

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 in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

C A (Writ) Application

No. 218 / 2016

Ariyasinghe Violet,

President,

Wayamba National College of Education,

Bingiriya.

PETITIONER

-Vs-

1. W M Bandusena,
Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.

2. Akila Viraj Kariyawasam,
Minister of Education,
Ministry of Education,
Isurupaya,
Battaramulla.

RESPONDENTS

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

P. Padman Surasena J

Counsel: Darshana Kuruppu for the Petitioner.

Janak de Silva DSG for Respondents.

Written submissions of the Petitioners not filed.

Written submissions of the Respondents filed on: 2016 - 10 - 18

Decided on: 2016 - 11 - 29

ORDER

P Padman Surasena J

The Petitioner is a class 2 - 1 graduate teacher of Sri Lanka Teacher Education Service who is serving at the Wayamba National college of Education-Bingiriya.

The Petitioner in this application seeks to challenge the decision of the 1st Respondent transferring her to the National College of Education Peradeniya, and thereafter to the Teacher Center in Bibile, as reflected in the document produced marked and **P 9** and **P 10**.

When this case was supported by the learned counsel for the Petitioner on 2016-07-20 this court issued an interim relief as prayed for by the

Petitioner in prayer IV of her petition, suspending the decision to transfer the Petitioner. This Court, since the Respondents were absent on the date of supporting this case only made this order valid for two weeks, as required by the Supreme Court Rules 1990.

On the notice returnable date (i.e on 2016-08-01) learned Deputy Solicitor General appearing for the Respondents informed court that he would be taking up a preliminary objection to the maintainability of this case.

Learned Deputy solicitor general has thereafter filed limited objections for that purpose.

Learned counsel for both parties, when this case was taken up before this court for inquiry into the said objection, agreed to file written submissions on the said preliminary objection raised by the Respondents and requested court to decide on the said preliminary objection on the written submissions intended to be so filed by the parties. Learned Deputy Solicitor General has pursuant to that, has filed written submissions. However the Petitioners have not filed any written submissions.

It is the position of the Respondents that this application cannot be maintained in view of Article 61 A of the Constitution which is as follows,

"..... subject to the provisions of paragraph (1), (2), (3), (4) and (5) of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this chapter or under any other law....."

The judgments relied upon by the learned Deputy Solicitor General namely Katugampola Vs. Commissioner General of Exercise and others (2003(3) S L R 207) which was decided in 2003, Rathnasiri and others Vs. Ellawala and others (2004 (2) S LR 180) which was decided in 2004 and Dissanayake Vs. Salahudeen and others. C A 250/ 2013 and 251/ 2013 (decided on 2014-02-12) which was decided in 2014 show that this Court has consistently held that the provisions in Article 61 A ousts the writ jurisdiction of this Court and grants exclusive jurisdiction to the Supreme Court to hear and determine all such matters coming under the scope and ambit of that Article. This court in all the above cases without any hesitation has upheld the preliminary objection raised on behalf of the Respondents in those cases that the ouster clause in Article 61 A would,

beg bar to entertain those writ applications. The preliminary objection taken up on behalf of the Respondents in this case is also the same.

Petitioner has not adduced any material with regard to this preliminary objection for the consideration of this Court.

We see no reason to deviate from that line of judgments. We therefore uphold the preliminary objection raised by the learned Deputy Solicitor General on behalf of the Respondents and dismiss this application in limine.

Application dismissed in limine.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL