

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

R.P.Sirisena,  
Maradama, Undugoda.  
Petitioner Appellant

**Court of Appeal case no.**  
**CA/PHC/ 94/99**

Vs.

**H.C. Kegalla case no.**  
**694/writ**

1. A.A.Amarasinghe, (Former Secretary),  
Kegalla Pradeshiya Sabha,  
(Presently) Ministry of Industries,  
Rathambalawatta, Kegalla.

2. Secretary,  
Provincial Ministry of Youth Affairs &  
Tourism,  
Sabaragamuwa.

3. K.P.P.Ranjith Silva,  
Provincial Secretary,  
Provincial Secretariat,  
Niwithigala.

4. Secretary,  
Provincial Public Service Commission,  
Sabaragamuwa Province.

5. Hon. Governor,  
Sabaragamuwa Provincial Council.

And 3 others

Respondents - Respondents.

Before : H.C.J.Madawala J.  
: L.T.B. Dehideniya J.

Counsel : Jagath Abeynayake for the Petitioner - Appellant.  
: Milinda Gunathilake DCG for the Respondents -  
Respondents.

Argued on : 05.07.2016

Decided on : 14.10.2016

L.T.B. Dehideniya J.

This is an appeal from the Provincial High Court of Sabaragamuwa. The facts of the case are briefly as follows. The Petitioner Appellant (hereinafter sometimes called and referred to as the Petitioner) says that he was appointed to the Provincial Public Service by the Sabaragamuwa Provincial Service Commission. The Petitioner, after an inquiry, was dismissed on a financial fraud. Being aggrieved by the said decision the Petitioner appealed to the 4<sup>th</sup> Respondent – Respondent, the Secretary of the Provincial Public Service Commission of Sabaragamuwa Province, who dismissed the appeal. Thereafter the Petitioner further appealed to the 5<sup>th</sup> Respondent – Respondent, the Hon. Governor of the Sabaragamuwa Province, was also dismissed his subsequent appeal. Being aggrieved by the said decisions, the Appellant institution an action in the Provincial High Court Sabaragamuwa for a mandate in the nature of a writ of certiorari to quash the decision of dismissal from the service, a writ of certiorari to quash the decisions of the 4<sup>th</sup> and 5<sup>th</sup> Respondents – Respondents dismissing the appeals, was also dismissed on the ground that the High Court has no jurisdiction. This appeal is from the said order of the High Court.

The foremost issue that has to be considered in this appeal is whether the Petitioner comes within the scope of a public officer under

the Article 175 of the Constitution because it has been argued that under the Article 55(5) of the Constitution (as it stood then) the Court has no jurisdiction to inquire into the matters of this nature. The Article 55(5) read thus;

*Article 55 (5):-*

*Subject to the jurisdiction conferred on the Supreme Court under paragraph (1) of Article 126 no court or tribunal shall have power or jurisdiction to inquire into, pronounce upon or in any manner call in question, any order or decision of the Cabinet of Ministers, a Minister, the Public Service Commission, a Committee of the Public Service Commission or of a Public Officer, in regard to any matter concerning the appointment, transfer, dismissal or disciplinary control of a public officer.*

The Provincial Public Officer is not defined in the Constitution, only the Public Officer is defined. I will consider whether the Provincial Public Officer comes within the definition of the Public Officer in the constitution. The Article 170 defines the public officer as “*a person who holds any paid office under the Republic*”. (Certain officers are excluded from the definition which is not relevant to this application) the Petitioner’s contention is that he is paid by the Provincial Council, not by the Republic. The Respondents argument is that the Provincial Council is a subordinate body of the Republic and it is maintained by the funds allocated to it by the budget of the Republic and therefore the officers of the Provincial Council are officers paid by the Republic.

The Provincial Councils were established by the 13<sup>th</sup> Amendment of the Constitution to decentralize certain powers within the unitary state.

In the case of *Wijewardana V Director of Local Government and others* [2004] 1 Sri L R 179 Amaratunga, J. held that;

*"A Provincial Council is a subordinate body established for the purpose of devolving some of the powers of the centre within the framework of a unitary State."*

The Supreme Court in a Fundamental Rights application where a question of law whether the Supreme Court has jurisdiction under Article 126 on the basis that "executive or administrative action" includes the acts or omissions of a Provincial Council or its officers, it has been held at page 362 that;

*In its determination on the Bills for the enactment of the 13th Amendment and the Provincial Councils Act, this Court held that such powers have been conferred by way of "devolution" or "delegation" of "Central Government powers" within the framework of the Unitary State postulated, by Article 2 of the Constitution. Having examined Article 154C and the relevant provisions, the majority of the Court said -*

*". . . There can be no gainsaying the fact that the President remains supreme or sovereign in the executive field and the Provincial Council is only a body subordinate to him."*

*In re Thirteenth Amendment to the Constitution and the Provincial Councils Bill (4).*

*I have, therefore, no doubt that the impugned acts constitute "executive or administrative action" within the ambit of Article 17 of the Constitution, which this Court has jurisdiction to review*

*under Article 126. ([1992] 2 Sri L R 356 Parameswary Jayathevan V. Attorney-General and others)*

At page 163 Court further held that;

*I would, however, conclude my opinion on this question with the observation that under the 13th Amendment, the Republic of Sri Lanka alone is sovereign and Provincial Councils have been established for the purpose of devolving some of the powers exercised by the Centre and they are no more than components of the Republic, created for that purpose. The status of a Provincial Council is, therefore, not analogous to that of the State in fundamental rights cases. However, the question whether relief may be granted against the Provincial Council alone on account of an infringement of fundamental rights by "executive or administrative action" within its area can arise for decision in an appropriate case in which event, this Court will express its opinion thereon.*

The Provincial Council being a subordinate body or a component of the Republic and is being maintained by the state funds, the officers of the Provincial Council are public officers within the meaning of the Article 170 of the Constitution.

The Supreme Court observed in the case of *Wijewardene v. Director General of Local Government* (supra) at page 182 that;

*Article 170 of the Constitution defines a public officer as a so person holding any paid office under the Republic. A Provincial Council is a subordinate body established for the purpose of devolving some of the powers of the Centre within the framework of a Unitary State. In re the Thirteenth Amendment to the*

*Constitution* <sup>(1)</sup>. *A Provincial Council is a 'component of the Republic'. Jayathevan v the Attorney General. Therefore any person holding a paid office even under a Provincial Council is a person holding a paid office under the Republic and accordingly is a public officer within the meaning of the Constitution*

The Article 55(5) of the Constitution (as it was then) excluded the jurisdiction of the Court; other than the Supreme Court in an application under paragraph (1) of the Article 126; investigating in to the correctness of the decision of the Cabinet of Ministers, a Minister, the Public Service Commission, a Committee of the Public Service Commission, or a Public Officer in regard to any matter concerning the appointment, transfer, dismissal or disciplinary control of a public officer.

It has been held in the case of *Ktugampola v. Commissioner General of Excise* [2003] 3 Sri L R 207 at page 210 that;

*This aforesaid Article 55 (5) and 61A of the said amendment precluded the correctness of a decision being investigated into upon except by the Supreme Court of Sri Lanka, which had sole jurisdiction to inquire into this matter. No claim has been made in this case by the petitioner to the fact that the person who made the promotion had no legal authority to make such decision. In other words, the only grounds upon which the writ jurisdiction could be sought under circumstances where a challenge was being made regarding the promotion (and/or appointment, transfer etc.) was where the person who made the impugned decision did not have any legal authority to make such decision. (Abeywickrema v Pathirana (1)- Gunaratne v Chandrananda de Silva (2) Kotakadeniya v Kodituwakku (3) In considering the writ jurisdiction of this Court, it is important to observe that Article 140 of the Constitution*

*stipulates that the Court of Appeal may issue writs "subject to the provisions of the Constitution". Therefore the ouster clauses contained in ordinary legislation would not effectively restrict or preclude the jurisdiction granted by Article 140 of the Constitution. Nevertheless the restriction contained in Article 55 (5) and the Amended Article 61 A as these are ouster clauses stipulated in the Constitution itself, the powers of this Court would be restricted by these provisions contained in the Constitution. It was held in the case of Atapattu v People's Ban (4) Bandaranayake v Weeraratne (5) that the ouster clauses contained in the Constitution would bar jurisdiction that has been granted within the Constitution and would therefore such ouster clause adverted to above would be a bar to the entertaining of writ applications to invoke the writ jurisdiction by this Court.*

Under these circumstances, we see no reason to interfere with the finding of the learned High Court Judge that the Provincial High Court has no jurisdiction to inquire in to, to express an opinion or to question in any manner on a dismissal of a provincial public officer.

Accordingly, we dismiss this appeal without cost.

Judge of the Court of Appeal

H.C.J.Madawala J.

I agree.

Judge of the Court of Appeal