

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari and Prohibition under
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

B.R.P.M.A. Devendra,
57th Post Road, Thibbatuwewa,
Kekirawa.

Presently at,
3/7, Larman St. Bentleigh East,
Victoria 3165, Australia.

CA (Writ) App. No. 800/2025

PETITIONER

Vs.

1. Sumith Dassanayake,
Director General,
Human Resources and Mission
Management,
Ministry of Foreign Affairs,
Foreign Employment and Tourism,
Republic Building,
Colombo 01.

2. Aruni Ranarajah,
Secretary,
Ministry of Foreign Affairs,
Foreign Employment and Tourism,
Republic Building,
Colombo 01.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Shantha Jayawardena for the Petitioner.

Sumathi Dharmawardena, Additional Solicitor General, President's Counsel, for the Respondents.

Argued on: 23.10.2025

Written Submissions filed on:

05.12.2025 by the Petitioner.

14.11.2025 by the Respondents.

Delivered on: 08.12.2025

Dr. D. F. H. Gunawardhana, J.

Judgement

Introduction

The Petitioner is an officer of the Sri Lanka Administrative Service, recruited in the year 2003, and thereafter served as an administrative officer in the Labour Department. However, he later ended up in the Ministry of Foreign Affairs as the Chief Administrative Officer. While serving in that capacity, he was appointed as the Minister-in-charge of the Consulate General of Sri Lanka in Melbourne, Australia, a diplomatic appointment with effect from 8th August 2024. His tenure of appointment is limited to three years from the date of assuming duties. Therefore, he had taken his family to Australia and had made arrangements to settle down there for those three years. Nevertheless, he has received a letter dated 16th July 2025, concluding his Tour of Duties as the Minister of the Consulate, directing him to report back to the Ministry of Foreign Affairs by letter issued by the 1st Respondent marked as **P4**. Consequently, the Petitioner appealed to the 1st Respondent by letter marked as **P5**, requesting to differ his transfer, and the said appeal was turned down by the 2nd Respondent and who had asked him to immediately return to his office in Sri Lanka, by the letter marked as **P6**.

Being aggrieved by the said decision of the 1st Respondent, the Petitioner has come to this Court, seeking to invoke its writ jurisdiction to quash the decision contained in **P4**, the letter of conclusion of his Tour of Duty received by him, dated 16th July 2025, and the subsequent letter **P6**, turning down his request to reconsider his transfer.

This was supported for notice on 7th August 2025. However, after issuing formal notice, the Respondents filed their objections. Thereafter, the Petitioner also filed counter affidavits. In addition to that, the parties have filed certain motions with certain more documents. This Application came up for main arguments on 23.10.2025; the following arguments were advanced before me by the counsel on either side; hence this judgement.

Arguments

The first contention advanced by the Counsel for the Petitioner, Mr. Jayawardena, is that the letter **P4** by which the Tour of Assignment of the Petitioner was concluded, with no reasons contained therein for such conclusion of service is irrational.

Answering a question, Mr. Jayawardena contended that the reasons have to be given in a constitutional democracy when an officer is transferred, and reasons need not be given when the transfer is effected of a service where such a service is rendered at the pleasure of the Government, which can only happen under and in the name of the Monarch. However, the ‘pleasure principle’ does not apply to the appointment, transfer or termination of service of a government servant now under a Republican Constitution. He heavily relies on the judgement of Justice Saleem Marsoof in the case of *Ratnasiri and Others v. Ellawala and Others* (2004)¹.

The second contention of Mr. Jayawardena is that when the Petitioner sought the reasons by **P5** as to why his Tour of Duty was concluded by **P4**. It was the explanation of the Respondents by way of Objections, since the Minister had given directions to the 2nd Respondent to recall the Petitioner from his Tour of Duty by **R5** (document marked along with the Objections), such decision has been taken by the 1st Respondent. Therefore, Mr. Jayawardena argued that the Minister has given

¹ *Ratnasiri and Others v. Ellawala and Others* [2004] 2 Sri L.R. 137

directions to recall the Petitioner; as such, the 1st and 2nd Respondents are dictated by the political authority. As such, the said letter **P4** along with **P6** is not only irrational, but they were also authored under the pressure and dictates of the Minister; therefore, politically motivated decision is contained therein, though it is not articulate.

However, on a question posed by the Court, on whether **R5** is only a red herring, his contention is that reasons must be given in **P4** and **P6**, otherwise the political reasons have to be attributed to **R5** only.

Mr. Dharmawardena on the other hand, having referred to the letter **R5**, argued that according to the Article 52(2) of the Constitution, ministers are not just puppets or cogs in a wheel; any particular minister of a particular ministry can give directions to carry out policy decisions to his secretary. Therefore, **R5** is justified.

Mr. Dharmawardena further contended that the Petitioner is admittedly an officer of the Sri Lanka Administrative Service; therefore, he does not have the basic qualifications to be recruited or absorbed into the cadre of the Foreign Service to hold a position in the Sri Lanka Foreign Service; and thus, he is also not qualified to be appointed to such a position in the permanent cadre of the Sri Lanka Overseas Service.

Having referred to the minutes published in the Gazette No. 1996/28 dated 6th December 2016 with regards to the Sri Lanka Overseas Service, where the required qualifications are set out, Mr. Dharmawardena contended that Schedule A (found in page 14A of the said document) requires an aspirant to be a Grade II Officer with two years' experience in the Foreign Service, to become a minister in the Mission of the Foreign Service, which the Petitioner does not have. Therefore, he cannot be recruited or appointed as a permanent member of the cadre of the Foreign Service. As

such, his appointment was only made on a contract basis as reflected in **P1** and **P2**. Therefore, according to the conditions laid down in **P1** and **P2**, the Petitioner's services is liable to be transferred or concluded at any moment.

On a question posed by the Court as to the rationale behind the appointment of the Petitioner to the cadre of the Foreign Service, Mr. Dharmawardena's reply is that it was done by the predecessor-in-office of the 1st Respondent; therefore, even the current officer holding office as Secretary to the 1st Respondent is unaware of such reasons. Therefore, Mr. Dharmawardena is unable to answer the question.

The next contention of Mr. Dharmawardena is that the Petitioner has repudiated the said contract **P1** and **P2**, by not reporting to the office in Colombo, when he was transferred to the Colombo Office after concluding his Tour of Duty by **P4** and **P6**. As such he is not entitled to invoke the writ jurisdiction of this Court.

Furthermore Mr. Dharmawardena contended that the unmeritorious conduct of the Petitioner prevents him from seeking writ jurisdiction, since not only has he repudiated his contract, but also, after repudiation, he has been served with a Vacation of Post. Therefore, even if this application is allowed, it will be rendered negatory.

In reply, Mr. Jayawardena contended that as there is a letter of Vacation of Post which has derived its powers from **P4** and **P6**, the Petitioner is very much entitled to a *Writ of Certiorari*, quashing the decisions taken in **P4** and **P6**.

In addition to the above, the parties have filed their respective written submissions on or before 14.11.2025 as well.

Qualifications of the Petitioner

There is serious allegation by the Respondents against the Petitioner that the Petitioner is not qualified to be appointed as a Minister of a Consulate General, since at first glance, he cannot be recruited or absorbed into the cadre of the Foreign Service. Hence, I will now consider this issue.

The Petitioner has been appointed as a Minister of the Consulate General by the appointment letter marked **P1**. However, the Petitioner has not been properly recruited to the Foreign Service as provided for in the minutes of the Sri Lanka Foreign Service published in the Gazette Extraordinary bearing No. 1996/28, dated 6th December 2016; and the Petitioner, being an administrative officer of the Sri Lanka Administrative Service, is not qualified to be recruited to the Sri Lanka Foreign Service. It should also be noted that according to Schedule A of the said gazette at page 14A, to hold the position as a Deputy Head of the High Commission or a Minister of the Consulate General, such an officer must be a Foreign Service officer of Sri Lanka and must have at least experience of two years in the Foreign Service as a Grade II Officer.

Accordingly, at first blush, the Petitioner is not qualified to be a member of the Foreign Service; therefore, it is rather surprising to note as to how such an officer of the Sri Lanka Administrative Service was absorbed into the Sri Lanka Foreign Service; nevertheless, he had been appointed by letter marked as **P1**, subject to the terms and conditions of **P2** as the Minister of the Consulate General in Melbourne. As an answer to a question posed by me, Mr. Dharmawardena indicated in the course of his argument that neither the 2nd Respondent, as the Secretary of the Ministry of Foreign Affairs, nor the 1st Respondent is aware of the reasons or rationale behind the Petitioner's appointment. Therefore, Mr. Dharmawardena has not received any instructions on that matter. As such, as Mr. Dharmawardena indicated, it is clear that the Petitioner has not been absorbed into the main cadre of the Foreign Service but was appointed on contract basis by letter marked as **P1**.

Therefore, it is my view that the Petitioner is not entitled to function as a Minister of the Consulate General.

However, on a question posed by me, Mr. Dharmawardena further answered that the retired superior court judges and some retired star-generals have secured appointment in the Foreign Service only on contract basis. Thus, the Petitioner may be having a complaint (if at all) based on fundamental rights, and not in this Court.

Whether the Petitioner is subject to the contract

It should be noted that the terms and conditions pertaining to the Petitioner's appointment are contained in **P2**. On the perusal of **P2**, as also conceded by Mr. Jayawardena, the Petitioner's appointment is subject to termination by the Secretary (2nd Respondent) "*at any time without adducing any cause, and in such event the person engaged will be transferred to Sri Lanka forthwith*²". Therefore, it is very clear that no reason needs to be given to the Petitioner by the Respondents regarding the conclusion of Tour of Duty.

Application of the 'Pleasure principle'

However, based on the basic principles of deriving from a constitutional democracy as opposed to a monarchy, Mr. Jayawardena contended that the "pleasure principle" does not apply to the said appointment, and therefore, reasons should be provided. However, if the Petitioner is not entitled to be appointed or be absorbed into the cadre of the Sri Lanka Foreign Service, he is not entitled to such rights derived from the Constitution or from the Gazette bearing No. 1996/28 as nothing flows from such law. If at all, the Petitioner's rights must be contractual based on **P1** and **P2**.

² 1(i)(c) of the letter marked as P2.

Remedy for breach of contractual rights

Such breach of contractual rights cannot be investigated by this Court. Such a contract appears to have been entered into by the parties and the Government (at pleasure). Therefore, the argument based on constitutional right or any other right derived from the Constitution cannot apply to this case, because as Mr. Dharmawardena pointed out, whoever who secured an appointment without proper legal rights, be it a retired general or superior court judge, has obtained such an appointment only by pleasing such appointing authority and not otherwise. Therefore, it appears that such an officer holds office at pleasure. Therefore, no correlative duty is cast upon the Respondents to give reasons. Therefore, it is my view that no writ lies.

To buttress my view, I rely on the following passage in the authoritative textbook, “Administrative Law”, by H. W. R. Wade and C.F. Forsyth (12th Edition);

“English law, unlike that of France and other countries, has no special legal regime governing contracts made by public authorities. Formerly the Crown had a special legal position on, and to some extent it still has; but, as explained in Chapter 21, it has for most practical purposes been put into the same position as an ordinary litigant by the Crown Proceedings Act 1947. Central government departments normally make contracts in their own names but as agents of the Crown, so that the enforcement of such contracts is governed by the Act. Other governmental bodies such as local authorities are subject to the ordinary law of contract which applies to them in the same way as to private individuals and corporations (though with one important exception). They are, as also are government departments, restricted in certain ways by rules of administrative law, such as the rules which prevent their contracts from fettering their discretionary powers and from creating

estoppels in some cases. European Union law, moreover, has imposed a special regime for procurement contracts, designed to ensure fair competition and non-discrimination.

The Crown is free to make contracts (though not to spend public money) without statutory authority since it enjoys the powers of a natural person?’ Local authorities, on the other hand, are wholly statutory bodies and can bind themselves by contract only in so far as statute permits.

Contractual obligations are not enforceable by judicial review, unless the question is whether the contracting authority has exceeded its powers. So much of the territory of government is now administered through contracts that this exclusionary rule may allow wide regions of administrative power to escape from judicial control, contrary to constitutional principles. It does not yet seem that the courts are alive to this danger.³

(Emphasis is mine)

In fact, it has been argued on behalf of the Petitioner that he had legitimate expectation to spend the period of three years in Melbourne; that expectation is deprived of. However, it must be noted according to the conditions and terms of the contract contained in **P2**, he is liable to be transferred anytime.

Present Administrative Service

An argument was advanced for and on behalf of the Petitioner that the cancellation of his Tour of Duty has emanated from the letter **R5** which clearly indicates that the 2nd Respondent was dictated

³ H. W. R. Wade and C.F. Forsyth, *Administrative Law* (12th Edition, Oxford University Press 2023) Chapter 20 “Liability of Public Authorities”, Page 636-637.

by the Minister to cancel the appointment of the Petitioner before the completion of the assigned period. I wish to advert to this argument now.

However, on the other hand Mr. Dharmawardena argued that the ministers of now not mere cogs or puppets, but they have an active role to play in the course of the discharge of their duties as required and expected. It is his argument that in terms of Article 52(2) of the Constitution, the minister is entitled to give directions; therefore, what is indicated in **R5** is justified at least in theory. There is a history to this.

Under the Soulbury Constitution (also known as the 1946 Constitution or the First Independence Constitution), the Cabinet of Ministers are only giving directions to the members of the Public Service who are assigned to each and every ministry as their permanent secretary or sometimes described as their junior minister. Therefore, the officers of the Public Service, or as it was then known as the ‘Ceylon Civil Service’ (“CCS”) are officers of certain class having secured their first degrees either from prestigious universities of like Cambridge or Oxford, or any other recognised university, and gone through the hassle of a competitive exam and several very tough interviews (the screening process), the cream of the best were recruited to the CCS. Therefore, they were very independent officers and were never dictated by their respective ministers. This was vividly explained by the former civil servant and official secretary to several prime ministers of Independent Ceylon (Sri Lanka) Bradman Weerakoon in “Rendering unto Caesar⁴”. When under the British and up to the time of the promulgation of the First Republican Constitution, Sri Lanka had one of the best civil services in the world; even without politicians, the country could be administered.

⁴ Bradman Weerakoon (2004, New Dawn Press) “Rendering unto Caesar: A Fascinating Story of One Man's Tenure under Nine Prime Ministers and Presidents of Sri Lanka”.

To further buttress my view, I wish to rely on the following text found in the book, “Cabinet Government”, by Ivor Jennings.

“Sometimes, it is true, the permanent head acts as a selective filter which allows to pass only those things of which it approves. Yet a strong minister can always open up the stream. Mr Lloyd George has stated his own practice.

I have never taken the view that the head of a Government Department is forbidden by any rule of honour or etiquette from sending for any person either inside or outside his office, whatever his rank, to seek enlightenment on any subject affecting his administration. If a minister learns that any subordinate in his department possesses exceptional knowledge or special aptitude on any question, it is essential he should establish direct contact with him... Freedom of access to independent information is quite compatible with order and due respect for the hierarchy, if that liberty is tactfully and judiciously exercised by the minister and wisely acquiesced in by the service.”⁵

However, the politicians wanted to break the backbone of the civil service and introduced the present Administrative Service, where the recruitment process is also not up to the standard that prevailed up until the First Republican Constitution was promulgated. Accordingly, the present ministers can give directions to its own secretaries on various matters. Therefore, Mr. Dharmawardena’s argument has more weight in theory than Mr. Jayawardena.

⁵ Ivor Jennings, *Cabinet Governance* (2nd Edition, Cambridge University Press) Chapter V “Minister at Work”, Page 111-112.

Petitioner's conduct

In this case, the Petitioner, having received the letter marked as **P4** concluding his Tour of Duty, has made an appeal marked as **P5**. Then, the 2nd Respondent replied by **P6**, according to which the decision contained in **P4** stands. Therefore, what the Petitioner should have done was to comply with **P4** and **P6** and report back to the Colombo Office and then make a complaint based on the breach of contract.⁶ Mr. Jayawardena referred the Court to Rule 2.4.6. of the Public Service Rules. However, if the Respondents are violative of those rules in concluding the Petitioner's Tour of Duty and transferring him to the Colombo Office, the Petitioner must first comply by reporting to the Colombo Office and then make an appeal to the Administrative Appeal Tribunal, which he has failed to do. Therefore, it is my view that since he has such alternative remedies, no writ lies in this case.

Conclusion

For the reasons adumbrated by me, this Application is dismissed, but without costs.

JUDGE OF THE COURT OF APPEAL

⁶ *Nandasena v Uva Regional Transport Board* [1993] SLR 318