

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

CA (Writ) Application No. 0833/25

In the matter of an application for orders in the nature of Writ of Certiorari, and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Sandanam Johnson Paul,
No. 183/77, Ellakanda,
Horana.

PETITIONER

-Vs-

1. Wannakuwatta Wadugu
Kalindra Jayaweera Fernando,
Returning Officer,
Horana Urban Council,
Election Office,
Kalutara.
2. Thalatha Athukorala,
General Secretary,
United National Party,
Sirikotha Mandiraya,
No. 400, Kotte Road,

Pitakotte.

3. Vajira Abeywardena,
Chairman,
United National Party,
Sirikotha Mandiraya,
No. 400, Kotte Road,
Pitakotte.
4. Ranil Wickramasinghe,
Party Leader,
United National Party,
No. 117, 5th Lane,
Colombo 03.
5. Rajeeva Wasula Gunasekara,
No. 172, Anguruwathota Road,
Horana.
6. Additional Election Commissioner
(Local Authorities)
Election Secretariat,
Rajagiriya.
7. Horana Urban Council
Horana.
8. Secretary,
Horana Urban Council
Horana.

RESPONDENTS

Before : **Hon. Rohantha Abeysuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Chamara Nanayakkarawasam with Apoorwa
Nanayakkara and Ridma Uddeepani for the
Petitioner.

Medhaka Fernando, SC for the 1st and 6th
Respondents.

Yassas De Silva with Kaushali Samarathunge for
the 2nd and 3rd Respondents.

Naomal Pelpola instructed by Vidanapathirana
Associates for the 4th Respondent.

Suraj Rajapakshe for the 5th Respondent.

Written Submissions : 2nd and 3rd Respondents filed on 07.10.2025
4th Respondent filed on 07.10.2025
5th Respondent filed on 07.10.2025
7th and 8th Respondents filed on 07.10.2025
Petitioner filed on 10.10.2025

Supported on : 01.10.2025 and 03.10.2025

Decided on : 29.10.2025

K. Priyantha Fernando, J.(CA)

The Petitioner has filed this application on 14th August primarily seeking to quash the document marked P16.

The Petitioner has sought following relief by the Petition:

- a. Writ of Certiorari quashing the Gazette Extraordinary No. 2447/81 dated 2nd August 2025 (**P16**)
- b. Writ of Certiorari quashing P12
- c. Writ of Prohibition prohibiting the 1st, 7th and 8th respondents from taking steps based on the declaration contained in P16.

By P16 dated 02.08.2025, the 1st respondent declared that the office of the petitioner as a member returned to the Horana Urban Council had fallen vacant under the provisions of the Urban Council Ordinance due to his resignation and declared that the 5th respondent (who had been nominated by the 2nd respondent to fill such vacant office) had been selected as a member of the Horana Urban Council.

The primary contention of the petitioner is that the Gazette P16 had been published declaring the 5th respondent as a member of the Horana Urban Council, despite the petitioner having revoked his previous resignation of office from the Horana Urban Council.

The subject matter of this application is to challenge the gazette notification P16 on the basis that the determination contained therein declaring that a vacancy had arisen in the Horana Urban Council and that the 5th respondent to be appointed in place of such vacancy as *ultra vires*.

FACTUAL MATRIX.

The aspects pertaining to the Petitioner's election and subsequent resignation followed by a revocation of the same are as follows:

- i. The petitioner returned as a member for the Horana Urban Council representing the United National Party, and the same is borne out in terms of gazette publication no. 2438/68 dated 31.05.2025 marked as **P1**;
- ii. Thereafter, the Chairman and Vice Chairman of the Horana Urban Council were elected with the participation of the members on 26.06.2025,
- iii. Then, in terms of letter dated 01.07.2025, the petitioner had tendered a letter of resignation from membership of the Horana Urban Council addressed to the 1st respondent (Returning Officer of Election Office-Kalutara) and copied to the 8th respondent (Secretary, Horana Urban Council) marked as **P5**.
- iv. Thereafter, a subsequent letter was addressed confirming his resignation by the petitioner once again addressed to the 1st respondent dated 12.07.2025 and copied to the 8th respondent marked as **P7**.
- v. a letter was submitted by the petitioner addressed to the 1st respondent and copied to the 7th respondent (Horana Urban Council) dated 23.07.2025 (**6R9**) to revoke the resignation on the basis that the petitioner's resignation was an act under coercion and pressure to himself and his family members by his political opposition and members of his own political party.
- vi. Upon the receipt of the said letter revoking resignation, the 8th respondent (Secretary, Horana Urban Council) notified the 1st respondent on the revocation of the petitioner in terms of letter dated 24.07.2025 marked as **P13**.
- vii. Thereafter, on 02.08.2025 the 1st respondent published gazette notification **P16** declaring that as vacancy had arisen in the

membership of the Horana Urban Council, the 5th respondent has been selected as a member of the Horana Urban Council in place of the petitioner.

The publication of gazette (**P16**) by the 1st respondent declaring (i) A vacancy had arisen in the Horana Urban Council and (ii) That such vacancy has been filled with the selection of the 5th respondent has been called into question in the instant case.

The 1st and 6th respondents taken up the legal objection that the impugned revocation of the petitioner's resignation by letter dated 23.07.2025 (**6R9**) was of no effect in law in view of Section 12 of the Urban Councils Ordinance (as amended)

Section 12(1) of the Urban Councils Ordinance (as amended) reads as follows:

- (1) Where any person who is elected as a member of an Urban Council decides for any reason not to serve as a member thereof, he may relinquish the office.*
- (a) By a written communication of his refusal of office to the election officer of the district in which the town for which the Council is constructed is situated at any time before the date fixed for the first meeting of the Council to be held after his election, or*
- (b) By a written communication of his resignation of office to such election officer, either direct or through the Chairman, at any time after such first meeting.*

The Section 12(1) of the Urban Councils Ordinance provides a mechanism for a member to relinquish his/her office either prior to the date fixed for the first meeting or after such first meeting.

The subject of this case deals with a situation where a council member has sought to resign after the first meeting and therefore Section 12(1)(b) applies.

If the elements of Section 12(1)(b) are fulfilled, the Ordinance by operation of law, decrees that such member has relinquished his office. Once a member has relinquished his office by operation of law in terms of Section 12(1)(b), Section 12(3) mandatorily requires the election officer to take steps in terms of Section 66A of the Local Authorities Elections Ordinance (Cap. 262) to fill that vacancy in office.

In the present case, the petitioner has made a written communication of his resignation of office to the 1st respondent who is the election officer. (vide P5/6R3 and 6R5).

HAS THE PETITIONER DIRECTLY SUBMITTED RESIGNATION LETTER TO THE RETURNING OFFICER OR NOT?

It was contended by the petitioner that P5 does not constitute a relinquishment because it has not been directly submitted to the returning officer or has not been submitted through the chairman of the UC as it required under 12 (1)(b). However, P5 is directly addressed to the 1st respondent, and it is signed by the petitioner himself. There is no requirement for petitioners to be present before the returning officer and forward such relinquishment. The fact that P5 was sent through an agent or through the power of attorney holder does not affect the validity of the communication.

Nevertheless, when perused the covering letter **6R6** written by the Secretary of Horana UC – the 8th respondent, on 23rd July 2025 addressing the 1st respondent drawing the attention of the 1st respondent to the resignation submitted by the petitioner, the 8th respondent had annexed a copy of the letter of resignation of the petitioner dated 01.07.2025 to the Covering Letter. Annexature marked ‘*amunuma 1*’ to 6R6, bears day stamp dated 4th July 2025, of the office of the 1st respondent. When compared the 6R3 with the 6R6, it is seen that the appearance of the Day Stamp is significantly different on the two copies. There is an initial on the Day Stamp on 6R3, but no such initial appears on Day Stamp 6R6. This

shows that the Letter of Resignation of the petitioner dated 01.07.2025 had been submitted in duplicate and that the 1st respondent had returned the duplicate after placing the Day Stamp and certification of 'True Copy' on the duplicate. It proves that the 6R3 is the original and the '*amunuma I*' is the duplicate.

As per Covering Letter 6R6, the 8th respondent had informed the 1st respondent that the Petitioner personally came and handed over the '*amunuma1*' annexed to **6R6** to the 8th respondent on 22nd of July 2025. Relevant part which appears in paragraph 1 of the Covering Letter 6R6 proves that the Petitioner himself had appeared before her on 22nd July 2025 and handed over a copy of the duplicate which bears the day stamp and certification made by the 1st respondent and a copy of the Letter of Confirmation of Resignation certified by the 1st respondent.

This fact is contrary to the contention that the Petitioner had taken. The Petitioner himself meeting the 8th respondent and handing over the documents amply proved that even on 22nd July, he had maintained the position of voluntarily resigning from the office.

Thus, it is the view of this Court that there is direct written communication of such resignation as required by Section 12(1)(b).

Moreover, upon being requested by the letter dated 09.07.2025 (6R4), the petitioner has written to the 1st respondent letter P7 dated 12.07.2025 confirming his resignation.

Thus, the requirement of direct communication has been sufficiently fulfilled by the petitioner.

IS THE RETURNING OFFICER ONLY CASTED WITH A MINISTERIAL DUTY?

Upon receipt of confirmation P7, the 1st respondent-Returning Officer initiated the steps under Section 66A of the Local Authorities Election Ordinance by

issuing the letter dated 22.07.2025 (**P12/6R7**) to the Secretary of UNP to nominate a candidate to fill the vacancy.

Section 12(3) of the Urban Councils Ordinance provides that,

*“If any person elected as a member of an Urban Council refuses or **resigns his office**, or dies, or vacates the office under subsection (2), or if a casual vacancy occurs in any other manner in such office, **such office shall be filled in accordance with the provisions of section 66A** of the Local Authorities Election Ordinance (Cap. 262)”* (the emphasis was added)

Since the petitioner is an individual who has returned to the Horana Urban Council as evidenced by 6R2, the procedure relevant to filling the petitioner’s vacant post under the Local Authorities Election Ordinance is **Section 66A (1)(b)** of the said Ordinance.

*“(1) **Where the office of a member of a local authority falls vacant** under the provisions of the Municipal Councils Ordinance (Chapter 252) Urban Councils Ordinance (Chapter 255) or the Pradeshiya Sabha Act No. 15 of 1987, as the case may be, **the returning officer** appointed for the electoral area in which such local authority is situated, **shall**, where such vacancy is in respect of a member-*

*“(b) returned under section 65A and 65AA of this Ordinance then, depending on whether the candidate whose office fell vacant is from a recognized political party or an independent group, **call upon the secretary of the recognized political party** or the leader of the independent group, as the case may be, **to nominate within thirty days of the occurrence of the vacancy** a candidate to fill such vacancy from candidates of the First Nomination Paper or the Additional Nomination Paper...”* (the emphasis was added)

It was 1st to 6th respondents’ contention that there is no provision in law for the 1st respondent to address his judicial mind or form an opinion regarding resignation of the petitioner and he is compelled to comply with section 66A of the Local Authorities Election Ordinance.

On the contrary, it was argued for the Petitioner along with 6th and 7th respondents that there is a judicial duty incumbent upon the returning officer to first ascertain whether a vacancy had in fact arisen (First Tier) and only thereafter does the mechanical process of law come into effect.

Attention of this Court was drawn to Jain and Jain in 'The Principles of Administrative Law' (4th Ed. Pg. 325) where it is stated that:

*“A ministerial function is one where the relevant law prescribes the duty to be performed by the concerned authority in certain and specific terms leaving nothing to the discretion or judgment of the authority. It does not involve investigation into disputed facts or making of choices. The authority concerned **acts in strict accordance with obedience to the law which imposes on it a simple and definite duty in respect of which it has no choice**”.* (the emphasis was added)

The Petitioner as well as 6th and 7th respondents relied on the case CA (Writ) 52/2021 Ranjan Ramanayaka vs. Secretary General of Parliament-wherein His Lordship Arjuna Obeysekera J. considering whether the Secretary General of Parliament performed a purely ministerial function in notifying the Election Commissioner of a vacancy arising from Articles 89 and 91 of the Constitution, held that there is a Two Tier Test cast on the Secretary General (SG) in performing his/her functions. The Court observed that in the First Tier, it is incumbent upon the SG to first ascertain upon exercising his fine judgment whether a vacancy had in fact arisen under Article 89 and 91 of the Constitution. It is only upon fulfillment of the said First Tier, that the Second Tier comes into effect which triggers Section 64(1) of the Parliamentary Elections Act, which process according to Court then becomes a 'Ministerial Function'.

It is important to consider the exact wording of the judgment which reads as follows:

“It is common ground that wide publicity was given to the conviction of the Petitioner by the Supreme Court and the subsequent imprisonment to serve the sentence imposed by the Supreme Court. The question that I must consider is can

*or should the Secretary General act in terms of Section 64(1) on the basis that a vacancy has arisen, the moment he reads about the said conviction? I do not think so, for the reason that **unlike some of the other events of disqualification set out in Articles 89 and 91, the disqualification in Article 89(d) is not triggered by a mere conviction for any offence.** I say this for the reason that the Secretary General must form the opinion or be satisfied that each of the above elements of Article 89(d) which are relevant to this application has been satisfied. I must stress, however, that in doing so, **the Secretary General is not assessing the validity of the conviction**”*

In the instant case, the relevant section 12(3) of Urban Councils Ordinance contains five situations which a vacancy may occur:

- (i) refuses or
- (ii) resigns his office, or
- (iii) dies, or
- (iv) vacates the office under subsection (2), or
- (v) casual vacancy occurs in any other manner.

Except in case of ‘death’ of a member, other four situations can be uncertain depending on the facts and circumstances of each case. To avoid and/or minimize any practical difficulties, the legislature in its wisdom has provided certain criterion to be satisfied in case of resignation, i.e. section 12(1) provides for a written communication directly or through Chairman.

Whenever such vacancy occurs, the returning officer must act immediately as he/she is mandatorily cast a duty to call upon the secretary of the recognized political party to nominate within thirty days of the occurrence of the vacancy, a candidate to fill such vacancy from candidates of the First Nomination Paper or the Additional Nomination Paper. The question that I must consider is, can or should the Returning Officer act in terms of Section 66A of the Local Authorities Elections Ordinance based on a vacancy has arisen, the moment he receives the written communication of resignation? Yes, I do think so, because the Section

itself states that such office shall be filled in accordance with the provisions of section 66A of the Local Authorities Election Ordinance, and 66A provides that the returning officer shall call for nominations from the recognized political party to nominate within thirty days of the occurrence of the vacancy.

Thus, the duty cast on the Returning Officer in terms of Urban Councils Ordinance is purely ministerial act and accordingly not amenable to writ jurisdiction.

If I borrow the words from ‘Jain & Jain” the returning officer has to act in strict accordance with obedience to the law which imposes on him/her a simple and definite duty in respect of which he/she has no choice

However, in the present case, the 1st respondent having received Letter of Resignation on 4th July 2025 had written the Letter P6 (6R4) 5 days after, on the 9th of July requesting the Petitioner to confirm his resignation. By P6, the 1st respondent had also informed the Petitioner to reply within 5 days thereof and that the 1st respondent would be taking steps to fill the vacancy thereafter.

Admittedly, the Petitioner had received P6 and had replied by his Letter dated 12th July 2025 (P7/6R5) once again confirming his resignation. As per the Day Stamp on 6R5, the 1st respondent received it on 17th July 2025.

If the Petitioner had signed his original Letter of Resignation under duress as claimed, he would have had an ample opportunity to inform the same to 1st respondent in reply to letter P6 and/or to make a complaint to any other law enforcement authority. Even after 17 days of signing and 14 days after submitting letter of resignation, the Petitioner had not made any complaint though he had been engaged in his usual day-to-day businesses as stated in his affidavit.

Only after 23 days of his Letter of Resignation and for the 1st time, the Petitioner overturned his position on 23rd of July by making a police complaint. His withdrawal of resignation has reached the 1st respondent only on 24th July 2025.

By that time, by operation of law, the seat had fallen vacant and there is no room to conduct an inquiry to ascertain reasons for withdrawal or reasons for resignation. Moreover, the returning officer should not assess the validity of the resignation.

In the case of H. K. Edmund V K J Felix Fernando [1961] 59 CLW 076, which is concerned the issue of the resignation of the Deputy Mayor of the Municipal Council of Galle, who, having tendered his resignation, later sought to withdraw the same and wanted to continue as a member of the said Municipal Council. It was argued that until and unless there is acceptance of the resignation, it was open for the Petitioner (deputy mayor) to withdraw his resignation and continue in office. The Petitioner had sought a Writ of Prohibition preventing the holding of a meeting of the Council to appoint another person to office of Deputy Mayor.

Tambiah J. held:

*“Learned Counsel contended that until the Mayor accepted the resignation, the petitioner could not have said to have resigned from the office of Deputy Mayor. But he was unable to refer me to any legal provisions to support the proposition that the Deputy Mayor’s resignation should be accepted by the Mayor before it could become valid, or the office of Deputy Mayor was not vacated until the acceptance of the resignation by the Mayor or the Municipal Commissioner. There was no contractual obligation between the Municipal Council and the Petitioner when he was elected as the Deputy Mayor, and hence his resignation need not be accepted by an officer of the council. **The act of resignation is unilateral and by sending his letter of resignation to the Commission**, who was the proper officer to whom a letter of resignation by the Deputy Mayor should be addressed, **the petitioner vacated his office**. Therefore, I hold that the petitioner has no locus standi to maintain this application”.* (the emphasis was added)

The decision reported in 42 NLR 531, De Silva vs De Silva also support the position that the Petitioner has not right in law to withdraw his resignation. It was where the Chairman of an Urban Council wrote to the secretary stating; “I

have to honour to inform you that I shall resign from the office of the Chairman, Urban Council. As from February 1, 1941, and to request you to take the necessary steps for the election of a successor as early as possible”, Held, that the communication announced the resignation of the Chariman as from February 1, 1941, and that the office of Chariman became vacant on that day. It was not open to the Chariman to withdraw the resignation even with the consent of the Council.

ARE THE MATERIAL FACTS IN DISPUTE?

In order to determine whether the resignation was voluntary, this Court must consider whether the petitioner’s letter of withdrawal of resignation dated 23.07.2025 (P8) is genuine or not and the legal effect of the same. The petitioner himself has filed a District Court case bearing No. DSP 26/2025 in the District Court of Colombo by the plaint dated 11.08.2025 (P15) against the 2nd, 3rd, and 4th respondents praying for a declaration that the office of the Horana Urban Council has not become vacant due to any resignation of the petitioner. Accordingly, the question of whether the resignation was voluntary or not falls outside the Writ jurisdiction of this Court for the reason that the major or material fact is in dispute.

[vide Thajudeen vs. Sri Lanka Tea Board (1981-2 SLR 471), Francis Kulassoriya vs. OIC – Police Station Kirindiwela (SC Appeal No. 52/2021-SC minutes of 14.07.2023)]

S. CHOUDRY, in his book on the law of Writs and Fundamental Rights (2nd Edition) Vol. 2 – at page 499) states that:

“Where facts are in dispute and in order to get at the truth, it is necessary that the question should be canvassed in a suit where parties would have ample

*opportunity of examining their witnesses and the Court would be better able to judge which version is correct, **a Writ will not issue.***”(the emphasis was added)

ARE THE RELIEFS CLAIMED MISCONCEIVED?

The Petitioner has sought Writs of Certiorari quashing the Letter dated 22.07.2025 (P12) and the Gazette dated 02.08.2025 (P16)

By P12/6R7, the 1st respondent has called for nominations under Section 66A(1)(b) on 22.07.2025 which is two days before the Petitioner’s ‘revocation of resignation’ by P8 dated 23.07.2025 but received by the 1st respondent only on 24th July 2025 as evidenced by 6R9.

The document 6R8 shows that the 2nd respondent-General Secretary of UNP had nominated the 5th respondent to the vacant post on 23.07.2025 one day prior to the revocation of the resignation by 6R9.

By the Extraordinary Gazette P16, the 1st respondent, acting in terms of Section 66A (1) of the Local Authorities Elections Ordinance, had published the name of the 5th respondent as a member of Horana Urban Council. In terms of section 66A (1) of the Ordinance, the power of nominating an eligible person is vested with the secretary to the political party which had won the vacant seat of the Council and the Returning Officer is obliged to accept the nomination so made by the Secretary. Therefore, P16 publication made by the 1st respondent is not an Executive or Administrative function but a procedural step performed by the 1st respondent, as the 1st respondent has no power or discretion to appoint any person to a vacancy of the membership of any Local Authority. The procedural steps or ministerial actions of state officers are not subject to the writ jurisdiction. Therefore, the Petitioner’s application to quash P16 is misconceived in Law.

Moreover, this Court should not interpret the Urban Councils Ordinance and the Local Authorities Elections Ordinance (as amended) for permitting members of local authorities to reverse their relinquishments from office. The purpose or the objective of both Statutes is to regulate and enable the smooth and seamless functioning of local authorities.

The scheme in Section 12(1) of the Urban Councils Ordinance read with Section 66A of the Local Authorities Elections Ordinance (as amended) provides such a seamless scheme to ensure that relinquishments of office by members of local authorities do not lead to undue hampering of the functions of such local authorities. In the said backdrop of Law, I cannot see any illegality in the 1st respondent disregarding letter 6R9 and taking steps to issue the Gazette P16.

For the foregoing reasons, I am not inclined to issue notice and interim relief. Accordingly, this application is dismissed without costs.

Judge of the Court of Appeal

Hon. Rohantha Abeyesuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal