

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

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

Case No. CA (Writ) 797/2009

1. R. A. B. Ranasinghe  
District Irrigation Engineer's Office, Kachcheri Complex, Gampaha.
2. G. K. S. S. B. Kiriella  
District Irrigation Engineer's Office, Kachcheri Complex, Gampaha.
3. R. P. Welekumbura  
District Irrigation Engineer's Office, Kachcheri Complex, Gampaha.
4. B. M. D. Swarnatissa  
Provincial Irrigation Director's Office, No. 25, Maligawa Road, Ratmalana.  
And presently at Department of Posts, D. R. Wijewardene Mawatha, Kalutara North.
5. J. J. Ginige  
District Irrigation Engineer's Office, Sri Suman gala Mawatha, Kalutara North.
6. G. N. Priyalal  
Executive Engineer's Office, Anamaduwa.
7. W. G. Upasena  
Divisional Building Engineer's Office, Mone ragala.
8. D. G. I. W. Udayasinghe Bandara  
Divisional Engineer's Office, Mahiyanganaya.
9. W. L. G. S. Liyanage  
Provincial Irrigation Department, Stage I, Lake Road, Anuradhapura.
- 9a. Tamara Dharshani Rammuthugala
- 9b. Tilan Dinulak Liyanage
- 9c. Widushi Lakruvini Liyanage  
All of No. 867, Gothatuwa New Town, Gothatuwa.
10. M. U. P. Samaranayaka  
Provisional Irrigation Director's Office, P. O. Box 1060, Gatembe, Peradeniya.

11. L. V. Somachandra  
Ministry of Justice & Law Reform, Hulftsdorp,  
Colombo 12.

Petitioners

**Vs.**

1. Public Service Commission  
Carlwill Place, Colombo 03.
2. N. Ariyadasa Cooray  
The Secretary,  
Public Service Commission, Carlwill Place,  
Colombo 03.  
T. M. L. C. Senaratne  
Public Service Commission, Carlwill Place,  
Colombo 03.  
H. M. G. Senevirathne  
No. 177, Nawala Road, Narahenpita, Colombo  
05.

Substituted 2<sup>nd</sup> Respondent

3. Hon. W. D. J. Seneviratne  
Ministry of Public Administration and Home  
Affairs, Independence Square, Colombo 07.  
Hon. Karu Jayasuriya  
Ministry of Public Administration, Provincial  
Councils, Local Government and Democratic  
Governance,  
Independence Square, Colombo 07.  
Hon. Ranjith Madduma Bandara  
The Minister of Public Administration and  
Management,  
Independence Square, Colombo 07.

Substituted 3<sup>rd</sup> Respondent

4. P. B. Abeykoon  
The Secretary,  
Ministry of Public Administration and Home  
Affairs, Independence Square, Colombo 07.  
J. Dadallage  
The Secretary,  
Ministry of Public Administration, Provincial  
Councils, Local Government and Democratic  
Governance,  
Independence Square, Colombo 07.  
J. Dadallage  
The Secretary,

Ministry of Public Administration and Management, Independence Square, Colombo 07.

J. J. Rathnasiri

The Secretary,

Ministry of Public Administration and Management, Independence Square, Colombo 07.

*(Present Incumbent)*

**Substituted 4<sup>th</sup> Respondent**

5. Sumith Abeysinghe  
The Secretary to the Cabinet of Ministers,  
Republic Building, Sir Baron Jayathilake  
Mawatha, Colombo 01.
6. Dr. Eng. K. M. P. S. Bandara  
The Director,  
Sri Lanka Engineering Service Board, Ministry  
of Public Administration and Home Affairs,  
Independence Square, Colombo 07.
- 6A. Eng. R. P. Jayasinghe  
The Director,  
Sri Lanka Engineering Service Board, Ministry  
of Public Administration, Provincial Council  
Local Government and Democratic  
Governance, Independence Square, Colombo  
07.

**Added 6A Respondent**

7. The Secretary  
Sri Lanka Engineering Service Board, Ministry  
of Public Administration and Home Affairs.
8. Commissioner General of Examination  
Department of Examination, Pelawatte,  
Battaramulla.
9. Department of Examination  
Pelawatte, Battaramulla.
10. Hon. A. L. M. Athaullah  
The Minister of Provincial Councils and Local  
Government,  
Union Place, Colombo 02.  
Hon. Faiszer Mustapha, P. C.  
The Minister of Provincial Councils and Local  
Government,  
Union Place, Colombo 02.

Substituted 10<sup>th</sup> Respondent

11. The Secretary  
Ministry of Provincial Councils and Local Government, Union Place, Colombo 02.
12. Dr. Dayasiri Fernando  
The Chairman, Public Service Commission, Carlwill Place, Colombo 03.
13. Palitha Kumarasinghe, P. C.  
Member, Public Service Commission, Carlwill Place, Colombo 03.
14. Sirimavo A. Wijeratne  
Member, Public Service Commission, Carlwill Place, Colombo 03.
15. S. C. Mannapperuma  
Member, Public Service Commission, Carlwill Place, Colombo 03.
16. Ananda Seneviratne  
Member, Public Service Commission, Carlwill Place, Colombo 03.
17. N. H. Pathirana  
Member, Public Service Commission, Carlwill Place, Colombo 03.
18. Thillan Nadarajah  
Member, Public Service Commission, Carlwill Place, Colombo 03.
19. D. W. Ariyawansa  
Member, Public Service Commission, Carlwill Place, Colombo 03.
20. Mohamed Nahiya  
Member, Public Service Commission, Carlwill Place, Colombo 03.
- 21A. Justice Sathya Hettige  
The Chairman,  
Public Service Commission, No. 177, Nawala Road, Narahenpita, Colombo 05.
- 22A. S. C. Mannapperuma  
Member, Public Service Commission, No. 177, Nawala Road, Narahenpita, Colombo 05.
- 23A. Ananda Seneviratne  
Member, Public Service Commission, No. 177, Nawala Road, Narahenpita, Colombo 05.

- 24A. N. H. Pathirana  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 25A. S. Thillanadarajah  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 26A. A. Mohamed Nahiya  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 27A. Kanthi Wijetunga  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 28A. Sunil S. Sirisena  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 29A. Dr. I. N. Soysa  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 30A. Dr. Dharmasena Dissanayake  
The Chairman,  
Public Service Commission, No. 177, Nawala  
Road, Narahenpita, Colombo 05.
- 31A. Justice A. Salam Abdul Waid  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 32A. D. Shirantha Wijayathilake  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 33A. Dr. Prathap Ramamujam  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 34A. V. Jegarasasingham  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 35A. Shanthi Nihal Seneviratne  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 36A. R. Ranugge  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.
- 37A. D. L. Mendis  
Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.

38A. Sarath Jayathilake

Member, Public Service Commission, No. 177,  
Nawala Road, Narahenpita, Colombo 05.

All being Members of the presently incumbent Public Service Commission, C/O the Secretary, Public Service Commission, No. 177, Nawala Road, Narahenpita, Colombo 05.

**Added 30A – 38A Respondents**

**Before:** Janak De Silva J.

**Counsel:**

Harindri Seneviratne for the Petitioners

Chaya Sri Nammuni SSC for the 3<sup>rd</sup> Respondent

**Written Submissions tendered on:**

Petitioners on 08.03.2019

Respondents on 28.03.2019

**Decided on:** 06.03.2020

**Janak De Silva J.**

The Petitioners are seeking the following relief:

- (a) Writ of Certiorari quashing the decision of the Secretary, Ministry of Public Administration and Home Affairs and/or the Engineering Service Board, pertaining to the denial/refusal to promote the Petitioners to SLES (Class II Grade II);
- (b) Several Writs of Mandamus directing the Respondents to re-evaluate the Petitioners and promote them to the SLES (Class II Grade II).

This order pertains to a preliminary jurisdictional objection raised by the learned Senior State Counsel that this Court does not have jurisdiction in terms of Article 61A of the Constitution to hear and determine this matter.

The learned counsel for the Petitioners submitted that this is not a matter that should be considered by Court since it was raised belatedly by the Respondents.

The preliminary objection goes to the root of the jurisdiction of this Court as it involves a constitutional ouster. It is a patent lack of jurisdiction and hence even if it is raised belatedly that cannot vest this Court with jurisdiction it does not possess.

As Tennakoon C.J. explained in *Beatrice Perera v. The Commissioner of National Housing* (77 N.L.R. 361 at 366)

"Lack of competency in a Court is a circumstance that results in a judgment or order that is void. Lack of competency may arise in one of two ways. A Court may lack jurisdiction over the cause or matter or over the parties; it may also lack competence because of failure to comply with such procedural requirements as are necessary for the exercise of power by the Court. Both are jurisdictional defects; the first mentioned of these is commonly known in the law as a 'patent' or 'total' want of jurisdiction or a *defectus jurisdictionis* and the second a 'latent' or 'contingent' want of jurisdiction or a *defectus triationis*. Both classes of jurisdictional defect result in judgments or orders which are void. But an important difference must also be noted. In that class of case where the want of jurisdiction is patent, no waiver of objection or acquiescence can cure the want of jurisdiction; the reason for this being that to permit parties by their conduct to confer jurisdiction on a tribunal which has none would be to admit a power in the parties to litigation to create new jurisdictions or to extend a jurisdiction beyond its existing limits, both of which are within the exclusive privilege of the legislature; the proceedings in cases within this category are *non coram iudice* and the want of jurisdiction is incurable. In the other class of case, where the want of jurisdiction is contingent only, the judgment or order of the Court will be void only against the party on whom it operates but acquiescence, waiver or inaction on the part of such person may estop him from making or attempting to establish by evidence, any averment to the effect that the Court was lacking in contingent jurisdiction.

The only issue before Court is the backdating of the appointments given to the Petitioners since pending this application, they have been promoted to SLES (Class II Grade II). This is not disputed by the Petitioners who admit that these appointments were given by the Public Service Commission (PSC) as the appointing authority.

### *Article 61A of the Constitution*

In *Atapattu v. People's Bank* [(1997) 1 Sri.L.R. 208] the Supreme Court held that the jurisdiction of the Court of Appeal set out in Article 140 of the Constitution can only be ousted by a constitutional provision. Article 61A of the Constitution is an example of such an ouster.

The approach this Court should take to the constitutional ouster in Article 61A of the Constitution was dealt with in great detail by Marsoof J. in *Ratnasiri and others v. Ellawala and others* [(2004) 2 Sri.L.R. 180 at 190] where he held:

"In view of the elaborate scheme put in place by the Seventeenth Amendment to the Constitution to resolve all matters relating to the public service, this Court would be extremely reluctant to exercise any supervisory jurisdiction in the sphere of the public service...I have no difficulty in agreeing ... that this Court must apply the preclusive clause contained in Article 61A of the Constitution in such a manner as to ensure that the elaborate scheme formulated by the Seventeenth Amendment is given effect to the fullest extent."

Furthermore, the ouster clause in Article 61A of the Constitution does not insulate the PSC from all forms of judicial supervision as the fundamental rights jurisdiction vested in the Supreme Court by Article 126 of the Constitution is preserved in all its vigour and any party whose fundamental rights are infringed or is in imminent danger of infringement has recourse to that jurisdiction.

The backdating of the appointments of the Petitioners is a matter for the PSC as the appointing authority. Article 61A of the Constitution prevents this Court from interfering with that process.

I uphold the preliminary objection raised by the learned Senior State Counsel and dismiss this application without costs.

Judge of the Court of Appeal