

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 writs of Certiorari and
Mandamus in terms of Article 140 of the
Constitution.

Ranasinghe Arachchige Palitha

No. 1,

Mahasen Mawatha,

New Town,

Polonnaruwa.

C.A. Writ. 392/2020

Petitioner

Vs.

1. Public Service Commission
2. Dharmasena Dissanayake
Former President,
3. M.A.B. Daya Senarath
Secretary,
4. Dr. Prathap Ramanujam
Former Member,
5. V. Jegarasasingam
Former Member,
6. S. Ranugge
Former Member,

7. D. Laksiri Mendis
Former Member,
8. Sarath Jayatilaka
Former Member,
9. Sudharma Karunarathna
Former Member,
10. G.S.A. De Silva
Member,
All of Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
11. P.M. Salahudeen
Additional Secretary,
12. Pro. Kapila Perera
Secretary,
13. Susil Pramajayantha
Minister of Education,
All of Ministry of Education,
Isurupaya, Battaramulla.
14. Mr. Sanath Jayantha Ediriweera
Present Chairman,
15. Mrs. S.M. Mohamed
Present Member,
16. Mr. N.H.M. Chithrananda
Present Member,

17. Pro. Nagananda Selvakumaran
Present Member,
18. Mr. N.B.R. Pushpakumara
Present Member,
19. Dr. A.D.N. De Zoysa
Present Member,
20. Mrs. Ranjani Nadaraja Pillai
Present Member,
21. Mr. C. Pallegama
Present Member,
22. Mr. G.S.A. De Silva
Present Member,
All of Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

Respondents

Before : Dhammika Ganepola, J.

Counsel : Prinath Fernando for the Petitioner.
Suranga Wimalasena, D.S.G. for the 10th – 22nd
Respondents.

Argued On : 24.06.2024

Written Submission : Petitioner : 14.08.2024
tendered On 11th to 22nd Respondents : 23.08.2024

Decided On : 29.08.2024

Dhammika Ganepola, J.

The Petitioner in the instant Application was appointed as a Class 2 Grade II Officer of Sri Lanka Principal Service by letter dated 21.02.2002 marked P2(a)/1R1 with effect from 04.08.2000. Subsequently, he was promoted as a Grade III Officer of the Sri Lanka Teachers' Education Service, effective from 15.12.2014 by letter dated 05.12.2014 marked P2(g)/1R2 and later was confirmed in the said position with effect from the same date. The 12th Respondent, on the directions of the 1st Respondent Commission, by the Gazette Notification dated 01.01.2016 marked P3(a)/1R3, called applications for the post of Grade III Officer in the Sri Lanka Education Administration Service. The closing date of the applications was extended by subsequent Gazette Notification dated 11.03.2016 P3(b)/1R4. Accordingly, the Petitioner tendered his application for the said post and sat for the examination. All the candidates who obtained more than forty marks for each subject out of the two subjects, were called for the interview. However, the Petitioner was neither informed of the marks nor was called for the interview. The Petitioner had come to know that his name was not included in the list of candidates selected for Grade III of the Sri Lanka Education Administration Service, which was published on the website of the 1st Respondent Commission. The Petitioner had been able to obtain a mark sheet P6(a) from the website of the Department of Examination from which he has realized that he was not given marks for his service experience. As per the Mark Sheet P6(a), marks had only been given to the Petitioner only for two subjects. Subsequently, in response to an application made to the Ombudsman, the Petitioner had received a letter marked P7(b) from the Ombudsman explaining the inability to intervene with the Petitioner's request with a copy of a letter marked P7(a) sent by the 11th Respondent Additional Secretary giving reasons why the Petitioner was not selected. As per the said letter marked P7(a) the Ombudsman had been informed by the 11th Respondent that the Petitioner had sat for the examination without completing the

basic requirements set out in Clause 4 of the Gazette Notification and Clause 7.4.2 of the Service Minute. The Petitioner asserts that he had fulfilled the necessary qualifications by the application deadline and was eligible to score 12 marks, thus qualifying for the position of Grade III in the Sri Lanka Education Administration Service. The Petitioner claims that the failure to give such marks and failure to appoint the Petitioner to the above post by the 1st to 12th Respondents are *ultra vires*, malicious, devoid of natural justice and are in contravention of the provisions in Gazettes marked P3(a), P3(b) and Procedural Rules of the 1st Respondent Commission. Given the above, the Petitioner seeks *inter alia* a Writ of Certiorari to quash the decision in P6(a) and P7(a) of the 1st to 12th Respondents and a Writ of Mandamus compelling the Respondents to grant the Petitioner the 12 marks and the above appointment.

In response to the Application of the Petitioner, the Respondents have raised preliminary objections stating that the reliefs sought by the Petitioner are contrary to Article 61 A of the Constitution and the Petitioner's application is devoid of merit and misconceived in law. The Respondents state that the applicants who have fulfilled the minimum qualifications set out in the 1R3 on or before the date stipulated therein and the individuals presently serving as Class 1 officers of the Sri Lanka Principal's Service are eligible to sit for the examination to fill vacancies in Grade III in the Sri Lanka Education Administration Service. It is submitted that the Applicants must have an active and satisfactory period of service. The Respondents contend that the Petitioner was not actively serving as a Class 1 officer of the Sri Lanka Principal's Service as of the closing date of the application stipulated in the 1R3. It is submitted that the Petitioner was only actively serving as a Grade III officer of the Sri Lanka Teacher Education Service as of the closing date. As the Petitioner has failed to fulfil the minimum qualification required for him to be considered, the Respondents claim that he was not called for the interview and was not given any marks for the service experience. As per Clause 9(xi) of 1R3, an application may be invalidated at any stage before, during or after the exam where it is revealed that the candidate does not possess the required qualifications.

One of the reliefs which the Petitioner seeks in this application is to quash the decision in documents marked P6(a) and P7(a) of the 1st to 12th Respondents. Only an administrative decision is subject to writ jurisdiction. As such, at this stage, it is important to consider whether these documents indeed reflect any administrative

decisions made by the Respondents. The document marked P6(a) is a mark sheet downloaded from the website of the Department of Examination which provides the marks obtained by the Petitioner at the exam. The said document P6(a) does not reflect any administrative decision taken by the 1st to 12th Respondents. It is important to note that the authorized person or authority who was responsible for the decision reflected in document P6(a) is not made the party to the instance application. The said mark sheet reflects the marks obtained by the Petitioner at the Competitive Examination held by the Department of Examination for Recruitment to Grade III of the Sri Lanka Education Administrative Service based on Service Experience & Merit. The administrative decision would have been taken by the Public Service Commission based on the result reflected in document P6(a) as the Public Service Commission is the appointing authority of the Recruitment to Grade III of the Sri Lanka Education Administrative Service. Because, as per the Gazette Notification P3(a) the applications for the appointment to the post of Grade III in Sri Lanka Education Administration Service were called by the 12th Respondent by order of the Public Service Commission.

The other impugned document P7(a) is a letter sent by the 11th Respondent Additional Secretary to the Ombudsman explaining the eligibility of the candidates who could have applied for the above Grade III of the Sri Lanka Education Administrative Service and the Petitioner's ineligibility to apply for the above Service in view of the provisions under the respective Gazette Notification. The said letter P7(a) also does not illustrate any decision of the 1st to 12th Respondents. It appears to me that the said letter P7(a) sent by the 11th Respondent Additional Secretary is more of an informative communication to the Ombudsman rather than a representation of an administrative decision made by the 11th Respondent. Moreover, any administrative decision in respect of recruitment to above Grade III of the Sri Lanka Education Administrative Service must be taken by the Public Service Commission as the appointment authority of officers of the Sri Lanka Education Administrative Service but not the 11th or 12th Respondents. Such power of the Public Service Commission has been delegated to the Education Service Committee by Extraordinary Gazette no.1989/29 dated 19.10.2016 marked 1R5 in terms of the powers vested with the Public Service Commission under Article 57(1) of the Constitution.

In spite of such circumstances, it is viewed that any decision not to give the Petitioner marks for Service Experience and not to appoint the Petitioner to Grade III of Sri Lanka Education Administrative Service by the Public Service Commission attracts the ouster clause stipulated in Article 61A of the Constitution. As such, I am of the view that the said Article 61A will preclude the jurisdiction of this Court from hearing and determining the instant application. Article 61A reads as follows;

“61A. Subject to the provisions of Article 59 and of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.”

In the case of *Atapattu v. People’s Bank* 1997 (1) Sri.L.R.208, *Bandaranayake v. Weeraratne* 1981 (1) Sri.L.R.10 at page 16 it was held,

“that the ouster clauses contained in the Constitution would bar jurisdiction that has been granted within the Constitution and would therefore such ouster Clause adverted to above would be a bar to the entertaining of writ applications to invoke the writ jurisdiction by this Court.”

In view of the foregoing, I hold that by virtue of Article 61A of the Constitution, this Court shall have no jurisdiction to inquire into or pronounce or in any manner call into question any order or decision made by the Public Service Commission or its delegated committee or public officer in pursuance of any power or duty conferred or imposed on them.

Further, the Petitioner seeks a direction from this Court compelling Respondents to grant the Petitioner the 12 marks and appoint him as a Grade III Officer of Sri Lanka Education Administrative Service. Nevertheless, this Court is of the view that giving any such direction would circumvent the constitutional ouster clause specified under Article 61A. This is because such direction would indirectly challenge the decision of the Public Service Commission to not appoint the Petitioner to the above-mentioned Grade III position. As per the doctrine of colourability what is prohibited from doing directly, it may not do indirectly. In ***Bandaranayake v. Weeraratne* 1981 (1) Sri.L.R.10 at pg 16**, **Samarawickrema J.** has opined as follows:

“There is a general rule in the construction of Statues that what a Court or person is prohibited from doing directly, it may not do indirectly or in a circuitous manner”

The Petitioner further states that the decision of the 1st to 12th Respondents not to grant the Petitioner 12 marks and not to appoint the Petitioner to Grade III of Sri Lanka Education Administrative Service is in contravention of the provisions under P3(a), P3(b) and P8(a). The applications for recruitment to Grade III of Sri Lanka Education Administrative Service were called from candidates who had completed the minimum requirements stipulated in P3(a) Gazette Notification. As per Clause 4 of P3(a), any officer with specified qualifications who was serving the Grade I of the Sri Lanka Principals’ Service, as at the closing date for application, was eligible to sit for the examination and to be appointed on the service experience and merit base. The candidates were also required to have completed an active and satisfactory period of service of a minimum of three years as at the closing date. Clause 4 and 4B referred to above read as follows;

“4. Eligibility; - An officer in grade I of the Sri Lanka Principals’ Service at present with the following qualifications shall be eligible to sit for the examination, to be appointed on the service experience and merit base...

.....

D. Having completed an active and satisfactory period of service.

Accordingly, it is abundantly clear that only the applicants who have completed three years of service in Grade I of the Sri Lanka Principals’ Service and were actively serving at the closing date of the application in Grade I of the Sri Lanka Principals’ Service while satisfying the other minimum qualifications, were eligible to sit for the examination.

As per the Gazette P3(b) the extended closing date for submitting applications was 11.04.2016. However, as per document P2(g), it is evident that the Petitioner had been appointed as a Grade III officer of the Sri Lanka Teacher Education Service with effect from 15.12.2014 and confirmed therein. Applications were called for the Grade III of the Sri Lanka Education Administrative Service on 01.01.2016. At the time of the closing date of the submitting of applications, the Petitioner was actively

serving as a Grade III Officer of the Sri Lanka Teacher Education Service but was not in the active service of the Sri Lanka Principals' Service. Accordingly, it appears that at the time of the closing date for applications, the Petitioner was not eligible to sit for the above examination under provisions of P3(a). As per Clause 9(xi) of the P3(a) an application can be annulled at any stage before, during or after the exam where it is revealed that the candidate does not possess the required qualifications. Hence, it appears that the Petitioner had submitted his application without complying with the requirement specified in the relevant Gazette Notification.

In *W.M.M. Premalal Kumarasiri Vs. National Transport Commission and others (Case No: C.A. (Writ) Application 238/2017) 19.07.2019*, it was held that "A litigant who seeks the protection of the rule of law by way of judicial review must in the first place have acted according to it. The Petitioner had failed to do so and hence I am not inclined to grant any discretionary relief to him."

For the reasons given above and the circumstances, I am of the view that the Petitioner is not entitled to any of the reliefs prayed for in the prayer to the Petition. Accordingly, I proceed to dismiss the application. I order cost.

Application is dismissed.

Judge of the Court of Appeal