

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

Subramaniam Garan,
No. 53/04, Railway Station Road,
Batticaloa.

PETITIONER

C.A. Case No. WRT/0529/21

Vs.

1. M. A. B. Daya Senarath,
Secretary,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
2. N. H. M. Chithrananda,
Secretary,
State Ministry of Home Affairs,
“Nila Medura”, Elvitigala Mawatha,
Narahenpita, Colombo 05.
3. K. P. Dharmathilaka,
Additional Secretary,
Divisional Administration Home Affairs
Division,
State Ministry of Home Affairs,

“Nila Medura”, Elvitigala Mawatha,
Narahenpita, Colombo 05.

4. K. Karunaharan,
District Secretary,
District Secretariat of Batticaloa,
Fort Road, Batticaloa.
5. K. Thanabalasundram,
Divisional Secretary,
Koralaipattu, Vaalaichenai.
6. The Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENTS

7. Justice Jagath Balapatabendi,
Chairman,
8. Indrani Sugathadasa,
Member,
9. T.R.C. Ruberu,
Member,
10. Ahamed Lebbe Mohamad Saleem,
Member,
11. Leelasena Liyanagama,
Member,
12. Dian Gomes,
Member,
13. Dilith Jayaweera,
Member,

14. W.H. Piyadasa,
Member,

15. Suntharam Arumainayaham,
Member,
All of the Public Service Commission,
1200/9, Rajamalwatta Road,
Battaramulla.

ADDED RESPONDENTS

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

COUNSEL : K. V. S. Ganesharajan with M. Mangaleswary Shanker, Vithusha Loganathan, Sutharshan Pavananthan and Sangeeth Satchithananthan, for the Petitioner.

Rajika Aluwihare, SC, for the Respondents.

ARGUED ON : 25.09.2025

DECIDED ON : 13.10.2025

JUDGEMENT

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

1. The petitioner is seeking to challenge his transfer effected by P-3, dated 09.08.2021. At the point of the impugned transfer, the petitioner had been serving as the Divisional Secretary of Vakarai, Koralaipattu North. He had been transferred to the Ministry of Public Administration, Provincial Councils and Local Government with immediate effect. This transfer had been effected by the Secretary of the Ministry, in accordance with Regulation 222 (iii) of the Procedural Rules of the Public Service Commission (hereinafter referred to as “the PSC”), published in the Gazette Extraordinary No. 1589/30 of 20.02.2009, subject to the covering approval of the PSC.

2. Upon being so transferred, the petitioner instituted this application initially, by petition dated 23.10.2021. Subsequently, the said petition was amended by the amended petition dated 19.11.2021. That being so, the matter was to be supported with direct notice to the respondents, and the 1st – 5th respondents have, on 14.03.2022, tendered a limited statement of objections objecting to the granting of notices and the issue of interim relief. It is relevant to note that though the Rules do not specifically provide for applications to file such limited objections prior to support and issuing of formal notices, subject to the discretion of court, it is sometimes allowed.
3. That being so, the respondents, with their limited objections, tendered documents R-1 to R-5, of which R-4 was the covering approval (dated 07.12.2021) issued by the PSC, whereby the approval sought by P-3 had been granted. Then, the matter was set for support on 17.05.2022. The petitioner sought to once again amend the petition to add the PSC as a party to the same and has been refixed for support. On 02.08.2022, the learned President's Counsel appearing for the petitioner has moved for further time to file the amended petition. Accordingly, the matter was rescheduled to be supported on 07.10.2022. Accordingly, the second amended petition had been filed, and the letter of covering approval of the PSC, R-4, has also been annexed and marked P-30 to the second amended petition, whilst naming the members of the PSC as party respondents. Correspondingly, the petitioners had added further prayers (g), (h), (i), and (j), seeking writs of *certiorari*, prohibition, and interim relief against the said letter P-30. It is the application based on this second amended petition that has been supported on 03.11.2022. At the point of supporting, the learned President's Counsel, Mr. Geoffrey Alagaratnam, has informed that "*the petitioner is only challenging the decision P-3, and the additional secretary had no authority or power to take such a decision even subject to the approval of the PSC.*" The 1st – 6th respondents have filed their objections on

26.05.2023. The respondents have, *inter alia*, raised the objection based on the ouster clause incorporated in Article 61A of the Constitution.

4. This matter was accordingly taken up for argument on 25.09.2025. When it was so taken up for argument, the main argument of Mr. Ganesharajan, the Senior Counsel for the petitioner, was that the Secretary of the said Ministry did not have the power or authority to issue the letter of transfer P-3, and also that there were no reasons assigned on the face of it, except the reference to Regulation 222 (iii) of the Procedural Rules of the Public Service Commission. It was his argument that the ouster clause in Article 61A has no application because the petitioner is challenging the procedure and the authority of the Secretary to issue the said letter in that form. It is his position that the purported covering approval had been sought almost 3 months after the issue of letter P-3, and thus, the petitioner is entitled to challenge the said letter P-3 in this Court, notwithstanding the ouster clause. He also laid emphasis on the fact that this application was initially instituted on 23.10.2021, well before the granting of the said purported covering sanction by P-30.
5. On this issue of law, the argument advanced by State Counsel Mr. Aluwihare is that issuing of letters of transfer subject to covering approval of the PSC is regular and is a practice more often than not resorted to and followed in the public service, especially when urgency and expediency of the circumstances so demand. It was argued that with the issuing of covering approval, the said letter of transfer and the transfer so effected for all purposes becomes the act and deed of the PSC, and the ouster clause thus comes into play. In support of this, he relied on ***Ratnasiri and others vs. Ellawala and others*** [2004] 2 Sri L.R 180. As this legal issue could determine this application, I would, at the outset, consider the same.
6. The regularity of the secretary of the Ministry issuing P-3 and the legality thereof were seriously assailed by Mr. Ganesharajan. However, it is apparent that by virtue of PSC Circular No. 05 of 2011 (R-10), there

is a general delegation of powers for administrative purposes provided for. The said Circular provides:

“රාජ්‍ය සේවා කොමිෂන් සභාවේ නිශ්චිත බලතල අවස්ථාවෝචිත පරිදි අමාත්‍යාංශ ලේකම්වරුන්ට සහ දෙපාර්තමේන්තු ප්‍රධානීන්ට පවරනු ලබ ඇති 2011 නොවැම්බර් 25 දානම් කළ යුත් අංක: 1733/52 දරණ ගැසට් නිවේදනයට ඔබේ අවධානය යොමු කරනු ලැබේ.”

The power of transfer concerning the petitioner, who is an SLAAS officer, comes within the PSC. By virtue of the aforesaid Circular No. 05/2011 dated 13.12.2011 and letter R-11 dated 15.07.2021, such powers of transfer of the PSC had been transferred to an Additional Secretary of the Ministry nominated by the Secretary to the Ministry of Public Administration and approved by the PSC. Accordingly, the PSC authorises certain Additional Secretaries to exercise such functions accordingly. It is based on this power of authorisation that the Additional Secretary had issued P-3, subject however to the covering approval of the PSC. The PSC has granted the covering approval by R-4, dated 07.12.2021. In these circumstances, the process and procedure followed in effecting the transfer is lawful and legitimate.

7. The practice of making decisions subject to covering approval is certainly not a novelty and is a practice often resorted to. In respect of matters coming under the PSC, the said practice and procedure has been legitimised and regularised by the aforesaid Circulars. The legitimacy of this practice, generally adopted in the public service, was considered by U. de Z. Gunawardana, J., in ***Gunaratne vs. Chandrananda de Silva*** [1998] 3 Sri L R 265, where his Lordship, at page 282, observed that:

“It is worth recalling the solitary argument put forward on behalf the respondent viz. that as the Public Service Commission had “granted its approval” to the decision made by the respondent by the date that the letter P1 was, in fact, served on the petitioner - the Public Service Commission must be deemed, if not, held to have ratified the impugned decision made by the respondent. At any rate, the Public Service Commission could not, in law, “grant

approval” and so ratify or impart validity and efficacy to the decision of the respondent, reasons being at least four-fold:

- (i) *it is an inflexible and deep-rooted principle of law, which is as elementary as it is well-known, that no act or decision which is void at its inception, as is the decision of the respondent, can ever be ratified vide Halsbury's Laws of England (4th edition, vol. 01), page 452. In **Brook vs. Hook**, Kelly C. B. said thus: ‘...that although a voidable act may be ratified by matter subsequent it is otherwise when an act is originally and in its inception void,’*
- (ii) *another principle which is as basic as it is rudimentary is embedded in the maxim: delegatus non protest delegare which means that a statutory power must be exercised only by the body or officer in whom it has been reposed or confided-unless sub delegation of the power is authorized by express words or necessary implication. This principle has been recognized to some extent, if not wholly, in article 58(1) of our constitution in the following terms: ‘The Public Service Commission or any committee thereof may delegate to a public officer, subject to such conditions as may be prescribed by the cabinet of Ministers, its powers of appointment, transfer, dismissal or disciplinary control of any category of public officers.’”*

8. According to the above, even when formal delegation and/or authorisation may not be provided, subsequent ratification, either principal authority vested with such power in appropriate circumstances, may ratify an order made and action taken by such other public officer. To that extent, the argument of Mr. Ganesharajan does not appeal to me as being tenable. Further, I also observe that Marsoof, P.C., J., P/CA (as he then was), in **Ratnasiri vs. Ellawala** (supra), considered a similar matter and approved the aforesaid dicta of Gunawardana, J.

9. The next argument is the effect and import of the preclusive clause incorporated in Article 61A, which provides thus:

“61A. *[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.”*

For all purposes, with the issue of P-30, the transfer is one made by the PSC. That is common ground. If that be so, this Court is precluded by virtue of Article 61A from considering the vires or validity of a decision made by the PSC. The remedy is to make an appeal to the Administrative Appeals Tribunal as provided for by Article 59. Once again, Justice Marsoof, in ***Ratnasiri vs. Ellawala*** (supra), has considered this very issue extensively and held thus:

“...while the Public Service Commission is empowered to delegate to a Committee or a public officer its powers of appointment, promotion, transfer, disciplinary control and dismissal of specified categories of public officers, it is expressly provided that any public officer aggrieved by an order made by any such Committee or public officer may appeal first to the Public Service Commission and from there to the Administrative Appeals Tribunal which is appointed by the Judicial Service Commission. All this is in addition to the beneficial jurisdiction created by Article 126 of the Constitution which is expressly retained by Article 61A of the Constitution. These are the many pillars on which the edifice of the Public Service rests” (at page 190).

“While I am inclined to the view that the Public Service Commission as well as a Committee of the Commission or a public officer exercising delegated authority may in appropriate circumstances ratify an order made or action taken by a public officer without authority, I also consider in the context of the present case that there is nothing in the Constitution or any law to prevent the 4th respondent from making a decision in regard to a matter where some person or body of persons has previously made some decision without any authority to do so” (at page 206).

I need not labour any further on this issue that the preclusive clause in Article 61A prevents this court from considering the validity or adjudicating upon the impugned transfer made by P-30.

10. Mr. Ganesharajan strenuously argued that he is entitled to maintain this application against P-3, as he instituted this application prior to the ratification and covering approval was granted. The fallacy of this argument is that with the ratification of P-3 by the PSC, the decision to transfer becomes one that is made by, or by the authority of, the PSC. The action being instituted at an anterior point of time makes no difference to the legal effect. Further thereto, in the context of the current application, the petitioner is now proceeding on the second amended petition, dated 31.08.2022. This amended petition is well after the ratification, and also, the said ratification made by P-30 is also challenged. Prayers (g), (h), (i), and (j) are all in respect of substantive relief by way of *certiorari* and prohibition as well as interim orders in respect of P-30. That being so, the argument advanced by Mr. Ganesharajan is misconceived. Once an application for amending a petition is made and allowed, thereonwards the matter will proceed on the petition as amended. The petitioner has amended the petition after the issuance of P-30 and added the said document, P-30, and is now seeking specific relief by way of writ against the same. In this context, Article 61A is directly attracted, relevant, and applicable.

11. In the above circumstances, I am more than convinced that the petitioners by this application, based on the second amended petition, is in fact and in effect challenging the said decision P-30 of the PSC, which this Court is well and truly precluded from considering. This is so held by Justice Marsoof in ***Ratnasiri vs. Ellawala*** (supra), and the law is now settled. In these circumstances, I uphold the argument of the learned State Counsel and find that, as this Court is precluded from taking cognizance of this application, the petitioner cannot have and

maintain this application as it is presently constituted, in view of the provisions of Article 61A of the Constitution.

12. Accordingly, this application is rejected and dismissed. However, I make no order as to costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL