

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

In the matter of an application for mandate  
in the nature of writ of *Certiorari* under and  
in terms of Article 140 of the Constitution  
of the Democratic Socialist Republic of Sri  
Lanka.

**CASE NO: CA/WRIT/292/19**

I.G.L. Jayaweera,  
No. 49, Paniyanduwa,  
Ambalangoda.

**PETITIONER**

**Vs.**

1. Geethani Wijegunasinghe,  
Regional Education Director –  
Ambalangoda,  
Regional Education Office,  
Ambalangoda
2. Nimal Disanayake,  
Provincial Education Director –  
Southern Province,  
Provincial Education Office,  
Upper Dickson Road,  
Galle.
3. Y. Wickramasiri,  
Secretary,  
Ministry of Education – Southern  
Province  
'Dakshinapaya',  
Labuduuwa,  
Galle.
4. Gunadasa Hewawitharana,  
Chairman,

Southern Provincial Public Service  
Commission,  
6<sup>th</sup> Floor, District Secretariate Office  
Complex.  
Kaluwella,  
Galle.

5. Gamini Weerawikrama,  
Secretary.
6. K.K.P.J.K. Siriwardena,  
Member,
7. Daya Witharana,  
Member,
8. Srimal Wijesekara,  
Member,
9. Sunil Dahanayake,  
Member,
10. L.K. Ariyaratne,  
Member,
11. Munidasa Halpandeniya  
Member,

5<sup>th</sup> to 11<sup>th</sup> Respondents, all of  
Southern Provincial Public Service  
Commission,  
6<sup>th</sup> Floor,  
District Secretariate Office Complex,  
Kaluwella,  
Galle.

12. Willie Gamage,  
Governor – Southern Province,  
Governor's Office,  
Lower Dickson Road,  
Galle.

13. R.C. De Soyza,  
Chief Secretary – Southern Province,  
Chief Secretariate Office – Southern  
Province,  
S.H. Dahanayake Mawatha,  
Galle.

14. Prof. Kapila Perera,  
Secretary,  
Ministry of Education,  
'Isurupaya',  
Battaramulla.

15. Justice Jagath Balapatabendi,  
Chairman,

15(a) Indrani Sugathadasa,  
Member,

15(b) Dr. T.R.C. Ruberu  
Member,

15(c) A.L.M. Saleem,  
Member,

15(d) L. Liyanagama  
Member,

15(f) Dian Gomes,  
Member.

15(g) Dilith Jayaweera,  
Member,

15(h) W.H. Piyadasa,  
Member,

15<sup>th</sup> and 15(a) to 15(h) Respondents

All at:

Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

**RESPONDENTS**

Before: **M. T. MOHAMMED LAFFAR, J. and**  
**S. U. B. KARALLIYADDE, J.**

Counsel: Chathura Galhena, instructed by Manoja Gunawardena for  
the Petitioner.

Mahohara Jayasinghe S.S.C., for the Respondents.

Argued on: 09.11.2021.

Written Submissions on: 16.12.2021 (by the Petitioner).  
22.12.2021 (by the Respondents).

Decided on: 20.01.2022.

**MOHAMMED LAFFAR, J.**

The Petitioner in this Application has invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, for the following reliefs:

- (c) A mandate in the nature of writ of *Certiorari*, quashing the suspension of the Petitioner's service by the 3<sup>rd</sup> Respondent by letter dated 06.03.2021 marked P12.
- (d) A mandate in the nature of writ of *Certiorari*, quashing the disciplinary Order of the 3<sup>rd</sup> Respondent dated 18.12.2017 marked P17.
- (e) A mandate in the nature of writ of *Certiorari*, quashing the Order dated 07.09.2018 of the Provincial Public Service Commission, Southern Province marked P20, and
- (f) A mandate in the nature of writ of *Certiorari* quashing the decision of the 11<sup>th</sup> Respondent contained in the letter dated 29.04.2019 marked P22.

## **Factual Matrix**

The Petitioner was appointed as an English Language Assistant Teacher by the Secretary of the Educational Service Committee of the Public Service Commission with effect from 06.04.1988 (P1) to the Galearawa Primary School in the Monaragala District. Accordingly, the Petitioner assumed duties in the said school on 07.06.1988 (P2 and P3). Thereupon, the Petitioner was transferred to Kiribanwewa Maha Vidyalaya, Embilipitiya in the year 1988 and thereafter to Sri Pathi Maha Vidyalaya in Ambalangoda in the year 1991. On 03.07.1995, the Petitioner was transferred to Sri Dhammakusala Primary School within the Ambalangoda Educational Zone (P4). Thereafter, the Petitioner was transferred to Kandegoda Maha Vidyalaya as an Assistant Teacher with effect from 30.11.2011 (P6 and P7). The Petitioner states that a preliminary investigation was initiated against him regarding his period of service at Sri Dhammakusala Primary School.

Subsequently, by letter dated 06.03.2012 marked P12, the Petitioner's services were suspended in terms of the Establishment Code on 12 charges of financial misappropriation by the 3<sup>rd</sup> Respondent. The Petitioner in his letter dated 16.03.2012 dispatched to the Educational Secretary of Southern Province, took up the position that the Petitioner is not coming within the Provincial Educational Service and the Provincial Education Secretary, not being his disciplinary authority, has no authority to suspend his services (P13). However, Educational Secretary of Southern Province has issued the charge sheet dated 04.04.2012 to the Petitioner. The Petitioner raised the same objections in his letter dated 18.04.2012. Despite the said objections, the Educational Secretary of Southern Province, acting as the disciplinary authority of the Petitioner appointed an inquiring officer to conduct a disciplinary inquiry against the Petitioner. After the inquiry being held, the Educational Secretary of Southern Province issued the disciplinary Order dated 18.12.2017 by which the Petitioner was terminated from service with effect from 06.03.2012 on the basis that he was found guilty for 8 charges out of 12 charges (vide P17 and P18).

The Petitioner preferred an Appeal to the Provincial Public Service Commission, Southern Province against the said Order marked P17. Having considered the said Appeal, the Provincial Public Service Commission of the Southern Province, on sympathetic grounds, decided to send the Petitioner on compulsory retirement, with effect from the date of termination (P20). Being aggrieved by the decision marked P20, the Petitioner preferred an appeal to the Governor of the Southern Province on 27.11.2018 which was dismissed by the Governor on 29.04.2019.

### **Contention of the Petitioner**

The Petitioner was appointed to the public service by the Public Service Commission with effect from 06.04.1988, and thereafter, he was transferred to different schools in Uva and Southern Provinces and at no time he was absorbed to the Provincial Public Service by the Public Service Commission of the Southern Province. As such, the contention of the Petitioner was that the Educational Secretary of the Southern Province is not the Petitioner's disciplinary authority.

In the circumstances, the Petitioner states that the suspension letter dated 06.03.2012, issued by the Secretary, Ministry of Education of Southern Province (3<sup>rd</sup> Respondent) marked P12, the letter of termination dated 18.12.2017 issued by the 3<sup>rd</sup> Respondent marked P17, the Order of the Southern Provincial Public Service Commission dated 07.09.2018 marked P20 for a compulsory retirement of the Petitioner and the Order dated 29.04.2019 of the 11<sup>th</sup> Respondent, the Governor of the Southern Province marked P22, dismissing the Appeal preferred by the Petitioner are *ultra vires*, bad in law and illegal. Accordingly, the Petitioner prays that the aforesaid Orders are liable to be quashed.

### **Contention of the Respondents**

The Respondents in their objections categorically stated that the Provincial Educational Secretary who is the 3<sup>rd</sup> Respondent in this Application is the disciplinary authority of the Petitioner. Moreover, the Respondents move for a dismissal of this Application on the basis, *inter alia*, that the Petitioner

failed to challenge the inquiry held against him on the same footing advanced by the Petitioner in this Application, the objection raised by the Petitioner is a technical nature and as per the document marked P23 the Petitioner's services falls within the purview of the Ministry of Education of the Southern Province.

### **Observation and findings**

We heard the learned Counsel on both sides. We have perused the impugned Orders and other materials placed on record as well.

The central issue to be determined in this Application is as to whether the Provincial Educational Secretary (3<sup>rd</sup> Respondent) is the disciplinary authority of the Petitioner.

Admittedly, the Petitioner was appointed to the public service by the Public Service Commission with effect from 06.04.1988. Thereafter, the Petitioner was appointed to the Galearawa Primary School in the Monaragala District. Subsequently, by the document marked P4, the Petitioner was transferred to Sri Dhammakusala Primary School within the Ambalangoda Educational Zone. Having scrutinized the documents tendered by the Petitioner and the Respondents it is abundantly clear that there is no evidence before Court to establish the fact that the Petitioner has been absorbed to the Southern Provincial Public Service.

The attention of this Court is drawn to the letter dated 01.10.2018 marked P27, dispatched by the Regional Educational Director of Ambalangoda to the Assistant Educational Director of Ambalangoda wherein it was manifestly stated that the Petitioner has not been absorbed to the Provincial Public Service.

Furthermore, by the letter dated 28.12.2018, sent by the Secretary of the Ministry of Education of Southern Province to the Educational Director of the Southern Province marked P23 and the letter dated 10.08.2012 dispatched by the Regional Educational Director to the Petitioner marked

P24, it has been substantiated that the Petitioner has not been absorbed to the Provincial Public Service.

The document marked P37 is a letter dated 29.08.2019 sent by the Regional Educational Director of Ambalangoda (1<sup>st</sup> Respondent) to all Principals of the schools within his region requesting to take steps to absorb all teachers who were initially appointed to schools outside the Southern Province.

Taking the totality of the evidence adduced into consideration, it is manifestly clear that the Petitioner in this case continues to be an employee under the Public Service Commission of the Central Government who was his appointing and the disciplinary authority as well.

The contention of the learned Senior State Counsel for the Respondents is that the Petitioner is estopped from taking up the position that he has not been absorbed to the Southern Provincial Council on the basis that the Petitioner had already accepted transfers, salaries, and benefits from the said Provincial Council. It is the considered view of this Court that accepting transfers, salaries, and benefits from the Southern Provincial Council, will not confer authority or power to the said Provincial Council what the latter did not have.

The doctrine of estoppel or waiver cannot in any event be employed to enlarge the powers of a public authority. In Public Law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority power which it does not in law possess. In other words, no estoppel can legitimate an action which is *ultra vires* [vide Prof. Wade, **Administrative Law (Tenth Ed.) at p. 200; Abeywickrema v. Pathirana and Others (1986) 1 Sri LR 120, p. 153** – *per* Sharvananda, C.J.].

I also decline to accept the position advanced by the learned Senior State Counsel that the Petitioner is not entitled to a remedy by a prerogative writ on the footing that the Petitioner failed to raise his said objection at the earliest opportunity. It is evident that the Petitioner in his letter dated 16.03.2012, dispatched to the Educational Secretary of Southern Province,



categorically took up the position that the Petitioner is not coming within the Provincial Educational Service and the Provincial Education Secretary, not being his disciplinary authority, has no authority to suspend his services (P13). Moreover, it is pertinent to be noted that both the Appeals made to the Southern Province Public Service Commission and to the Governor of the Southern Province, the Petitioner took up the position that the 3<sup>rd</sup> Respondent was not his disciplinary authority.

The objection raised by the Petitioner stating that the 3<sup>rd</sup> Respondent has no power and/or authority to take disciplinary action against the Petitioner leads to the root of this case, and therefore, I do not agree with the argument of the learned Senior State Counsel that the said objection of the Petitioner is a technical objection.

Professor Wade in ***Administrative Law (Tenth Edition)***, at page 31, emphasizes that,

*“Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e. deprived of legal effect. If it is not within the powers given by the Act, it has no legal leg to stand on. The situation is then as if nothing has happened, and the unlawful act or decision may be replaced by a lawful one.”*

In the case of ***Edirisooriya and Others v. National Salaries and Cadre Commission and Others [2011] 2 Sri LR 221***, it was observed that,

*“The Central principle of Administrative Law, - ultra vires - simply means acting beyond one's power or authority.”*

The Court of Appeal, in ***Gunaratne v. Chandrananda de Silva [1998] 3 Sri LR 265*** observed that,

*“Per Gunawardena, J.*

*it is an inflexible and deep rooted principle of law that no act or decision which is void at its inception can ever be ratified . . . further statutory power must be exercised only by the body or officer in whom*

*it has been reposed or confided unless sub delegation of the power is authorized by express words or Necessary Implication . . . further one cannot act or decide on his own account when in fact one is devoid of power to so act or decide and seek to validate that act or decision thereafter under the colour of the concept of ratification.”*

In the case in hand, the 3<sup>rd</sup> Respondent taking disciplinary action against the Petitioner is *ultra vires* due to the fact that the Petitioner has never been absorbed to the Provincial Public Service but remains under the disciplinary control of the Secretary of the Educational Service Committee of the Public Service Commission of Central Government. The 3<sup>rd</sup>, 4<sup>th</sup> and 11<sup>th</sup> Respondents failed to consider this fact. As such, the impugned Orders made by the 3<sup>rd</sup> Respondent are *ultra vires* and illegal. The impugned Orders made by the 4<sup>th</sup> and 11<sup>th</sup> Respondents recognizing the *ultra vires* and illegal Orders of the 3<sup>rd</sup> Respondents are also bad in law.

For the foregoing reasons, writs of *Certiorari* are issued as prayed for in paragraphs (c), (d), (e) and (f) of the prayers to the Petition dated 25.10.2019. Accordingly, the impugned Orders marked as P12, P17, P20 and P22 are quashed.

Application allowed. No costs.

**JUDGE OF THE COURT OF APPEAL**

**S. U. B. KARALLIYADDE, J.**

I agree.

**JUDGE OF THE COURT OF APPEAL**