

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

CA Writ 762/08

In the matter of an application for mandates in the nature of writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution.

1. Adasuriya Mudiyansele Rohana Bandara,
No.436, Walpola, Bamunukotuwa.

And 110 others.

Petitioners.

Vs.

1. The Governor, Wayamba Provincial Council, Kurunegala.
2. The Chief Secretary, Wayamba Provincial Council, Kurunegala.
3. The Secretary, Chief Ministry, Wayamba Provincial Council, Kurunegala.
4. The Director Engineering Services, Wayamba Provincial Council, Kurunegala.
5. The Provincial Director, Road Development Authority, Wayamba Province, Kurunegala.
6. The General Manager, Road Development Authority, Setsiripaya, Battaramulla.
7. The Director of Establishment, Ministry of Public Administration and Home Affairs, Independence Square, Colombo 7.
8. The Provincial Public Service Commission, Wayamba Provincial Council, Kurunegala.
9. The Wayamba Machinery Authority, Circular Road, Kurunegala.
10. Hon. Attorney General, Attorney General's Department, Colombo 7.

BEFORE : K.T.Chithasiri J.

L.T.B.Dehideniya J.

COUNSEL : Nimal Weerakkody for the Petitioners.

Anusha Samaranayake SSC for the 1st to 8th and 10th Respondents

Dulinda Weerasuriya PC with Ruvindra Welikala fo the 9th
Respondent.

ARGUED ON:30.03.2015

WRITTEN SUBMISSIONS

TENDERED ON: For the 9th Respondent on 18.02.2015 and for the 1st to 8th and
10th Respondents on 12.03.2015

DECIDED ON: 19.05.2015

Dehideniya J.

The Petitioners of this application were employees of the Road Development Authority. After establishing Provincial Councils under the Thirteenth Amendment of the Constitution, they were absorbed in to the North-Central Provincial Council (hereinafter sometimes called and referred to as NWPC), with their consent, in 1990 and issued letters of appointment by the Public Service Commission of the NWPC. The Petitioners grievance is that they were absorbed in to the Wayamba Machinery Authority without their consent and by this arbitrary act of NWPC, their status of employment of government servants has changed to private sector employees. Therefore the Petitioners are seeking for a mandate in the nature of a writ of *certiorari* to quash the decision to absorb them into the Wayamba Machinery Authority and mandate in the nature of a writ of *mandamus* against the 8th Respondent to give effect to the letter of appointment issued by the Public Service Commission of the NWPC.

The Respondents have taken up two preliminary objections at the hearing of this application, i.e. this Court has no jurisdiction and inordinate delay in instituting this application. With consent of all counsels, the objection on jurisdiction tried first. The objection was formulated thus;

The jurisdiction to hear and determine the said issues or matters and grant reliefs the Petitioners have sought, if any, in this application exclusively vest in the Provincial High Court of the North-Western Province as per Article 154 P (4) of the Constitution. Therefore the 9th Respondent most respectfully submits that this Court has no jurisdiction to hear and determine this application and therefore most respectfully moves that this application be dismissed for the want of jurisdiction.

The Petitioners were originally employed by the Road Development Authority of the Central Government. After establishing the Provincial Councils under the Thirteenth Amendment to the Constitution, they were absorbed in to the NWPC. The Petitioners have no grievance in changing their employment status from government servants of the Central Government to the government servants of Provincial Council. Actually they have consented to this change. Thereafter, the letters of appointment were issued by the Public Service Commission of NWPC, marked as P8. By virtue this appointment, the Petitioners have ceased to be the employees of the Central Government and became the employees of the NWPC. Petitioners in their petition averred in several paragraphs that they are employees of NWPC. In paragraphs 3, 6, 10, and many other paragraphs they admit that they were absorbed in to the NWPC and released from the Central Government employment.

Wayamba Machinery Authority was established under the North Western Machinery and Equipment Authority Statute, No. 09 of 1992 of North Western Provincial Council. The Petitioners grievance is that they were absorbed into this Authority without their consent. They are seeking for a mandate in the nature of a writ of *certiorari* to quash the letter of appointment issued by the 9th Respondent marked P16. The 9th Respondent is the Wayamba Machinery Authority which was established under the said statute. The Petitioners further seeking for a mandate in the nature of a writ of *mandamus* against the 8th Respondent to give effect to the letter of appointment marked P8. The 8th Respondent is the Provincial Public Service Commission of the NWPC. The Petitioners are invoking the extraordinary

jurisdiction of this Court to make an order against subordinate institutes of a Provincial Council which were acting under a statute enacted by the said Provincial Council. They do not seek any relief against any decision taken by any officer or an institute of the Central Government.

The Petitioners in paragraph 2(a) of the petition state that they are seeking a public law remedy in the context that the Respondents are under a public duty in law to provide the Petitioners with a lawful status in the Provincial Public Service. They seek remedy against those who were exercising power within the Province and acting under a statute enacted by the said Provincial Council.

Article 154P of the Constitution introduced the Provincial High Courts. Sub Article 4 of the said Article has vested the exclusive writ jurisdiction on the Provincial High Court against any person exercising, within the Province, any power under any law or any statutes made by the Provincial Council established for that Province.

The article reads thus;

154P. (1) There shall be a High Court for each Province with effect from the date on which this Chapter comes into force. Each such High Court shall be designated as the High Court of the relevant Province.

(2) The Chief Justice shall nominate from among Judges of the High Court of Sri Lanka such number of Judges as may be necessary to each such High Court. Every such Judge shall be transferable by the Chief Justice.

(3) Every such High Court shall—

(a) exercise according to law, the original criminal jurisdiction of the High Court of Sri Lanka in respect of offences committed within the Province ;

(b) notwithstanding anything in Article 138 and subject to any law, exercise, appellate and revisionary jurisdiction in respect of convictions, sentences and orders entered or imposed by Magistrates Courts and Primary Courts within the Province;

(c) exercise such other jurisdiction and powers as Parliament may, by law provide.

(4) *Every such High Court shall have jurisdiction to issue, according to law-*

(a) *orders in the nature of habeas corpus, in respect of persons illegally detained within the Province; and*

(b) *order in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against any person exercising, within the Province, any power under-*

(i) *any law; or*

(ii) *any statutes made by the Provincial Council established for that Province, (emphasis added)*

(5)

(6)

The Petitioners issue is that the letter of appointment issued by the Wayambe Machinery Authority, has no force or avail in law because it was done without their consent and the said Authority has no power or authority to change the employment status of the Petitioners, who were appointed by the public service commission of the NWPC. As I pointed out earlier, the said Wayamba Machinery Authority has been established under the North Western Machinery and Equipment Authority Statute, No. 09 of 1992 of North Western Provincial Council. The Preamble says that the purpose of enacting the statute is to establish the said authority to put in to maximum use and to protect and maintain the machinery within and belongs to the NWPC.

This statute is in operation only within the North-Western Province. Its idea is to protect and put in to maximum use of properties belongs to the NWPC. This statute has no application to any other part of the country. Under Article 154P (4) of the Constitution, exclusive jurisdiction of matters in this nature is vested on the Provincial High Court of North Western Province.

High Court for the North Western Province has been established and the Chief Justice has nominated the Judges for the said Court. Therefore, at the time of institution of this action, the High Court of North Western Province was in operation. Therefore, the exclusive jurisdiction on any application to have a mandate in the nature of a writ against any person exercising, within the North-Western

Province, any power under any law or any statutes made by the North-Western Provincial Council established for the North-Western Province is vested with the Provincial High Court of the North Western Province.

For the reasons stated above, I uphold the preliminary objection. The application is dismissed for the want of jurisdiction.

No costs.

Judge of the Court of Appeal

K.T.Chitrasiri J.

I agree.

Judge of the Court of Appeal