

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

In the matter of an application in the nature of Writs of Certiorari Mandamus and Prohibition in terms of Article 140 of the constitution of the Democratic Socialist Republic of Sri Lanka.

CA. (Writ) Application No. 122/2017

M.G. Indika Mahawatta,
“Jayasiri”, Kudanelubewa,
Hidogama, Anuradhapura.

Petitioner

Vs.

1. The Public Service Commission,
No. 1200/09, Rajamalwatta Road,
Battaramulla.
2. Justice Jagath Balapatabendi,
The Chairman,
The Public Service Commission,
No. 1200/09, Rajamalwatta Road,
Battaramulla.
3. Indrani Sugathadasa,
Member of Public Service Commission.
4. Dr. T.R.C. Ruberu,
Member of Public Service Commission.
5. Ahamod Lebbe Mohamed Saleem,
Member of Public Service Commission.
6. Dion Gomes,
Member of Public Service Commission.
7. W.H. Piyadasa,
Member of Public Service Commission.
8. Dilith Jayaweera,
Member of Public Service Commission.
9. Leelasena Liyanagama
Member of Public Service Commission.
10. Suntharam Arumainayaham,
Member of Public Service Commission.
11. The Secretary,
Public Service Commission,
All of No.1200/09,
Rajamalwatta Road, Battaramulla.

12. Director General of Health- Health Service,
“Suwasiripaya”,
No. 385, Rev. Baddegama Wimalawansa Mawatha,
Colombo 10.
13. Secretary,
Ministry of Healthcare and Nutrition,
“Suwasiripaya”,
No. 385, Rev. Baddegama Wimalawansa Mawatha,
Colombo 10.
14. Director Maternity and Child Health,
Ministry of Health,
Rev. Baddegama Wimalawansa Mawatha,
Colombo 10.
15. Director (Investigation),
Ministry of Health,
Rev. Baddegama Wimalawansa Mawatha,
Colombo 10.
16. Director General of Combined Services,
Ministry of Public Administration and Home Affairs,
Independent Square, Colombo 07.
17. Secretary to the Ministry of Public Administration and Home Affairs,
Independent Square,
Colombo 07.
18. Secretary to the Cabinet of Ministers,
Sir Baron Jayathilake Mawatha,
Colombo 01.
19. Hon. Ranil Wickremasinghe,
Minister of Defence, Minister of Finance, Economics Stabilization and National Policies, Minister of Technology, Minister of Women, Child Affairs and Social Empowerment, Minister of Investment Promotion
20. Hon. Dinesh Gunawardena,
Minister of Public Administration Home Affairs, Provincial Council and Local Government,

Independence Square, Independent Avenue, Colombo 07.

21. Hon. Nimal Siripala de Silva,
Minister of Ports, Shipping and Aviation
22. Hon. (Mrs.) Pavithra Devi Wanniarachchi,
Minister of Wildlife and Forest Resources Conservation, Minister of Irrigation
23. Hon. Douglas Devananda,
Minister of Fisheries
24. Hon. Susil Premajayantha,
Minister of Education
25. Hon. (Dr.) Bandula Gunawardana,
Minister of Transport and Highways,
Minister of Mass Media
26. Hon. Keheliya Rambukwella,
Minister of Health
- 26(a) Hon. (Dr.) Ramesh Pathirana,
Minister of Health, Minister of Industries
27. Hon. Mahinda Amaraweera,
Minister of Agriculture and Plantation Industries.
28. Hon. (Dr.) Wijedasa Rajapaksa,
Minister of Justice, Prison Affairs and Constitutional Reforms
29. Hon. Prasanna Ranathunga,
Minister of Urban Development and Housing
30. Hon. Ali Sabry,
Minister of Foreign Affairs.
31. Hon. Vidura Wickramanayake,
Minister of Buddhasasana, Religious and Cultural Affairs.
32. Hon. Kanchana Wijesekara,
Minister of Power and Energy.
33. Hon. Naseer Ahamed
Minister of Environment
- 33(a).Keheliya Rambukwella,
Minister of Environment.
34. Hon. Roshan Ranasinghe,
Minister of Sports, Youth Affairs,
Minister of Irrigation

- 34(a). Hon. Harin Fernando,
Minister of Sports, Youth Affairs,
Minister of Tourism and Lands.
35. Hon. Manusha Nanayakkara,
Minister of Labour and Foreign
Employment.
36. Hon. Tiran Alles,
Minister of Public Security.
37. Hon. Nalin Fernando,
Minister of Trade, Commerce and Food
Security.
38. Hon. Jeevan Thondaman,
Minister of Water Supply,
Estate Infrastructural Development
39. Conservation General of Forest,
Forest Conservation Department,
Rajamalwatta Road, Battaramulla.
40. Deputy Conservator of Forest,
Regional Forest Office,
Kadapanaha, Meththa Mawatha,
Anuradhapura.
41. Justice Anil Gunarathna,
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Dharmapala Place,
Rajagiriya.
42. G.P. Abeykeerthi,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Dharmapala Place,
Rajagiriya.
43. A. Gnanathasan PC,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Dharmapala Place,
Rajagiriya.
44. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: D.H. Siriwardena with Vikum Siriwardena for the Petitioner.

S. Wimalasena, DSG with A. Weerakoon for the Respondents.

Written Submissions: By the Petitioners – on 17.07.2019, 25.06.2024

By the Respondents – on 22.05.2020, 06.06.2024,
24.06.2024

Argued on: 17.05.2024

Decided On: **29.08.2024**

M.C.B.S. Morais J.

Mr. M.G.I. Mahawatta, the petitioner, commenced service in the Government Clerical Service as a clerk grade II(B) at the Ministry of Health on 8th of June 1992. Subsequently, in 1996, he was promoted to grade II(A). During his tenure as a Management Assistant stationed at the office of the Director General of Health Services, he was served with a charge sheet on 6th of June 2006, comprising four charges by the Director General of Health Services.

Charge I

While working in the Transport Division you paid driver P.H.S.P. Hewage Rs. 6000/- at the rate of Rs. 2000/- per day without any proper checking, and carelessly on or about 10.02.2006, 21.02.2006 and 23.02.2006 on fraudulent claims made by Ministry driver P.H.S. Hewage permitted fuel to be pumped to vehicle which was not allocated to him, and thereby committed an act of misconduct.

Charge II

By acting contrary to written instructions of the Transport Director of the Ministry of Health whereby the daily fuel allowance for vehicles of the Ministry should not exceed Rs. 500/- for Colombo travelling you issued a fuel allowance for vehicles of the Ministry in excess of Rs. 500/- for Colombo travelling i.e. a fuel allowance of Rs. 2000/- to driver P.H.S.P. Hewage, and thereby having, acted in violation of the written instructions committed an act of misconduct.

Charge III

You deliberately inattentively and through neglect failed to make entries in the Case Order Book the fuel allowance of Rs. 2000/- to driver P.H.S.P. Hewage on 16.02.2006 and thereby committed an act of misconduct.

Charge IV

As a management Assistant of Ministry of Health by committing one or several or all the offences in Charge I, II and III you brought disrepute to the position you hold in the Ministry Health and the Public Service in general.

The aforementioned charge sheet was subsequently amended on two occasions by the 12th respondent, first on 19th of February 2008, and again on 7th of March 2008.

Following a formal disciplinary inquiry, M.G.I. Mahawatta was found guilty of all four counts brought against him. Consequently, the following disciplinary actions were imposed:

1. Deferral of two salary increments.
2. Severe reprimand.
3. Recovery of Rs. 30,000 as administrative costs for the disciplinary inquiry.

Being aggrieved by the aforementioned disciplinary order, the petitioner filed an appeal with the Public Service Commission (PSC) on 15th of December 2008. While this appeal was pending, the PSC ceased functioning, and all PSC matters were handled by the Cabinet while certain matters were delegated to the ministry secretaries. Consequently, the above appeal was reviewed and adjudicated by the Cabinet of Ministers.

On 15th of December 2010, the Cabinet of Ministers, upon reviewing the petitioner's appeal, decided that the disciplinary order issued against the petitioner shall remain in force without alteration. Furthermore, the Cabinet of Ministers determined that the recovery of the sum of Rs.30,000 as administrative costs should be implemented on an installment basis, to be paid by the petitioner over a period of two years.

Upon reconstitution of the PSC, petitioner filed a new appeal dated 28th of September 2011. However, PSC rejected it on 01st of March 2012 since Cabinet of Ministers had already made an order dated 30th of December 2010. Upon the reactivation of the Public Service Commission, the decisions made by the Cabinet during its period of inactivity were given an opportunity to re-canvass the decisions of Cabinet of Ministers. However, in this instance, allegedly on the basis that the 1st respondent is not the disciplinary authority but only the appellant authority and stating that the 1st respondent did not have the power and authority to reconsider a decision made by the Cabinet of Ministers, the 1st respondent rejected and dismissed the appeal.

In the interim, the petitioner got selected for a promotion to Sri Lanka Administrative Service Class III on the basis of a competitive examination which was denied to the petitioner by the Public Service Commission.

Being aggrieved by the said order of the Public Service Commission dated 01st of March 2012 the petitioner appealed to the Administrative Appeals Tribunal (AAT) by Appeal dated 23rd of March 2012. By its order dated 16th of February 2016, AAT also dismissed the appeal and affirmed the order of the PSC dated 01st of March 2012.

Now, the petitioner seeks the following substantive reliefs from us.

- a) Issue notice on the Respondents above named
- b) To quash and set aside the order of the Public Service Commission bearing No. PC/93/2008 dated 01.03.2012 (p14)
- c) To quash the decision of Senior Assistant Secretary of Public Service Commission No. A/21/1/237/01 dated 17.01.2012 marked (p24)
- d) To quash the decision of Senior Assistant Secretary of the Public Service Commission bearing No. A/21/1/237/07 dated 30.04.2014 marked (p25)

- e) To quash the decision of Director Ministry of Health (Administration) for Director General Health Service Ministry of Health No. 6/F/06/M/2010 dated 31.07.2012 marked (p21)
- f) To quash the decision of Senior Assistant Secretary (Appeals Division) J. Jayasundara No. DG/93/2008 dated 09.04.2015 marked (p20)
- g) To quash the decision of Assistant Secretary (Appointments) for Secretary of Public Service Commission bearing No. A/21/1/237/2007 dated 19.06.2012 addressed to Secretary, Ministry of Public Administration and Home Affairs marked P 23.
- h) To quash the decision of Director General of Health Services bearing No. 06/F/06/M/2010 dated 04.01.2013 addressed to the petitioner (P 26)
- i) To quash the decision of AAT bearing No. AAT/71/2012 (PSC) dated 16.02.2016 marked (P16)
- j) To quash the decision of the Cabinet of Ministers bearing No. අමැප/ 10/2827/415/222 dated 30.12.2010 marked (P12)
- k) To quash the disciplinary order of Director General Health Services No. CF/DPE/56/2006 dated 19.09.2008 marked (P8)
- l) To quash the amended disciplinary order No. CF/DPE/56/2006-II dated 28.11.2008 marked P8(a)
- m) To quash the letter of Director (Investigation) Ministry of Health 15th Respondent here to bearing No. CF/DPE/56/2006-II dated 14.07.2010 marked P8(b).
- n) To quash amended effected on the charge sheet, embodied in the letter issued by the Director General of Health Services marked P5.
- o) To quash decision embodied in the letter of Director (Investigation) Ministry of Health – 15th Respondent hereto bearing No. FHB/EB/PF/64(1) dated 23.03.2010 involving the petitioner addressed to Director General of Health Services marked P8(c)
- p) To quash the interim decisions arrived on 06.05.2009 by Cabinet of Ministers by way of an interim measure to arrogated and delegate powers and authority hitherto exercise by PSC and Police Commission to Cabinet of Ministers embodies in minute Cabinet of Ministers bearing No. 11/1264/558/028 dated 31.05.2011 signed by Mahinda Rajapaksha- President of Republic of Sri Lanka and the same is marked P (22) (a) hereof.
- q) To issue writ of mandamus compelling above named 1st to 11th, 12th to 13th, 16th to 17th and 66th to 67th Respondents to pay back a sum of Rs. 30000 (with legal interest

thereon) which had been recovered from the petitioner as per disciplinary order (P8) and P8(a)

- r) For costs and
- s) Further and other reliefs that your lordships court seem meet.

On thorough examination of the matter at hand, a pivotal issue emerges, whether this court possesses the authority to issue the writs sought against the Public Service Commission, given the constitutional ouster clause stipulated in Article 61A. This raises fundamental questions about the jurisdiction and reach of judicial intervention in light of established constitutional constraints.

Article 61A of the Constitution:

[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 ***Katugampola v. Commissioner- General of Excise & Others*** [2003] 3 SLR 207, her Ladyship Shiranee Tilakawardane, J. held,

“The State Counsel appearing on behalf of the Attorney-General and the other respondents raised a preliminary objection pertaining to jurisdiction, stating that this Court did not have jurisdiction to entertain this application in view of Article 61 A, which has been introduced by the 17th Amendment of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Accordingly, this Court holds that the ouster clause contained in Article 61A of the Constitution precludes the Jurisdiction of this Court....”

In ***Ratnasiri & Others v. Ellawala*** [2004] 2 SLR 180 his Lordship Marsoof, PC, J. 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 with the submission made by the learned State Counsel that this Court has to 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."

In ***Hewa Pedige Ranasinghe & Others v. Secretary, Ministry of Agricultural Development and Agri Service & Others***, SC Appeal 117/2013 decided on 18.07.2018, his Lordship Sisira J de Abrew J. held,

"When I consider Article 61A of the Constitution, I hold that the Court of Appeal has no power to inquire into the above examination conducted by the Secretary to the Ministry of Agricultural Development. Therefore, the Petitioner-Petitioners could not have invoked the jurisdiction of the Court of Appeal to quash the said examination"

In light of the foregoing authorities, it is our considered opinion that this court lacks jurisdiction to intervene by exercising its writ jurisdiction against the decisions rendered by the Public Service Commission. Writ jurisdiction is limited to review the order of the Administrative Appeals Tribunal according to the law.

When a comprehensive assessment of the documents submitted us, this court made the following observations.

- ✓ It has not been stated in any evidence that the accused officer Mr. Indika Mahawatta was aware that the driver mentioned in the first charge, Mr. Hewage, fraudulently and falsely obtained the fuel money for the vehicle number 301-4395.
- ✓ It has not been established that the accused had knowledge of the vehicle's inoperability.
- ✓ There are invoices corresponding to the received amount and they have been documented for the relevant dates, and the driver's signature has been obtained by the accused and it is indicating that the formal procedures regarding fuel expenditures have been adhered to.
- ✓ It has been identified that this vehicle is being utilized by the minister, and therefore, there is evidence indicating that no daily driving records are maintained for this vehicle.

As a result, the driver is not questioned about the journey, and the officer responsible for disbursing fuel funds is obligated to provide the amount requested by the driver for fuel.

- ✓ Therefore, the evidence does not establish that funds were disbursed negligently or without proper oversight.
- ✓ Since the vehicle is being utilized by the minister, it seems that the fuel restrictions imposed on other vehicles do not apply to this vehicle.
- ✓ The evidence establishes that the accused was on leave on February 16, 2006, in relation to the third charge.
- ✓ Accordingly, in regards to the count IV, it is apparent that it could not be maintained as the rest of allegations against the accused have not been substantiated.
- ✓ The inquiry officer has failed to appreciate and duly consider the evidence elicited in favor of the appellant.

Therefore, on perusal of the certain material before us, it is apparent that the petitioner has been unfairly victimized for reasons unknown to us.

It is also submitted that the Director General of Health Services, Mr. Kahandaliyanage, who signed the petitioner's Charge Sheet as the Charging Officer, was appointed as Secretary to the Ministry of Health, during the period when the Public Service Commission was not operational, and the same Mr. Kahandaliyanage has referred the petitioner's appeal to the Cabinet of Ministers on 15th of November 2010. The respondents have not expressly denied such.

This action, taken in a context where the principles of natural justice (*nemo debet esse judex in propria causa*) were compromised, raises serious concerns. The referral process to the Cabinet of Ministers conducted during the inactivity of the Public Service Commission by the charging officer himself signifies a clear deviation from procedural fairness and undermines the integrity of the appeal process.

In ***R v. Sussex Justices*** - 1924 1KB 256 Lord Hewart C.J. states that,

“...it is not merely of importance, but of fundamental importance that justice should not only be done, but must manifestly and undoubtedly be seen to be done.”

In the case *Geeganage V. Director General of Customs* (2001) 3 SLR 179;

“The principle that no man shall be judge in his own cause (nemo judex in causa sua potest) is based on this rule against bias and is intended to ensure that decision - makers are as independent as is practicable. The rule of bias, which is a variant if not the same thing as the principle of "nemo judex in causa sua" which means literally that no man shall be a judge in own cause. But as a rule of natural justice that maxim has wider connotation and prevents any person suspected of being biased from deciding a matter.”

In this instant case, the petitioner has filed an appeal with the PSC on 15th of December 2008. However, while pending the appeal the PSC has become defunct and as for the letter No.09/1041/360/034 dated 25th of June 2009 marked and produced as ‘R1’, this appeal was considered by the Cabinet of Ministers. However, once the Public Service Commission resumed operations, it was granted the authority by ‘R2’ to review decisions arrived by the Cabinet of Ministers in order to ensure administrative fairness.

According to the decision dated 01st of March 2012 marked and produced as ‘P14’ by the petitioner, it is mentioned that the PSC, that it has no authority to change a decision that the Cabinet of Ministers had made. Though they have decided so, they have not given any reason to come to that conclusion as ‘R2’ the letter dated 18th November 2012 by the Office of the Cabinet of Ministers directs and empowers them to act otherwise. Anyway as for Article ‘61A’ of the constitution, this court has no authority to question an order made by the Cabinet of Ministers on behalf of the Public Service Commission or any decision made by the PSC, hence we are confined solely to the consideration of the decision rendered by the Administrative Appeals Tribunal.

It seems that the PSC has adopted an arbitrary self-imposed condition that limits its role to not being the disciplinary authority but rather an appellate authority. This self-imposed restriction prevents the PSC from effectively reviewing the Cabinet of Ministers decisions in regard to the Public Servants, given during the period of inactivity of the PSC, thus rendering its authority somewhat superficial deferring the purpose of ‘R2’.

Although the petitioner subsequently appealed to the AAT, it seems that the AAT has not substantially considered the merits of the application in detail. The AAT has declined the

appeal of the petitioner on the basis that he has not produced any material to set aside the PSC order. However, it is apparent that all the materials before us have been there before the AAT as well. Accordingly, we find that the order is unreasonable and should be quashed.

It is unnecessary to grant the reliefs prayed in prayers (b)-(h) and (j)-(q) of the petition, as the AAT has the power and authority to do the needful once this matter is fully reviewed by them.

In light of the above, as for prayer (i), the order of the AAT dated 16th of February 2016, is hereby quashed and vacated, enabling the AAT to reconsider the matter carefully and provide appropriate relief to the petitioner.

No cost.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal