

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

In the matter of an application for the grant
of writ of *Certiorari* and *Mandamus* under
Article 140 of the Constitution of Sri Lanka.

Ven Hatharaliyadde Narada,
The Principal and the Chief Incumbent,
Sri Widyawardana Piriwena,
Karadagolla,
Abakotte.

The Petitioner

CA (Writ) Application No: 395/2014 Vs.

1. **Mr. Akila Viraj Kariyawasam,**
Hon. Minister of Education,
Ministry of Education,
3rd Floor,
Isurupaya, Battaramulla.
2. **Mr. W.M. Bandusena,**
The Secretary,
Ministry of Education,
Isurupaya, Battaramulla.
3. **Dodangoda Piyasiri Thero,**
Director General of Education,
Council of Pirivena Education,
Ministry of Education,
Isurupaya, Battaramulla.

4. **H.U. Premathilaka,**
Additional Secretary,
Planning and Performance Review,
Ministry of Education – Pirivena Branch,
Isurupaya, Battaramulla.
5. **G.R. Chandana Kumara Kadigamuwa,**
Deputy Director of Education,
North Western Province I,
Ministry of Education,
Isurupaya, Battaramulla.
6. **Human Rights Commission,**
No. 165,
Kynsey Road,
Colombo 08.
7. **Hon. Attorney General,**
Attorney General's Department,
Colombo 12.

Respondents

Before : A.L. Shiran Gooneratne J.

Counsel : Harshika Samarasekara for the Petitioner.

Manohara Jayasinghe, SC for the Respondents.

Argued on : 20/11/2017

Written Submissions of the Respondent filed on: 02/03/2018

Judgment on : 30/05/2018

A.L. Shiran Gooneratne J.

The Petitioner has invoked the jurisdiction of this Court seeking a mandate in the nature of writ of Certiorari, to quash the determination by the 3rd Respondent to cancel the registration of the Vidyawardhana Pirivena, as contained in letter dated 29/4/1998, marked P7 (a), and the determination by the 3rd Respondent, upholding the said cancellation in appeal as contained in letter dated 31/07/1998, marked P11, and writ of Mandamus, to compel the 1st to 5th Respondents to re-register the Pirivena No. 2/PIRI/KU/32, and to appoint the Petitioner as the Principal of the said Pirivena with back wages from 21/07/1998 to date.

It is observed that, the Petitioner been aggrieved by the said decision dated 29/04/1998, marked P7 (a), has filed CA/Writ/ 1339/98, to quash the same order. However, due to a criminal case pending against the Petitioner on the same issue, the Petitioner sought permission of Court to withdraw the said case with the liberty to file a fresh application.

The State Counsel appearing for the Respondents have raised a preliminary objection to the Petition that, the Petitioner has failed to certify the copies of the documents annexed to the Petition and therefore, has failed to comply with rule 3 (1) (a) of the Supreme Court Rules of 1990, and contends that it is a fatal

irregularity upon which the Court must necessarily dismiss this application. The Respondents have pleaded to the said irregularity in their Petition.

Rule 3(1) (a) of the Court of Appeal (Appellate Procedure) Rules 1990, states that;

“Every application made to the Court of Appeal for the exercise of the powers vested in the Court of Appeal by Articles 140 and 141 of the constitution shall be by way of Petition, together with an affidavit in support of the averments therein, and shall be accompanied by the originals of documents material to such application (or duly certified copies thereof) in the form of exhibits, and where a Petitioner is unable to tender any such document, he shall state the reason for such inability and seek the leave of Court to furnish such document later; where the Petitioner fails to comply with the rule the Court may, ex mero motu or at the instance of any party, dismiss such application.”

In the instant case a large number of marked documents are annexed to the Petition, which are photo copied documents, however, not duly certified as true copies by an Attorney-at-Law. It is observed that the impugned documents marked P7 (a) and P11 are annexed marked “True Copy” without identifying the person who certified the said document’s as true copies. The said irregularity has deprived the Court of its reliance on documentary evidence, which is essential to deal with the merits of this application.

The State Counsel submits that none of the marked documents served on the Respondents are certified copies as required by the said Supreme Court Rule. It is observed that several documents which are material to this application are not duly certified and the failure to comply to the said requirement is a violation of the provisions of the Supreme Court Rules. The Petitioner has also failed to seek the leave of Court to submit such documents even at a later stage explaining the reasons for such inability.

In *Perera Vs. Perera 2001 3 SLR 30*, the Court cited with approval C.A. Application No. 18/91, decided on 26/11/1991, where Justice Gero on the question of whether the imperative provisions of the Supreme Court Rules where by a Petition shall be accompanied by originals of documents material to the action and duly certified copies need to be filed as exhibits held;

“ the view that where the documents are essential and when the court is required to go into the merits of the application, non compliance of requirements regarding the tendering of such documents without satisfactory explanation for such non compliance is a violation of the provisions of the Supreme Court Rules and was fatal to the application”.

As submitted by the State Counsel, the Court has taken a similar view on numerous occasions where the Petitioner has failed to comply with rule 3(1) (a) of the Supreme Court Rules which has been considered as a fatal irregularity, where the Court must necessarily dismiss the application.

In the case of *Urban Development Authority Vs. Ceylon Entertainments Limited and others 2004 (1) SLR 95* the court held that;

“the appellant failed to file in the Court of Appeal duly certified copies of material documents as required by Rules 3(b) read with Rule 3(a) of the Supreme Court Rules. It is settled law that Rule 3 of the Supreme Court Rules must be adhered to.”

It is also noted that, in spite of the undertaking to file written submissions by 02/03/2018, the Petitioner has failed to do so.

It is mandatory that the Petitioner complied with the requirements of Rule 3(1) (a), of the Court of Appeal (Appellate Procedure) Rules 1990, and the failure to comply as observed, necessitates a dismissal of this application.

Accordingly, the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL