

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

CA [Writ] Application No: 621/09

Weerasingha Mudiyanseelage Ariyawansa Bandara,
Vidyalaya, Ethoya, Ratnapura.
Ethoya

Petitioner

Vs.

Hearath A. Kularatna,
The Chief Secretary,
Chief Ministry, Sabaragamuwa Provincial Council,
New Town, Ratnapura.

Mr. A.K. Dhannadasa of 34/1,
Fourth Sagara Lane, Uyana, Moratuwa.

The Secretary,
Public Service Commission
No: 356 B, Carlwil Place,
Galle Road, Colombo 03.

The Secretary, Provincial Public Service Commission,
Sabaragamuwa Provincial Council,
New Town, Ratnapura.

5. The Secretary, Ministry of Education,
Isurupaya, Battaramulla.

6. Honorable Attorney General
Attorney Generals' Department
Colombo 12.

Respondents

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

In the matter of an application for 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. (Writ) Application No. 621/2009

<u>BEFORE</u>	: Deepali Wijesundera J.
<u>COUNSEL</u>	: J.M. Wijebandara with Manori Gamage for the Petitioner. Nayomi Kahawita SC for the Respondents.
<u>ARGUED ON</u>	: 31 st January, 2014
<u>DECIDED ON</u>	: 23 rd May, 2014.

Deepali Wijesundera J.

The petitioner has filed this application for a writ of certiorari to quash the decisions contained in the documents marked as **P5**, **P6** and **P11**. **P5** is the letter of interdiction, **P6** the charge sheet and the **P11** is the order given after disciplinary inquiry. These documents have been given under the hand of Chief Secretary of the Sabaragamuwa Province who is the 1st respondent of this application. The petitioner has also prayed for a writ of Mandamus to compel the respondent (petitioner does not state which respondent) to reinstate petitioner with back wages.

The petitioner is a Grade III Principal in the Si Lanka Principals' Service appointed by the Educational Services Committee of the Public Service Commission by letter marked **P2** with the petition. Paragraph 2 and 3 of **P2** states that the petitioner is bound by any rules and regulations issued by the government from time to time.

The petitioner while serving as Principal of R/Niralgama Vidyalaya, Ratnapura was transferred as Deputy Principal to R/Kiriella Maha Vidyalaya after a preliminary inquiry held regarding a building construction done under the supervision of the petitioner. Thereafter the

1st respondent by letter dated 27/04/2006 marked **P5** has interdicted the petitioner. A charge sheet (**P6**) was served on the petitioner by the 1st respondent under 4 charges relating to a construction of a school building by the School Development Society of R/Niralgama Vidyalaya, Ratnapura where the petitioner was chairperson ex officio. An inquiry was held and the disciplinary order dated 17/06/2009 (**P11**) under the hand of the 1st respondent was delivered to the petitioner. By **P11** it has been ordered to reinstate the petitioner without any back wages and a sum of Rs.94,483.71 to be deducted from the petitioner's salary or for the petitioner to pay back the said money.

The petitioner in the instant application is challenging the legality of the documents marked as **P5**, **P6** and **P11** and the decisions contained therein on the basis that the 1st respondent Chief Secretary has not been vested with disciplinary powers over the officers attached to Sri Lanka Principals' Service.

The petitioner's argument was that the petitioner being a Grade III Officer of the Sri Lanka Principals' Service comes directly under the National Public Service Commission and is governed by the service Minutes (**P2a**) and disciplinary control over the said service shall only be exercised by the National Public Service Commission. He further

submitted that if any delegation is to be enforced it is mandatory to be gazetted *under article 57(2) of the constitution*.

The argument of the petitioner is that the 1st respondent has acted without lawful authority therefore **P5, P6 and P11** should be quashed.

This court has to decide whether 1st respondent who signed **P5, P6** and **P11** has legal authority to issue these documents. The learned state counsel for the respondents producing documents marked **1R1 to 1R2, X** and **X1** showed that the 1st respondent had legal authority delegated to him *under article 57(2) of the Constitution*. Gazette Extraordinary No.1295/26 dated 02/07/2003 encompasses the delegation of the powers of the Public Service Commission.

The petitioner being a non-staff grade officer, the category of officers pertinent to the petitioner's position is the public officers in the 5th category in the 1st column of the table in the said Gazette. The petitioner's counsel tried to mislead court by only printing the upper part of the said column, leaving the 5th category out. Under this gazette the Public Service Commission has delegated its powers to the respective heads of Departments.

The circulars marked as 1R1 and 1R2 has been issued subsequent to the said Gazette No.1295/26 and both these circulars should be read with the said Gazette 1295/26. The respective head of the department to exercise disciplinary control is the Secretary to the Provincial Ministry under whose charge the subject of education comes. In the instant case the 1st respondent.

Clause 6(v) reads thus;

ශ්‍රී ලංකා විදුහල්පති සේවයේ නිලධාරීන්ගේ විනය පාලනයට අදාළව ආයතන සංග්‍රහයේ 2 වන කාණ්ඩයේ පළමු උපලේඛනයේ සඳහන් වැරදි පිළිබඳව නීත්‍යානුකූලව ක්‍රියා කිරීමේ බලතල මාගේ සමාංක හා 2001.05.03 දින දරණ බලතල පැවරීමේ ලිපියේ 3(IX) ඡේදයේ සඳහන් පරිදි තවදුරටත් පළාත් සභාවේ අධ්‍යාපන විෂය භාර ලේකම් වෙත පැවරී ඇති බව.

The petitioner in his submissions referring to the document marked P9 stated that the 1st respondent himself has admitted to the 5th respondent that he does not have jurisdiction to determine the disciplinary inquiry against the petitioner. The 1st respondent has stated that this issue arose due to a judgment produced by the petitioner at the inquiry in a similar case. The matter was referred back to the 1st respondent. The judgment in question has no bearing to the instant case since the petitioner in the said case was a Grade I Principal of the Sri

Lanka Principals' Service where as the petitioner in the instant case is a Grade III principal.

The document produced marked X shows that petitioner has already allowed the respondents to deduct the said money mentioned in P11 from his salary and it has been fully recovered.

Even though the petitioner was appointed as a Grade III Principal by the Education Services Committee of the Public Service Commission subsequently the power of appointment, promotion, dismissal and disciplinary control of the Public Service Commission was delegated by virtue of gazette No.1295/26 accordingly at all times material to this case the proper disciplinary authority of the petitioner has been the 1st respondent. In paragraph 3 of the letter of appointment it is stated that he *inter alia* be subject to the rules and regulations issued by the government from time to time.

Paragraph 3 of the letter of appointment reads thus;

රාජ්‍ය සේවා කොමිෂන් සභාවේ ව්‍යවස්ථා වලට/මුදල් රෙගුලාසි වලට ආයතන සංග්‍රහයේ විධිවිධාන වලට ද දෙපාර්තමේන්තු නියෝග වලට හා කලින් කල රාජ්‍ය විසින් නිකුත් කරන රෙගුලාසි වලට ද ඔබ යටත් විය යුතුය.

Thus the decision of the government to delegate the powers of the Public Service Commission as per the provisions of the gazette Extraordinary No.1295/26 shall be applicable to the petitioner and accordingly his disciplinary authority would be changed as per the provisions of the said gazette.

There is no sustainable prejudice caused to the petitioner by the disciplinary determination of the 1st respondent as his service had not been terminated and the money ordered to be paid had already being paid by the Petitioner (X1).

A writ of Mandamus set out in paragraph (d) of the prayer can not be granted as it does not specify the specific respondents against whom the writ of Mandamus is sought.

For the afore stated reasons the application of the petitioner is dismiss with cost fixed at Rs. 25,000/=.

JUDGE OF THE COURT OF APPEAL.