

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

In the matter of an application for mandates in the nature of Writs of Certiorari, Mandamus and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA-WRT- 595-23**

Mrs. Indumathi Paranamana  
2<sup>nd</sup> Mile Post  
Ampara Road  
Siyabalanduwa

**Petitioner**

**Vs.**

1. Mrs. M.K. Harshani Sameera  
Director of Education  
Zonal Education Office  
Monaragala
2. Mr. H.M.P.K. Herath  
Deputy Director of Education (Control)  
Zonal Education Office  
Monaragala

**Also**

Director of Education (Acting)  
Siyabalanduwa Divisional Education Office  
Dombagahawela

3. Mr. A.H.R. Amaradasa  
Director of Education - Uva Province

Uva Provincial Department of Education  
Weelagedara Road  
Badulla.

4. Mr. Gamini Mahindapala Josephus  
Secretary  
Uva Provincial Ministry of Education  
Welagedara Road  
Badulla
5. Mr. M.N. Ranasinghe  
Secretary  
Ministry of Education  
Isurupaya  
Battaramulla
6. Mr. K.D. Ranjith Asuka  
Secretary  
Ministry of Public Administration, Home  
Affairs, Provincial Councils and Local  
Government, Independence Square  
Colombo 07.
7. Mr. Jeewantha Herath  
Secretary  
Uva Provincial Public Service Commission  
No. 14/4  
Peelipothagama Road  
Badulla.

**Respondents**

**Before:** N. Bandula Karunarathna, P/CA, J.  
B. Sasi Mahendran, J.

**Counsel:** Sanjeewa Jayawardena, PC for the Petitioners  
P. Jayasuriya, SC for the State.

**Argued On:** 01.08.2024, 07.08.2024 and 12.09.2024

**Judgment On:** 12.11.2024

**B. Sasi Mahendran, J.**

The Petitioner instituted this action praying for the following reliefs in the petition dated 09.10.2023

- a) Issue Notice hereof on the Respondents;
- b) Issue a mandate in the nature of a Writ of Certiorari calling for and quashing the patently wrongful and impugned decision/ order made by the 3rd Respondent to assign the Petitioner to the Sivambalanduwa Divisional Education Office, as referred to in the impugned letter dated 27-03-2023, produced P-14, by which, the 1st Respondent was purportedly informed regarding the purported assignment of the Petitioner, without however, duly disclosing to the Petitioner, the principal substantive decision purportedly dated 18-03-2023;
- c) Issue a mandate in the nature of a Writ of Certiorari quashing the letter dated 27-03- 2023, signed by the 1st Respondent, communicated the purported, undisclosed decision of the 3rd Respondent to wrongfully assigning the Petitioner to the Siyambalanduwa Divisional Education Office, the letter of communication is produced marked P-14;
- d) Issue a mandate in the nature of a Writ of Certiorari calling for and quashing any adverse findings and/or observations in any investigation Report (if any) implicitly referred to in the Letter dated 27-03-2023 produced marked P-14;

- e) Issue a mandate in the nature of a Writ of Mandamus directing the 1st to 5th and 7th Respondents and/or their servants and agents and/or their successors in office, to forthwith reinstate the Petitioner to the Siymabalanduwa National School, at which school the Petitioner was serving at, as the principal and to furthermore make and put in place all administrative and other measures in order to duly facilitate the Petitioner's said reinstatement;
- f) Issue a mandate in the nature of a Writ of Mandamus directing the 1st to 5th and 7th Respondents and/or any one or more of the Respondents and/or their servants, and agents to issue the Petitioner, the Report (if any) of the purported investigation bearing reference number No: 9/අ/15/1/19;
- g) Issue a mandate in the nature of a Writ of Mandamus, directing the 1<sup>st</sup> to 5<sup>th</sup> 7<sup>th</sup> Respondents and/or any one or more of the Respondents and/or their servants and/or agents and/or their successors in office, subject to any term and conditions as to Your Lordship's Court shall seem fit, to firstly restore the status quo ante and immediately transfer the Petitioner back to her post as the Principal of the Siyambalanduwa National School and to then, if required, to conduct a full and fair and fresh investigation, pertaining to the purported allegations set out in the letter dated 24-04-2023, produced marked P-30(b) strictly in terms of principles and procedures established by law, including providing the Petitioner a full, fair and adequate opportunity to be duly heard and to present material/evidence in its defence, as well as to appoint a new inquiring officer;
- h) Issue a mandate in the nature of a Writ of Prohibition restraining the 1st to 4th and 7th Respondents and/or their servants and agents and/or their successors in office from conducting the investigation bearing reference No: 9/අ/15/1/19;
- i) Grant and issue a mandate in the nature of a Writ of Prohibition, restraining the 1st to 4th Respondent and their servants and agents and/or their successors in office, from harassing or harming or victimizing the Petitioner, in respect of any matter pertaining to, or arising from the subject matter of this application and due to the Petitioner, invoking the

jurisdiction of Your Lordship's Court in order to duly protect her rights and interests in law,

#### Interim Orders

- j) Issue an interim order calling for and staying and/or suspending the patently wrongful and impugned decision/ order made by the 3rd Respondent to assign the Petitioner to the Siyambalanduwa Divisional Education Office, as referred to in the impugned letter dated 27-03-2023, produced P-14, by which, the 1st Respondent was purportedly informed regarding the purported assignment of the Petitioner, without however, duly disclosing to the Petitioner, the principal substantive decision purportedly dated 18-03- 2023, until the final hearing and determination of this Application;
- k) Issue an interim order staying and/or suspending the letter dated 27-03-2023, signed by the 1st Respondent, communicated the purported, undisclosed decision of the 3rd Respondent to wrongfully assigning the Petitioner to the Siyambalanduwa Divisional Education Office, the letter of communication is produced marked P-14, until the final hearing and determination of this Application;
- l) Issue an interim order calling for and staying and/or suspending, any adverse findings and/or observations in any investigation Report (if any) implicitly referred to in the Letter dated 27-03-2023 produced marked P-14, until the final hearing and determination of this Application;
- m) Issue an interim order restraining the 1st to 4th and 7th Respondents and/or their servants and agents and/or their successors in office, from conducting the investigation bearing reference No: 9/අ /15/1/19, until the final hearing and determination of this Application;
- n) Grant and issue an interim order, restraining the 1st to 4th Respondent and their servants and agents and/or their successors in office, from harassing

or harming or victimizing the Petitioner, in respect of any matter pertaining to, or arising from the subject matter of this application and due to the Petitioner, invoking the jurisdiction of Your Lordship's Court in order to duly protect her rights and interests in law, until the final hearing and determination of this Application;

Make a determination under Article 140 of the constitution inter-alia to:-

- o) Call for and examine the Report of the Investigation bearing reference number ෭෩෪/අධ්ය/විමර්ශන/01/2022/ මොන, if any, and to make an order in terms of Article 140, directing the 1st to 4th Respondents and/or any one or more of the Respondents and/or their servants, and agents to produce in Your Lordships' Court:
- p) Call for and examine the Investigation Report bearing reference No: 9/ ep/15/1/19, if any, to make an order in terms of Article 140 directing the 1s to 4th Respondents and/or any one or more of the Respondents and/or their servants, agents to produce in Your Lordships' Court:
- q) Call for and examine the Report of the Financial Audit and the Special Commodity Survey to make an order in terms of Article 140 directing the 1# to 4th Respondents and/or any one or more of the Respondents and/or their servants, agents to produce in Your Lordships' Court
- r) Award substantial cost to the petitioner; and
- s) Grant the Petitioner such other and further reliefs as to your Lordships' Court shall seem meet.

The facts of this are briefly as follows:

According to the Petitioner, at the time of the incident, the Petitioner was serving as the Principal of Siyambalanduwa Maha Vidyalaya, Monaragala which is a National School. According to the Petitioner on or around 23.08.2022, one Mrs. Wijesundara, the Administrative Officer of Zonal Educational Office Monaragala visited the said school with a group of parents and informed the Petitioner that some of the parents submitted a

Petition against the Petitioner. Thereafter, there was a meeting held on 26.08.2022 organized by the School Development Society with the participation of the 1<sup>st</sup> Respondent where certain parents made allegations against the Petitioner. Some of such allegations were inefficient management of the school, deterioration of discipline of the students and financial improprieties.

According to the Petitioner, as stated in paragraph 12 of the petition, the Chairman of the Siyambalanduwa Pradeshiya Sabha has also sent a letter dated 13.03.2023 to the Director of Education (National School) requesting to transfer the Petitioner to another School and to appoint a new Principal to the said School making several other allegations against the Petitioner. The Petitioner asserts that this was done by the Chairman as an act of revenge relating to an incident where the Petitioner has refrained from endorsing the retention of the Chairman's brother in a contract awarded to him coinciding with the National School Ceremony.

The Petitioner states that, for her utter shock and dismay, the 2<sup>nd</sup> Respondent had forwarded a letter dated 27.03.2023 signed by the 1<sup>st</sup> Respondent informing the Petitioner that she has been temporarily assigned to the Divisional Education Office Siyambalanduwa with immediate effect. The Petitioner further avers that, despite all the hardships, the Petitioner commenced her work at the said office from 28.03.2023.

The Petitioner states that, due to the hardships faced by her by travelling to the new workplace which is located 20 km away from her residence, and the expenses incurred due to the transportation, she informed the 1<sup>st</sup> Respondent by letter dated 13.03.2023 requesting to grant permission to her to retire 3 months before the due date. However, the Respondents have not granted the permission. The Petitioner further states, that since no reply was received for the earlier letters, the Petitioner sent another letter dated 22.08.2023 to the 1<sup>st</sup> Respondent indicating that she wishes to revoke her request and

wishes to work for one more year. The Petitioner moreover states that the Petitioner also filed a complaint to the Human Rights Commission against the 1<sup>st</sup> Respondent. The Petitioner has further requested the 1<sup>st</sup> Respondent to provide her an investigation report which was purported to be held and the 1<sup>st</sup> Respondent informed her that he was unable to provide such an investigation report as the preliminary investigation is still ongoing.

Thereafter, the Petitioner had made an appeal to the Uva Provincial Public Service Commission against the decision of the 1<sup>st</sup> Respondent. In the meantime, the Petitioner has come to know that the 1<sup>st</sup> Respondent has taken steps to hold a disciplinary inquiry against her. It should be noted that the 5<sup>th</sup> Respondent, the Secretary to the Ministry of Education, Isurupaya in his Statements of Objection in averment 5 has stated that, the school in which the Petitioner was the Principal was declared as a National School, therefore, the Uva Provincial Public Service Commission is not vested with the power to intervene about the disciplinary matters regarding the Petitioner. Further, through the letter marked as 5R2, the staff of the said school are deemed to have been absorbed by the Central Government.

It should be noted that the decision to transfer the Petitioner was made by the 3<sup>rd</sup> Respondent who is the Director of Education, Uva Province.

The question is whether the 3<sup>rd</sup> Respondent has the legal authority to take steps to transfer the Petitioner and to initiate the disciplinary inquiry.

Sunil F.A. Coorey in his book *Principles of Administrative Law*, Fourth Edition, Volume II, page 916 states as follows:

“Power to decide questions affecting right of parties may be conferred either by statute law or by contract of parties.

The phrase “legal authority” in this context has traditionally been used to refer only conferred by statute, to the exclusion of power conferred by contract of parties.”



According to Appendix III of the Ninth Schedule (Provincial Council List) of the Constitution, Section 3 reads as follows:

“The transfer and disciplinary control of all educational personnel, i.e. Teachers, Principals and Education Officers, Officers belonging to a National Service but serving the Provincial Authority on secondment will have the right of appeal to the Public Service Commission. Officers belonging to the Provincial Public Service will have a right to appeal to the Public Service Commission against dismissal.”

Further, it is discussed by Sunil F.A.Coorey in *Principles of Administrative Law in Sri Lanka* (Supra) at Page 911 that;

“The circumstances in which certiorari and prohibition will be available have been summed up by Lord Justice Atkin, an English judge, in the following famous words which on numerous occasions have been cited and followed by our courts:

*" Whenever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these Writs."*

This dictum has been analyzed as follows as laying down four conditions which must be satisfied for certiorari or prohibition to issue:-

*" Whenever any body of persons, (firstly) having legal authority, (secondly) to determine questions affecting the rights of subjects, (thirdly) having the duty to act judicially, (fourthly) act in excess of their legal authority, they are subject to the controlling jurisdiction exercised by these writs."*

In Regina v. National Joint Council for The Craft of Dental Technicians, 1953, QB Volume I, Lord Goddard C.J held that,

“But the bodies to which in modern times the remedies of these prerogative writs have been applied have all been statutory bodies on whom parliament has conferred statutory Powers and duties which, when exercised, may lead to the detriment of subjects who may have to submit to their jurisdiction.”

This was further elaborated by His Lordship Sripavan, J (as he was then) in Daewoo Engineering and Construction Co. Ltd. v. Amarasekara, (2006) 2 SLR 232, at page 234 that;

“An objection was taken by the President's Counsel for the eighth respondent that the court has no jurisdiction to quash a decision taken by the Cabinet of Ministers. In terms of Article 4(c) of the Constitution, the judicial power of the People is exercised through courts, tribunals and institutions created, established, or recognized by the Constitution or created and established by law. The power to issue writs against a judge of any Court of First Instance, tribunal or other institution or any other person is conferred on the Court of Appeal in terms of Article 140 of the Constitution. Section 2 of the Interpretation Ordinance provides that "person" includes "any body of persons corporate or unincorporate". Thus, this court has jurisdiction to issue writs on a body of persons according to law. *In Rex vs Electricity Commissioners* at 204, the writ of certiorari was declared to be available against "any body of persons having legal authority to determine the questions affecting the rights of the subjects and having the duty to act judicially". In other words, certiorari lies only against persons or tribunals, the source of whose authority to make decisions or orders affecting the rights of subjects, is legal. Commenting on the phrase "Legal authority" Lord Goddard C. J. In *Rex vs. National Joint Council for Dental Technician*<sup>(2)</sup> at 707 said "Legal authority generally means statutory authority".”

The concept of ‘having legal authority’ was considered by His Lordship Vythialingam, J in Mendis, Fowzie and Others v. Goonewardena, G.P.A. Silva, (1978-1979) 2 SLR 322, at page 333, that;

“An examination of the process by which this has been done and to see how Lord Atkin's formula has been modified is best done by considering each of the four parts into which Slessor, L J divided in the case of *R. V. London Country Council*; Namely that whenever any body of persons (1) having legal authority  
(2) to determine questions affecting the rights of subjects, and  
(3) having the duty to act judicially  
(4) act in excess of their legal authority

they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs.

### **Having Legal Authority**

In this context generally "legal authority" means statutory authority or authority under the common law. But this has now been extended to include acts of public authorities who are not vested with any power under any statute or under the common law. In the case *Ex parte Lain* (supra) it was argued that the Criminal Injuries Compensation Board was not a body of persons having "legal authority" in the sense of having statutory authority, as the Board had been established by the executive in terms of a White Paper which had been adopted by Parliament. The Court of Appeal rejected this argument and held that it had legal authority to act. Mr. Choksy pointed out that the Court of Appeal's decision in that case was based on the fact that the Board had been set up by the executive in the exercise of the prerogative and that therefore it had a legal basis."

From the Objections raised by the 5<sup>th</sup> Respondent, it is quite apparent that the transfer and the disciplinary inquiry were not delegated to the Provincial Public Service Commission. Therefore, the decision taken by the 3<sup>rd</sup> Respondent by letter dated 27.03.2023 is without legal authority, thus it is illegal.

We thus, issue writs of Certiorari to quash the decision of the 3<sup>rd</sup> Respondent. We further issue writs of Prohibition as prayed for in prayers (h) and (i) of the Petition.

Application allowed with costs.

**JUDGE OF THE COURT OF APPEAL**

**N. Bandula Karunarathna (P/CA), J.**

**I AGREE**

**PRESIDENT OF THE COURT OF APPEAL**