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

C.A. 96/2013 (Writ)

1. The Ceylon Teachers' Union
2. Benedict Joseph Stalien
   Secretary – Ceylon Teachers' Union
3. S. Priyantha Fernando
   President – Ceylon Teachers' Union

   All of 65/3, Chittampalam A. Gardiner Mawatha, Colombo 2.

   And 52 others

   PETITIONERS

   Vs.

1. Bandula Gunawardena Esq., MP
   Hon. Minister of Education,
   Isurupaya, Battaramulla.

   And 66 others

   RESPONDENTS

   AND NOW BETWEEN
   In the matter of an Application for Intervention.

1. Ven Telambugammana Chandrananda Thero
   Sri Pushparamaya, Kobeigana

   And 199 others

   INTERVENIENT-PETITIONERS
   Vs.

1. The Ceylon Teachers' Union
And 54 others

PETITIONERS-RESPONDENTS

AND

2. Bandula Gunawardena Esq., MP
Hon. Minister of Education,
Isurupaya, Battaramulla.

And 66 others

RESPONDENTS-RESPONDENTS

BEFORE: Anil Gooneratne J. &
Malinie Gunaratne J.

COUNSEL: Rajeev Amarasuriya for the Intervenient-Petitioner

Krishmal Warnasuriya with Wardanie Karunaratne for Petitioners

Milinda Gunatilleke D.S.G. for 1st , 14th , 21st , 38th , 48th , 53rd , & 56th Respondents

ARGUED ON: 24.10.2013 & 05.12.2013

DECIDED ON: 25.02.2014

GOONERATNE J.

This is an application to intervene in an application for Mandates in the nature of Writs of Certiorari, Prohibition & Mandamus, filed by the Ceylon Teachers' Union (1st Petitioner) and 54 others. 2nd & 3rd Petitioners are Secretary and President of the 1st Petitioner Union. 4th to 5th Petitioners are persons in Grade I of the Sri Lanka Principals Service and as pleaded entitled and eligible for appointments of Class III of the Sri Lanka Education Administrative Service (SLEAS). Service minute of the SLEAS produced marked P3. In paragraph 1(d) of the petition it is pleaded that the matter in the interests of the general public in the form of a public interest litigation. The Respondents are Minister of Education and the Cabinet of Ministers (1st Respondent and 2nd to 65th Respondents respectively). The 66th Respondent is the Secretary to the Ministry of the 1st Respondent. 67th Respondent is the Secretary to the Cabinet.

It would be, also important to give one's mind to the relief sought in the Writ application. The prayer reads thus:

(a) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the Cabinet decision purporting to absorb those ineligible into the SLeAS as contained in Cabinet Memorandum bearing reference No.2012/ ED/E/13 dated 28/03/2012 and Cabinet

paper bearing reference No. 12/0443/530/015 dated 14/06/2012 marked "P13" and "P14" respectively;

(b) Grant and issue a mandate in the nature of a Writ of Prohibition restraining 1st to 65th Respondents from giving effect to the Cabinet decision purporting to absorb those ineligible into the SLEAS as contained in Cabinet Memorandum bearing reference No. 2012/ED/E/13 dated 28/03/2012 and Cabinet paper bearing reference No. 12/0443/530/015 dated 14/06/2012 marked "P13" and "P14" respectively.

(c) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 66th Respondent to immediately take steps to assess and identify accurately the number of vacancies existing in the cadre of SLEAS Class III.

(d) Grant and issue an interim order staying any further steps in terms of the above Cabinet decision purporting to absorb those ineligible into the SLEAS as contained in Cabinet Memorandum bearing reference No.2012/ ED/E/13 dated 28/03/2012 and Cabinet paper bearing reference No. 12/0443/530/015 dated 14/06/2012 marked "P13" and "P14" respectively;

The Intervenient-Petitioners call themselves as the primary stake holders in respect of matters sought to be impugned by this application. It is described in the petition of the Intervenient-Petitioners (all 200 in number) are officers who are functioning for a very long period of time and performing as Assistant Directors of Education and on the verge of being absorbed on a supernumerary basis to the SLEAS. It is further stated that they presently hold appointments that are to be made permanent and such absorption and permanency are to be challenged in the misconceived Writ Application filed by the Petitioners. There are several points urged in paragraph 2 of the petition of

the Intervenient-Petitioners which more or less gives the reason and basis for intervention in this application.

It would be essential to consider both the factual and legal position in an application of this nature notwithstanding the fact that Court of Appeal (Appellate) procedure Rules of 1990 do not permit 3rd party interventions.

Let me gather, inter alia, the following points urged by the intervenient party.

(1) The true and accurate state of facts and circumstances surrounding the appointments of Intervenient-Petitioners being permanent and their absorption to the SLEAS, Petitioners who seek intervention have functioned for a long period of time.

(2) Best equipped to place facts i.e proper history and background, and after several years and several significant events culminated in decision of Cabinet and the Public Service Commission granting permanency and the absorption of the Intervenient Petitioners.

(3) Nature and character of duty performed would indicate that this lot of Intervenient-Petitioners are vital and necessary parties.

(4) Intervenient-Petitioners are not only the direct beneficiaries of the decision impugned, which purports to strike at the very root of their livelihood, but more importantly the decision to absorb them is the fruition of a struggle which the Intervenient-Petitioners have been engaged in for several years.

(5) The Intervenient-Petitioners do not have confidence that the Respondents would do proper justice in the defence and the resistance of the case

especially where the beneficiaries of the impugned decision i.e the Intervenient-Petitioners are not a party to the application. (sub para (F) of para 2 pg. 33 to 61 of their petition).

(6) Display extreme mala fides of Petitioners etc. (a) in sub para (h) of 2 pg 33 – 61) and in any event liable to be dismissed for failure to name necessary parties.

(7) It would be in the interest of the Petitioner to keep the application pending for as long as possible, thereby seeking to delay the implementation of the decision, of Cabinet and the PSC to absorb the intervenient-Petitioners to their present post permanently.

(8) Intervenient-Petitioners have as at present no grievance with the Respondents, to file a separate case. As such only recourse available is to intervene and protect and safeguard their interest.

(9) The Intervenient-Petitioners further state that the impugned decision was ultra vires or illegal or liable to be set-aside The discretion to refuse the grant of relief on several grounds including public policy, public interest, conduct of the Petitioners or where it is vexatious or where it would result in disastrous consequences, and consequently, the determination is not limited to one of mere legality, but transgresses a much wider scope and ambit, and the inclusion of the Intervenient Petitioners would assist in the full and proper and due determination of the same.

10. The Intervenient-Petitioners further reiterate that if the prayers sought by the Petitioners (misconceived as they may be) are granted the very livelihood and career progression of the Intervenient-Petitioners will be severely prejudiced and as such, the Intervenient-Petitioners are left with

no alternative but to seek to intervene into this Application in order to ensure that the livelihood and career progression of the Intervenient Petitioners as well as the beneficial interests of the public are best safeguarded.

I have perused the entire petition submitted to this court consisting of about 61 pages (entitled to plead) and somewhat prolix in the context of this application. I am thankful to learned counsel for the Intervenient-Petitioners who had taken the trouble to explore and disclose details more particularly the position and stance of the Intervenient-Petitioners which may make them entitled to intervene in this application. There is also further expansion of the above submissions in other sub titles referring to "the principal grounds for intervention". Necessary and vital parties not made Respondents, misrepresentation and suppression of material facts in the petition of the Petitioners; in terms of Article 61A of the Constitution this is a matter to be decided by the Supreme Court; prayer to the petition misconceived; Petitioners not invoked the jurisdiction of court bona fide etc.

The rest of the petition is in several parts namely part B, C, D, E, F, G, H. Finally the focus is on public interest dimension.

What is sought to be quashed in this application is a Cabinet Memorandum (P13) and a Cabinet Decision (P14). As far as the relief prayed for in the prayer to the petition, it is for the named Respondents in the petition of the petitioners to resist the application in the best possible way and assist court to arrive at a proper decision. The Petitioners rely inter alia on several documents which are annexed to the petition inclusive of the service minutes to obtain relief from this court more particularly demonstrating that ineligible persons should not be absorbed into the above service. The Respondents named in the petition are competent to place all necessary facts and circumstances relevant to the case without any external intervention or compulsion from any other party. It is very unfortunate that the Intervenient-Petitioners attempt to demonstrate that they have no confidence that the Respondents would do proper justice in the defence and resistance of this case. This court totally reject and dismiss such an unfounded baseless allegation.

The Honourable Attorney General has nominated (as stated in the several journal entries) Deputy Solicitor General to undertake the defence and appear. Such baseless allegation would not prevent the State from placing the relevant facts in a reliable way and assist this court. Attorney General being the Chief Legal Officer to advice and appear on behalf of the State is more than

competent to assist court and perform its usual functions which could in all probabilities display and perform the quazi judicial role which is expected to be performed by the Attorney General as the Chief Legal Officer of the State. It is unfortunate that the Intervenient-Petitioners make such insidious unacceptable insinuation in their pleadings. Courts will not be moved by such statements, irrespective of the outcome of this application.

If ineligible persons are absorbed into the SLEAS, such a move or statement on the part of the Petitioners need to be verified, dissected, analysed and examined by the Respondents named in the petition of the Petitioners in their capacity as the author of documents P13 & P14. Cabinet Decision and Memorandum was considered and examined prior to its issue by the Respondents to this application and not the Intervenient-Petitioners, although they may have been the beneficiaries. Even if the Intervenient-Petitioners have an interest in the subject matter of this application, all necessary explanations and justifications to issue P13 & P14 need to surface from the Respondents and not by any busybody or by a meddlesome busybody like the Intervenient-Petitioners although they may have a grievance if relief prayed for by the Petitioners are granted.

The points urged by the Intervenient-Petitioners and incorporated in this order at (1) to (4) above are all factual matters that the Respondents could aver and deal in their objections, If really necessary; or provide details of such facts. The matters stated in 6, 8, 9 & 10 are not matters that could not be dealt, with by the Respondents, if necessary. Point No. (2) is a mere general allegation and this court cannot consider such a position and waste valuable judicial time.

I would at this point of my order consider a few case law on the subject. My views to refuse this application for intervention are fortified by the observations made by the Supreme Court that, it has never been the practice of this court to allow persons other than those who are parties to the application for writs to intervene in the proceedings. Chandrasena Vs. de Silva (1961) 63 NLR 143.

In Weerakoon & Another Vs. Bandaragama Pradeshiya Sabha 2012 BLR 310 at 311 per Ranjith Silva J. holds that

> "…. In this Context, it is pertinent to note that the Court of Appeal (Appellate Procedure) Rules 1990, made under Article 136 of the Constitution of the Democratic Socialist Republic of Sri Lanka setting out the procedure to be followed by this court in dealing with applications inter alia for prerogative writs, do not provide for third party interventions in these proceedings…"

Harold Peter Fernando Vs. Divisional Secretary Hanguranketha & Two Others 2005 BLR 120 held that Court of Appeal (Appellate Procedure) Rules 1990 do not provide for third party intervention in application for writs under Article 140 of the Constitution.

Sri Lanka Medical Council Vs. Secretary Ministry of Finance & Planning C.A (W) 651/2010 – CA minutes of 3.4.2013 per Sri Skandarajah J.

> ".... a person has "a standing" or 'adequate interest" in a particular application is not the ground on which he could be made a party to that application. If the Petitioner is aggrieved by any decision made by any authority, he should independently file an action to redress his grievance, but that is not a ground on which he could intervene in an application made by another person..."

Bandaranayake Vs. de Alwis et al (1982) 2 SLR 617. This judgment has considered the case of Maha Nayaka Thero, Malwatta Vihara Vs. Registrar General et al (1938) 39 NLR 186 and observed that such a judgment is not helpful to decide intervention. (above Mahanayake case in fact allowed intervention) at pgs. 121, 122 & 123...

> In the hearing into the application for intervention, learned President's Counsel appearing for the Intervenient-Petitioner relied on the judgment of the Supreme Court in Maha Nayaka Thero, Malwatta Vihare v. Registrar-General et al (1938) 39 N.L.R 186 to show that our courts have allowed interventions by third parties in proceedings for prerogative relief where the decision of court would affect such parties. This was an extraordinary case in which the Maha Nayaka Thero of the Malwatta Vihara had sought a writ of mandamus on the Registrar General to compel the latter to exercise his power under the Buddhist Temporalities Ordinance by modifying the register of priests in

terms of a communication from the petitioner to the effect that a certain priest had been expelled by him from the priesthood. Intervention by the expelled priest in question was allowed by court, without objection being taken. At page 189 of the judgment, Soertsz J. has observed that the expelled priest was permitted to intervene "as he was vitally concerned in the matter", but the focus of the judgment of the Supreme Court was on the question whether the Court should exercise its beneficial discretion in favour of the petitioner in the peculiar circumstances of the case. Soertsz J., after carefully considering the merits of the case, went on to refuse the mandamus sought by the Maha Nayaka Thero as his Lordship was satisfied that the substantial dispute between the intervenient priest and the Maha Nayaka Thero ought to be adjudicated upon and determined by a proper tribunal in a regular action, and the grant of the mandamus at that stage would put the intervenient priest "in a position of great disadvantage, and even of great danger" (page 192). This judgment is not helpful in deciding whether intervention should be allowed in a case such as the present one, where objection is taken to the application for intervention.

Dr. Ranaraja J. in Tyre House (Pvt.) (1) Vs. Director General of Customs CA 730/95 CA minutes 5.6.1996. Per Ranarajah J.

'To permit intervention overlooks the basic rule governing locus standi which is that a person who has a particular grievance of his own is entitled to certiorari ex debito justitiae, while the grant of the remedy to a stranger is purely discretionary.....

"In the instant case, what the intervenients are seeking is to prevent the relief sought by the petitioner being granted. Thus they have no common interest with the petitioner and can in no way be considered 'aggrieved persons' who have an interest in preventing an abuse of power by the Director General of Customs, as alleged by the petitioner. It is the respondent and he alone who could say that he has acted within the law and his decisions sought to be quashed are valid in law. Court cannot permit outsiders to offer him moral support or cheer him along in his battle with the petitioner. Such a course would only strengthen the case of the petitioner that the respondent acted the way he did for extraneous reason and therefore mala fide."

The appellate procedure Rules of 1990 do not provide for 3rd party interventions, in Writ Applications. These rules made under Article 136 of the Constitution refer to the procedure to be adopted but makes no provision for 3rd

party interventions. Prerogative writs are discretionary remedies of court. Its character and nature is different to other actions or suits before Superior Courts. It is the named Respondents alone, who could satisfy court that they acted within the available legal frame work and or plead and demonstrate to court as to whether the remedy sought in the context of this application could be granted or not. Learned D.S.G indicated to court that he would abide by the decisions of this court as regards the application for intervention is concerned. Nor did he wish to comment at the inquiry that the intervenient party is a necessary party. There is no preclusion on the part of the Respondents to plead the grounds which disentitle court to grant the remedy sought by the Petitioners. In all the above facts and circumstances of this application this court is not inclined to grant 3rd party intervention.

Application for intervention refused and dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M.Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL