

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

*In the matter of an application for an  
order in the nature of Writ of Certiorari  
and Mandamus in terms of Article 140 of  
the Constitution of the Democratic  
Socialist Republic of Sri Lanka*

CA (Writ) Application No. 10/ 2018

1. Annarajah Senthuran,  
Vadduvini Lane,  
Inuvil West,  
Inuvil,  
Jaffna.
  
2. Sathiyanesan Nilojan,  
No 32/2,  
1<sup>st</sup> Lane,

Temple Road,  
Jaffna.

3. Vallipuram Kugenthiran,  
Kaithady South,  
Kaithady.

4. Sivagnanam Gnanakumar,  
Vattapalai,  
Mulliyawalai,  
Mullaithivu.

5. Sritharan Hariharan,  
Ulavar Road,  
Thavady North,  
Kokuvil.

6. Kandasamy Mauran,  
No 159,

Ananthanagar,

Kilinochchi.

**PETITIONERS**

-Vs-

1. J J Rathnasiri,

Secretary,

Ministry of Public

Administration and

Management,

Colombo 07.

2. Public Service Commission,

No. 177,

Nawala Road,

Colombo 05.

3. Secretary,

Public Service Commission,

No 177,  
Nawala Road,  
Colombo 05.

4. Dharmasena Dissanayaka,  
Chairman,  
Public Service Commission.

5. Professor Hussain Ismail,

6. Dhara Wijayatilake,

7. Dr. Prathap Ramanujam,

8. V Jegarasasingam,

9. Santi Nihal Seneviratne,

10. S Ranugge,

11. D Laksiri Mendis,

12. Sarath Jayatilaka,

All Members of the Public  
Service Commission,

No 177,

Nawal Road,  
Colombo 05.

13. B Sanath Pujitha,

Commissioner General of  
Examinations Organization &  
Foreign Examinations Branch,  
Department of Examinations,  
Pelawatta,  
Battaramulla.

14. Hon. Mangala Samaraweera,

Minister of Finance & Mass  
Media,

The Secretariat,

Lotus Road,

Colombo 01.

15. Dr. R H S Samaratinga,

Secretary,  
Ministry of Finance,  
The Secretariat,  
Lotus Road,  
Colombo 01.

16. Hon. Attorney General,  
Attorney General's  
Department,  
Colombo 12.

**RESPONDENTS**

**Before: P. Padman Surasena J (P/CA)**

**A.L Shiran Gooneratne J**

Counsel: E Thambaiah for the Petitioners.

Zuri Zain SSC for the Respondents.

Supported on : 2018 - 01- 16 and 2018 - 01 - 22

Decided on : 2018 - 01 - 26

ORDER

**P Padman Surasena J (P/CA)**

The Petitioners are candidates who have sat for the open/ limited competitive examinations for recruitment to class III of the Sri Lanka Accountants' service - 2016. The Gazette notification relating to the conduct of this examination has been produced marked **P 13**.

Commissioner General of Examinations who is the 13<sup>th</sup> Respondent named in this application has invalidated the above examination held on 22<sup>nd</sup> 23<sup>rd</sup> and 29<sup>th</sup> April 2017 and has notified that the said examination would be conducted again. The newspaper advertisement setting out the above position has been produced marked **P 24**.

By the newspaper advertisement produced marked **P 25** the 13<sup>th</sup> Respondent has notified that the steps have been taken to conduct the said exam at Colombo and Jaffna towns on 27<sup>th</sup> 28<sup>th</sup> January and 3<sup>rd</sup> February 2018.

Petitioners in this application have prayed for,

- I. a writ of Certiorari to quash the said decision invalidating the examination held previously
- II. a writ of Certiorari to quash the decision to hold a fresh examination on the 27<sup>th</sup> 28<sup>th</sup> January and 3<sup>rd</sup> February 2018
- III. a writ of Mandamus against the 13<sup>th</sup> Respondent to send the results (marks) of the previously held examination to all the candidates including the petitioners who sat for the said examinations
- IV. a writ of Mandamus against the 2<sup>nd</sup> to 12<sup>th</sup> Respondents to select and appoint the candidates who had 'obtained high marks of merit' on the said previously held examination for the post of class III of the Sri Lanka Accountant Service 2016 / 2017
- V. a writ of Mandamus against the 14<sup>th</sup> and 15<sup>th</sup> Respondents to assure the selected candidates for the recruitment to class III of the Sri Lanka Accountant Service



VI. an interim relief to stay the validity or operation of notices marked **P 24** and **P 25** and to stay conducting of the written examination scheduled to be held on 27<sup>th</sup> 28<sup>th</sup> January and 3<sup>rd</sup> February 2018 as per said advertisement until the final determination of this application.

Learned Senior State Counsel upon being given notice by the Petitioners of this application was present in Court on 2018-01-16 when the learned counsel for the Petitioner first supported this application. Having obtained time to obtain instructions from the Respondents learned Senior State Counsel on the next day i.e. on 2018-01-23 brought to the notice of this Court relevant documents which showed the basis for the said cancellation. Learned Senior State Counsel subsequently filed these documents in this Court. Learned counsel for the Petitioners advanced the following arguments,

- I. that the 13<sup>th</sup> Respondent has no power to invalidate the said examination and to hold fresh examinations
- II. that it is the Public Service Commission which has the power to cancel the said exam as per clause 1 of the Gazette notification bearing No. 1, 992 dated 2016-11-04 produced marked **P 13**

- III. that there were no irregularities reported to have been committed during he previously held exam
- IV. that there is no valid reason for the 13<sup>th</sup> Respondent to invalidate the said examination.

The said grounds have been more fully set out by the Petitioners in paragraph 9 of their Petition. It would appear that the fundamental basis for this application according to the averments in the petition is that the issuance of notices marked **P 24** and **P 25** are ultra-wires the powers of the 13<sup>th</sup> Respondent.

This Court perused the documents filed by the learned Senior State Counsel. The said documents show that it is the Public Service Commission which has decided to invalidate the said examination. This is reflected in the letter dated 2017-11-30 addressed to the 13<sup>th</sup> Respondent by the Secretary to the Public Service Commission. Such invalidation has been provided for by clause 1 of the Gazette notification above mentioned. In these circumstances complaint of the Petitioners that the 13<sup>th</sup> Respondent had acted ultra-wires his powers cannot be accepted.

Perusal of the letter dated 2017-11-27 by the 13<sup>th</sup> Respondent addressed to the Secretary Public Service Commission who is the 3<sup>rd</sup> Respondent,

shows clearly that the recommendation made by the 13<sup>th</sup> Respondent to invalidate this examination is not without reasons. Indeed learned Senior State Counsel has tendered for perusal of this Court the report dated 2017-11-20 of the committee appointed to report on the irregularities complained by public. It is on the finding of that report that the Commissioner General of Examinations had recommended invalidation of this examination to the Public Service Commission.

This Court has perused the documents and is satisfied that there is no basis for this Court to issue notices on the Respondents.

Further, conducting a fresh examination cannot be considered as only affecting the Petitioners. There are a lot of other candidates who have sat for the previous examination and are expecting to sit for the fresh examination also. The Petitioners have not made them Respondents to this application. Under those circumstances this Court is unable to gather information as to how the other candidates would be affected by the request of the Petitioners.

The jurisdiction to issue writs in the nature of certiorari and Mandamus which is vested in this Court by virtue of article 140 of the constitution is a

jurisdiction which this Court could decide in its discretion to exercise in a fit case. This Court is not inclined to assist anyone to uphold the validity of any irregularly conducted examination.

In these circumstances this Court decides to refuse issuing notices on the Respondents.

This Application should therefore stand dismissed without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**A.L Shiran Gooneratne J**

I agree,

**JUDGE OF THE COURT OF APPEAL**