

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

In the matter of an application for writs in the nature of Certiorari and Mandamus under and in terms of Article 140 of the Constitution.

1. Koonamge Nayal Priyanga
No.44, Kings Court Garden,
Ambathanna,
Kandy.

Court of Appeal Application

No: WRT/0681/2024

2. Kudage Tharindu Sudarshana
Dharmarathne
442/B, Elapatha south,
Ratnapura.
3. Tharaka Nadeeshan Balage
No.17, Pallikkudawa,
Tangalle.
4. Wee Baddage Thushan Thiwanka Kumarasena
Rambawewa,
Nochchiyagama.
5. Eranga Manoj Weerakoon
No.27, Meepagedara watta,
Thithagalla,
Ahangama.
6. Tennakoon Mudiyanseelage Asantha Sanjeewa
Tennakoon
No.533, Walasena,
Galgamuwa.

7. Ranaweera Arachchillage Hashantha Dishath
Premaratne
41/A, Methmal Mw,
Godagama,
Meegoda.
8. Nadummulla Arachchige Kasun Shalika
5th Lane, Alaswththa, Thiththawella,
Kurunegala.
9. Wickramasinghe Arachchige Gayan Eranga
Wickramasinghe
Ginipenda,
Kalugamuwa,
Narammala.
10. Withanage Don Janith Prasanna
No.102/C, Kapuduwa,
Paragasthota.
11. Attanayake Mudiyanlalage Gamini Udayakumara
Allara 53,
Moragolla,
Rilpola,
Badulla.
12. Kapila Ganganath Asmagoda Pathirana
No – 13, Higgoda Road,
Poramba,
Akiressa.
13. Weerasingha Mudiyanlalage Amila Kasun Isuranga
Weerasingha
Saman sevana,
Bathalawatta,
Thaldena,
Badulla.

14. Gurusinghe Disawage Pivithuru Sankalpa
Gurusinghe
Bohingamuwa,
Kuliyapitiya.

Petitioners

Vs.

1. S.J. Kahawatta
Director General,
Department of Fisheries and Aquatic Resources,
New Secretariat,
Maligawatta,
Colombo 10.
2. M.P.N.M. Wickramasinghe
Secretary,
Ministry of Agriculture, Lands, Livestock, Irrigation,
Fisheries and Aquatic Resources,
New Secretariat,
Maligawatta,
Colombo 10.
3. Sanath J. Ediriweera
Chairman,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.
4. N.H.M. Chithrananda
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.

5. G.S.A. de Silva P C
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.
6. Dr. A.D.N. de Zoysa
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.
7. S.M. Mohamed
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.
8. Ranjani Nadarajapillai
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.
9. M.B.R. Pushpakumara
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.
10. Prof. N. Selvakkumaran
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.

11. W.H.M.M.C.K. Dayaratne
Secretary,
Member,
Public Service Commission,
No 1200/ 9, Rajamalwatta Road,
Battaramulla.
12. H.J.M.C. Amith Jayasundara
Commissioner General of Examinations,
Department of Examinations Sri Lanka,
Pelawatta,
Battaramulla.

Respondents

Before : Dhammika Ganepola, J.
Damith Thotawatta, J.

Counsel : Vijithsing with K. Jackson for the Petitioner.
Sehan Soyza, SSC for the Respondents.

Supported on : 24.02.2025

Written Submissions : By the Petitioner : 28.03.2025
tendered on By the 1st, 2nd & 12th Respondents: 28.03.2025

Decided on : 20.05.2025

Dhammika Ganepola, J.

The Petitioners in the instant application seek in the nature of Writ of Certiorari to quash the Gazette Notification No. 2395 dated 26.07.2024 marked P3 issued for the purpose of Open and Limited Competitive Examinations for recruiting Assistant Directors to the Department of Fisheries and Aquatic Resources and alternatively in the nature of Writ of Mandamus removing the qualification mentioned in paragraph 3(i)(b) of the said Gazette Notification P3 by which the Development Officers will be qualified to apply for the above post. The Petitioners have also prayed for the following interim reliefs as effective until the final determination of this application as follows:

- i. Staying the recruitment process of Assistant Directors to the Department of Fisheries and Aquatic Resources as specified in the said Gazette Notification P3;
- ii. Restraining the 12th Respondent from conducting any examination scheduled for the 7th and 8th of December 2024 for the purpose of the above recruitment process.

When this application was taken up for support on 24.02.2025, the learned Counsel for the Petitioners made submissions in support of the application. The learned Senior State Counsel for the 1st, 2nd, and 12th Respondents took up several preliminary objections in respect of this application and made submissions opposing the application. Furthermore, both parties have filed written submissions in support of their oral submissions. This order is in respect of the issuance of notice on the application and the granting of interim reliefs.

Factual matrix of the application

All Petitioners serve the Department of Fisheries and Aquatic Resources as Fisheries Officers. Originally, some of the Petitioners had been recruited as Fisheries Inspectors through competitive examinations based on their qualification of studying in the Biology Stream at the G.C.E. Advanced Level Examination. Later in the years 2017 and 2018, certain Petitioners had been recruited as Fisheries

Officers through competitive examinations based on their qualification of holding a Bachelor of Science Degree. In the years 2013, 2017 and 2019, the Government appointed the Development Offices to the Department of Fisheries and Aquatic Resources.

The Petitioners state that the Fisheries Department is a closed Department, and the Fisheries Inspectors and Fisheries Officers are Departmental Officers who are governed by the Department rules and policies, which do not allow the officers to transfer or sit for examinations which are held for the purpose of recruitment of officers for any other Government Department. It was submitted that the Development Officers belong to the Combined Service, and they are not subjected to restrictions such as those imposed above on the officers of the closed service belonging to the Fisheries Department.

The Petitioners state that until the year 2023, promotions and recruitments for the post of Assistant Directors in the Department of Fisheries and Aquatic Resources included an internal recruitment or promotion process and only the officers of the Grade of Inspectors in the Department were considered for such recruitments and promotions. As per the Gazette No. 1427 dated 06.01.2006(P4A) and Gazette No. 1883 dated 03.10.2014(P4B), the qualifications required to be satisfied for limited examinations were 10 years of service in the Department or holding of a Bachelor of Science degree with 5 years of experience in the Department.

However, in the year 2024, the Secretary of the Ministry of Fisheries and Aquatic Resources called for applications for the limited examination to recruit officers for the post of Assistant Director by publishing the above-mentioned Gazette notification No.2395 dated 26.07.2024 marked P3/1R2. As per the said Gazette Notification, P3/1R2, an additional category of candidates, that is the Development officers who have completed 05 years of service in the Department, were also enabled to apply for the said limited examination.

The Petitioners state that although the said Gazette Notification P4B bears the fact that it had been published on the direction of the Public Service Commission ("PSC"), the said Gazette Notification P3/1R2 does not bear the fact that it has been published upon the Direction of the PSC. Further, the Petitioners urge that, if

the Development officers are given a chance to sit for the limited examination, other candidates who are holders of Bachelor of Science degrees and more experienced will be prejudiced.

It is urged by the Petitioners that even if the Court determines that the PSC has authorized the scheme of recruitment as published in Gazette P3/1R2, said Gazette is *ultra vires* as the PSC does not have any authority to include a criteria in the Gazette that the Development Officers who have completed 05 years of service in the Department could apply and sit for the limited examination on several grounds as follows. First, the Development officers are different and distinct categories as opposed to the Petitioners. The Development officers are Art Graduates who do not hold a Bachelor of Science Degree. The officers belong to the Grade III Assistant Directors, hold a degree in Science. Second, the qualifications for the open competitive examination have not been changed to include other than science graduates. Thus, the Development Officers who have a non-science degree can sit for the limited competitive examination without sitting for the open competitive examination. Third, the Development Officers are inexperienced officers who lack basic expertise in science and technology-related matters, which is required in performing duties at the Department. Therefore, Development Officers so appointed will not be capable of functioning efficiently as Assistant Directors Grade III.

Whether the Gazette Notification P3/1R2 was published with the Authorization of the PSC

The Petitioners claim that the Gazette Notification P3/1R2 does not indicate that it was published by or under the authorization of the PSC. The Petitioners rely on provisions of the purported provisions under the Establishment Code in support of their stance that it is mandatory to obtain such approval from PSC.

As per Rule No.66 of the Procedural Rules of the Public Service Commission of the Democratic Socialist Republic of Sri Lanka, published in Gazette Notification No. 2310/29 dated 14.12.2022 (“Procedural Rules”), which came into force with effect

from 01.01.2023, the Administrative Authority of the relevant service or post shall publish the notice calling for applications. Rules Nos. 65 and 66 are reproduced below:

- “65. If the Head of the Department or the Head of Institution recommends filling of the vacancy and if the conditions in Section 30 of Chapter III herein have been met, the Appointing Authority shall approve the notice calling for applications prepared in accordance with the approved Service Minute or Scheme of Recruitment and the applicable marking scheme where selection is made based on an interview for evaluating eligibility and publish them in the manner provided in the Service Minute or the Scheme of Recruitment, as the case may be.*
- 66. Where the Appointing Authority is the Public Service Commission, the Administrative Authority of the relevant service or post shall forward the documents referred to in Section 65 to the Commission without delay for approval together with his recommendation and publish the said notice as stated in the Service Minute or the Scheme of Recruitment as the case may be as soon as the approval therefor is received.*

Accordingly, there is no mandatory requirement as per the above rules to publish the impugned Gazette Notification P3/1R2 by the PSC itself. It is sufficient that the relevant Administrative Authority, under the approval of the PSC, publish such Gazette Notification. In the instant application, as per the document marked 1R3a, it is evident that the draft of the notice for calling for applications has been tendered for approval of the PSC. The approval of the PSC has been granted by letter dated 01.04.2024 marked 1R3b. Further, the Scheme of Recruitment for the Assistant Director post has also been forwarded for approval, and approval has been granted by the PSC as evident by document marked 1R1. The Secretary to the Ministry of Fisheries, as the Administrative Authority, has published the Gazette Notification P3/1R2.

In view of the above, the Court is of the view that the PSC has approved the Scheme of Recruitment as published in Gazette P3/1R2, and the publication of the Gazette Notification P3/1R2 is well within the applicable law.

Petitioners' Allegation that the Development Officer will not be able to Function Efficiently in the Post due to their Lack of Scientific and Technological Knowledge

The Petitioners state that, as the Development Officers are not science Graduates, they lack scientific and technological knowledge and cannot function efficiently in the post of Assistant Director Grade III. As per the impugned Gazette Notification P3/1R2, Development Officers are eligible to apply for the limited competitive examination held for the recruitment for the post of Assistant Director (Fisheries and Aquatic Resources). The Scheme of Recruitment (1R1) provides that the degree from a University recognized by the University Grants Commission is a required educational qualification for a candidate to be eligible to apply for the post of Assistant Director (Fisheries and Aquatic Resources). The Gazette Notification P3/1R2 does not specify that holding a Bachelor of Science Degree is a requirement to be eligible to apply for the aforesaid post. Further, in terms of the Scheme of Recruitment (1R1), for a person to be recruited for the above post of Assistant Director (Fisheries and Aquatic Resources), such persons are required to sit for three papers, namely, the Fisheries Act and Regulations, Office Systems and Financial Regulations.

The decision as to the educational qualifications required for an individual to hold a particular office is entirely a decision that should be made by the Appointing Authority, in this case, the PSC. I am of the view that this Court cannot strike down a decision merely because it feels another policy decision would have been fairer, wiser or more scientific or logical. The Court is not expected to express its opinion as to whether, at a particular point of time or in a particular situation, any such decision should have been adopted or not, unless such policy is found to be manifestly unreasonable or irrational. It is best left to the discretion of the authority concerned. Thus, such policy consideration should be arrived at by the PSC.

Consequently, I shall now consider whether the inclusion of the aforesaid criteria under the Gazette Notification P3/1R2 is irrational or unreasonable. According to the Gazette Notification P3/1R2, according to the general nature of this position, it is a category of service in which the tasks are assigned specifying the post from amongst the tasks included in the overall function assigned to the highest executive officer of the institution in relation to the tasks of policy making, ordering /commanding, management and related decision-making. Thus, I am of the view that including criteria under the said Gazette Notification P3/1R2 to the effect that Development Officers holding any Degree from a University recognized by the University Grants Commission are eligible to apply for the aforesaid post, is neither irrational nor unreasonable. Hence, the Petitioners' argument that only the Bachelor of Science graduates can function efficiently in the above post cannot be accepted.

Futility

The impugned Gazette notification P3/1R2 has been published calling for applications for the post of Assistant Director (Fisheries and Aquatic Resources) in terms of the Scheme of Recruitment approved by the PSC on 21.03.2023(1R1). In terms of the Scheme of Recruitment, Development Officers are eligible to apply for the limited competitive examination held for the recruitment for the aforesaid post. Although the Petitioners challenge the said Gazette Notification P3/1R2 based on the eligibility of the Development Officers to apply for the limited competitive examination, issuance of a writ in the instant application will be futile without making any determination on the PSC-approved Scheme of Recruitment 1R1 which allows Development Officers to apply for the limited competitive examination.

In **Siddeek v. Jacolyn Senevirathna and Three Others** (1984) 1 SLR 83, the Supreme Court observed that a Writ of Certiorari will not be issued where the end result would be futility, frustration, injustice, and illegality.

Further, there is no material before this Court to the extent that the said approved Scheme of Recruitment 1R1 has been challenged before. The Petitioners' failure to challenge the Scheme of Recruitment 1R1 and waiting for some consequential or ancillary decision to be taken and then challenging the decisions thereon cannot be accepted in law.

In the case of **Sunethra Rupasinghe v. D.S.K. Pushpakumara (CA Writ 627/2021, CA Minutes dated 08.06.2022)**, this Court assessed whether the conduct of the Petitioner was reasonable and addressed the delay in filing the application for judicial review. The Court referred to "**Judicial Remedies & Public Law**" (4th edition), specifically paragraphs 9-17, where **Lewis** provides relevant insights on the matter:

"The claimant should challenge the decision which brings about the legal situation of which complaint is made. There are occasions when a claimant does not challenge that decision but waits until some consequential or ancillary decision is taken and then challenges that later decision on the ground that the earlier decision is unlawful. If the substance of the dispute relates to the lawfulness of that earlier decision and if it is that earlier decision which is, in reality, determinative of the legal position and the later decision does not, in fact, produce any change in the legal position, then the courts may rule that the time-limit runs from that earlier decision."

In the above case, the Court was of the view that in instances where the impugned action takes place in stages, the challenge should be launched against the earliest stage rather than the final and decisive stage.

Necessary Parties

The Petitioners state that the Government appointed the Development Officers to the Department of Fisheries and Aquatic Resources. As per the impugned Gazette Notification P3/1R2, the Development Officers in the Department are also eligible to apply for the limited competitive examination held for the recruitment to the post of Assistant Director. As per the document marked 1R11, several Development Officers have sat for the said limited competitive examination also. Accordingly, it is

apparent that the main and the interim reliefs prayed for in the prayer of the Petition have a direct impact on the rights of the Development Officers in the Department, and if the Writs prayed for are issued, such Development Officers will be adversely affected. Nevertheless, the Petitioners have failed to name such Development Officers as parties to the instant application. In **Rawaya Publishers and Others v. Wijedasa Rajapaksha, Chairman, Sri Lanka Press Council and Others (2001)3 SLR 213**, it was decided that in the context of a writ application, a necessary party is one without whom no order can be effectively made, and the Petitioner cannot be permitted to proceed with an application.

Therefore, I am of the view that without them, no effective order can be made in this Application, and failure to make them Respondents is fatal to the application.

Suppression of/ Failure to Disclose Material Facts

It is observed that the Petitioners have failed to disclose the existence of the prevailing Scheme of Recruitment marked 1R1 approved by PSC on 07.03.2024 in which it specifies that the candidates who are eligible to sit for the limited competitive examination for the recruitment to the post of Assistant Director (Fisheries and Aquatic Resources) should obtain a Degree from university recognized by the University Grant Commission. Such failure of the Petitioners would amount to a suppression/ failure to disclose material facts.

Pathirana J. in Alphonso Appuhamy v. Hettiarachchi (1973) 77 NLR 131 stressed on the necessity of a full and fair disclosure of all the material facts to be placed before the Court when an application for a writ or injunction is made and then held that “in other words, so rigorous is the necessity for a full and fair disclosure of all material facts that the Court will not go into the merits of the application, but will dismiss it without further examination.”

Thus, I am of the view that the Petitioners have failed to come with clean hands before this Court, which would preclude them from obtaining any relief from this Court.

Conclusion

In view of the above reasons, I hold that the Petitioners have failed to satisfy a potentially arguable claim such as unlawfulness, unfairness, or unreasonableness, which warrants this Court to issue formal notices on the Respondents. Accordingly, I refuse to issue formal notice and dismiss this application without cost.

Judge of the Court of Appeal

Damith Thotawatta, J.

I agree.

Judge of the Court of Appeal