

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

C.A. Case No. WRT/0750/23

1. D.C.P. Kaluarachchi,
No. 442/3 (198),
Neelammahara Road,
Maharagama.

2. J.D.D.L. Gunasekara,
No. 10A,
Thalgaspe,
Elpitiya.

PETITIONERS

Vs.

1. Justice Anil Gooneratne,
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Sri Jayawardenepura Kotte.

1A. Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Sri Jayawardenepura Kotte.

2. A. Gnanathan PC,
Member,

Administrative Appeals Tribunal,
No. 35, Silva Lane,
Sri Jayawardenepura Kotte.

3. G.P. Abeykeerthi,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Sri Jayawardenepura Kotte.

- 3A.J. J. Rathnasiri,
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Sri Jayawardenepura Kotte.

4. Sanath J. Ediriweera,
Chairman,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

5. S. M. Mohamed,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

6. N. H. M. Chithrananda,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

7. Prof. N. Selvakkumaran,

Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

8. M. B. R. Pushpakumara,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
9. Dr. A. D. N. de Zoysa,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
- 10.R. Nadarajapillai,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
11. C. Pallegama,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
- 11A. (Dr.) S. Panawennage,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

12. G. S. A. de Silva PC,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

13. W. H. M. M. C. K. Dayaratne,
Secretary,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

14. Department of Examination,
Pelawatta, Battaramulla.

15. J. M. S. N. Jayasinghe,
Commissioner General of Excise,
Department of Excise,
No. 353, Kotte Road,
Rajagiriya.

15A.M. J. Gunasiri,
Commissioner General of Excise,
Department of Excise,
No. 353, Kotte Road,
Rajagiriya.

15B.Commissioner General of Excise,
Department of Excise,
No. 353, Kotte Road,
Rajagiriya.

16.His Excellency Hon. Ranil Wickramasinghe,
Minister of Finance, Economic Stabilization
and National Policies,

Ministry of Finance,
The Secretariat,
Colombo 01.

16A. Minister of Finance, Economic
Stabilization and National Policies,
Ministry of Finance,
The Secretariat,
Colombo 01.

17. K.M. Mahinda Siriwardana,
Secretary,
Ministry of Finance,
The Secretariat,
Colombo 01.

17A. Secretary,
Ministry of Finance,
The Secretariat,
Colombo 01.

18. K. G. L. Perera,
No. 18/20, First Lane,
Janapada Mawatha,
Daluwakotuwa,
Kochchikade.

19. R. V. S. T. Kumara,
Excise Assistant Commissioner's Office
(Central),
Kandy.

20. M. J. De Silva,
Excise Assistant Commissioners Office
(W.P.I.),

No. 65, Pagoda Road,
Nugegoda.

21. A. A. R. Perera,
Excise Assistant Commissioner's Office
(WP111),
Walawwatta, Gampaha.
22. M. S. P. De Costa,
Excise Assistant Commissioner's Office,
Nagoda, Kalutara.
23. K. D. S. Chandrakumara,
Excise Assistant Commissioner's Office,
Wakunagoda, Galle.
24. H. H. D. Jayawardena,
No. 170/3, City Point,
Yakkala Estate,
Yakkala.
25. S. Thangaraja,
Excise Assistant Commissioner's Office
(Eastern),
Trincomalee.
26. S. Ranjan,
Excise Assistant Commissioner's Office (Uva),
Badulla.
27. K. K. Nimal Rathnayake,
Excise Head Office,
No. 353, Kotte Road,
Rajagiriya.
28. R. P. K. K. Wijayasinghe,

Excise Assistant Commissioner's Office,
No. 228, 6th Floor, Unite paint Building,
Kandy Road, Kurunegala.

29. B. H. Peiris,
Sameera Japamal Mawatha,
Wennappuwa.

30. M. B. Wijeratne,
No. 584/2, Halmillaketiya,
Thunkama, Embilipitiya.

31. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : K.M.G.H. KULATUNGA, J.

COUNSEL : Mangala Niyarepola with Kushini Gunaratna, instructed by
Consilium Attorneys, for the Petitioners.

Prabashanee Jayasekara, SC, for the 4th to 17th and 31st
Respondents.

Raid Ameen with Ishara Gunawardena with S. Vishakan,
instructed by Paul Ratnayake Associates, for the 19th to 23rd and
26th and 28th Respondents.

ARGUED ON : 07.07.2025

DECIDED ON : 05.08.2025

JUDGEMENT**K. M. G. H. KULATUNGA, J.**

1. At the outset, the Counsel for the petitioners informed that he is not pursuing with the relief prayed for by prayers (d) and (f). This writ application seeks to quash certain portions of the determination dated 29.08.2023 of the Administrative Appeals Tribunal (hereinafter referred to as “the AAT”) (P-36) by way of writ of *certiorari*. The petitioners are also seeking writs of *mandamus* to compel the Public Service Commission (PSC) to hold an inquiry which is alleged to have been denied by P-24 and P-25.

Facts.

2. The petitioners are Excise Officers attached to the Excise Department. In 2011, a structured interview was held and the written examination was held in 2012 to fill 22 vacant positions. Up to 50% of the positions were for those with over 10 years’ experience and the balance for the others to which category the petitioners had fallen. The said examination was conducted both in Sinhala as well as Tamil languages. Due to an error committed by the Examinations Department, the Sinhala medium paper required the answering of 4 out of 7 questions, whereas in the Tamil medium paper, the requirement was 5 of 7 questions to be answered. Originally, around twelve persons have complained against this examination to the PSC. However, six of them appear to have been successful at this examination. The petitioners have not obtained the necessary pass mark of 40% for each subject and have been unsuccessful. As such, the two petitioners along with few others have made several appeals/applications to the PSC to complain of the said irregularity in the said examination paper. However, as they were not successful, an appeal has been preferred to the AAT. The allegation against the PSC is that an opportunity was not afforded to the petitioners and certain decisions to grant appointments based on the said examination results. The AAT upon considering the appeal

pronounced its order on 29.08.2023 (P-36) whereby the PSC was directed to hold a fresh examination only to those unsuccessful candidates who sat the 2012 examination. This examination was ordered in view of the alleged defects and irregularities of the examination. The relevant portion of the said Order of the AAT reads thus;

“As such, this Tribunal orders that the relief prayed for by the appellants would not be granted, but orders the PSC and all those Authorities concerned to hold another examination and give an opportunity to the appellants and all others who were not successful at the written examination and the structured interview described above in this order to sit for a fresh written examination.

Those who obtained cut-off marks or above should be called for a structured interview following the same guidelines laid down in the notification published in the Internal Circular dated 20.06.2012 of the Secretary, Ministry of Finance and Planning, and those who obtained cut-off marks of 156 and above should be appointed to the post of Excise Superintendent on a supernumerary basis with effect from 23.06.2020, until they are absorbed into the permanent cadre on the occurrence of vacancies in the post.”

It is admitted that the petitioners have sat the subsequent examination held in April 2025.

3. I observed that the AAT, in coming to this conclusion, has been mindful and expressly adverted to the alleged defects in the examination paper and the irregularities and prejudice caused to the petitioners on the one hand, and also the interest of the successful candidates. Upon balancing the rights and interests of all parties that may be affected, the AAT has afforded another opportunity to the petitioners to sit for an exam afresh with the specific directive that the appointments of the

successful candidates will be with effect from 23.06.2020. The previous successful candidates received their promotions on that day.

4. As at today, the petitioners are neither seeking to quash the examination held in 2012, nor are they seeking a *mandamus* directing their appointments or any other substantive relief. According to the learned Counsel for the petitioners, as the petitioners have been denied a fair hearing and an opportunity to participate at an inquiry before the PSC, they desire to pursue with this remedy to establish the denial of their said right. In short, what the petitioners are now seeking is a mere declaration, if at all, and no more. Substantive relief for their alleged grievance has been already addressed and granted by the AAT by its Order dated 29.08.2023. The petitioners have now sat and participated in the subsequent examination exclusively held for them. The learned Counsel for the petitioner submitted that what the petitioners desire is setting aside of certain portions of P-36 and conceded that there is no substantive relief that they are seeking by way of a writ. Unfortunately, the jurisdiction of this Court is to issue writs and not declarations. In these circumstances, in the absence of any substantive and effective relief sought or that could be granted, this application is now academic and futile to that extent.

Futility.

5. The petitioners have been afforded the opportunity of sitting for a fresh examination. It is also specifically ordered that if any one of the petitioners was successful at the said examination, their appointments be with effect from 23.06.2020 on a supernumerary basis until they are absorbed into the permanent cadre. Accordingly, the petitioners will not be in a lesser position to those who were successful and appointed upon the first examination. To my mind, the Order P-36 by itself, has provided everything the petitioners required to rectify the alleged prejudice that may have been caused by the defective examination.

There is, in fact, no prejudice to the petitioners that has been caused by the said Order P-36.

6. In the case of **Samastha Lanka Nidahas Grama Niladhari Sangamaya vs. Dissanayake** [2013] BLR 68, it was held as follows:

“It is trite law that no court will issue a mandate in the nature of writ of certiorari or mandamus where to do so would be vexatious or futile.”

Marsoof, PC., J., in the case of **Ratnasiri and others vs. Ellawala** (2004) SLR 180, and others held as follows:

*“This court is mindful of the fact that the prerogative remedies it is empowered to grant in these proceedings are not available as of right. The court has a discretion in regard to the grant of relief in the exercise of its supervisory jurisdiction. It has been held time and time again by our Courts that ‘A writ... will not issue where it would be vexatious or futile.’ See, **P.S. Bus Co. Ltd. v Members and Secretary of the Ceylon Transport Board.** (61 NLR 491, 496).”*

In **Siddeek v. Jacolyn Senevirathna and three others** (1984) 1 SLR 83, the Supreme Court observed as follows:

“Certiorari being a discretionary remedy will be withheld if the nature of the error does not justify judicial intervention. Certiorari will not issue where the end result will be futility, frustration, injustice and illegality.”

7. In the above circumstances, it is with regret I note that the petitioners appear to have embarked upon instituting this application for an ulterior purpose, so to say. The subsequent conduct of the petitioners in sitting for the examination held as directed by the AAT clearly establishes that they had no real or lawful reason to complain against the said Order. It is admitted that the petitioners did sit for the

examination in April 2025. It appears that continuing with this application does not appear to be *bona fide* as there is no effective or substantial relief that could have been obtained by this Court. Therefore, these proceedings are rendered futile and academic. The petitioners appear to have appreciated this, and has not sought any substantive relief, except the quashing of certain portions of the order P-36. Accordingly, there is no basis in law that entitles the petitioner to have and maintain this application or to obtain the relief as prayed for.

8. Accordingly, this application is dismissed, subject to costs. As for costs, what is relevant is that the petitioners, having obtained relief from the AAT, have merely instituted and pursued with this application knowing very well that it is futile. In these circumstances, it is apparent that this was merely pursued with to cause hardship to the respondents. The petitioners have, to an extent, abused the process of this Court which has resulted in wasting much valuable judicial time. In these circumstances, I made the following order for the payment of costs. Each of the petitioners is directed to pay to the 19th - 23rd, 26th, and 28th respondents costs in a sum of Rs. 10,000/- to each respondent (the total cost payable by each petitioner separately is Rs. 70,000/-).
9. Application is dismissed.

JUDGE OF THE COURT OF APPEAL