

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

**In the matter of an application for
mandates in the nature of Writs of
Certiorari, Prohibition, Mandamus
under Article 140 of the Constitution of
the Democratic Socialist Republic of Sri
Lanka.**

CA Writ Application No.288/2014

Dr. (Mrs.) Shalini Sudarshana Siriwardena
No.26, Old Quarry Road,
Mount Lavinia

Petitioner

Vs,

1. University of Colombo
and 245 others

Respondents

Before : Vijith K. Malalgoda PC J (P/CA) &

H.C.J. Madawala J

Counsel : K.G .Jinasena with Thissa Karunanayke for the Petitioner

Arjuna Obesekara DSG for the 1st- 176th Respondents

Pradeepa Ariyawansa for the 220th -221st Respondents

Supported On : 27.04.2015

Decided On : 30.04.2015

Order

Vijith K. Malalgoda PC J

Petitioner who has followed a 3 year Pre MD.(Restorative Dentistry) programme had sat for the final examination in May 2014. Due to several reasons the Petitioner had pleaded in her Petition including harassment and failure to followed guide lines to conduct of Examination and Guide Lines for conduct of Examiners, petitioner has preferred an application before Court of Appeal and has prayed inter alia.

- b). Issue the mandate in the nature of Writ of Certiorari to quash the recommendation made to accept the result of the MD (Restorative Dentistry) examination Part II Examination by the Board of Examiners that met on 30th May 2014 to Board of Study in Dental Surgery and the Board of Management of the PGIM;
- c). Issue the mandate in the nature of Writ of Certiorari to quash the decision made in P12 by the Board of Management of the PGIM to approve the results of the MD (Restorative Dentistry) Examination Part II Examination subject to confirmation of the Senate of the 1st Respondent University;
- d). Issue the mandate in the nature of Writ of Prohibition preventing the Senate and the Council of the 1st Respondent University approving the Results of the MD (Restorative Dentistry) examination (P11) of the PGIM.
- e). Issue the mandate in the nature of Writ of Mandamus directing the Board of Management of the PGIM, the senate and the Council of the 1st Respondent University to conduct a fresh Examination in Restorative Practical component (viz Practical 1.a, page 14 of P5) and case book and research presentation (viz page 15 of P5) for the candidates who had completed the three year training programme in said MD (Restorative Dentistry)

When this matter supported for notices on 05.09.2015 the Court decided to issue notices on the Respondents. However the Petitioner reserved his right to support for interim relief. On 19th March 2015 Petitioner has filed additional documents including a petition and affidavit praying inter alia.

“Grant and issue an interim relief preventing the 1st respondent University and the 176th Respondent conducting the scheduled MD (Restorative Dentistry) Examination until the final determination of this application,” and supported for above relief before us.

In support of the above application Petitioner submitted before us, that the respondents including the 176th Respondent failed to file objections in the present application for nearly five months, but proceeded to publish the next date of commencement of the Examination in MD (Restorative Dentistry) for the year 2015 by circular dated 25th February 2015. According to the above circular (produced marked P-20) the examination will commence on 5th May 2015.

Petitioner further submitted that, after filing the present application, she never expected the Authorities to proceed with the next examination in MD (Restorative Dentistry). However, Petitioner submitted that she had applied to sit for the 2015 examination even though she is not fully prepared for the said examination, and therefore moved, either that she be permitted to sit only for Practical- Restorative Dentistry and case book the two subjects out of nine subject she had come down or to issue an interim order preventing the 1st respondent University and/or the 176th Respondent conducting the above examination. Learned Deputy Solicitor General who appeared for 1st – 219th and 221st-246th Respondent objected to the grant of the interim relief for several reasons.

According to the Learned Deputy Solicitor General the annual calendar of post Graduate Institute of Medicine for the year 2015 was issued as far back as on 13th November 2014. In the said Calendar MD (Restorative Dentistry) Examination is scheduled for 5th May and submitted that the petitioner cannot plead ignorance of this date when all the arrangements are now finalized.

In support of the above contention the Respondents have produced Documents marked R-22A, letter of invitation to Dr. Miss Serpil Djemal, Kings College Dental Hospital UK to attend the said examination as the External Examiner, R22-B letter of confirmation from the said external examiner R23A minutes of PGIM meeting dated 6th January 2015 and R 23 B a copy of the appointment letter as examiner for the said examination.

From the above material it is clear that the Respondents have taken all steps to have the examination commenced on 5th May as scheduled in the Annual Calendar.

Circumstances under which interim reliefs are granted by our courts were discussed in a number of cases such as *Billimoria V. Minister of Lands (1978-1979)* 1 Sri LR 10, *Duwearachchi* and another *V.*

Vincent Perera (1984) 2 Sri LR 94 Mahindasoma V. Mithripala Senanayake and others (1996) 1 Sri LR 180.

This court bears in mind the useful reminder of that celebrated jurisprudence as propounded by Neville Samarakone CJ in the case of Billimoria V. Minister of Lands, Land Development and Mahaweli Development and Two Others (1978-1979) I Sri LR 13 that “the interest if justice therefore required that a stay order be made as an interim measure. It would not be correct to judge such stay order in the same strict manner as final orders by their very nature must depend a great deal on a judge’s opinion as to the necessity for interim action.”

Court of Appeal in the case of Deuwearchchi and another V. Vincent Perera and another (1984) 2 Sri LR 94 held that the court should be guided by the following principle when granting interim relief.

- I will the final order be rendered nugatory if the petitioner is successful
- II where does the balance of convenience lie
- III will irreparable and irremediable mischief or injury be caused to either party

As admitted by the petitioner before us, one reason for his request for the interim relief is that, the petitioner never expected the authorities to proceed with the 2015 examination as scheduled in the 2015 examination calendar, but on the other hand petitioner concedes that, if an interim relief is granted, five other candidates will also be aggrieved by the said order. When compared the loss or mischief caused, between the petitioner and the five others, we find that an irreparable damage or mischief will cause to the five others if an interim order is issued suspending the MD (Restorative Dentistry) Examination until the conclusion of this case, but on the other hand if Petitioner is succeeded and this court decide to grant relief, (iv) in the prayer to the petition by issuing a mandate in the nature of writ of Mandamus directing a fresh examination to be conducted as prayed for by the petitioner, no damage or mischief would cause to him. We are also mindful of the steps taken by the Authorities including 1st and 176th Respondents to conduct the examination on 5th May 2015 and if an interim order is issued at this juncture, 5 days before the examination, everybody interested including the External and Internal examiners and candidates will lose faith on the examination process.

The Learned Deputy Solicitor General raised a further preliminary objection based on the Court of Appeal (Appellate procedure) Rules 1990 but for the reasons I have discussed above, I see no reason to entertain a preliminary objection at this stage.

For the reasons discussed above we see no ground to consider issuing an interim relief as prayed by the petitioner at this stage. Application for interim relief is dismissed.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala

I agree,

JUDGE OF THE CUORT OF APPEAL