

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 a Writ of Mandamus under
Articles of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

W. Ajith Bandu
Paluwatta,
Ethkandura.

PETITIONER.

C.A. Application C.A. (Writ) 727/2010

Vs.

1. Jayasiri Ruwan Pathirana.
Secretary,
Ministry of Education – Southern
Province.
Shopping Complex, 2nd Floor,
Talbot Town,
Dickson Junction,
Galle.
- 1A. Y. Wicramasiri
Ministry of Education – Southern
Province.
Shopping Complex, 2nd Floor,
Talbot Town,
Dickson Junction,
Galle.
2. Kithsiri Liyanagamage, Provincial
Director of Education.
Provincial Ministry of Education,
Southern Province.
Upper Dickson Road,
Galle.

- 2A. Jayatissa Block,
Director of Education,
Provincial Ministry of Education
Southern Province.
Upper Dickson Road,
Galle.
3. Wijayapala Manawadu
Zonal director, Zonal Education
Office, Elpitiya.
- 3A. U.K. Tilak Manoj Padmalal,
Zonal director, Zonal Education
Office, Elpitiya.
4. I.D. Renuka Priyadarhsanee
Acting Principal,
G/Seevalee Maha Vidyalaya,
Athkandura.

RESPONDENT

Before : E.A.G.R. Amarasekara, J

Decided on : 2018.11.19

Counsel : Mr. Chula Bandara AAL for the Petitioner.
Mr. P.K.W. Wjeratne AAL the 4th Respondent.
Mr. Mithri Amarasinghe Jayathilake SC for the 1st 2nd and 3rd
Respondents

E.A.G.R. Amarasekara, J.

The Petitioner of this application is a father of a student of G/Seevalee Maha Vidyalaya, Ethkandura and the 4th Respondent was the acting Principal of the said

school. The petitioner states that the 4th Respondent was in charge of all the administrative functions including admissions of the children to the school.

In the Year 2009, the Petitioner along with several other parents admitted their children to the year one of the aforesaid school. The Petitioner states that he and other parents were asked to pay Rs. 1750/- each to the school, which he did not pay, but the others paid without getting receipts on the payment being made. Anyhow, this Court observes that no one else has given an affidavit to indicate that it was the 4th Respondent who charged money without issuing a receipt. As per the 4th Respondent's stance, it was a voluntary contribution made to a committee formed by the parents of the 1st year students, which controlled the acceptance and management of funds without interference or involvement of the 4th Respondent. However, the Petition states, that on a complaint (P1) made by the Petitioner, an audit report (P2) was made and the said report recommended disciplinary action against the 4th Respondent. The Petitioner has further stated in his Petition that due to the failure of the authorities to take any action, he with some other parents met the Governor of the Southern Province and complained against the inaction of the authorities. As a result, the Petitioner states that the Governor directed the Provincial Ministry of Education to take necessary action (Vide P1).

However, it is alleged in the Petition that after the receipt of said audit report, which had found a violation of the circular No. 2008/21 issued by the Secretary of Education on School Admission and recommended disciplinary action against the 4th Respondent, the 1st Respondent recalled and attached the 4th Respondent to the Provincial Ministry of Education but after about 3 weeks, even without calling

the 4th Respondent to show cause, the 4th Respondent was sent back to the same school as Acting Principal.

The Petitioner alleges that;

1. The 1st Respondent, in the letter issued to the 4th Respondent transferring her back to the same school, stated that the 4th Respondent had committed said misdeeds due to the ignorance and lack of experience,
2. The 1st Respondent had failed to issue a show cause letter to the 4th Respondent,
3. After receiving the audit Report marked P2, it is the duty of the 1st Respondent to act in terms of the Section 29 of the volume II of the Establishment Code,
4. The 1st Respondent failed and or deliberately refrained from acting under the aforesaid provisions of the Establishment Code by failing to take disciplinary action against the 4th Respondent, which was irregular, illegal, capricious and ultra vires.

The petitioner further states that he sent the letter of demand marked as P3 to the 1st and 2nd Respondents demanding to take actions against the 4th Respondent. While stating in his Petition that this Court has concurrent jurisdiction, the Petitioner pleads that he has not invoked the jurisdiction of this court previously, but is silent with regard to whether he invoked the jurisdiction of the Civil Appeal High court of the Southern Province or not. Anyway, as a relief, the Petitioner has prayed for a writ of Mandamus to compel the 1st Respondent to act according to the aforesaid Section 29 of the volume 11 of the Establishment Code.

The 4th Respondent as stated before has taken up the stance that the alleged collection of money was an act of a committee of parents which is private in nature. She also states that the audit Report (P2) is abnormal, tainted, callous and not of any standing due to the influence exerted on audit officers by the Petitioner through W. Jayarathna, a former teacher of the said school who requested her to appoint him as a Deputy Principal which she declined, and his two brothers W. Piyanarathna, who became the Deputy Principal later on, and W. Nimal, an audit officer of the internal audit department of the Ministry of Education of the Southern Province. She further states that after a malicious media campaign orchestrated by the Petitioner and other interested parties, she was asked to report for the duty at Ministry of Education Southern Province, but after recording a statement she was directed to assume duties as the Acting Principal again. The 4th Respondent has further stated that after recording her statement, the 1st Respondent proceeded to hold an inquiry regarding the matters mentioned in the audit report under Section 29 (3) of the Volume II of the Establishment Code and being satisfied that there was no evidence for disciplinary steps to be taken to frame charges against her, the 1st Respondent did not proceed any further. Thus, she remains absolved. She has annexed the relevant report of the preliminary inquiry as 4R1. She has also mentioned certain incidents that might have given rise to personal animosities between the Petitioner and the 4th Respondent.

The 1st, 2nd and 3rd Respondents have taken up the following preliminary objections;

1. The Petitioner is in violation of the Article 154 P of the constitution by invoking the Jurisdiction of this court by virtue of Article 140, since the jurisdiction is with the provincial High Court Holden in the Southern Province.
2. The Petitioner has not shown any locus standi in this application.

3. This writ application is a futility since the 1st Respondent has already carried out an investigation under and in terms of the aforesaid clause 29 of the Establishment Code.

Among other things pleaded in their statement of objections, 1st, 2nd and 3rd Respondents state, that the 1st Respondent after receiving P2, the audit report related to this application, and two other audit reports (vide IR1, IR2, and IR3) directed the assistant Education Director of the Southern Province to conduct an investigation and report the recommendation thereon to the 1st Respondent (vide IR4). Pursuant to the said direction, it is stated that a team of competent officers attached to the Education Department of the Southern Province conducted an investigation and forwarded the report (IR5) to the 1st Respondent. The 1st Respondent after having examined and given his mind to the recommendation of the said report, IR5, has issued a warning letter (vide IR6)

All the parties have filed their written submissions with regard to the preliminary objections raised by the 1st to 3rd Respondents.

For the following reasons I uphold some of the preliminary objections and dismiss this application.

- 1. Petitioner has not shown any locus standi in this application.**

The Petitioner's allegation is that the 4th Respondent charged money against the aforesaid circular No. 2008/21 issued by the Secretary to the Ministry of Education. The 4th Respondent's position is that those were voluntary contributions made to a committee of parents by the parents and it was not her deed. Whatever the

situation is, the Petitioner has not paid any money and no consequence resulted from such nonpayment. His child was admitted to the school. Therefore, no duty owed to the Petitioner seems to have been breached by the 4th Respondent. No right of the petitioner is violated. There is no evidence annexed to the Petition to show that any other person's rights were violated. Since there was no consequence that affected a right of the Petitioner or a deprivation of a right of the Petitioner due to the nonpayment, it appears, if any monetary contribution was made by a parent, most probably it would have been on a voluntary basis. However, when no duty owed to the Petitioner or a right belonging to the Petitioner is breached, the Petitioner cannot be said to have locus standi to file this action.

II. The writ application of the petitioner is a futility;

The petitioner relies on the Audit Report marked P2. His grievance is that the 1st Respondent failed and deliberately refrained from acting under the Section 29 of the volume 11 of the Establishment Code. The only substantive relief he prayed is a mandate in the nature of Mandamus against the 1st Respondent to compel the 1st Respondent to act according to the Section 29 of the volume 11 of the Establishment code against the 4th Respondent with regards to the contents of P2. The 1st to 3rd Respondent as mentioned before with their statement of objections, have placed material before this court to show, that the 1st Respondent directed the Assistant Education Director to investigate and to report the recommendation to the 1st Respondent (vide 1R4). They have further elaborated that in furtherance of 1R4, competent senior officers attached to the Provincial Education Department of the Southern Province investigated and forwarded the report to the 1st Respondent (vide 1R5) and after considering the said report, 1R5 and its annexures, the 1st Respondent issued a warning letter to the 4th Respondent (vide 1R6). These

materials show that the 1st Respondent has already carried out an investigation under Section 29 of the Establishment Code and issued a warning letter as a disciplinary measure taken against the 4th Respondent. The Petitioner has not amended his Petition to quash the aforesaid warning letter and the aforesaid disciplinary steps taken under Section 29 of the volume 11 of the Establishment Code by the 1st Respondent, if there is any illegality, irregularity or irrationality with regard to the disciplinary measures taken by the 1st Respondent. When the said disciplinary measures have taken place and warning letter is already issued, it is not proper for this court to issue a mandate in the nature of writ of Mandamus to take steps under Section 29 of the volume 11 of the Establishment Code. If this Court grant the relief prayed for, there will be a multiplicity of disciplinary actions on the same incident. This Court shall not issue a mandate in the nature of Writ of Mandamus to do an act again when the 1st Respondent has already done that.

Hence, I dismiss the application of the Petitioner.

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E.A.G.R. Amarasekara,
Judge of the Court of Appeal.