

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

B.A Jinapala Amarasinghe

No.192, Godawela,

Polgahawela

**Petitioner**

Vs.

**C.A Application No: 354/2012**

- 1 The Secretary.  
Ministry of Public  
Administration & Home Affairs,  
Independence Square,  
Colombo 07.
- 2 The District Secretary,  
Kurunegala.
- 3 Divisional Secretary,  
Maspotha.
- 4 H.M Sirisena  
Maspotha Watte,  
Maspotha

- 5 Public Service Commission  
No.177, Nawala Road,  
Narahenpita,  
Colombo 05.
- 6 The Secretary,  
Public Services Commission,  
No.177, Nawala Road,  
Narahenpita,  
Colombo 05.
- 7 Administrative Appeals Tribunal,  
No.5, Dudley Senanayake Mw,  
Colombo 08.
- 8 The Secretary,  
Administration Appeals  
Tribunal,  
No.5, Dudley Senanayake Mw,  
Colombo 08.

**Respondents**

**BEFORE** : L.U Jayasuriya J.  
Deepali Wijesundera J.

**COUNSEL** : Chula Bandara for the Petitioner

Janak de Silva Senior DSG for the Respondents

**ARGUED ON** : 19<sup>th</sup> May, 2016

**DECIDED ON** : 6<sup>th</sup> December, 2016

**L.U Jayasuriya J.**

The Petitioner is seeking mandates in the nature of writ of Certiorari to quash:

- a) The decision of the formal disciplinary inquiry which is contained in P7
- b) The decision of the 1<sup>st</sup> Respondent to terminate the Petitioner's Services produced marked P8.
- c) The decision of the 1<sup>st</sup> Respondent to dismiss the Petitioner from service of "Grama Seva Niladhari" produced marked P9.
- d) The decision of the Public Service Commission to dismiss the Petitioner's Appeal produced marked P10.
- e) The order of the Administrative Appeals Tribunal produced marked P12.

The petitioner has joined the Samurdhi Authority of Sri Lanka as a Samurdhi Niyamaka with effect from 08.11.1999 and he was absorbed to the Service of Grama Niladhari Grade II from 02.05.2000.

On 17.05.2000, the Assistant Divisional Secretary of Alawwa has informed the Petitioner that a preliminary investigation with regard to the charge of producing a fraudulent Birth Certificate when the petitioner was appointed to the Government Service has been commenced.

At the preliminary inquiry, the Additional Registrar Kurunegala has given evidence and had stated that he had by his letter dated 31.06.2004 (P16) addressed to the District Secretary of Kurunegala indicating that the birth certificate bearing no 6941(P2) where the date of birth recorded as 21.06.1956 was correct and the certificate bearing 6941 where the date of birth reflects as 21.06.1960, was a false certificate.

The petitioner in his declaration made under section 21 of the W & O.P Fund Ordinance had on page 2 declared that his date of birth as 21.06.1960. He had entered the said false date of birth, 21.06.1960, in the History Sheet and had signed it. It had also been signed by the Administrative officer on behalf of the Maspotha District Divisional Secretary.

According to the document produced marked P15 at the inquiry the Petitioner had certified as a true copy on the reverse of the fraudulent birth certificate where the date of birth appears as 21.06.1960.

The Petitioner had also certified as a true copy on the reverse of his genuine birth certificate bearing No. 6941 being the date of birth as 21.06.1956 produced marked P8 at the inquiry. Administrative officer W.M Wijesinghe has testified at the inquiry to the effect that both the birth certificates are found in the personal file of the Petitioner.

At the inquiry held against the Petitioner he was found guilty of all four charges leveled against him. Having considered the disciplinary inquiry report, the 1<sup>st</sup> Respondent had terminated the services of the Petitioner by the letter produced marked P8. The Public Service Commission and the Administrative Appeals Tribunal had dismissed the respective appeals lodged by the Petitioner.

At the hearing before this court, the learned Senior D.S.G took up a preliminary objection to the effect that the jurisdiction of this court is ousted by Article 61A of the Constitution. It was held in **Rathnasiri and Others Vs Ellawala and Others 2004 2SLR 180** that Article 61A seeks to oust the jurisdiction of courts to review determination of the PSC except where there has been a violation or imminent violation of a fundamental right. The ambit of the Article 61A is discussed in detail in the above mentioned judgment. On that ground alone the application of the Petitioner can be dismissed.

The other objection taken up by the learned Senior D.S.G is that the petitioner had not made members of the Public Service Commission and the Administrative Appeals tribunal (Who took the decision) parties to this application.

In **Wijerathna Vs Ven. Dr. Paragoda Wimalawansa Thero** (S.C Appeal No.84/2007; S.C Minutes 14.10.2011) the Supreme Court held that:

“The first rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the Application. If it is a body of persons whose decision or exercise of power is sought to be quashed each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made Respondent. The failure to make him or them Respondents to the application is fatal and provides in itself a ground for the dismissal of the application in limine.”

As the Petitioner has failed to name necessary parties to the Application, this court upholds the preliminary objections raised by the learned Senior D.S.G in forming a ground to dismiss the Application.

This court is of the view that the writ jurisdiction of this court is ousted by Article 61A of the Constitution with regard to this matter.

In view of the aforementioned reasons the application is dismissed with cost fixed at Rupees 25,000/-

**JUDGE OF THE COURT OF APPEAL**

**Deepali Wijesundera J.** :

I Agree.

**JUDGE OF THE COURT OF APPEAL**