

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

Ahamed Lebbe Mohamed Mukthar,  
General Secretary,  
Sri Lanka Educational Administrative  
Service Union,  
Eastern Province,  
478 A/4, Alim Road,  
Saithamaruthu - 16

CA (WRIT) 212/2016

**Petitioner**

**Vs**

01. H.E.M.W.G. Dissanayake  
Secretary,  
Provincial Public Service Commission,  
Eastern Provincial Council,  
Eastern Province,  
Trincomalee.

And Others

**Respondents**

C.A. Application (Writ) No.212/2016

BEFORE : VIJITH K. MALALGODA PC J (P/CA)  
S. THURAIRAJA (PC) J

COUNSEL : U.L. Ali Zaky for the Petitioner  
Pubudini Wickramaratne for the 1<sup>st</sup> and 2<sup>nd</sup>  
Respondents  
Arjuna Obeysekera SDSG with  
D. Kaneshayogan SC for the 3<sup>rd</sup> and 4<sup>th</sup>  
Respondents

ARGUED AND  
DECIDED ON : 17.10.2016

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**VIJITH K. MALALGODA PC J (P/CA)**

The petitioner's position in this case was entirely depended on the service minute which is produced marked 'P10' to the petition. The petitioner's position is that according to the item 8 in Appendix 5 of the service minute for the Post of Zonal Director of Education the method of selection should be by the Provincial Education Authorities. However his complaint was that the Provincial Public Service Commission of the Eastern Province had called for applications for the said post and advertised the Zonal Director of Education Post in Ampara division. In support of his position the learned Counsel had filed the similar notice issued by the Uwa Provincial Council when they called for the Zonal Director of Education Post and the said application had been issued by the Secretary to the Ministry of Education of the Uwa Provincial Council.

The learned Senior Deputy Solicitor General appearing for the 3<sup>rd</sup> and 5<sup>th</sup> respondents and the learned Counsel appearing for the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents raised number of preliminary objections. Out of their objections raised, we observe that according to the provisions of the Provincial Councils Act the appointments to the Provincial Councils are vested with the Governor of that province. This position is clear under Section 32(1) of the said Act and under Section 32(2) of the said Act the Governor may delegate such powers to the Provincial Public Service Commission. Under Section 32 (2)(a) the said powers delegated to the Provincial Public Service Commission may delegate to the Chief Secretary or any officer of the Provincial Public Service of that province. As observed by this Court even though the service minute may require the method of selection should be by the Provincial Education Authorities what the Provincial Council has to follow is the provisions in the Provincial Councils Act and under the provisions of Section 32 if there is a provincial appointment, the appointment has to be governed by Section 32 of the Provincial Councils Act and therefore the appointing authority of the said province is the Provincial Governor and if he has delegated such powers to the Provincial Public Service Commission then the appointing authority is the Provincial Public Service Commission. In the present case it is clear that the Governor had appointed the Provincial Public Service Commission and in the said circumstances, the appointing authority should be the Provincial Public Service Commission and when considering this position placed before this Court we observe that the impugned decision which was challenged before this Court had been issued by following the correct provisions of the Provincial Councils Act by the Provincial Public Service Commission.

Considering the said submissions we see no merit in this application and therefore we refuse notice in this application.

PRESIDENT OF THE COURT OF APPEAL

**S. THURAIRAJA (PC) J**

I agree.

JUDGE OF THE COURT OF APPEAL

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