

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC
OF SRI LANKA**

In the matter of an Application for orders in the nature of Writs of *Certiorari* and *Mandamus* made under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Court of Appeal Case No.
CA/WRT/0359/2023**

I. G. L. Jayaweera,
No. 49, Paniyanduwa,
Ambalangoda.

Petitioner

Vs.

1. **Mr. Samitha Kurukulasooriya,**
Zonal Director of Education - Ambalangoda,
Zonal Education Officer,
Ambalangoda.
2. **Mr. O. D. Mudalige,**
Provincial Director of Education –
Southern Province,
Department of Education -Southern
Province,
Upper Dickson Road, Galle.
3. **Mr. Ranjith Yapa,**
Secretary,
Southern Provincial Ministry of Education,

Ground Floor, Dakshinapaya,
Labuduwa, Akmeemana.

4A. Mr. D. H. Kamal
Danasinha.

4. **Mr. Gunasena Hewawitharana,**
Chairman,

()
✓ 29/5/2023

5. **Mr. Gamini Weerawickrama,**
Secretary,

()
✓ 29/5/2023

6. **Mr. K. K. G. J. K. Siriwardhane,**
Member,

()
✓ 29/5/2023

7. **Mr. Daya Witharana,**
Member,

()
✓ 29/5/2023

8. **Mr. Srimal Wijesekara,**
Member,

()
✓ 29/5/2023

9. **Mr. Sunil Dahanayake,**
Member,

()
✓ 29/5/2023

10A. Mr. M. Y. S.
Dechupriya.

10. **Mr. L. K. Ariyaratne,**
Member,

()
✓ 29/5/2023

11. **Mr. Munidasa Halpandeniya,**
Member,

()
✓ 29/5/2023

The 4th to 11th Respondents above at –
Southern Provincial Public Service
Commission,
6th Floor, District Secretariat Building,
Galle.

12A. Mr. Lakshman Jayap
Dheyawardene

12. **Dr. W. Willie Gamage,**
Governor-Southern Province,

()
✓ 29/5/2023

- Governor's Secretariat,
Lower Dickson Road,
Galle.

12B. Mr. Mandurun
Itassischandran

()
✓ 29/5/2023

Respondents

Before: **M. T. MOHAMMED LAFFAR, J (ACT.P/CA).**
 K. M. S. DISSANAYAKE, J.

Counsel: Chathura Galhena with Dharshani Weerasinghe for the Petitioner.
 Manohara Jayasinghe, D. S. G. For the Respondents.

Argued on: 10.03.2025

Written Submissions of
the Petitioner
tendered on : 04.04.2025

Written Submissions
of the Respondents
tendered on : 17.03.2025

Decided on : 28.05.2025

K. M. S. DISSANAYAKE, J.

The Petitioner in the instant application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as the ‘Constitution’) praying *inter-alia*, for a mandate in the nature of writ of Certiorari quashing the decision of the Southern Provincial Public Service Commission embodied in the letter dated 10th February, 2023 marked ‘P19’ by which the application of the Petitioner to be absorbed to the Southern Provincial Public Service was refused (Vide-prayer ‘b’ of the petition); for a mandate in the nature of a writ of Certiorari quashing the decision of the

Governor of the Southern Province embodied in the letter dated 12th April, 2023 marked '**P23**' by which the application of the Petitioner to be absorbed to the Southern Provincial Public Service was refused (Vide-prayer 'c' of the petition); for a mandate in the nature of a writ of Mandamus directing the 4th to 11th Respondents to absorb the Petitioner to the Southern Provincial Public Service (Vide-prayer 'd' of the petition); for a mandate in the nature of a writ of Mandamus directing the 3rd and/or the 4th to 11th Respondents to process the retirement benefits and/or the pension of the Petitioner (Vide-prayer 'e' of the petition).

The facts material and relevant to the instant application as recited by the Petitioner in his petition, may be briefly, set out as follows;

The Petitioner's services had been suspended by the then, Secretary of the Southern Provincial Ministry of Education by the letter 6th of March, 2012; that subsequent to the suspension of his services, a disciplinary inquiry had been conducted against the Petitioner by the Secretary of the Southern Provincial Ministry of Education and the Petitioner's services had been terminated with effect from, 6th of March 2012; that writ application bearing No. CA (Writ) 292/2019 had been instituted by the Petitioner in his Petition dated 12th July, 2019 and the members of the Public Service Commission of the Central Government too, had subsequently, been added thereto by the amended Petition dated 25th of October, 2019 (P1) challenging the authority of the Secretary of the Southern Provincial Ministry of Education to conduct disciplinary proceedings against him on the premise that, the Petitioner had been recruited by the Education Service Committee of the Public Service Commission of the Central Government and had not been absorbed to the Southern Provincial Public Service Commission; that, this Court had having heard the said case by its order dated 20th of January, 2022 (P2), issued a Writ of *Certiorari* as prayed for in paragraphs (c),(d),(e), and (f) of the amended

petition quashing the impugned orders marked "P12", "P17", "P20", and "P22"; that, in view of the aforesaid judgment, the Petitioner was reinstated to his last place of service, namely; G/ Kandegoda Maha Vidyalaya pursuant to several requests being made thereto by him; that, by a circular bearing No. 19/2022 titled "Reducing the Age of Compulsory Retirement of Public Officers up to 60 Years", dated 14th September 2022 issued by the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government (P7), the age of retirement of all public servants was made (60) years and whoever has completed Sixtieth year by 31st of December 2022 was made to retire as per the said circular; that, the Petitioner reached his 60th year on 10th February, 2022 and as per the aforesaid circular, he was made to retire, on 31st of December 2022; the Zonal Director of Education of Ambalangoda-1st Respondent had on or about 9th September 2022 (P8), forwarded a letter to the Provincial Director of Education of Southern Province-2nd Respondent, with three sets of documents and recommended to absorb him to Southern Provincial Public Service; that, the Secretary of the Southern Provincial Ministry of Education-3rd Respondent had by letter dated 10th October, 2022 (P9), recommended to the secretary of the Southern Provincial Public Service Commission to absorb the Petitioner to the Southern Provincial Public Service; that in this regard, the Zonal Director of Education of Ambalangoda-1st Respondent had by the letter dated 31st of December, 2022 (P10), sought advice from the Provincial Director of Education of Southern Province-2nd Respondent for the reason that the Petitioner was due to retire on 31st of December, 2022; that, even, the Provincial Director of Education of Southern Province-2nd Respondent too, had by his letter dated 14th of November, 2022 (P11) sought advice from the Secretary of the Southern Provincial Ministry of Education-3rd Respondent on the same matter whereas, the Zonal Director of Education of Ambalangoda-1st Respondent had by the letters dated 14th November, 2022 (P12) and 08th December, 2022 (P13), sought instructions

from the 2nd and 3rd Respondents regarding the same; that Legal Officer of the Chief Secretariat of the Southern Province had by the letter dated 19th January, 2023 (P14), sought instructions from the Attorney General regarding the absorption of the Petitioner to the Provincial Public Service for which the Attorney General had opined as contained in the document marked (P15) that there was no legal impediment to the Petitioner to be absorbed to the Southern Provincial Public Service; that the Zonal Director of Education of Ambalangoda-1st Respondent had by the letters dated 12th January, 2023 (P17) and 2nd February, 2023 (P18) sought advice in regard to the retirement of the Petitioner from the Provincial Director of Education of Southern Province-2nd Respondent; that, the Southern Provincial Public Service Commission had by its letter dated 10th February, 2023 (P19), had informed the Secretary of the Southern Provincial Ministry of Education-3rd Respondent that, the request of the Petitioner to be absorbed to the Southern Provincial Public Service was refused and the Petitioner was informed of the same by the Secretary of the Southern Provincial Ministry of Education-3rd Respondent by the letter dated 22nd of February, 2023 (P20); that, the Petitioner had preferred an appeal to the Governor of the Southern Province-the 12th Respondent on 27th of February, 2023 (P21) against the said decision of the Southern Provincial Public Service Commission not to absorb him to the Southern Province Public Service which was refused by the Governor of the Southern Province-the 12th Respondent by the letter dated 12th of April, 2023 (P23); that, in consequence, the pension was not paid to the Petitioner to date nor taken steps to process it by the Southern Provincial Council where he had been in employment since 1992 notwithstanding the fact that the reinstatement of the Petitioner thereto had taken place by virtue of the said judgment of this Court (P2) and also, the fact that he be deemed an employee thereof, in view of his salaries being paid by the Southern Provincial Council Fund although, he had not been duly, absorbed thereto by the Southern Provincial Public Service Commission; that,

the Petitioner had legitimate expectation for him to be duly absorbed to the Southern Provincial Public Service specially after him being reinstated in view of the said judgment of this Court; that, in view of the above, the decisions of both the Southern Provincial Public Service Commission (P19) and the Governor of the Southern Province (P23) refusing him to be absorbed into the Southern Provincial Public Service were thus, a) *ultra vires*; b) bad in law; c) bias; d) irrational; e) unfair; f) against the rules of Natural Justice; g) violation of his legitimate expectation; h) in violation of the Wednesbury rules of reasonableness and were liable to be quashed by an order in the nature of a Writ of *Certiorari* and for the same reasons the failure of the Southern Provincial Public Service Commission to absorb the Petitioner to Southern Provincial Public Service is liable to be enforced by way of an order in the nature of a Writ of Mandamus.

The Respondents on the other hand, had in their collective statements of objection, while, denying categorically, unequivocally and in unambiguous terms that they had acted illegally, unlawfully, unreasonably, irrationally, maliciously and in a disproportionate manner with respect to any transaction, dealing, correspondence, order, determination or any other matter affecting the Petitioner or any person claiming under him as alleged by the Petitioner, submitted that, they had in all their dealings with the Petitioner acted in good faith and in accordance with the law and that they had at no stage sought to further a collateral purpose nor had they acted with an improper motive. It was further submitted therein, by the Respondents that they had at all times, acted, fairly, reasonably and according to law by following the proper procedure. Hence, it was urged by the Respondents that in view of the above and the further matters pleaded in defense in the averments in paragraph 21 (i) to (x) of their collective statements of objection, the instant application should be dismissed with costs.

It was the position adverted to by the Petitioner in the averments in paragraph 22 of the written submissions that, the decision made by Southern Provincial Public Service Commission (P19) as well as the decision made by the Governor of the Southern Province (P23) refusing to absorb the Petitioner into the Southern Provincial Public Service were based on the similar line of reasoning. Hence, the Petitioner's entire case was presented to this Court on the said premise/assumption that, both of the decisions (P19 and P23) contained the similar line of reasoning.

As manifest from the averments in paragraphs 28 and 29 of the petition, the Petitioner seeks in the instant application to impugn both of those orders (P19 and P23) mainly, on the following two grounds, namely;

- a) by reinstating the Petitioner upon the judgment of this Court by the Secretary of the Southern Provincial Ministry of Education (the 3rd Respondent) and the salaries of the Petitioner being paid by the Southern Provincial Council Fund, the Petitioner is deemed to be an employee of the Southern Provincial Service despite not being duly absorbed by the Southern Provincial Commission;
- b) there is a legitimate expectation for the Petitioner to be duly absorbed to the Southern Provincial Public Service especially after being reinstated upon the judgment of this Court in case bearing No. CA(Writ) 292/2019 and to receive a pension after retirement;

It was on that premise, it was contended by the Petitioner that the decision made by the Provincial Public Service Commission (P19) as well as the decision made by Governor of the Southern Province (P23) refusing to absorb the Petitioner into the Southern Province Public Service both of which according to the Petitioner, was made on the similar line of reasoning, had been a) *ultra*

vires; b) bad in law; c) bias; d) irrational; e) unfair; f) against the rules of Natural Justice; g) violation of his legitimate expectation; h) in violation of the Wednesbury rules of reasonableness and therefore, they are liable to be quashed by orders in the nature of a Writ of *Certiorari* and Writ of *Mandamus*.

Grounds enumerated as (a) and (b) above would I think, call for separate treatment.

a) by reinstating the Petitioner upon the judgment of this Court by the Secretary of the Southern Provincial Ministry of Education (the 3rd Respondent) and the salaries of the Petitioner being paid by the Southern Provincial Council Fund, the Petitioner is deemed to be an employee of the Southern Provincial Service despite not being duly absorbed by the Southern Provincial Commission;

It may now, be examined.

The Zonal Director of Education, Ambalangoda-1st Respondent had sent a letter dated 9th of September, 2022 (P8) to the Provincial Director of Education of Southern Province-2nd Respondent (P8) recommending absorption of the Petitioner into the Southern Provincial Public Service while, the Secretary to the Southern Provincial Ministry of Education- 3rd Respondent (P9) had by the letter dated 10th of October, 2022 (P9) forwarded it to the Secretary to the Southern Provincial Public Service Commission-5th Respondent recommending absorption of the Petitioner into the Southern Provincial Public Service. The Southern Provincial Public Service Commission-5th Respondent had through its Secretary-5th Respondent, communicated its decision dated 10th of February, 2023 (P19), made by it on the request made to it with their recommendation by 1st, 2nd and 3rd Respondents as aforesaid with regard to the absorption of the Petitioner into the Southern Province Public Service 2023, refusing the

same. It is this decision that the Petitioner *inter-alia*, seeks to impugn before us in this application.

The Petitioner had in the averments in paragraph 21 of the written submissions, reproduced the following as being the sole reason as had been adduced in the decision (P19) by the Southern Provincial Public Service Commission for its refusal to absorb the Petitioner into the Southern Province Public Service;

“.... එබැවින් අධිකරණ තීන්දුව ලබාදුන් දිනට පෙර දිනයකින් මෙම ගුරුහැවනා දකුණු පලාත් රාජ්‍ය සේවයට අන්තර්ග්‍රහණය කිරීම තුළින් අධිකරණ තීන්දුව අවස්ථාවට ලක් වන බවත්, එය අධිකරණයට කරනු ලබන අපහාසයක් වන බවත් කෙමිඡන් සහාව විසින් නිරික්ෂණය කරන ලදී.”

When it translates into English, it reads thus;

“....Therefore, the Commission observed that the absorption of this teacher into the Southern Provincial Public Service on a date prior to the date of the Court decision would be in contempt of Court.”

The question that would then, arise for our consideration would be;

“Is that the only reason adduced in the decision (P19) by the Southern Provincial Public Service Commission for its refusal to absorb the Petitioner into the Southern Province Public Service as submitted by the Petitioner?”

To find out a precise and a definite answer to this question, it would be most necessary to peruse and scrutinize the decision (P19) in its totality.

However, upon a careful perusal and scrutiny of the decision (P19) in its totality, it becomes abundantly, clear that, the reason adduced by the Petitioner in the averments in paragraph 21 of the written submissions, was

not at all the sole reason that had been adduced by the Southern Provincial Public Service Commission for its refusal to absorb the Petitioner into the Southern Province Public Service but, it does contain another vital and cogent reason adduced by it for its refusal of the same and it can be found on the reverse of the decision (P19) and it reads thus;

“වන බවත් කොමිෂන් සභාව විසින් නිරීක්ෂණය කරන ලදී. තවද අධිකරණ තීන්දුව ලබා දීමට පැඳක කරගත් මෙම ගුරු හටතා මධ්‍ය රජයේ සේවයේ නිලධාරයෙකු යන කරුණ අනුව ඔහුගේ ඉදිරි පරිපාලා කටයුතු මධ්‍ය රාජ්‍ය සේවයේ බලධාරීන් විසින් සිදු කිරීම නිවැරදි ක්‍රමවේදය වන බව ද කොමිෂන් සභාව විසින් නිරීක්ෂණය කරන ලදී. එබැවින් මෙම ගුරු හටතා දකුණු පළාත් රාජ්‍ය සේවයට අන්තරුහනය වීමට කරන ලද ඉල්ලීම ප්‍රතික්ෂේප කිරීමට කොමිෂන් සභාව විසින් තීරණය කරන ලද බව කොමිෂන් සභාවේ නියමය පරිදි කාරුණිකව දන්වා සිටිමි.”

When it translates into English, it reads thus;

“Furthermore, the Commission also observed that the correct procedure is to conduct his future administrative affairs by the authorities of the Central Public Service, based on the fact that this teacher is an officer of the Central Government Service, Therefore, I kindly inform you that the Commission has decided to reject the request made by this teacher to be absorbed into the Southern Provincial Public Service, as per the order of the Commission.”

Hence, it clearly, appears to me upon a careful perusal and scrutiny of the decision of the Southern Provincial Public Service Commission (P19), that the contention of the Petitioner that, the Southern Provincial Public Service Commission had refused to absorb the Petitioner into the Southern Provincial Public Service only for the reason adduced in it (P19) namely; “.... එබැවින්

අධිකරණ නීත්දුව ලබාදුන් දිනට පෙර දිනයකින් මෙම ගුරුභාවනා දකුණු පලාත් රාජ්‍ය සේවයට අන්තර්ග්‍රහණය කිරීම තුළින් අධිකරණ නීත්දුව අවශ්‍යවට ලක් වන බවත්, එය අධිකරණයට කරනු ලබන අපහසුයක් වන බවත් කොමිෂන් සභාව විසින් නිරික්ෂණය කරන ලදී.” which means in English; “....Therefore, the Commission observed that the absorption of this teacher into the Southern Provincial Public Service on a date prior to the date of the Court decision would be in contempt of Court.”, is wholly, untenable for; in the light of what had been contained in the said decision (P19), two reasons had clearly, been adduced therein, therefor, by it. [Emphasis is mine]

However, let me now, examine the first reason so adduced by the Southern Provincial Public Service Commission in its decision (P19) for its refusal to absorb the Petitioner into the Southern Provincial Public Service.

Upon a careful perusal of the judgment (P2), it becomes abundantly clear, that nowhere in the judgment (P2), had there been any direction on the Southern Provincial Public Service Commission (P19) prohibiting it from absorbing the Petitioner to the Southern Province Public Service on a date prior to the date of the Court decision.

In the circumstances, the pertinent question that would arise is; How can it be contempt of court upon the Petitioner's absorption thereto on a date prior to the date of the Court decision (P19)? This question should in my view, be answered in the negative.

Hence, the first reason so adduced as aforesaid by the Southern Provincial Public Service Commission in its decision (P19) as being one of the reasons for the refusal to absorb the Petitioner to the Southern Province Public Service, clearly, shows that it had thereby, taken into its consideration wholly, irrelevant matter in arriving at the decision contained therein (P19) and

therefore, the said reason adduced by it for the refusal to absorb the Petitioner to the Southern Province Public Service, cannot wholly, be sustainable and therefore, it should be rejected *In-limine*.

Let me now, examine the other reason which is in my opinion, the most important, vital and pertinent reason adduced as aforesaid by the Southern Provincial Public Service Commission in its decision (P19) as being another reason for the refusal to absorb the Petitioner to the Southern Province Public Service and it may once again, be reproduced for convenience and clarity as follows;

“වන බවත් කොමිෂන් සභාව විසින් තීරක්ෂණය කරන ලදී. තවද අධිකරණ නීත්‍යව ලබාදීමට පාදක කරගන් මෙම ගුරු හටතා මධ්‍ය රැඟයේ සේවයේ නිලධරයෙකු යන කරුණ අනුව ඔහුගේ ඉදිරි පරිපාලා කටයුතු මධ්‍ය රාජ්‍ය සේවයේ බලධාරීන් විසින් සිදු කිරීම නිවැරදි ක්‍රමවේදය වන බව ද කොමිෂන් සභාව විසින් තීරක්ෂණය කරන ලදී. එබැවින් මෙම ගුරු හටතා දකුණු පළාත් රාජ්‍ය සේවයට අන්තරුහනය වීමට කරන ලද ඉල්ලීම ප්‍රතික්ෂේප කිරීමට කොමිෂන් සභාව විසින් තීරණය කරන ලද බව කොමිෂන් සභාවේ නියමය පරිදි කරුණිකව දන්වා සිටිමි.”

When it translates into English, it reads thus;

“Furthermore, the Commission also observed that the correct procedure is to conduct his future administrative affairs by the authorities of the Central Public Service, based on the fact that this teacher is an officer of the Central Government Service, Therefore, I kindly inform you that the Commission has decided to reject the request made by this teacher to be absorbed into the Southern Provincial Public Service, as per the order of the Commission.”

It is significant to observe at this juncture, that, this Court had granted relief to the Petitioner in its judgment in case bearing No. CA (Writ) 292/2019 (P2) solely on the basis, that the Petitioner had never been absorbed to the Southern Provincial Public Service and therefore, he had never been an employee of Southern Provincial Public notwithstanding the fact that the Petitioner had already, accepted transfers, salaries and benefits from the Southern Provincial Council Service as contended by the Petitioner in that case while totally, rejecting the contention advanced by the learned Senior State Counsel for the Respondents that, the Petitioner was estopped from taking up the position that he had not been absorbed to the Southern Provincial Public Service for; the Petitioner had already, accepted transfers, salaries and benefits from the Southern Provincial Council Service.

Hence, it is a matter of fact that had been finally, and conclusively, adjudicated and decided by this Court in its judgment in the former case bearing No. CA (Writ) 292/2019 (P2), pronounced by this Court on 20th of January, 2022 that, the Petitioner had even, by the time of the delivery of the judgment, namely; 20th of January, 2022, never been absorbed to the Southern Provincial Public Service and therefore, he had never been an employee of Southern Provincial Public notwithstanding the fact that the Petitioner had already, accepted transfers, salaries and benefits from the Southern Provincial Council Service, but remained as an employee under the Educational Service Committee of the Public Service Commission of the Central Government notwithstanding his assumption of duties as an English Language assistant teacher under the Southern Provincial Public Service since 2nd of January, 1992 until up-to the date of the delivery of the judgment of the former case on 20th of January, 2022.

In terms of the circular bearing No. 19/2022 titled “Reducing the Age of Compulsory Retirement of Public Officers up to 60 Years”, dated 14th

September 2022 issued by the Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government (P7), the age of retirement of all public servants was made (60) years and whoever has completed Sixtieth year by 31st of December 2022 was made to retire as per the said circular, and the Petitioner had reached his 60th year on 10th February, 2022 and as per the aforesaid circular, he too, was made to retire, on 31st of December 2022.

It is however, significant to observe, that absorption process into the Southern Provincial Public Service in relation to the Petitioner had only, commenced much after a day, the Petitioner had already, reached his compulsory age of retirement, namely; 10th February, 2022, as evident from the letter dated 9th of September, 2022 sent to the 2nd Respondent by the 1st Respondent (P8) and the letter dated 10th of October 2022 sent to the 5th Respondent by the 3rd Respondent (P9) regarding absorption of the Petitioner to the Southern Provincial Public Service.

Hence, the second reason assigned in its decision (P19) by the Southern Provincial Public Service Commission for the refusal to absorb the Petitioner into the Southern Provincial Public Service, namely; **the correct procedure is to conduct his future administrative affairs by the authorities of the Central Public Service, inasmuch as the Petitioner was an officer of the Central Government Service**, is wholly, tenable both in view of the facts and circumstances pertaining to the instant application as enumerated above.

It is to be reiterated once again at this juncture, it was the position adverted to by the Petitioner in the averments in paragraph 22 of the written submissions that, the decision made by Southern Provincial Public Service Commission (P19) as well as the decision made by the Governor of the Southern Province (P23) refusing to absorb the Petitioner into the Southern Provincial Public Service were based on the similar line of reasoning. Hence, the Petitioner's entire case was presented to this Court on the said

premise/assumption that, both of the decisions (P19 and P23) contained the similar line of reasoning.

In addition to the second reason assigned by the Southern Provincial Public Service Commission for its decision (P19) for the refusal to absorb the Petitioner into the Southern Provincial Public Service, there is a further reason assigned to it by the Governor of the Southern Province-12th Respondent, for the refusal to absorb the Petitioner into the Southern Provincial Public Service and it contains in both paragraphs 1(VI) and 4 of his decision (P23), namely;

“මෙකී සියලු කාරණා අනුව ඔබ දකුණු පළාත් රාජ්‍ය සේවයට අයන් නිලධාරියෙකු නොවන බව කැවතනැවතන් තහවුරු වන අතර, ඒ අනුව දකුණු පළාත් සහාවට අයන් නොවන නිලධාරියෙකු සම්බන්ධයෙන් විශ්‍රාම ගැන්වීම සම්බන්ධ කාරණා ඉටු කිරීමට අපගේ විෂය වපසරියෙන් පරිභාජිර කරුණක් වේ.”

When translated into English paragraph 1(VI) of it(P23) reads thus,

“In view of all these matters, it is confirmed once again that you are not an officer belonging to the Southern Provincial Public Service, and accordingly, it is beyond our scope to deal with matters relating to the retirement of an officer who does not belong to the Southern Provincial Council.”

“ඉහත VI හි දක්වා ඇති කරුණු අනුව දකුණු පළාත් සහාවට ඔබ සම්බන්ධව ආයතනික කරුණු අදාළ කර ගැනීමට නො භැකි වුවන්, ඔබ පිළිබඳ බලධාරීන්වය නිවැරදිව පවතින සූදුසූ ආයතනයක් වෙතින් ඔබගේ විශ්‍රාම ගැන්වීමට අදාළ කරුණු ඉටු කරවා ගැනීමට බාධාවක් නිරීක්ෂණය නොවේ. ඒ අනුව, ඔබගේ ආයතනික කටයුතු පිළිබඳව බලනාල, මධ්‍යම රජයේ රාජ්‍ය සේවා කොමිෂන් සහාවේ අධ්‍යාපන සේවාකම්වුව වෙත පැවරෙන බැවින් ඔබගේ

විග්‍රාම ගැන්වීම හා ඉදිරි ආයතනික කටයුතු සඳහා අධ්‍යාපන අමාත්‍යාංශයේ ලේකම්වරයාවෙන මේ වන විට ලේඛන යොමු කර ඇති බලින් ඒ අනුව කටයුතු සලසාගන්නා ලෙස කාරුණිකව දැනුම් දෙමි.”

When translated into English paragraph 4 of it (P23) reads thus,

“Although the Southern Provincial Council is unable to process your institutional matters in accordance with the above VI, there is no obstacle to getting your retirement matters handled by an appropriate institution that has the authority over you. Accordingly, since the powers regarding your institutional matters are transferred to the Education Services Committee of the Central Government Public Service Commission, I kindly inform you that the documents for your retirement and future institutional matters have been forwarded to the Secretary to the Ministry of Education, and accordingly, arrangements should be made”.

Hence, it clearly, appears from the reasons set out in paragraph 4 of it (P23), that the documents required for the due and timely, process of the Petitioner's retirement and future institutional matters have already, been forwarded to the Secretary to the Ministry of Education, by the Governor of the Southern Province-12th Respondent thereby, clearly, showing his *bona fides* and unbiasedness of his towards the Petitioner and therefore, it cannot be said that the Petitioner would be prejudicially affected by the decisions contained in P19 and P23 which refused to absorb him to the Southern Provincial Public Service for; remedy will no doubt, lie with the Education Service Committee of the Public Service Commission of the Central Government in view of the fact that, he had right throughout been an employee of the Central Government as maintained by him in the former case bearing No. CA(Writ) 292/2019 and as upheld by this Court therein.

It is my further view that, the reasons set out in paragraphs 1(vi) and 4 of the decision (P23) by the Governor of the Southern Province-12th Respondent too, will no doubt, fortify and strengthen the reasons adduced for its decision for the refusal to absorb the Petitioner into the Southern Provincial Public Service by the Southern Provincial Public Service Commission contained in P19.

Lord Greene's judgment in **Associated Provincial Picture Houses Ltd Vs. Wednesbury Corporation [1948] 1KB 223** is commonly cited today in decisions involving judicial review of powers for unreasonableness. What is often referred to as the "Wednesbury Test" is the proposition that a Court may interfere with the exercise of discretion for unreasonableness only when the authority has come to a conclusion so unreasonable no reasonable authority could ever have come to it." The meaning of "unreasonable" was central to the decision of the House of Lords in the **Tameside Case [1977] AC 1014**. Lord Diplock there said that, "unreasonable denotes conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt." (Vide-Wade and Bradley, "Constitutional and Administrative Law" Edited by A.W. Bradley and Keith Ewing-Eleventh Edition at page 676).

In the light of the law and the facts and circumstances set out above, I am of the view that, viewed in the light of the reasons set out therein, and as enumerated above, the decisions of both the Southern Provincial Public Service Commission (P19) and of the Governor of Southern Province (P23) cannot in any manner, be construed as being the decisions to be "so unreasonable that no sensible authority acting with due appreciation of its responsibilities would have decided to adopt".

Hence, I am of the opinion that, the second reason thus, assigned by the Southern Provincial Public Service Commission for its decision (P19) for the refusal to absorb the Petitioner into the Southern Provincial Public Service, namely; "**the correct procedure is to conduct his future administrative**

affairs by the authorities of the Central Public Service, inasmuch as the Petitioner was an officer of the Central Government Service”, when read together with reasons set out in paragraphs 1(vi) and 4 of the decision of the Governor of the Southern Province contained in P23, is wholly, tenable both in fact and law and therefore, the said decision based on the second reason, is in all respects, lawful, rational, unbiased, and reasonable and therefore, they cannot be construed as a) *ultra vires*; b) bad in law; c) bias; d) irrational; e) unfair; f) against the rules of Natural Justice; g) violation of his legitimate expectation; h) in violation of the Wednesbury rules of reasonableness as contended by the Petitioner.

b) there is a legitimate expectation for the Petitioner to be duly absorbed to the Southern Provincial Public Service especially after being reinstated upon the judgment of this Court in case bearing No. CA(Writ) 292/2019 and to receive a pension after retirement;

It may now be examined,

With regard to the burden of proof, it was *inter-alia*, held by Court in **Ginigathgala Mohandiramlage Nimalsiri Vs. Colonel P. P. J. Fernando and Others-SC/FR/256/2010-decided on 17th September, 2015** as referred to in his written submissions by the Petitioner that, “In order to seek redress under the doctrine of legitimate expectation, a person should prove that, he had a legitimate expectation which was based on a promise or an established practice. Thus, the applicability of the said doctrine is based on the facts and circumstances of each case.”.

It was *inter-alia*, held by Court in **Wickremasignhe and another Vs. The Urban Development Authority [2002] 3 SLR 253** as referred to in his written submissions by the Petitioner that, “Legitimate expectation is pivoted on fairness and reasonableness as long as these two components co-exist there

can and will always will be legitimate expectation....the public authority has a duty to act with fairness and consistency in dealing with the Public and if it makes inconsistent decisions unfairly and unjustly, it misuses its powers".

See also; **Samagi Real Estates (Private) Limited Vs. Ceylon Electricity Board-CA(Writ) 157/2021-decided on 28th of February, 2024.** and **The State of Bihar Vs. Dr. Sachindra Narayan AIR 2019 SC 705** as referred to in his written submissions by the Petitioner.

It was contended by the Petitioner, in paragraph 30 of his written submissions, that the expectation of the Petitioner to be absorbed into the Southern Provincial Public Service is a legitimate expectation that falls within the powers of the Southern Provincial Public Service to fulfill, and however, it had unreasonably and unfairly, and irrationally, refused to absorb the Petitioner into the Southern Provincial Public Service as contained in P19 and P23.

In the light of the law enumerated above, in order to seek redress under the doctrine of legitimate expectation, the Petitioner in the instant application, should prove that, he had a legitimate expectation which was based on a promise adduced to him by the Respondents or due to an established practice adopted by the Respondents; or else, a case of legitimate expectation had arisen when the Respondents by representation or by past practice aroused expectation on the Petitioner in the instant action which it was within their powers to fulfill.

However, record shows that the Petitioner had not adduced an iota of evidence before us to establish that he had a legitimate expectation which was based on a promise adduced to him by the Respondents or due to an established practice adopted by the Respondents in relation to his absorption to the Southern Provincial Public Service; or else, a case of legitimate expectation had arisen in view of the representation made to him by the Respondents or in view

of the past practice that existed in relation to his absorption to the Southern Provincial Public Service, that aroused expectation on the Petitioner in the instant action and it was within their powers to fulfill.

Hence, I would hold that, the Petitioner had not in any manner, established the second ground too, so urged by him in order to seek redress in the instant application against the Respondents.

In view of all the above facts and circumstances, I would hold that, the Petitioner has not made out a case for an order in the nature of a Writ of *Certiorari* against the Respondents quashing the decisions contained in P19 and P23 and also for an order in the nature of *Mandamus* directing the 4th to 11th Respondents to absorb the Petitioner to the Southern Provincial Public Service and to process the retirement benefits and/or the pension of the Petitioner.

I would therefore, hold that the instant application is not entitled to succeed in both in fact and law.

In the result, I would refuse to grant relief to the Petitioner as prayed for in the prayer to his petition.

Hence, I would proceed to dismiss the instant application *in-limine*.

However, in view of all the above circumstances, I make no order for costs.

JUDGE OF THE COURT OF APPEAL

MOHAMMED LAFFAR, J (ACT.P/CA)

I agree.

PRESIDENT(ACTING) OF THE COURT OF APPEAL

