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

CA (PHC) APN 184/2013
Revision HCCA Kandy 42/2012 Writ

D.M.H. Abeykulawardena,
No: 05, Vihara Mawatha,
Daluwalatenna,
Lunuketiyamaditta, Menikhinna.

And another

Petitioner-Petitioners

Vs

01. S.B. Beddewala,
President.
Central Provincial Public Service Commission,
Mahaiyawa,
Katugasthota,
Kandy.

And 8 others

Respondent-Respondents

CA (PHC) APN 184/2013 Revision **HCCA Kandy 42/2012 Writ**

BEFORE : K.T. Chitrasiri, J. &
W.M.M. Malinie Gunaratne, J.

COUNSEL : Prinath Fernando for the two petitioner-petitioners.
Anusha Fernando SSC for the 1st – 9th Respondent-respondents.

ARGUED &
DECIDED ON : 14.11.2014

K.T. CHITRASIRI, J.

Heard both Counsel in support of their respective cases.

This is a revision application filed by the two petitioners, seeking to revise and/or set aside the order dated 25.05.2012 of the learned High Court Judge in the Civil Appellate High Court of the Central Province holden in Kandy. Initially, the two petitioners filed an application in the Provincial High Court, seeking to have a writ of certiorari and a writ of mandamus issued against the respondents. The learned High Court Judge in that writ application having heard the learned Counsel for the petitioner, decided not to issue the notices on the respondents. Accordingly, he has dismissed the writ application filed in the High Court. Against which decision, the two petitioners have invoked the revisionary jurisdiction of this Court seeking for a direction on the learned High Court Judge to look into the merits of the writ application

filed in that Court. At this stage, it is pertinent to note that the petitioners in such a situation could have filed an appeal which right they have not resorted to. Instead they have filed this application invoking the revisionary jurisdiction of this Court.

According to the averments in the petition of appeal, the petitioners have filed an appeal in the Supreme Court to challenge the decision impugned in this application. It had been dismissed for want of jurisdiction in that Court. Thereafter, the petitioners have come to this Court by way of a revision application. Therefore, it is necessary to note that the petitioners have failed to exercise the right of appeal which is a statutory right the petitioners possess.

Having argued the matter to some extent, learned Counsel for the petitioner submitted that he is not pursuing the relief (ඇ) that had been prayed for in the petition filed in the High Court. He submitted so, due to the reason that the decisions mentioned in the documents referred to in that prayer ' ඇ ' do not amount to administrative or executive decision that are liable to be reviewed under writ jurisdiction.

Then the question is whether the learned High Court Judge is correct when he did not allow the petitioners to proceed with the application made to have a writ of mandamus as prayed for in paragraph ' ඇi ' in the prayer to the petition filed in the High Court. Learned High Court Judge in his decision has stated that the relevant provisions in the Gazette

Notification marked ෙ 1 (Vide at page 89 in the brief) by which the applications for the recruitment of Gramaseva Niladharis had been called, could become relevant, only to determine whether the applicants are suitable to call them for an oral interview. Admittedly, the two petitioners had been called for an interview. Therefore, it is clear that the basis on which the writ application was filed will not give right to issue a writ of mandamus. Furthermore, learned High Court Judge has stated that nothing is mentioned in the Gazette Notification ensuring that the persons who have scored the highest marks would be appointed to the relevant posts. In the circumstances, we do not see any error in those reasoning adduced by the learned High Court Judge when he decided not to issue notices on the respondents.

In Rule 5 (ii) found in the Gazette Notification marked ෙ 1, it is stated that the selections would be made upon an interview being held after conducting a written examination. Therefore, it is clear that merely because the petitioners have obtained higher marks do not entitle them to be appointed to the posts that they have applied for. At this stage, we note that in the relief ' ඇ ' mentioned in the prayer to the petition filed in the High Court, the petitioners have affirmatively stated that some of the applicants have been appointed to the positions that they were seeking to have them appointed. However, no material is available to establish such a position and therefore it is seen that at the time of filing the writ application the petitioners have failed to establish whether any appointment had been made pursuant to the publication of the Gazette

marked P 1. Furthermore, there is no evidence to show that the petitioners have made any application to the authorities concern to ascertain the outcome of their applications made. Without such material, the High Court Judge would not have made an order issuing even a writ of mandamus since nothing is found to decide that the applicants have not been selected to the posts they have applied for.

For the aforesaid reasons, it is our view that the learned High Court Judge is correct when he refused to issue notices on the respondents in the writ application filed by the two petitioners. Accordingly, this revision application is dismissed.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. MALINIE GUNARATNE, J.

I agree.

JUDGE OF THE COURT OF APPEAL

KRL/-