

**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 a writ of Certiorari under and in  
terms of Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.

**CA-WRIT-120/2023**

A.S. Amarasinghe  
No. 9/15, 4th Lane  
Pitakotte

**Petitioner**

**Vs.**

1. Tertiary and Vocational Educational  
Commission  
No. 354/2, Nipunatha Piyasa  
Elvitigala Mawatha  
Colombo 5
2. Eng. Udeni Wickramasinghe  
Chairman  
Tertiary and Vocational Educational  
Commission  
No. 354/2, Nipunatha Piyasa  
Elvitigala Mawatha  
Colombo 5
3. Director General  
Tertiary and Vocational Educational  
Commission  
No. 354/2, Nipunatha Piyasa  
Elvitigala Mawatha  
Colombo 5

4. Ruchika Amarasinghe  
Board Member  
No. 971, Sri Jayawardhanapura Mw,  
Welikada  
Rajagiriya.
5. S.C.Jagath  
Board Member  
DTET, Olcott Mawatha  
Colombo 10
6. Upali Kappetipola  
Board Member  
Vocational Training Authority  
Nipunatha Piyasa  
Narahenpita  
Colombo 05.
7. H. Athauda Senevirathna  
Board Member  
SLIATE, Janawathu Piyasa  
T.B. Jaya Mawatha  
Colombo 10.
8. Harshani Fernando  
Board Member  
Department of Treasury Operations  
Ministry of Finance,  
Colombo 01.
9. Prof. Sudantha Liyanage  
Board Member  
Vice Chancellor

University of Sri Jayawardhanapura,06,  
Nugegoda

10. Sarath Chandra Mohotti

Board Member

236/1

T.C. Road, Kotikawatta

11. Prof. T.M. Bandula Palawatta

Board Member

600/7, A2

Udaya Mawatha

Ihalabiyawila

Kadawatha

12. M.G.K.M. Fernando

Board Member

47C, Thomas Fernando Mw

Wennappuwa

13. Prof. H.H Sumathipala

Board Member

44/B, Pahala Imbulgoda,

Imbulgoda

14. Kanishka Weerasinghe

Bord Member

286/7, Gemunu Mawatha

Buthgamuwa Rd

Rajagiriya

15. Prof. N.R.Abeynayake

Board Member

6561

Nayaka road

Katyunayake

16. Jayantha Weerasinghe

Board Member

178/7, Kothalawala Road

Magammana

Homagama

17. Manjula Hiranya De Silva

Board Member

17/36C, Wijayaba Mawatha

Nawala Road

Nugegoda

18. P/A/D/R/Chandrasiri

Board Member

No. 763

Meepitiya Road

Kegalle

19. Damith Wickramasinghe

Chairman

Vocational Training Authority

Nipunatha Piyasa

Narahenpita

Colombo 5

New Address

Crescat Residencies

No. 7/6A

Colombo 02

20. Damayanthi Kumari Wijesinghe

Additional Secretary

3rd Floor

Sethsiripaya Stage 1  
Battaramulla  
Sri Lanka.

New Address

Additional Director General  
Land and Regulatory Division  
Department of Public Finance  
General Treasury  
Colombo 1

21. Secretary

State Ministry of Skills Development  
Vocational Education,  
Research and Innovation  
No. 354/2, Nipunatha Piyasa  
Elvitigala Mawatha, Colombo 5.

22. Director General

Department of Management Services  
Ministry of Finance, General Treasury  
Colombo 1.

23. Hon Attorney General

Attorney General's Department  
Colombo 12.

24. J.A.D.J. Jayalath

Director General (Acting)  
Tertiary and Vocational Educational  
Commission  
No. 354/2 Nipunatha Piyasa, Elvitigala  
Mawatha, Colombo 05

**Respondents**

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

**Counsel:** Dr. Thashira Gunatilake with Nimani Amanda for the Petitioner  
Shemanthi Dunuwille, SC for the Respondents

**Argued On:** 18.06.2024

**Written** 31.07.2024 (by the Petitioner)

**Submissions:**

**On**

**Judgment On:** 06.09.2024

**B. Sasi Mahendran, J**

The Petitioner instituted this action inter alia, praying to quash the decisions marked P12 and P13. The following reliefs are prayed in the amended petition dated 08.03.2023.

- a. Issue notice on the Respondents in the first instance
- b. Quash the decision marked P12 and P13 of the interview panel comprising of the 2nd, 3rd, 18th, 19th, 20th and 24th Respondents to disqualify and/or discontinue the Petitioner from the interview process by Writ of Certiorari.
- c. Issue a Writ of Mandamus Directing the interview panel comprising of the 2nd, 3rd, 18th, 19th, 20th and 24th Respondents to entertain and process the application submitted by the Petitioner for the Position of Director (Administration).
- d. Grant interim relief directing both the interview panel comprising of the 2nd, 3rd, 18th, 19th, 20th and 24th Respondents and the Board of Directors comprising of 2nd to 18th Respondents staying respectively further actions and steps taken at the interview process based on the advertisement marked P5, and

appointing a candidate to the post of Director (Administration), until the final determination of this application.

- e. Consider the delay if any to file the present case as an excusable delay considering the reasons given by the Petitioner and the seriousness of the legal issues involved in the impugned award of the 4<sup>th</sup> Respondent.
- f. Grant Costs
- g. Grant such other and further reliefs as Your Lordship's Court shall seem meet.

The facts of this matter very briefly are as follows:

According to the Petitioner, the Petitioner directly joined the 1<sup>st</sup> Respondent Commission on 06.04.2006 as the Deputy Director (Finance) and was subsequently made permanent in that position by the letter dated 23.06.2008. The Petitioner states that when the 1<sup>st</sup> Respondent Commission was restructured with the directions of the Department of Management Services, the Petitioner was absorbed into the restructured salary scale of MM-1-1 and granted the position of Deputy Director (Finance) Grade I, to which the Petitioner is still attached to. Further, the Petitioner avers that the 3<sup>rd</sup> Respondent, advertised the position of Director (Administration) under the salary scale HM-1-1 and called for application with the direction of the 'Appointment Authority' of the 1<sup>st</sup> Respondent Commission.

The Petitioner further states that, the Petitioner applied for the said position by application dated 21.08.2020. Further, the Petitioner states that the Petitioner had already fulfilled all entry criteria under the internal applicants' category for the position of Director (Administration) as per the advertisement marked P5. It should be noted that, the Petitioner was entrusted with the duties of the Director (Administration) of the 1<sup>st</sup> Respondent in capacities of both cover-up and acting until P13 was issued.

According to P5, the internal candidates under category (b), where the Petitioner falls into, should have the following qualifications.

***“Internal Applicants – Qualifications and Experience:***

- a. Meeting the qualifications applicable to external applicants,  
or
- b. Having completed five years of satisfactory service in first-grade post in the Managerial Service Category (MM-1-1) in a relevant field at the Tertiary and Vocational Education Commission.”

According to the written submission filed on 31.07.2024, the Petitioner herself admits that, an internal candidate, can apply for the said post either under category (a) or (b). The Petitioner states that, since the Petitioner had acquired all the entry qualifications cited in the advertisement marked P5 relevant to category (b) of internal candidates, the Petitioner be eligible to be considered as a prospective candidate for the post of Director (Administration).

However, according to the statements of objection filed on 13.12.2023, the Respondents take the position that, the Petitioner does not fall under category (b) where an eligible candidate should possess five years experience in first-grade post in the Managerial Service Category (MM-1-1). Further according to the Respondents, by letter dated 14.12.2006 which is marked as R3, the Department of Management Services introduced a salary revision for the officers of the 1<sup>st</sup> Respondent Commission who were in service as at 31.12.2005 which also introduced a ‘salary code’ for officers based on their salary scale. According to letter dated 03.02.2010 issued by the Department of Management Services, additional salary step for the post of Deputy Director (Finance) has not been specified as the Petitioner joined the 1<sup>st</sup> Respondent Commission after 01.01.2006. According to the objection, the Petitioner’s post of Deputy Director falls under MM1-1 Grade (2). Inadvertently, she was drawing a salary of MM1-1 Grade (1). This has come to the light after the audit inquiry marked as R6 and R7. According to R5, the Petitioner was inadvertently absorbed into the MM1-1 Grade (1) category. The said audit inquiry was not challenged by the Petitioner. According to the objections, the Petitioner is not eligible under category (b) of the advertisement marked P5 to apply for the post of Director (Administration). Since, she does not fall under category (b) of the said advertisement, the Petitioner has to fulfill the requirement under category (a) which requires a postgraduate degree.



When we peruse the documents marked P12 and P13 which are sought to be quashed by the Petitioner, indicate the following facts;

1. With regard to the qualification for the said post, reference was made to the Department of Management Services and response was received on 03.01.2023.
2. The letter marked P13, further revealed that the particular post of Director (Administration) for the internal candidate requires the candidate to belong to the salary scale of MM1-1 which she is not qualified into. Therefore, to qualify for the said post, the Petitioner is required to possess a postgraduate degree.

When we peruse the petition, the said decision made by the Department of Management Services is not challenged by the Petitioner contained in R13. Instead, the Petitioner indicates that the said decision was taken by the Interview Panel. The documents marked P12 and P13 are information regarding the decision taken by the said Department conveyed through the Respondents. Further, P12 allows the Petitioner to appeal if the Petitioner wants to challenge the said decisions, to date, the Petitioner has not taken any such steps.

Generally, the Court has to consider whether the decision maker has exceeded his powers in making the decision or not followed the procedures or biased. Therefore, there should be a blatant error made by the decision maker executing his duties or any abuse of power or authority in order to exercise the supervisory jurisdiction of this Court.

In the instant case, the said order made by the Department is not placed before us. Therefore, we are unable to consider the decision of the Department to quash the said decision.

Grounds for issuing certiorari are mentioned by **M.P. Jain and S.N. Jain** in **Principles of Administrative Law, 6<sup>th</sup> Enlarged Edition, Volume 2, Page 2180.**

The grounds for the issue of certiorari have been succinctly stated by the Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan*. Prohibition and Certiorari are issuable on the following grounds:

- i. When the concerned authority is acting or has acted under a law which is invalid, ultra vires or unconstitutional;

- ii. jurisdictional error;
- iii. error of law apparent on the face of the record;
- iv. findings of fact not supported by evidence;
- v. failure of natural justice.”

To consider the above-mentioned grounds to issue writs, the Petitioner has not placed the said order of the Department before this Court.

Instead, the Petitioner seeks to quash the decision of the Interview Panel. We hold that the Interview Panel has not made any decision with regard to the disqualification of the Petitioner to the said post. The Panel has merely followed the instructions of the said Department and conveyed the said decision to the Petitioner by the letters marked P12 and P13.

Therefore, there is no necessity to issue notice to the Respondents to quash the decision.

Application dismissed with costs.

**JUDGE OF THE COURT OF APPEAL**

**N. BandulaKarunarathna (P/CA), J.**

**I AGREE**

**PRESIDENT OF THE COURT OF APPEAL**