil Appeals Nos. 2951-57 of 2001, Decided on March 6, 2014]** it held that an order of termination passed against an army personnel member in the exercise of the pleasure doctrine is subject to judicial review, but that in doing so the court cannot substitute its own conclusion on the basis of materials on record. It was further held that judicial review is limited to allegations of mala fides or constitutional violation [See **B*.P. Singhal v. Union of India*** **[(2010) 6 SCC 331]**.

Admittedly, the Petitioner was commissioned in the rank of Second Lieutenant pursuant to Section 9 of the Army Act which stipulates that officers shall be appointed by commissions under the hand of H.E. the President.

Nevertheless, we are not called upon to examine the *vires* of the exercise of the pleasure principle by H.E. the President pursuant to Section 10 of the Army Act. The Respondent invoked the jurisdiction of the Court of Appeal prior to H.E. the President exercising power such power.

Hence, I reserve my position on the scope and application of the pleasure principle in relation to officers of the armed forces in the present constitutional framework based on the rule of law and whether the limitations this court has developed to the application of the pleasure principle in relation to the public service as explicated above applies with equal force to the pleasure principle enshrined in Section 10 of the Army Act.

Question of Law Nos. 1 and 3

Both parties argued this appeal on a wider proposition, namely whether a court martial or a summary trial must be held before any recommendation is made to H.E. the President to consider the withdrawal of the commission of an officer. However, I am of the view that this appeal must be determined on a narrower proposition, namely *whether in the circumstances of this case*, a court martial or a summary trial should have been held before any recommendation was made to H.E. the President to consider the withdrawal of the commission of the Respondent.

Question of law No. 1 consists of two parts.

The first is whether a withdrawal of a commission is conditional upon the conduct of a summary trial.

The short answer to this is found in Section 42 of the Army Act according to which a summary trial can only be held in respect of persons holding ranks below that of Lieutenant Colonel. At the material time, the Respondent held the rank of Temporary

Lieutenant Colonel. Hence, a summary trial could not have been conducted against the Respondent.

The other question is whether a court martial should have preceded the recommendation to H.E. the President.

According to Section 56 of the Army Act, where three years have elapsed after the commission of any offence by any person subject to military law, he shall not be tried by a court martial for that offence unless it the offence of mutiny, desertion, or fraudulent enlistment. As the misconduct occurred in 2002 and came to light only in 2005 after the complaint made by the wife of soldier Samantha Ranasinghe, a court martial would have been time-barred as the misconduct did not amount to mutiny, desertion or fraudulent enlistment.

The maxim *lex non cogit ad imposssibilia* (law does not compel the performance of what is impossible) applies. There was no fault on the part of the authorities in failing to take steps to conduct a court martial as they were not aware of the misconduct on the part of the Respondent prior to the lapse of three years from the date of misconduct.

Accordingly, I hold that in the circumstances of this case, there was no necessity to conduct a summary trial or a court martial prior to any recommendation been made to H.E. the President to consider the withdrawal of the commission of the Respondent. I answer question of law No. 1 as follows:

(i) Whether the Court of Appeal misdirected itself in law and in fact in failing to consider that a recommendation for the withdrawal of a commission by His Excellency the President need not necessarily be preceded by the findings of a Summary Trial or a Court Martial?

In the circumstances of this appeal, YES.

Question of law No. 3 requires an examination of the powers of the Commander of the Army to make a recommendation to H.E. the President for the withdrawal of the commission of any officer of the Army.

At the outset, it must be emphasized that the power given to H.E. the President by Section 10 of the Army Act is a power that he and he alone can exercise. He must form his personal opinion whether the commission should be withdrawn. He cannot act under dictation from the Commander of the Army or any other party.

However, as the executive head of the country with a significant number of armed forces personnel, it is inconceivable that he will have personal knowledge of each of them to be in a position to decide on the exercise of powers of withdrawal of commission. He must rely on persons having knowledge to provide him the necessary material to enable him to form his personal opinion.

The provisions of the Army Act and regulations made thereunder establish that the Commander of the Army is the conduit through whom H.E. the President should be made aware of the circumstances which may justify him exercising the powers vested in him under Section 10 of the Army Act.

In ***Captain Ambawalage Dammika Senaratne De Silva v. Lt. General Jagath Jayasuriya, Commander of Sri Lanka Army and Others*** **[SC/FR 546/2012, S.C.M. 31.10.2023]** it was held (at page 20) that in terms of Regulation 2 of the Army Disciplinary Regulation 1950 read with Section 8 of the Army Act, the Commander of the Army is vested with the responsibility of maintaining discipline in the Army and has a paramount public duty to ensure that soldiers are commanded by fit and proper persons.

Regulation 62(3) of the Sri Lanka Army (Volunteer Force and Volunteer Reserve) Regulations 1985 states that:

> *"Upon the conclusion of a Court of Inquiry, the Commanding Officer shall forward the copy of the proceedings together with his recommendations*

through the usual military channels to the Commander of the Army who shall decide what further action should be taken."

The Commander of the Army then has several options including the conduct of a court martial or summary trial upon receiving the findings of a COI. However, both these options were not available in the circumstances of this appeal as expounded earlier.

Following is some of the findings made by the COI on the conduct of the Respondent:

(1) Got soldier Samantha Ranasinghe to work on the estate owned by his wife;
(2) Lied on six (6) occasions to the COI;
(3) Tried to mislead the COI;
(4) Committed a fraud by getting soldier Samantha Ranasinghe to sign a document acknowledging the receipt of a payment when no such payment was made;
(5) Abused his powers.

These are serious findings made after leading of evidence where the Respondent had the right of cross examination. They go to the root of the suitability of the Respondent to hold a commission as a senior officer in the Sri Lanka Army Volunteer Force. Should the Army Commander have turned a blind eye to the findings of the COI as it was not possible to conduct a summary trial or a court martial in the circumstances of this appeal? No reasonable person will agree.

In ***Captain M.B.A. Dissanayake v. General Jagath Jayasuriya and others*** **[S.C. Appeal 15/2021, S.C.M. 05.09.2023]** my learned brother Samayawardena, J. held (at page 8) that the Army Commander could not have taken a decision to withdraw the commission of the petitioner. I am in respectful agreement that the Army Commander does not have any power to withdraw the commission of any officer. Pursuant to Section 10 of the Army Act, that is a decision that only H.E. the President can take. Indeed, my learned brother Samayawardena, J. emphasizes (at page 8) that there the Army Commander had ordered the withdrawal of the commission rather than recommend or opine.

However, in this appeal, P10 (page 4) clearly shows that having considered the findings of the COI, the Army Commander made a recommendation (නිර්දේශ) to withdraw the commission of the Respondent.

A recommendation, by its very nature, is not a determination of rights; it may contain more than raw facts, yet it does not constitute a decision. It is an evaluative opinion intended to assist H.E. the President in exercising his under Section 10 of the Army Act.

The assessment of the facts by the Army Commander is shaped by his duty to preserve discipline, efficiency, and the integrity of the Army, yet he is not empowered to withdraw the commission of any officer on his own volition. His role is limited to brining the material facts to the attention of H.E. the President, who alone may decide how to act upon such material. The ultimate authority therefore remains firmly with H.E. the President.

Learned President's Counsel for the Respondent drew out attention to Regulation 38 of the Army Disciplinary Regulations, 1950, which provides that "where an officer investigates a charge against a person subject to military law but does not himself summarily try such person, he shall carefully refrain from expressing any opinion as to the guilt or innocence of such person." He contended that the Army Commander had by P10 acted contrary to this regulation.

The short answer is that there was no charge against the Respondent before the COI, as it is a fact-finding process and in any event the Army Commander did not investigate the Respondent.

The Respondent relied on several decisions of the Court to Appeal to establish that the Army Commander cannot, based upon a COI report, make a recommendation for the withdrawal of the commission of the Respondent. The facts in all those cases are distinguishable from the facts in this appeal.

In ***Flying Officer R.H.M.K.A.K.B. Ratnayake v. Air Marshal Donald Perera*** **[C.A. Writ 104/2005, C.A.M. 28.02.2007]** the decision turned on two features absent in the present case: first, the petitioner there had expressly requested that a court martial be convened, and the respondent had affirmatively undertaken to do so, but thereafter failed to fulfil that assurance. Second, in this case, it was not possible to conduct a court martial or summary trial for the reasons more fully set out above. The *ratio* in ***Ratnayake(Supra)*** therefore does not assist the Respondent.

In ***W.M. Ranjith Weerasinghe v. Lt. General Sarath Fonseka and Others*** **[CA/Writ Application 2148/ 2005, C.A.M. 23.07.2007]** further disciplinary proceedings were pending against the petitioner at the time the recommendation was made to withdraw the commission, and the Court of Appeal held that the recommendation should have awaited the conclusion of those proceedings. However, in the present case, no such disciplinary proceedings were pending. Thus, the ratio in ***Weerasinghe*** is of no assistance to the Respondent.

In ***Lieutenant Hetti Gamage Harischandra v. Commander of the Army and Others*** **[CA/WRIT/App/895/2007, C.A.M. 28.07.2009]** the Army Commander decided to discharge the petitioner from the Sri Lanka Army Volunteer Force based on the findings of a COI. The Court of Appeal held the decision to be ultra vires. However, in this appeal, the Army Commander only made a recommendation to H.E. the President. Hence, this decision does not assist the Respondent.

The Court of Appeal as well as the Respondent placed much reliance on the decision in ***Boniface Silva v. Lieutenant General Sarath Fonseka*** **[C.A. 705/2007, C.A.M. 10.09.2009]**. There it was held that a COI cannot be used as the basis for imposing a punishment, as it is only a preliminary fact-finding step. The present appeal, however, is materially different. In ***Boniface Silva***, the Army Commander had recommended three punishments based on the findings of a COI, whereas in this appeal no punishment has been proposed. The Army Commander has only made a recommendation to the President that the commission of the Respondent be

withdrawn. The President is free to consider it or completely disregard it. In fact, should H.E. the President simply adopt the recommendation without forming his personal opinion, he will be acting under dictation. The *ratio* in ***Boniface Silva*** therefore does not assist the Respondent.

In view of the gravity of the findings of the COI, I am of the view that the 1st Respondent, as the Commander of the Army, was empowered in the circumstances of this appeal to make a recommendation to the President to withdraw the commission of the Respondent. Such a recommendation is consistent with the public policy encapsulated in the pleasure principle contained in Section 10 of the Army Act.

In this context, it is apposite to refer to the decision in ***Major K.D.S. Weerasinghe v. Colonel G.K.B. Dissanayake and others*** **[SC/FR/Application No. 444/2009, S.C.M. 31.10.2017]** where Malalgoda, P.C. J., held (at pages 5-6) as follows:

> *"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 the 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.*
>
> *In the said circumstances it is clear that the decision to withdraw the Commission and to dismiss the Petitioner from the Sri Lanka Volunteer Force was taken by the then Commander of the Army by following the provision of the Army Act No. 17 of 1949 and the Regulations framed there under and the said decision was not reached, as alleged by the Petitioner in violation of the*

provisions of the Army Act No. 17 of 1949 and the Court of Inquiry Regulations promulgated under the said Act."

I answer question of law No. 3 as follows:

(ii) Whether the Court of Appeal failed to give due consideration to the statutory power vested in the Commander of the Sri Lanka Army to make recommendations to His Excellency the President regarding the removal of the commission of any officer of the Army?

In the circumstances of this appeal, YES.

Question of Law No. 2 is premised on the wider proposition on which parties argued this appeal. However, as I have stated previously, this appeal can be disposed on the narrower proposition limited to the circumstances of this case. Hence, I see no reason to address question of law No. 2.

For all the foregoing reasons, I set aside the judgment of the Court of Appeal dated 24.03.2016.

Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath K.B Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT