

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

*In the matter of an Application for a  
mandate in the nature of Writ of  
Certiorari in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

C A (Writ) Application No. 401 / 2015

C A (Writ) Application No. 402 / 2015

C A (Writ) Application No. 403 / 2015

C A (Writ) Application No. 404 / 2015

C A (Writ) Application No. 405 / 2015

C A (Writ) Application No. 406 / 2015

C A (Writ) Application No. 407 / 2015

C A (Writ) Application No. 411 / 2015

C A (Writ) Application No. 412 / 2015

C A (Writ) Application No. 413 / 2015

W A Albert,

Udakalagama,

Hungama.

(Petitioner in Application No. 401/2015)

H K Dayaratne,  
'Ruwani',  
Dalawella.

(Petitioner in Application No. 402/2015)

Daniel Vidanapathirana,  
'Vikirana',  
Dewalagama,  
Radawala,  
Matara.

(Petitioner in Application No. 403/2015)

J P Muthuhetti,  
No. 226/55<sup>c</sup>,  
Richmond Hill,  
Galle.

(Petitioner in Application No. 404/2015)

M A Dharmadasa,  
8/72,  
Finance Watta,  
Hathbodiya,  
Beliatta.

(Petitioner in Application No. 405/2015)

U R N Vaidayanatha,  
'Sanasuma',  
Bogaha Junction,  
Beragala Colony,  
Ambalantota.

(Petitioner in Application No. 406/2015)

S K Karunaratne,  
25, Gonamulla Junction,  
Galle.

(Petitioner in Application No. 407/2015)

Umagiliyage Sarath Wickramatilaka,  
No. 16B,  
Pituwala Road,  
Elpitiya.

(Petitioner in Application No. 411/2015)

V A Piyadasa,  
'Pasannie',  
Omasa,  
Walasmulla.

(Petitioner in Application No. 412/2015)

K Jayasena,  
'Sanasuma',  
Pathegama South,  
Kottegoda.

(Petitioner in Application No. 413/2015)

**PETITIONERS**

-Vs-

1. Chief Secretary,  
Southern Province,  
Office of Chief Secretary,  
S H Dahanayake Mawatha,  
Galle.
2. Secretary (Education)  
Provincial Ministry of Education,  
Southern Province,  
Ground Floor,  
Dakshina Paya,  
Labuduwa,  
Akmeemana,  
Galle.
3. Director,  
Provincial Department of Education,  
Southern Province,  
Upper Dixon Road,  
Galle.
4. Director General of Customs,  
Sri Lanka Customs,  
No 40, Main Street,  
Colombo 11.

(A Respondent only in C A Writ Application No. 411/2015 and No. 412/2015)

**RESPONDENTS**

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

**P. Padman Surasena J**

Counsel: Chula Bandara for the Petitioner

Vikum de Abrew, DSG with Indula Ratnayake SC for the Respondents in case No. C A 401/ 2015 - C A 407/ 2015 & C A 413/ 2015

Suranga Wimalasena SSC for the Respondents in case No. C A 411/ 2015 & C A 412/ 2015

Argued on: 2016-06-29 and 2016-07-20

Decided on: 2016-10-11

**JUDGMENT**

**P Padman Surasena J**

When these cases were taken up for argument on 2016-06-29 as well as on 2016-07-20, all the parties agreed that the issues to be decided by this Court in respect of the cases namely,

C A (Writ) Application No. 401 / 2015,

C A (Writ) Application No. 402 / 2015,

C A (Writ) Application No. 403 / 2015,

C A (Writ) Application No. 404 / 2015,

C A (Writ) Application No. 405 / 2015,

C A (Writ) Application No. 406 / 2015,

C A (Writ) Application No. 407 / 2015,

C A (Writ) Application No. 411 / 2015,

C A (Writ) Application No. 412 / 2015,

C A (Writ) Application No. 413 / 2015,

are the same, and hence they agreed that one judgment in respect of all these cases would suffice. Hence this judgment must apply to all the cases referred to above.

Petitioners are retired public officers. It has transpired that the Petitioners had preferred an appeal to the Administrative Appeals Tribunal (AAT) against their being promoted on super-numerary basis. While the said appeal was pending, the Petitioners upon reaching the retirement age, had retired from public service. The Administrative Appeals Tribunal had

allowed their appeal by its order dated 2013-09-04 directing that the word "super-numerary" in their promotion letters be removed thus converting their promotions to permanent posts.

The Petitioners have thereafter made applications to obtain Motor-Vehicle Permits on concessionary terms under Trade and Investment Policy Circular No. 01 / 2013 dated 2013-08-02.

It is to be noted and highlighted the fact that the Petitioners have submitted these applications for Motor-Vehicle permits under Trade and Investment Policy circular No. 01/2013 dated 2013-08-02 to obtain motor vehicles on concessionary terms, only in the year 2015, which is a date very much after their retirement.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by the letters marked and produced in this proceedings, had recommended to the 1<sup>st</sup> Respondent that the Petitioners be issued with the vehicle permits. Consequently, 1<sup>st</sup> Respondent had issued vehicle permits in the name of the Petitioners. The said permits have been marked and produced in these proceedings.

The 1<sup>st</sup> Respondent thereafter, by the letters marked and produced in this proceedings has informed the Petitioners that the said vehicle permits issued to them have been cancelled.

It is the submission of the learned counsel for the Petitioners that the issuance of the said letters cancelling the said vehicle permits are unreasonable, arbitrary and against the rules of natural justice.

Learned counsel for the Petitioner further submitted that the Petitioners, when they were issued with the said permits, had a legitimate expectation that they would be entitled to import a motor-vehicle under the said concessionary terms on the said permits.

The Petitioners have prayed from this court *inter alia*, that a mandate in the nature of writ of Certiorari be issued to quash the decisions contained in the said letters issued by the 1<sup>st</sup> Respondent cancelling the said vehicle permits already issued to the Petitioners.

It is the position of the Respondents that the Director General, Department of Trade and Investment Policy by the letters marked and produced in this proceedings, had informed the 1<sup>st</sup> Respondent that the relevant vehicle



permits had been issued contrary to the regulations contained in the circulars of the Department of Trade and Investment Policy.

Further the Director General of Department of Trade and Investment Policy had informed the Chief Secretary of the Southern Province, that if motor-vehicles had been imported on the said vehicle permits, such motor-vehicles would not be qualified for the concession granted under the circular bearing No. 01 / 2013.

The Petitioners have based their applications to obtain permits for import of motor vehicles on concessionary terms on the Trade and Investment Policy circular No. 01/ 2013 dated 2013-08-02. Thus it would be necessary to examine whether this circular has any application to the Petitioners.

It could be seen in the first paragraph of this circular itself, that this circular applies with effect from 2013-08-05 in respect of officers in active service (නනතුරුවල නිරතවන නිලධාරීන්).

It could be seen that there had been a letter dated 2008-03-04 by the Ministry of Finance and Planning which had amended the then existing circular No. 01 making the public servants who are employed on a super -

numerary basis also eligible to apply for such vehicle permits under the then circular dated 2007-03-30.

It was the position of the Petitioners, that the Public Service Commission has informed them by the letter dated 2014-09-05, that their appointments to class 2 posts on super-numerary basis have been amended making them as having been appointed to Class 2 posts (Permanent posts as opposed to super-numerary posts) in SLEAS with effect from 2000-06-26. It is their position that they therefore became eligible to apply for vehicle permits in terms of that circular (i.e. the circular No. 01 dated 2007-03-30 as amended by the letter dated 2008-03-04).

The Petitioners have failed to establish that the said circular above referred to, was still in force when they submitted their applications for vehicle permits. On the contrary they have specifically based their applications on Trade and Investment Policy circular No. 01/ 2013 dated 2013-08-02, and not on the circular that was applicable in 2007/2008.

Furthermore it could be seen that the information the Petitioners had supplied in their applications are not factually correct. Despite the fact that the Petitioners are retired officers, they have given their present designation, official address, official telephone number, the place of work etc, to give an impression that they are officers serving in active service for whom the said circular applies. Thus it is clear that the Petitioners are not

entitled by any yardstick to apply for motor vehicle permits under Trade and Investment Policy circular No. 01/ 2013 dated 2013-08-02.

The fact that the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents had recommended to the 1<sup>st</sup> Respondent that the Petitioners be issued with motor vehicle permits and the subsequent issuance of those permits in the name of the Petitioners are manifestly illegal.

If this court is to quash the decision of the 1<sup>st</sup> Respondent cancelling the issuance of the said vehicle permits referred to above (which issuance is illegal) all what this court does is facilitating the continuance of an illegal activity unabated.

By the receipt of these vehicle permits from the authorities, the Petitioners would have got an expectation. That expectation has to be termed as an illegitimate expectation rather than a legitimate expectation. Thus all what the Petitioners have established before this court is that they have had an illegitimate expectation and not a legitimate expectation.

An expectation whose fulfillment requires that a decision maker should make an unlawful decision, cannot be a legitimate expectation. Thus it is necessary that the fulfillment of the legitimate expectation, breach of which is complained of, must be within the powers of the relevant public authority.

Although the Petitioners have complained to this court that they were not heard before the cancellation of their permits the 1<sup>st</sup> Respondent is under

no duty to give the Petitioners a hearing before he declares any manifestly illegal activity a nullity. This is because, no amount of causes could change the illegal status of such an action and that the relevant authority cannot exercise any discretion to decide whether such an action should or should not be declared a nullity.

In these circumstances it is not difficult for this court to conclude that there is no merit in these applications. Hence all the following applications namely C A Writ Applications No. 401/2015 , 402/2015, 403/2015, 404/2015, 405/2015, 406/2015, 407/2015, 411/2015, 412/2015, 413/2015 are hereby dismissed but without costs.

**JUDGE OF THE COURT OF APPEAL**

**Vijith K. Malalgoda PC J**

I agree,

**PRESIDENT OF THE COURT OF APPEAL**