

Don Thilak Jayashantha Dahanayake v Lieutenant General Jagath Jayasuriya and et al, (CA (writ) Application No. 54/2011) (2/CA) Decided on 16/03/2011

Art 140 of the Constitution- power of the Court of Appeal to issue writs

Upaly Abeyrathne J. with Sathya Hettige P.C. J. agreeing

The petitioner and several others including his superior officer had been alleged for an air ticket fraud in respect of which a Court of Inquiry was commenced. Based on the opinion of the Court of Inquiry the first respondent decided to recover the misappropriated sum from the petitioner and discharge him from the service. His superior officer who was also affected by the said decision instituted a writ of certiorari and subsequently the Court of Appeal ordered to quash that part of the decision which affects the superior officer. But the petitioner has failed to produce any of the documents to establish his case. Hence, the petitioner instituted the present action in the Court of Appeal seeking for a writ of certiorari to quash the decision of the first respondent.

Held;

The court was on the opinion that non-production of the material documents is fatal to the application. Hence the present application of the Petitioner can be dismissed on this reason alone.

Further, the court noted that to issue a writ of certiorari there must already be a determination of rights. If at the time certiorari is applied for there is no order to be quashed, that remedy will be refused for that reason alone.

Ex Parte Pritchard (1953) All E. R. 766 at 772 ; remedy by way of Certiorari only lies to bring up to the Court and quash something which is a determination or a decision

Appapillai Amirthalingam V s. M.A. Priyasekera Commissioner of Elections and Another (1980) 2 SLR 285; there has necessarily to be a formal decision or determination by the Commissioner requiring the Secretary of a political party to nominate a member of that party to fill a vacancy in Parliament before a writ of certiorari could issue quashing that decision or determination.

Application dismissed.