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

In the matter of an Application for Mandates in the nature of Writs of Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**Case No. CA/WRIT/ 81/20**

Suriyapperuma Arachchilage Amarasiri Suriyapperuma of Alkegama, Makehelwala

**Petitioner**

**Vs.**

1. N.C. Withanage,
   Registrar General,
   Registrar General's Office,
   23/A3, Denzil Kobbekaduwa, Mawatha,
   Battaramulla.

2. District Secretary,
   Kegalle District, Kegalle.

3. Hon. Janaka Bandara Tennakoon,
   Minister of Internal and Home Affairs and Provincial Councils and Local Government,
   563, Elvitigala Mawatha,
   Colombo 05.

4. Hon. Attorney-General,
   Attorney General's Department,
   Colombo 12.

**Respondents**

**Before:** **D.N. Samarakoon, J.**
**B. Sasi Mahendran, J.**

**Counsel:** Dr. Sunil Abeyratne with M. Kudakolawa for the Petitioner
Medhaka Fernando, SC for the 1st,2nd and 4th Respondents

**Written Submissions:** 22.09.2022 (by the Petitioner)
22.09.2022 (by the 1st,2nd, and 4th Respondents)

**Decided On :** 21.10.2022

**B. Sasi Mahendran, J.**

The Petitioner, by Petition dated 06th March 2020, instituted this application under Article 140 of the Constitution seeking a Writ of Certiorari to quash the decision of the Registrar General (the 1st Respondent) to remove the Petitioner from the post of Registrar of Births and Deaths of Galbada Pattuwa Division and Marriages (Kandyan/ General) of Galbada Koralaya Division and a Writ of Mandamus to be reinstated.

It should be noted that, on 21st July 2022, when the matter was fixed for argument, Counsel for both parties agreed that the parties would abide by the judgment delivered by this Court on the written submissions.

The Petitioner was appointed by the Registrar General to the post of Registrar of Births and Deaths of Galbada Pattuwa Division and Marriages (Kandyan/ General) of Galbada Koralaya Division with effect from **01st January 2020**, by letter dated 12th December 2019 ("P6"). This follows a lengthy process that commenced with him submitting his application (pursuant to the notice in Gazette No. 2104 dated 28th December 2018), an inquiry held on 10th April 2019 to inquire into matters such as the place he proposes to situate his office and the suitability of it (per document marked "P2"), and an interview on 5th July 2019 at the Kegalle District Secretariat (per document marked "P3"). The Petitioner then commenced setting up his office, after he received his letter of employment. On **15th January 2020** ("P7"), a mere two weeks after his appointment, he received from the Kegalle District Secretary, stating that his appointment had been cancelled due to an ongoing court case he was involved in. The relevant part of the letter reads:

"(02) ඔබ වෙත 2020.01.06 දින රෙජිස්ට්‍රාර් ජනරාල් අංක RG/MBD/7/2/9 හා 2019.12.12 දිනැති ලිපිය අනුව ලබා දුන් පත්වීම රෙජිස්ට්‍රාර් ජනරාල් අංක RG/MBD/7/2/9 හා 2020.01.09 දිනැති ලිපිය මගින් ඔබ සම්බන්ධයෙන් අධිකරණයේ නඩුවක් විභාග වෙමින් පවතින බැවින් රෙජිස්ට්‍රාර් ධූරය අවලංගු කර ඇති බව කාරුණිකව දන්වමි."

This was challenged by the Petitioner by way of a letter of demand (dated 17th January 2020- marked "P9") for the reason that there was no case against him. Thereafter, the Registrar General by letter dated 27th January 2020 ("P11"), responding to this claimed that it had been reported to him that a case (bearing No. 22974 at the Mawanella District/Magistrate Court) concerning the Petitioner had been ongoing and then concluded. Further, the Petitioner had been and was continuing to engage in active politics, as a member of a major political party. The post is an honorary one to serve the public and his engagement in politics would compromise the independence and impartiality required in the dispensing of his services. The relevant parts of the said letter read:

"03 කරුණ අනුව මෙම රෙජිස්ට්‍රාර් වරයා සම්බන්ධව ගරු අධිකරණයේ නඩුවක් විභාග වෙමින් පවතින බව මා වෙත වාර්තා වූ අතර කරුණු සොයාබැලීමේ දී මෙම නඩු කටයුත්ත මාවනැල්ල දිසා/මහේස්ත්‍රාත් අධිකරණය මගින් නඩු අංක 22974 යටතේ පැවති බවත් එය අවසන් වී ඇති බවත් මා වෙත වාර්තා වී ඇත.

04 කරුණු අනුව උක්ත නම් සඳහන් අය ක්‍රියාකාරී දේශපාලනයේ නිරත වී ඇති බව හා නිරතව සිටින අයෙකු බව මා වෙත වාර්තා වී ඇත.

05 කරුණ අනුව උප්පැන්න, විවාහ හා මරණ රෙජිස්ට්‍රාර් තනතුරක් යනු වැටුප් නොලබන ගරු තනතුරක් වන අතර මෙම තනතුර අදාළ කොට්ඨාසයේ පොදු මහජන සේවය උදෙසා ලබාදෙනු ලැබේ. උක්ත නම් සඳහන් අය ප්‍රබල දේශපාලන පක්ෂයක් තුල ක්‍රියාකාරී සාමාජිකයෙකු ලෙස දේශපාලනයේ නිරත වන බව මා වෙත වාර්තා විය. එබැවින් දේශපාලන කටයුතු වල සෘජු ලෙස නියැලෙන පුද්ගලයකු වෙත මෙම පත්වීම ලබා දීම හේතුවෙන් පොදු මහජනයාට නිර්පාක්ෂික ප්‍රවේශයක් ලබා ගැනීමේ දුෂ්කරතා මතුවිය හැකි බව මා හට නිරීක්ෂණය විය."

It was based on these reasons that the Registrar General acting under Section 6(1) of the Marriage Registration Ordinance No. 19 of 1907, as amended, cancelled the Petitioner's appointment. The letter dated 10th February 2020 ("P12") issued by the Kegalle District Secretary, also in response to the letter of demand, reiterates the reasons of the Registrar General. The letter reads:

"(02)ඒ අනුව එස්. ඒ. අමරසිරි සුරියප්පෙරුම මහතා සම්බන්ධයෙන් ඔබ විසින් එවන ලද 2020.01.17 දිනැති එන්තරවාසියේ 03 ඡේදයේ සඳහන් නඩුකරය මේ වන විට අවසන් වී ඇති බව රෙජිස්ට්‍රාර් ජනරාල් වෙත වාර්තා වී ඇති බවත්, එම කාරණයට අනුව නොව ඔහු ක්‍රියාකාරී දේශපාලනයේ නිරත වී ඇති හා නිරතව සිටින අයෙක් බැවින් විවාහ, උප්පැන්න හා මරණ රෙජිස්ට්‍රාර් ධුරයක් දැරීමට නුසුදුස්සෙකු සේ සලකා මෙම තනතුරෙන් ඉවත් කිරීමට කටයුතු කල බව රෙජිස්ට්‍රාර් ජනරාල්ගේ RG/MBD/7/2/9 හා 2020.01.16 දිනැති ලිපියෙන් මා වෙත දන්වා ඇති බව කාරුණිකව දන්වමි."

The Respondents' contention is that in terms of **Section 6(1)** of the Marriage Registration Ordinance, a Registrar holds office at the pleasure of the appointing authority (in this case the Registrar General). It reads as follows:

The Registrar General may appoint one or more persons to each such division, who shall be called Registrars of Marriage, and any such registrar **at pleasure he may remove** and appoint some other person in his place…… [emphasis added]

When removal can be done "at pleasure" it is claimed that the Registrar General exercised unfettered discretion and is thereby not duty-bound to disclose reasons for his decision to remove. Reliance is placed on the case of Thenabandu v. Samarasekera 70 NLR 472 to substantiate the position of the Respondents.

Further, the Respondents claim that the Petitioner was aware of this because of his letter of appointment ("P6") which provides that the Petitioner was to be on probation for a period of 11 months, from the date of appointment. Upon completion of that period and other conditions such as passing a written exam, if his work is satisfactory, the appointing authority would consider making him permanent. The fifth condition in the letter stipulated that his services could be terminated at any time, without notice or reason.

We will now determine the correctness of this assertion.

In Thenabandu (supra) his Lordship Abeyesundere J. held that since the Petitioner, in that case, a Registrar of Births and Deaths and a Registrar of Marriages, had been appointed under Section 6 of the Marriage Registration Ordinance the Registrar General, as the appointing authority, was empowered by that Section to remove the Petitioner at his pleasure. His Lordship held:

*"As the petitioner held the office of Registrar of Marriages at the pleasure of the appointing authority, he had no right in law to be heard before he was dismissed. No writ of certiorari therefore lies in respect of the petitioner's dismissal from the office of Registrar of Marriages."*

Further his Lordship held:

*"…….. the Registrar General, as the authority empowered to appoint a Registrar of Births and Deaths, has the unfettered power to dismiss such a Registrar appointed by him. There is no statutory provision in the Births and Deaths Registration Ordinance or any other statute specifying the grounds of dismissal of a Registrar of Births and Deaths nor is there any statutory procedure laid down which is to be observed before the dismissal of such a Registrar."*

His Lordship then cited the cases of Kulatunga v. The Board of Directors of the Co-operative Wholesale Establishment (66 NLR 169) and Ridge v. Baldwin (1963 2 A.E.R. 66) as authority for the proposition that the principle of audi alteram partem does not apply in the case of dismissal from an office where the grounds of dismissal are not specified or where there is no procedure prescribed which should be followed before dismissal.

We are of the view that the case of Thenabandu will not be applicable to the facts of the instant case. Firstly, in Thenabandu the Registrar had been asked to show cause prior to his dismissal. What the Registrar pleaded but the Court refused to grant was "an inquiry and an opportunity to appear and lead evidence to vindicate his innocence". Whereas, in the instant case, no opportunity had been granted to the Petitioner to show cause. Secondly, the reasons proffered by the Respondents are arbitrary. Thirdly, whether the 'pleasure principle' can be accepted as conferring unfettered authority, even in cases where there appear to be mala fides, is doubtful.

The 'pleasure principle' as expounded in Sunil F.A. Coorey's, 'Principles of Administrative Law in Sri Lanka' Fourth Edition (Volume 1 at page 493) entails:

*"Where statute provides that an office is held at "pleasure" or that the holder of an office is removable at "pleasure", it has been held that the statutory implication is that the audi alteram partem rule is excluded from a disciplinary proceeding that maybe held against the holder of such office".*

The rule originated from the Latin phrase 'durante bene placito' ("during good pleasure") or 'durante bene placito regis' ("during the good pleasure of the King").

Lord Hobhouse in Shenton v. Smith [1895] AC 229 affirmed the rule:

*"It is pointed out to be the general rule in Crown Colonies that offices are holden during Her Majesty's pleasure. The difficulty of dismissing servants whose continuance in office is detrimental to the State would, if it were necessary to prove some offence to the satisfaction of a jury, be such as seriously to impede the working of the public service."*

In Dunn v. the Queen [1895-99] All ER Rep 907 Lord Herschell observed:

*"Persons employed in the public service of the Crown are, unless there is some statutory provision for a higher tenure, ordinarily engaged to hold office during the pleasure of the Crown……. It has been pointed out in the cases that the appointments are made for the public good, and that it is essential for the public good to be able to determine the appointments at*

*pleasure, except in cases where, for the public good, it has been determined that Some other tenure is better."*

The rationale of this principle of Common Law is explained in Wade and Forsyth's, 'Administrative Law' 11th Edition (on page 49) thus:

"The basis of the rule that Crown servants are dismissible at pleasure, therefore, is the principle that the public interest requires that the government should be able to disembarrass itself of any employee at any moment. All the emphasis was on public policy."

As Lord Diplock explained in the Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374:

*".... The theory that those by whom the administration of the realm is carried on do so as personal servants of the monarch who can dismiss them at will, because the King can do no wrong."*

Lord Reid in the landmark judgment of Ridge v. Baldwin (supra) propounded a threefold classification of employment relationships. The first class is the master-servant relationship. The master is at liberty to terminate the services of the servant at any time, even without reason. The remedy of the servant is for damages for breach of contract. The second deals with persons who hold office at pleasure. The third category deals with officeholders whose dismissal cannot take place without cause and where the rules of natural justice must be adhered to.

Expanding on the second category, Lord Reid stated as follows:

*"Then there are many cases where a man holds an office at pleasure. Apart from judges and others whose tenure of office is governed by statute, all servants and officers of the Crown hold office at pleasure..... It has always been held, I think rightly, that such an officer has no right to be heard before he is dismissed, and the reason is clear. As the person having the power of dismissal* ***need not have anything against the officer****, he need not give any reason..... I fully accept that where an office is simply held at pleasure the person having power of dismissal cannot be bound to disclose his reasons. No doubt he would in many cases tell the officer and hear his explanation before deciding to dismiss him. But if he is not bound to disclose his reason and does not do so, then, if the Court cannot require him to do so, it cannot determine whether it would be fair to hear the officer's case before taking action."* [emphasis added]

This passage was cited with approval in the cases such as Kulatunge v. The Board of Directors of the Co-operative Wholesale Establishment (supra), Yakkaduwe Sri Pragnarama Thero v. The Minister of Education 71 NLR 506, Fernando v. Jayaratne 78

NLR 123, Perera v. Attorney General [1985] 1 SLR 156, and Air Vice Marshall Elmo Perera v. Liyanage [2003] 1 SLR 331.

However, the unbridled application and acceptance of this principle, in a modern democratic society underpinned by the rule of law, must be re-considered.

Wade and Forsyth commenting on the passage from Ridge, quoted above, states the following (on page 468):

*"He [Lord Reid] stated that since no reasons need be given for the removal, the court could not determine whether it would be fair to hear the officer's case. But this is circular reasoning, and it is unsatisfying on grounds of justice as well as of logic…. Natural justice does not require the giving of reasons for decisions, but nevertheless it does require fair notice of the case to be met, and this requirement of notice is quite different from a duty to give reasons for the decision when taken.* ***If the officer is subject to some accusation, justice requires that he should be allowed a fair opportunity to defend himself, whatever the term of his tenure. To deny it to him is to confuse the substance of the decision, which is maybe based on any reason at all, with the procedure which ought first to be followed.*** *"* [emphasis added]

Paul Craig in his text, 'Administrative Law' (Ninth Edition on page 312) commenting on the principle notes that,

*"This rule was applied by analogy with the dismissibility of military servants, the policy being the necessity for the Crown to be able to rid itself of a servant who might act detrimentally to the state. There are obvious flaws in this reasoning. While some Crown servants in senior positions might represent such a danger, it is difficult to envisage this being so for the majority."*

Lord Wilberforce commenting on this principle in Malloch v. Aberdeen Corp. [1971] 2 All ER 1278 observed:

*"The rigour of the [pleasure] principle is often, in modern practice, mitigated for it has come to be perceived that the very possibility of dismissal without reason being given—action which may vitally affect a man's career or his pension—makes it all the more important for him, in suitable circumstances, to be able to state his case and, if denied the right to do so, to be able to have his dismissal declared void."*

The following observation of Lord Reid in Malloch is also noteworthy:

*"Acting at pleasure means that there is no obligation to formulate reasons. Formal reasons might lead to legal difficulties.* ***But it seems to me perfectly sensible for Parliament to say to a***

*public body, 'you need not give formal reasons but you must hear the man before you dismiss him.*" [emphasis added]

Chief Justice Laskin delivering the judgment of the Canadian Supreme Court in Nicholson v. Haldimand-Norfolk Regional Police Commissioners [1979] 1 SCR 311 observed:

*"the old common law rule, deriving much of its force from Crown law, that a person engaged as an office holder at pleasure may be put out without reason or prior notice ought itself to be re-examined. It has an anachronistic flavour in the light of collective agreements, which are pervasive in both public and private employment, and which offer broad protection against arbitrary dismissal in the case of employees who cannot claim the status of office holders. As de Smith has pointed out in his book Judicial Review of Administrative Action (3rd ed. 1973), at p. 200, "public policy does not dictate that tenure of an office held at pleasure should be terminable without allowing its occupant any right to make prior representations on his own behalf; indeed, the unreviewability of the substantive grounds for removal indicates that procedural protection may be all the more necessary"."*

Citing this passage, the majority in the Canadian Supreme Court in Knight v. Indian Head School Division No. 19 [1990] 1 SCR 653 held:

*"The argument to the effect that, since the employer can dismiss his employee for unreasonable or capricious reasons, the giving of an opportunity to participate in the decision-making would be meaningless, is unconvincing. In both the situation of an office held at pleasure and an office from which one can be dismissed only for cause, one of the purposes of the imposition on the administrative body of a duty to act fairly is the same, i.e., enabling the employee to try to change the employer's mind about the dismissal. The value of such an opportunity should not be dependant on the grounds triggering the dismissal.*

*There is also a wider public policy argument militating in favour of the imposition of a duty to act fairly on administrative bodies making decisions similar to the one impugned in the case at bar. The powers exercised by the appellant Board are delegated statutory powers which, as much as the statutory powers exercised directly by the government, should be put only to legitimate use. As opposed to the employment cases dealing with "pure master and servant" relationships, where no delegated statutory powers are involved, the public has an interest in the proper use of delegated power by administrative bodies…….. As pointed out by Wade in the above-quoted passage (at p. 500), dismissal for displeasure should be all the more the object of scrutiny as it is a power of a wider discretionary nature."*

In Dunsmuir v. New Brunswick [2008] 1 SCR 190 the Canadian Supreme Court reversing this decision held the following:

*"In our view, what matters is the nature of the employment relationship between the public employee and the public employer. Where a public employee is employed under a contract of employment, regardless of his or her status as a public office holder, the applicable law governing his or her dismissal is the law of contract, not general principles arising out of public law.* ***What Knight truly stands for is the principle that there is always a recourse available where the employee is an office holder and the applicable law leaves him or her without any protection whatsoever when dismissed…….***

*The principles expressed in Knight in relation to the general duty of fairness owed by public authorities when making decisions that affect the rights, privileges or interests of individuals are valid and important. However, to the extent that the majority decision in Knight ignored the important effect of a contract of employment, it should not be followed. Where a public employee is protected from wrongful dismissal by contract, his or her remedy should be in private law, not in public law.*

*The dismissal of a public employee should therefore generally be viewed as a typical employment law dispute.* ***However, there may be occasions where a public law duty of fairness will still apply. We can envision two such situations at present. The first occurs where a public employee is not, in fact, protected by a contract of employment.*** *This will be the case with judges, ministers of the Crown and others who "fulfill constitutionally defined state roles" (Wells, at para. 31).* ***It may also be that the terms of appointment of some public office holders expressly provide for summary dismissal or, at the very least, are silent on the matter, in which case the office holders may be deemed to hold office "at pleasure"…… Because an employee in this situation is truly subject to the will of the Crown, procedural fairness is required to ensure that public power is not exercised capriciously.****"* [emphasis added]

The Australian jurisprudence has created inroads in the pleasure principle if a legislative intent to displace the right to dismiss at pleasure could be ascertained. (Gould v. Stuart [1896] AC 575, Jarratt v. Commissioner of Police [2005] HCA 50)

An observation of the Indian Supreme Court in B.P. Singhal v. Union of India [2010] 6 SCC 331, is worth quoting:

*"There is a distinction between the doctrine of pleasure as it existed in a feudal set-up and the doctrine of pleasure in a democracy governed by rule of law. In a nineteenth century feudal set-up unfettered power and discretion of the Crown was not an alien concept. However, in a*

*democracy governed by Rule of Law, where arbitrariness in any form is eschewed, no Government or Authority has the right to do what it pleases. The doctrine of pleasure does not mean a licence to act arbitrarily, capriciously or whimsically. It is presumed that discretionary powers conferred in absolute and unfettered terms on any public authority will necessarily and obviously be exercised reasonably and for public good."*

This re-consideration is all the more important in light of the introduction of the Seventeenth Amendment to the Constitution and the abolition of the "pleasure principle" for appointments and dismissals of "public officers". His Lordship Marsoof P.C. J. in Ratnasiri v. Ellawala [2004] 2 SLR 180 emphatically pronounced:

*"..it is pertinent to observe that the Seventeenth Amendment to the Constitution has brought about several fundamental changes in relation to the public service, the most important of which was the abolition of the 'pleasure principle' which was recognized by our law as a fundamental norm inherent in the prerogative of the British Crown, and was expressly embodied in every Constitution of this country since 1946.* ***It is indeed surprising that this principle was accommodated in Constitution which claimed to be independent, republican and even democratic and socialist, and the removal of this concept by the Seventeenth Amendment of the Constitution will no doubt contribute to the independent of the public service."*** [emphasis added]

Although Ratnasiri dealt with the appointment and dismissal of "public officers" (officers who hold any paid office under the Republic, minus the exempted categories- vide Article 170 of the Constitution) which is Constitutionally regulated, it did not state that the pleasure principle was abolished in general. The post of Registrars are not public officers within the meaning of the Constitution, they are only deemed to be "public officers" within the meaning of the Penal Code (Vide Section 7 of the Births and Deaths Registration Act No. 17 of 1951, as amended). They are honorary posts. The pleasure principle thus remains applicable in the instant case.

However, the change in the Constitutional ethos with the abolition of the pleasure principle for public officers, and the limitations the principle were subject to while it existed, in relation to appointments and dismissal of public officers, as evident in the case law examples below, justify a legislative reconsideration of the suitability of this principle in a modern constitutional framework fortified by the Rule of Law. If not, in the absence of legislative intent to indicate the abrogation of this principle such as in cases concerning the legislation of the type we are dealing with which provides for dismissal 'at pleasure', this principle would be read to confer unfettered, unimpeachable discretion on the Registrar General to act arbitrarily in violation of the basic tenets of administrative law.

This is untenable. To quote the words of his Lordship Fernando J. in Bandara v. Premchandra [1994] 1 SLR 301:

*"It may well be that in the United Kingdom the prerogative in regard to office held at pleasure was very wide.* ***However, any such prerogative recognised or conferred under a written Constitution such as ours, with a separation of functions, must necessarily be subject to limitations.*** *"* [emphasis added]

The Indian Supreme Court in B.P. Singhal (supra) also observed:

*"As a result when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, it should however necessarily be read as being subject to the "fundamentals of constitutionalism". Therefore in a constitutional set up, when an office is held during the pleasure of any Authority, and if no limitations or restrictions are placed on the "at pleasure" doctrine, it means that the holder of the office can be removed by the authority at whose pleasure he holds office, at any time, without notice and without assigning any cause.* ***The doctrine of pleasure…… does not dispense with the need for a cause for withdrawal of the pleasure****. In other words, "at pleasure" doctrine enables the removal of a person holding office at the pleasure of an Authority, summarily, without any obligation to give any notice or hearing to the person removed, and without any obligation to assign any reasons or disclose any cause for the removal, or withdrawal of pleasure.* ***The withdrawal of pleasure cannot be at the sweet will, whim and fancy of the Authority, but can only be for valid reasons.*** *"* [emphasis added]

The following passage from Wade and Forsyth's, 'Administrative Law' (on page 27) is apposite to quote:

*"It is a cardinal axiom that every power has legal limits. If the Court finds that the power has been exercised oppressively or unreasonably, or if there has been some procedural failing… the act may be condemned as unlawful. Although lawyers appearing for government departments have often argued that some Act confers unfettered discretion on a minister, they are guilty of constitutional blasphemy. Unfettered discretion cannot exist where the rule of law reigns. The same truth can be expressed by saying that all power is capable of abuse, and that the power to prevent abuse is the acid test of effective judicial review."*

When the pleasure principle was in operation, prior to its abolition by the Seventeenth Amendment, there were significant limitations.

In the case of Bandara (supra) it was held that:

*"Article 55(5) makes the "pleasure principle" subject to the fundamental rights and the language rights; Article 55(1) makes it "subject to the provisions of the Constitution", so that other*

*limitations may be found elsewhere in the Constitution. The concept of holding office at pleasure suggests, prima facie, that dismissal may be for a reason - good, bad, or indifferent - or without any reason. However, "since Article 55(1) is subject, inter alia, to Article 12, dismissal, even by the Cabinet of Ministers, cannot be for a reason which involves a denial of equal protection, violative of Article 12(1), or an infringement of Article 12(2). Even if the reasons for dismissal are not stated, upon a challenge under Article 12, a consideration of those reasons becomes almost inevitable; an assertion that there were no reasons would amount to an admission that it was arbitrary; and a refusal to disclose reasons would tend to confirm a prima facie case of discrimination made out by the Petitioners. Thus the "pleasure principle" contained in Article 55(1) is necessarily subject to significant limitations…."*

This was reaffirmed in the cases of Migultenne v. The Attorney General [1996] 1 SLR 408 and Jayawardena v. Dharani Wijayatilake [2001] 1 SLR 132. In Migultenne, his Lordship Fernando J. held:

*"However, the "pleasure principle" in Article 55(1) is "subject to the provisions of the Constitution", and not only to express contrary provisions; accordingly, it may be diluted by implications arising from other provisions of the Constitution such as Chapter III (and possibly even Article 55(4)). Thus the "pleasure principle" would not sanction dismissal contrary to the fundamental rights and may also be subject to other limitations found elsewhere in the Constitution."*

Her Ladyship Shirani Bandaranayake J. (as she then was) in Trinita Perera v. Jayaratne [1998] 1 SLR 372 held:

*"It is the contention of the learned Counsel for the petitioner that the equal protection of the law guaranteed in terms of Article 12 (1) of the Constitution cannot be violated by the Cabinet of Ministers. He relied on the ruling in Bandara… where it was held that "the 'pleasure principle' in Article 55 (1) of the Constitution is subject to the equality provision of Article 12 and mandates fairness and excludes arbitrariness". The learned Counsel's submission is that the petitioner and the 3rd respondent are equally situated and therefore the appointment of the 3rd respondent violates the petitioner's right the equal protection the law. With this submission, I agree."*

In Maithripala Senanayake v. Gamage Don Mahindasoma [1998] 2 SLR 333, his Lordship Amerasinghe J commented:

*"Article 55 (1) of the Constitution provides that the appointment, transfer, dismissal and disciplinary control of public officers is vested in the Cabinet of Ministers, and that all public officers shall hold office at pleasure. In the UK, public servants hold office during the pleasure of the Crown unless otherwise provided. The rule, even in England, is not based on connection with*

*the royal prerogative, except, perhaps in a loose sense, but rather on the ground that 'the government should be able to disembarrass itself of any employee at any moment':* ***Paradoxically, both in the UK and in Sri Lanka, there are legal restrictions on the exercise of the 'pleasure' principle."*** [emphasis added]

The limitations which the principle was subject to were reiterated in the case of Karavita & Others v. Inspector General of Police [2002] 2 SLR 287 by his Lordship Amaratunga J.:

*"The respondents cannot also invoke the pleasure principle embodied in Article 55 (1) of the Constitution as an answer to the petitioners' plea for a Writ of Mandamus. As was pointed out by his Lordship Justice Fernando in Migultenne v. The Attorney-General, the pleasure principle does not give an absolute discretion to the executive. It is subject to the other provisions of the Constitution such as the fundamental rights and* ***the Writ jurisdiction of the Court of Appeal under Article 140 of the Constitution.*** *It cannot be used to shield an act which has no basis in - law or in fact."* [emphasis added]

These decisions serve to illustrate that the 'pleasure principle' was subject to significant limitations and was not intended to confer unfettered discretion on the appointing authority to dismiss an officer arbitrarily. However, these limitations, whether explicit or implicit, were found in the provisions of the Constitution itself.

In Acts of Parliament that do not limit the application of the principle, such as in the present case, in which a Registrar is dismissible at pleasure, the old rule appears to be alive. It is not for this Court, acting in its supervisory jurisdiction to legislate and read in the requirement of fairness when the statute is explicit that the pleasure principle has not been abrogated. We would be transgressing Constitutional boundaries and usurping the power of the Legislature. This must be distinguished from cases where an Act is silent on whether the rules of natural justice or the requirement of fairness apply. In such cases, to use the words of Byles J. in Cooper v. Wandsworth Board of Works [1863] 143 ER 414, "the justice of the common law will supply the omission of the legislature".

Notwithstanding this proposition, the facts of the instant case, for reasons explained below, warrant this Court's intervention. In doing so, we bear in mind that the Marriage Registration Ordinance embodies the pleasure principle and that the position concerned is an honorary post in which impartiality is imperative in the dispensing of public service.

The Respondents themselves, of their own volition, have decided to tender an explanation. The excerpts from the documents quoted above, sufficiently demonstrate, that this discretion to remove 'at pleasure' was exercised arbitrarily and at a whim; it was not bona fide. The initial reason (as per document "P7") was due to an ongoing Court case. The Petitioner denies that there was such a case. There is no material provided by the Respondents to indicate to this Court that their initial reason to remove the Petitioner was in fact true. Although the Registrar General states in the letter "P11" that the existence of such a case was "reported to him", there is no material to substantiate such a report. There is no explanation of the subject matter of the supposed case either or how that case was relevant to impugn the credibility of his appointment.

Subsequent to the Petitioner's challenge to this decision, the Respondents provide an entirely new reason; that the Petitioner was actively involved in politics. This reversal is quite candidly admitted in the document "P12" thus:

""(02)ඒ අනුව එස්. ඒ. අමරසිරි සුරියප්පෙරුම මහතා සම්බන්ධයෙන් ඔබ විසින් එවන ලද 2020.01.17 දිනැති එන්තරවාසියේ 03 ඡේදයේ සඳහන් **නඩුකරය මේ වන විට අවසන් වී ඇති බව රෙජිස්ට්‍රාර් ජනරාල් වෙත වාර්තා වී ඇති බවත්, එම කාරණයට අනුව නොව ඔහු ක්‍රියාකාරී දේශපාලනයේ නිරත වී ඇති හා නිරතව සිටින අයෙක් බැවින්**....." [emphasis added]

This is problematic for two reasons. Firstly, if the Petitioner had not acted through his lawyer and pressed for more information on his removal, especially for more information or details of the case supposedly involving him, the real reason for his removal would have never seen the light of day. It thus raises the question of whether the Respondents would have ever revealed the real reason for the removal if the Petitioner had not acted.

Secondly, a doubt is created whether the Respondents had to 'invent' a reason to justify removal after their first reason flopped. The absence of a clear, distinct reason for the removal is a failure of good administration. As his Lordship Fernando J. in Jayawardena (supra) held:

*"Respect for the Rule of Law requires the observance of minimum standards of openness, fairness, and accountability in administration; and this means - in relation to appointments to, and removal from, offices involving powers, functions and duties which are public in nature - that the process of making a decision should not be shrouded in secrecy, and that there should be no obscurity as to what the decision is and who is responsible for making it".*

We are mindful that under this Act which embodies the pleasure principle, there is no requirement to give notice or disclose reasons. However, as in this case, when the appointing authority has disclosed a reason, an apparently manufactured reason, they have taken it upon themselves to so disclose. It would only be natural for an officer to respond requiring clarification when the reason proffered is baseless. When that happens, one cannot try to fall back on the pleasure principle, conveniently stating that there is no necessity to provide a reason.

This points to the fact that there the decision to cancel the appointment was arbitrary or an abuse of power.

We must also examine the accuracy of the subsequent reason, in the light of the Petitioner's protest that it is untrue.

It is claimed that the Petitioner was actively engaging in politics by campaigning for a particular party in the 2019 Presidential Election and that he had served as the Opposition leader/ member of the Mawanella Pradeshiya Sabha. To substantiate this, photographs of the Petitioner campaigning for that party ("1R1") and a letter from the Minister of Highways, Road Development, and Petroleum Resources Development at the time requesting the then Minister of Internal and Home Affairs to take steps to appoint the Petitioner to the post attached as "1R2" was tendered.

The Respondents cite Section 6(5) of the Births and Deaths Registration Act No. 17 of 1951, as amended, incorporated by the Amendment Act No. 37 of 2006. The Section provides:

(a) A person shall be disqualified from being appointed or continuing as a Registrar, or Deputy Registrar, if he : –

(i) becomes a Member of Parliament ; or

(ii) becomes a Member of a Provincial Council ; or

(iii) becomes a Member of a local authority ;

(iv) is holding any paid officer under the Republic ; or

(v) is engaged in a profession that would prejudicially affect the duties of a Registrar.

As stated in their Statement of Objections (at para.11(h) and (i)):

*"h) circumstances are such that the petitioner engaging/ engaged in active politics and with the allegiance and conduct of the same would prejudicially affect the duties of a registrar and set an unhealthy precedent from performing the functions in the said honorary post in an independent manner for the pure purpose of serving the general public.*

*i) Therefore, as a former politician it cannot be presumed that the conduct and affiliations attributed to the Petitioner will not be prejudicial to the duties of a Registrar of births and deaths in the future."*

Regarding this contention, firstly, it must be observed that the reason for his removal is based on conjecture. The Respondents have not demonstrated a single instance in which a complaint has been made against the conduct of the Petitioner, or any instance that he had acted in a partisan manner during that period of his appointment. It is only on an assumption that his political involvement might affect his duties that he had been removed. Even if one tries to justify it on the basis that, as mentioned above, these positions must be both actually and visibly impartial, and thus an appearance or possibility of partisan acts should result in removal a question arises then if this was a concern, why was the Petitioner found to be suitable and thus appointed to the post in the first place? What changed in the brief period between handing over of his letter of appointment and notifying him of his removal? The documents that were submitted to this Court by the Respondents alleging political involvement and his 'partiality' were in their possession. The fact that he was engaged in politics was known to them. Yet, this was not considered a disqualification when he was appointed.

This should not be read to mean that when such a title holder is found to be in active politics that he cannot be removed. Here the matter is, when they knew that the Petitioner used to be involved in politics, they nonetheless appointed him and then tried to cancel that appointment on the basis that he is engaged in politics. It seems disingenuous and arbitrary. This is even more so because the Respondent's first reason had no suggestion that the Petitioner's appointment was cancelled due to his politics.

Further, the statute disqualifies a Registrar if he **is engaged in a profession that would prejudicially affect the duties of a Registrar**. The Petitioner states that he was a member of the Pradeshiya Sabha until the last local government elections. He has made an undertaking to this Court that he does not engage in politics. If he was a member prior to submitting his application for this post, he would not be disqualified. The Section envisages situations in which persons who are engaged in a profession that affects their duties simultaneously hold the office of Registrar.

The Respondents do not provide any material to the satisfaction of this Court indicating that he was actively engaged in politics in the capacity of a member of the Pradeshiya Sabha or any other "profession" that would prejudicially affect his work as a Registrar, from the time he was considered eligible for the post and thereafter since he was appointed.

Additionally, unlike in Thenabandu (supra), there was no opportunity for the Petitioner to show cause. This is the least the Registrar General could have afforded the Petitioner in order to ensure that he does not offend the principles of natural justice. Such an opportunity would have enabled the Petitioner to contradict the allegations made. Even in the case of Ridge, Lord Reid observed that in practice officers held 'at pleasure' are informed of the reasons for the same.

It is trite that the content of the audi alteram partem rule varies according to the context. It will not apply with its full rigour in the present case. Instead, in the instant case, while the pleasure principle enables dismissal without notice and reason, according to a reading in consonance with the protection of the rule of law, this Section cannot be read to dispense with the minimum requirement of an obligation to act fairly by providing an opportunity for the Petitioner to show cause why he should not be removed, especially since the reasons for removal appear to be arbitrary. The Petitioner claims to have been taken by surprise when he was suddenly informed of his removal from the post for a case that he denies.

Lord Steyn in the case of R (Anufrijeva) v. Secretary of State for the Home Department [2004] 1 AC 604 remarked, "In our system of law surprise is regarded as the enemy of justice. Fairness is the guiding principle of our public law."

For those reasons, the 1st Respondent acted unfairly when deciding to cancel the appointment of the Petitioner.

Further, it appears that the Registrar General has acted on extraneous considerations: the fact that the Petitioner was in the past a member of a Pradeshiya Sabha and that he was engaging in active politics. These are irrelevant, extraneous considerations that were considered in removing the Petitioner. It would have been relevant or material if the Petitioner was found to be continuing his role as a Pradeshiya Sabha member as that is a reason for his disqualification or was still found to be engaging in active politics since his appointment.

In Gunasekera v W P L De Mel, Commissioner of Labour 79 NLR 409 his Lordship Tittawella J. held:

*"A lack of jurisdiction may arise in different ways. While engaged on a proper inquiry the tribunal may depart from the rules of natural justice* ***or it may ask itself the wrong questions or may take into account matters which it was not directed to take into account. Thereby it would step outside its jurisdiction****. A tribunal which has made findings of fact wholly unsupported by evidence or which it has drawn inferences wholly unsupported by any of the facts found by it will be held to have erred in point of law. The concept of error of law includes the giving of reasons that are bad in law or inconsistent, unintelligible or it would seem substantially inadequate.* ***It includes also the application of a wrong legal test to the facts found taking irrelevant considerations into account*** *and arriving at a conclusion without any supporting evidence. If reasons are given and these disclose that an erroneous legal approach has been followed the superior Court can set the decision aside by certiorari for error of law…. If the grounds or reasons stated disclose a clearly erroneous legal approach the decision will be quashed. An error of law may also be held to be apparent… if the inferences and decisions reached by the tribunal in any given case are such as no reasonable body of persons properly instructed in the law applicable to the case could have made. The above is a summary of some of the grounds for awarding certiorari as set down in S. A. de Smith's work-Judicial Review of Administrative Action"* [emphasis added]

In Collettes v. Bank of Ceylon [1984] 2 SLR 253 his Lordship Sharvananda J. (as he then was) held:

*"This Court undoubtedly has the jurisdiction to revise the concurrent findings of fact reached by the lower court in appropriate cases. However, ordinarily, it will not interfere with findings of fact based upon relevant evidence except in special circumstances, such as, for instance, where* ***the judgment of the lower court shows that the relevant evidence bearing on a fact has not been considered or irrelevant matters have been given undue importance or that the conclusion rests mainly on erroneous considerations or is not supported by sufficient evidence****. When the judgment of the lower court exhibits such shortcomings, this court not only may, but is under a duty to examine the supporting evidence and reverse the findings."* [emphasis added]

The five-judge bench of the Supreme Court held in the same case that the question of whether the Tribunal has failed to take into account the relevant considerations is a question of law. This was also referred to in Fonseka v. Candappa [1988] 2 SLR 11 and Sithamparanathan v. People's Bank [1989] 1 SLR 124.

In Padfield v. Minister of Agriculture, Fisheries and Food [1968] 2 WLR 924, Lord Upjohn held, *"He may have good policy reasons for refusing an investigation, though that policy*

*must not be based on political considerations which as Farwell LJ said in R v Board of Education are pre-eminently extraneous."*

It must be noted that despite an assurance given to this Court on 12th February 2021 by the Counsel of the 1st and 2nd Respondents that no steps would be taken to call for applications to fill the purported vacancy, it is appalling, if it is true, that a person has allegedly been appointed to that post. The document marked "P13" annexed to the Counter Affidavit of the Petitioner, is a letter issued by the Divisional Secretariat of Mawanella stating that a person concerned has received an appointment for the same post. What is more shocking is the document marked "P14", dated 10th June 2022, issued by the Mawanella Pradeshiya Sabha stating that the same person is purportedly a member of the Mawanella Pradeshiya Sabha. Given that the person concerned is not a party to this application and the Respondents, although their written submissions dated 22nd September 2022 are silent on the matter, have not had an opportunity to controvert the veracity of the contents of these documents the questions of whether a person has been appointed to the post of Registrar and further whether that person is simultaneously holding a political office must be inquired into and addressed by the Respondents.

For the reasons that the Respondents have acted arbitrarily and made an error of law by taking into account irrelevant, extraneous considerations, and thereby acted illegally, we quash the decision of the Respondents to cancel the appointment of the Petitioner. We issue a Writ of Mandamus to reinstate the Petitioner, subject to an inquiry on his eligibility to continue in the position considering the allegations made against him and the satisfactory completion of his probation. We order costs.

**JUDGE OF THE COURT OF APPEAL**

**D. N. SAMARAKOON, J.**

**I AGREE**

**JUDGE OF THE COURT OF APPEAL**