Judgments

Ganitha Devayalage Sunil Jayaratne v Hon. Attorney-General

SC Appeal No: 97/09
CA Appeal Case No: CA Appeal 45/2007
HC (Kegalle) Case No: 1230/97

Before : Marsoof J. Ekanayake J, Suresh Chandra J

Decided on: 29.07.2011

"...On appeal to the Court of Appeal, the appeal was dismissed. The grounds urged before the Court of Appeal were (inter alia):

Considering the circumstances of the case it was incumbent on the learned trial Judge to have considered whether there was common murderous intention.'

Taking into consideration the judgment given in *Alwis v Piyasena Fernando* [1993] 1 SLR 119 by GPS De Silva CJ the learned judge reiterated that the Court of Appeal would not lightly disturb the findings of primary facts made by a trial judge unless it is manifestly wrong as they have the priceless advantage of observing the demeanour of witnesses which the judge of the Court of Appeal does not have.

...In relation to the issue of common murderous intention the Court of Appeal stated that due to the fact that the evidence of a prosecution witness was considered to be accurate the fact that the accused together armed with weapons had attacked the deceased and dragged him to the river shows that there was a common murderous intention and the failure of the trial judge to address the issue has not caused prejudice to the accused. The Court of Appeal applied S.334 of the Criminal Procedure Code and Article 138 of the Constitution to reject the appellant's argument.

...Considering all the above issues it is clear that the 2nd accused did have the requisite common murderous intention to commit the act of murder.

In relation to the procedural issue which has been brought up by learned Counsel it has to be stated that the correct provision which should have been considered for an appeal from a trial without a jury under the Code of Criminal Procedure would have been S.335 and not S.334 (as stated by the Court of Appeal) which deals specifically with trials by jury as stated in the case of *Sheela Sinharage v Attorney General* 1985 1 SLR 1. Though the issue has been raised, it does not have any application to the present context since under S.335 the only procedural issue that the Court of Appeal needs to consider in appeal is whether there is sufficient grounds for interfering with the original judgment and if there is none the Court of Appeal should dismiss the appeal.

2011/04/01

Dr. C.L. Illesinghe and 15 others v Justice P.R.P. Perera and 12 others

S.C. F.R. No. 469/08

Before : Hon. Dr. Shirani Bandaranayake, CJ
Hon. C. Ekanayake, Hon. S.I. Imam, J

Decided on : 29.09.2011

Held:

The Petitioners have tendered this application seeking a declaration inter alia that they be declared eligible and entitled to be appointed as Ayurveda Medical Officers under the Sri Lanka Ayurveda Service Minute(SLASM), and consequently direct the Respondents to appoint the Petitioners as Ayurvedic Medical Officers (Preliminary Grade) attached to the Department of Ayurveda.

Hon. Imam J.

..In my opinion as the Sri Lanka Ayurveda Service (SLAS) is a cadre based service, all Graduates and Diploma Holders cannot be recruited to the SLAS at any given point of time due to the limitations in the approved cadre. New Appointees are recruited only when vacancies arise as set out in Section 10.1.1. and 10.1.2. of the SLASM. It is also necessary that an Applicant should have the necessary seniority in the Register in the respective Merit Order of Ayurveda, Siddha, Unani or Diploma category as and when a vacancy arises in the approved cadre. The Petitioners have failed to produce any material that they possessed the relevant Seniority in the Register for due appointment to the SLAS or that they were prejudiced by some one with a Junior registration being appointed above them

...It was revealed that the Petitioners' contract appointments were not granted by the PSC, which is the Appointing Authority of the SLAS. The PSC was of the view that the Secretary, Ministry of Indigenous Medicine had no Authority to make these appointments initially. On an examination of the Petitioners' appointment letters it was specifically stated that they were recruited on a contract basis, which is not a permanent appointment. Hence in my view there is no possible reason for the aforesaid contracts of Employment to create a legitimate Expectation in the minds of the Petitioners.

Application Dismissed..

2011/04/02

Judgments/BASL News

Dasanayakage Gayani Geethika and2 others v D.M.D. Dissanayake and 5 others

S.C. FR Application No. 35/ 2011

Before : Marsoof J, Ekanayake J, Suresh Chandra J

Decided on : 12.07.2011

"The application requires a consideration of the provisions of the circular P5(R1) which lays down the criteria for admission to Grade 1 of Government Schools specially regarding the matters pertaining to **residence**. The main thrust of the Petitioners application is that on the basis of residence they are entitled to have the 3rd Petitioner admitted to the school. The ordinary meaning that is given to "residence" is "the place where an individual eats, drinks, and sleeps or where his family or his servants eat, drink and sleep. (Wharton's Law Lexicon).

Residence as envisaged by the said Circular would imply a permanent abode which has been used for a continuous period. The manner in which 35 marks have been allotted would indicate that the continuity in such residence should be at least for a period of 5 years. Such residence does not necessarily connote ownership as the circular speaks of leases whether registered or unregistered being acceptable for the purpose of establishing residence.

...The documents that can be considered under Clause 6.1-III are not confined to the five documents listed therein, it refers to other documents without mentioning the type of documents. It is left to the interview Panel to consider other relevant documents. They cannot rule out those documents just because they are not listed in the relevant Clause. What is necessary to be seen is as to whether such documents can be considered to confirm the residence of the Applicants. In such circumstances important documents such as the child's health development record, and the letters regarding their employment should have been considered.

...It is clear that the interview panel should always have to look at the establishment of evidence to prove residence and consider the totality of what has been put forward as evidence by a parent to establish evidence rather than only carrying out an exercise of ticking the relevant box in relation to the specified documents mentioned in the circular alone.

...In the above circumstances I hold that the Petitioners have established the fact of violation of their fundamental rights in terms of Article 12(1) of the Constitution"

2011/04/03

SuhadaGamalath, Secretary to the Ministry of Justice v Kristina Rosario and Another

CA (PHC) APN 3/2010

Before: Sisira De Abrew J, Anil Goonaratne J

Decided On: 01.06.2011

The 1st and 2nd Respondents are the parents of the child, who was brought to Sri Lanka by the father, violating an order given by a French Court. The Mother had made an application to the authorities in France, and the said authorities had made an application to the Secretary to the Ministry of Justice under the provision of Hegue Convention on the Civil Aspects of International Child Abduction, which was enacted in Sri Lanka by Act No. 10 of 2001. Accordingly the Petitioner had made an application to the High Court in terms of the said Act. The High Court had refused the said application mainly on the grounds of non-conformity with Section 6(3) and 10 (b). The Petitioner instituted a revision application in the Court of Appeal against the said refusal by the High Court.

Held:

A) Section 6(3), which provides for filing of English translations of the documents in High Court is a directory provision, which could be rectified, hence the non-conformity of the said provision should not amount to a dismissal of the application.

B) Failure to file an application within one year from the removal of the child and retention in Sri Lanka as set out in Section 10 of the Act cannot be considered as a ground to dismiss the application and such delay must be disregarded by court.

2011/04/04

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