

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

In the matter of an application for a mandate in the nature of Writs of Certiorari and Prohibition under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Case No. CA (Writ) 974/2007**

1. Viyanralalage Seaman Nishantha Udaya Kumara  
Colony 88, Okkampitiya, Moneragala.
2. Ekanayaka Mudiyanseelage  
Asanga Bandara Ekanayaka  
“Amba Sevana”, Divugalpitiya, Keppetipola.
3. Hewa Bambarandage Madhu Sri Kumara  
Ambalanwatta, Welihena, Bopagoda, Akuressa.
4. Nissanka Mudiyanseelage Mahinda Pradeep  
Nissanka  
Yaya 10, Hospital Road, Uva Tissapura,  
Mapakadawewa.
5. Kandanpulli Hewage Ravindra Kumara Wijesiri  
“Madushanka”, 10<sup>th</sup> Mile Post, Medagama,  
Bibile.

**Petitioners**

**Vs.**

1. Secretary  
Ministry of Education and Local Government,  
Uva Provincial Council, Badulla.
2. Secretary  
Ministry of Education,  
“Isurupaya”, Sri Jayawardanapura Kotte.

3. M.D. Mangala Piyaseeli,  
Buttala.
4. H.M. Gunaratne,  
Naagadeepa Gama,  
Uraniya, Mahiyanganaya.
5. R.T.Jayalath Ratnayake,  
Mahthanna, Kirawangama, Haldamulla.
6. G.M. Sanjeewa Pradeep Kumara Alwis,  
No. 14, Akkara visipaha,  
Moneragala.
7. A.K.M. Menaka Priyadarshanee,  
Alanmulla, Medagama,  
Bibile.
8. C.L. Siriwardena,  
No. 6, Kotmallanda, Spring Valley,  
Badulla.
9. Y.M. Anusha Dilhani,  
No. 33, Nelungama,  
Badulla.
10. K.A.W. Vajira Senadheera Bandara,  
No. 99, Kolluwatta, Oboda Ella,  
Bndarawela.
11. K.D. Susantha Pushpakumara,  
Jana Udana Village,  
Meeragahawatta, Welikadagama,  
Bandarawela.
12. R.M. Ayesha Lakshitha Ratnayake,  
Teachers Quarters,  
B/Halpe Central College,  
Hela Halpe.

13. H.M. Kanthi,  
Getagahawatta, Rambukpotha,  
Badulla.

14. I.M.Thivanka harshani Mayurakanthi,  
“Suramapaya”, Digatenna,  
Bandarawela.

**Respondents**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

Manohara De Silva P.C. with Imalka Abeysinghe for the Petitioners

Suren Gnanaraj SSC for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Chandrasiri Wanigapura for the 3<sup>rd</sup> to 5<sup>th</sup> Respondents

Shantha Jayawardena with Chamara Nanayakkarawasam for the 6<sup>th</sup> to 14<sup>th</sup> Added Respondents

**Written Submissions Filed On:**

Petitioners on 31.07.2019

1<sup>st</sup> and 2<sup>nd</sup> Respondents on 11.03.2019 and 17.10.2019

3<sup>rd</sup> to 5<sup>th</sup> Respondents on 28.06.2019

6<sup>th</sup> to 14<sup>th</sup> Added Respondents on 11.03.2019 and 17.10.2019

**Argued On:** 23.10.2019

**Decided On:** 26.05.2020

**Janak De Silva J.**

The Petitioners are members of the Student Union of the Faculty of Music in the University of Visual & Performing Arts and the 3<sup>rd</sup> Petitioner functions as its President. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Petitioners reside within the Uva Province.

They are assailing the decision of the 1<sup>st</sup> Respondent contained in P7 by which applications were called to recruit Aesthetic and English teachers to Sri Lanka Teachers' Service. The recruitment is for employment in the Uva Province Provincial Public Service.

The advertisement specified the following prerequisite qualifications:

- (1) Passing National Music Final Examination
- (2) Passing Bathkande Music Final Examination

The Petitioners complain that this restricts the recruitment of aesthetic teachers including music teachers to Diplomats with the above qualifications excluding graduates thereby depriving the Petitioners from applying for the post of teachers in the Uva Province. It is further claimed that the above qualifications have not been recognized by the Ministry of Education as diploma courses and as such the proposed recruitment violates section 2.11 of the Minutes of Sri Lanka Teacher Service (P8 and P9).

The Petitioners are seeking the following relief:

- (a) Writ of Certiorari quashing the decision of the 1<sup>st</sup> Respondent to call applications only from the diplomats for vacant music teachers' posts in the Uva Provincial Council contained in the newspaper advertisement marked P7 and any subsequent decision taken based on the said decisions;
- (b) Writ of Certiorari quashing the decision of the 1<sup>st</sup> Respondent recruiting only diplomates to the post of music teacher in the Uva Province excluding graduates;
- (c) Writ of Prohibition prohibiting the 1<sup>st</sup> Respondent recruiting anybody to the post of music teacher based on the qualifications contained in the newspaper advertisement marked P7;

(d) Writ of Prohibition prohibiting the 1<sup>st</sup> Respondent recruiting only diplomates to the post of music teacher in the Uva Province excluding graduates.

The application of the Petitioners must be dismissed on procedural requirements on at least two grounds.

Firstly, the Petitioners have failed to add necessary parties. The rule is that all those who would be affected by the outcome of the writ application should be made respondents to the application [Amaratunga J. in *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* [(2011) 2 Sri.L.R. 258 at 267]. While this is the general rule a particular application of this rule in relation to school admission is found in *Gregory Fernando and Others v. Stanley Perera, Acting Principal, Christ The King National School and Others* [(2004) 1 Sri.L.R. 346] where this Court dismissed *in limine* an application which sought a writ of certiorari to quash the temporary list of successful candidates without making the successful children parties to the application.

In this instant as well, after P7 was published 450 candidates were selected but the Petitioner did not make any of them Respondents. Only 12 candidates out of the said 450 are Respondents and that too after they intervened. It is clear from letters marked X15 to X15(d) that the selected candidates were granted fixed term appointments every six months and that they have not been confirmed in the public service notwithstanding having served for almost 12 years. The said letters, X15 to X15(d), state that the said Fixed Term appointments are subject to the final determination of this Court.

Since the reliefs claimed by the Petitioners adversely affect the rights of parties not before Court the application is liable to be dismissed on that ground alone.

Secondly, the Petitioners have suppressed and/or misrepresented material facts to Court. It is established law that discretionary relief will be refused by Court without going into the merits if there has been suppression and/or misrepresentation of material facts.

This principle has been consistently applied by courts in writ applications as well. [*Hulangamuwa v. Siriwardena* [(1986) 1 Sri.L.R.275], *Collettes Ltd. v. Commissioner of Labour* [(1989) 2 Sri.L.R. 6], *Laub v. Attorney General* [(1995) 2 Sri.L.R. 88], *Blanca Diamonds (Pvt) Ltd. v. Wilfred Van Els* [(1997) 1 Sri.L.R. 360], *Jaysinghe v. The National Institute of Fisheries* [(2002) 1 Sri.L.R. 277] and *Lt. Commander Ruwan Pathirana v. Commodore Dharmasiriwardene & Others* [(2007) 1 Sri.L.R. 24].

In *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [(2011) 2 Sri.L.R. 372] a divisional bench of this Court held:

“(1) A petitioner who seeks relief by writ which is an extra-ordinary remedy must in fairness to Court, bare every material fact so that the discretion of Court is not wrongly invoked or exercised.

(2) It is perfectly settled that a person who makes an ex parte application to Court is under an obligation to make the fullest possible disclosure of all material facts within his knowledge.

(3) If there is anything like deception the Court ought not to go in to the merits, but simply say “we will not listen to your application because of what you have done.”

The essence of the complaint of the Petitioners is that the recruitment sought to be done is prejudicial to graduates such as the Petitioners. However, according to the Sri Lanka Teachers Service Minute, diploma holders are recruited to Class 3 Grade II of the Teachers Service whereas graduates are recruited to Class 3 Grade I of the Teachers Service. Diploma holders recruited as teachers are only entitled to teach students from Grade I to the G.C.E. O/L whereas graduate teachers can teach students from Grade I to A/L. As such from time to time applications have been called separately from diploma holders and graduates to fill vacancies in the Teachers Service based on the service requirements.

Accordingly, in so far as the Uva Province is concerned applications were called only from graduates to fill vacancies that existed in Class 3 Grade I of the Sri Lanka Teacher Service in the Uva Province in February 2007 (R1) four months prior to P7 thereby providing employment

opportunities to graduates. This is a material fact which the Petitioners have suppressed and as such this application is liable to be dismissed on that ground alone.

An examination of the merits of the application is unnecessary given the above facts, yet for the sake of completeness I will proceed to examine them as well.

As explained earlier, diploma holders and graduates are treated as two distinct and different classes in terms of the Teachers Service Minute P8 and P9. The Petitioners did not assail the Service Minute. The Petitioners cannot challenge the validity of the recruitment sought to be done by P7 based on the said distinction drawn in the Teachers Service Minute P8 and P9 between diploma holders and graduates.

The Petitioners contend that the proposed recruitment is contrary to Article 12(1) of the Constitution and, it is implied, that this application should be referred to the Supreme Court in terms of Article 126(3) of the Constitution. Reliance is placed on *Perera v. Prof. Daya Edirisinghe* [(1995) 1 Sri.L.R. 148 at 156].

However, P7 is dated 23.06.2007 whereas this application was filed on 19<sup>th</sup> November 2007 after more than the one month stipulated in Article 126(2) of the Constitution. In *Shanthi Chandrasekaram v. D.B. Wijetunga and Others* [(1992) 2 Sri.L.R. 293 at 297] Fernando J. held:

"Article 126(1) confers sole and exclusive jurisdiction in respect of infringements of fundamental rights, and Article 126(2) prescribes how that jurisdiction may be invoked. Article 126(3) is not an extension of or exception to those provisions: if a person who alleges that his fundamental rights have been violated fails to comply with them, he cannot smuggle that question into a writ application in which relief is claimed on different facts and grounds, and thereby seek a decision from this Court."

In any event, the complaint that the National Music Final Examination and the Bathkande Music Final Examination have not been recognized by the Ministry of Education as diploma courses is incorrect. By letter dated 09.10.2007 [3-5R2] the Secretary, Ministry of Education informed the Secretary, Provincial Ministry of Education, Uva Province that the two examinations are recognized.

The Petitioner refers to the date of this letter and submits that it is post-facto and should be disregarded. However, it only supports the averments made by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that these two examinations have been recognized by the Ministry of Education.

For all the foregoing reasons, I dismiss the application.

With regard to costs, I am inclined to order costs as sought by the 3<sup>rd</sup> to 14<sup>th</sup> Respondents in view of the facts of the case. The Petitioners shall each pay to the 3<sup>rd</sup> to 14<sup>th</sup> Respondents Rs. 5,000/= each as costs of this application. Hence each of the 3<sup>rd</sup> to 14<sup>th</sup> Respondents is entitled to receive a total of RS. 25,000/= as costs of this application.

Application dismissed with costs as set out above.

Judge of the Court of Appeal

**N. Bandula Karunarathna J.**

I agree.

Judge of the Court of Appeal