

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

In the matter of an Application for the
mandate in 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:225/2020

Kalu Guruge Suneetha alias Suneetha
Guruge,
No. 145/30,
Sandun Uyana, Dampe Road, Meegoda.

Petitioner

Vs.

1. Dr. Nadeera Rupasinghe,
Director General,
Department of National Archives,
No. 07. Philip Gunawardhena Mawatha,
Colombo 07.
2. Department of National Archives
No. 07. Philip Gunawardhena Mawatha,
Colombo 07.
3. The Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Batteramulla.
4. Dharmasena Dissanayake,
The Chairman,
The Public Service Commission,

(Ceased to hold Office)

4.(a) .Jagath Balapatabendi
Member,
The Public Service Commission,

(Ceased to hold Office) 5. Prof. Hussaain Ismail,
Member,
The Public Service Commission,

5.(a). Indrani Sugathadasa,
Member,
The Public Service Commission,

(Ceased to hold Office) 6. G.S.A. De Alwis
Member,
The Public Service Commission,

6(a). V. Sivagananasothy,
Member,
The Public Service Commission

(Ceased to hold Office) 7. Dr. Pratharp Ramanujam
Member,
The Public Service Commission

7(a). Dr. T.R.C. Ruberu,
Member,
The Public Service Commission

(Ceased to hold Office) 8. V.Jegarasingham,
Member,
The Public Service Commission

8(a) Ahamed Lebbe Mohamed Saleem
Member,
The Public Service Commission

(Ceased to hold Office)

9. Santi Nihal Seneviratne,
Member,
The Public Service Commission

9(a).Leelasena Liyanagama,
Member,
The Public Service Commission

(Ceased to hold Office)

10. S. Runugge
Member,
The Public Service Commission

10(a). Dian Gomes
Member,
The Public Service Commission

(Ceased to hold Office)

11. D.L. Mendis,
Member,
The Public Service Commission

11(a).Dilith Jayaweera
Member
The Public Service Commission

12. Sarath Jayathilake,
Member,
The Public Service Commission

12(a) W.H. Piyadasa
Member,

The Public Service Commission

13. The Secretary,
The Public Service Commissioner
All of,
No.1200/9, Rajamalwatta Road,
Batteramulla.

14. Bandula Harischandra

(Ceased to hold Office)

Secretary

Ministry of Buddhasasana Culture
and Religious Affairs,
8th Floor, Sethsiripaya, Battaramulla.

14(a) Prof. Kapila Gunawardena,

Secretary

Ministry of Buddhasasana Culture
and Religious Affairs,
8th Floor, Sethsiripaya, Battaramulla.

15. Himali Weerakoon,

No.343/7A,
George E.De Silva Mawatha,
Anniwatta, Kandy

16. Dilini Liyanage alias

C.M.D.A.Liyanage,
No, 89/2,
Jayapura Lane,
Battaramulla.

17. Chamila Rajapathirana alias R.C.R.

Priyangani

No. 259/56A, Bandaranayakepura,
Kalapaluwawa, Rajagiriya.

18. Shirani Patabendi alias S.N.K.
Patabendi
No.78/A/17, Diamond Gardens,
Kumudu Mawatha, Piliyuandala

19. A. Sumana Amarasinghe,
No. 187/A/1, Wewagawatta,
Aluthgama Welimada Junction.
Bandaragama.

20. Buddhini N.Liyanage,
Director of Combined Services,
Ministry of Public Administration, Home
Affairs, Provincial Councils and Local
Governments,
Ministry of Administration,
Colombo 07.

21. Anoja P. Guruge,
Additional Secretary (Administration),
Ministry of Buddhasana, Cultural and
Religious Affairs,
8th Floor, Sethsiripaya,
Battaramulla.

22. Rashani Thilakaratne,
Assistant Director (Administration),
Department of National Archives,
No. 7, Philip Gunawardena Mawatha,
Colombo 07

23. Ruwini Rajapakshe,
Administrative Officer,
C/O Department of National Archives,
No. 7, Philip Gunawardena Mawatha,
Colombo 07

24. Muditha Wimalasena,
Assistant Director(Administration)
Department of Archeology,
Sir Marcus Fernando Mawatha
Colombo 07

25. S.K. Wickremasinghe,
Ombudsman,
Presidential Secretariat,
Colombo 01.

26. Hon. Attorney General,
Attorney Generals Department,
Colombo 12.

Respondents

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

Counsel: D.H. Siriwardena for the Petitioner
M. Jayasinghe SSC for the 1st Respondent

Written 05.07.2022 (by the 1st,14th,20th to 24th, and 26th Respondents)

Submissions :

On

Order On : 26.07.2022

B. Sasi Mahendran, J.

The Petitioner, by amended Petition dated 22nd March 2021, invoking the writ jurisdiction of this Court in terms of Article 140 of the Constitution, seeks, inter alia, a Writ of Certiorari to quash the decision embodied in the documents marked “P40”, “P14(b)”, and “P6”, a Writ of Certiorari to quash the results of the interview board, a Writ of Mandamus to either compel the 1st to 14th Respondents to set up a fresh interview for the post of Assistant Director or to compel the same Respondents to promote/appoint the Petitioner to the position of Assistant Director. In the interim, the Petitioner prays for an order against the 1st to 14th Respondents to prevent them from taking steps to promote/appoint the 15th to 18th Respondents or any other person to the posts of Assistant Director.

When this matter was taken up for support on 26th May 2022 before this Court, it appeared that the Petitioner is seeking these Writs against the Public Service Commission and thus an issue was raised whether this Court is empowered to grant the writs prayed for against the Public Service Commission, in the light of the Constitutional ouster clause found in Article 61A of the Constitution. This Order pertains to whether this action can be maintained.

Article 61A of the Constitution reads:

Subject to the provisions of Article 59 and of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.

Whether Article 61A of the Constitution ousts the writ jurisdiction of this Court was discussed in the following cases.

In Katugampola v. Commissioner- General of Excise & Others [2003] 3 SLR 207, her Ladyship Shiranee Tilakawardane, J. held,

“The State Counsel appearing on behalf of the Attorney-General and the other respondents raised a preliminary objection pertaining to jurisdiction, stating that this Court did not have jurisdiction to entertain this application in view of Article 61 A, which has been introduced by the 17th Amendment of the Constitution of the Democratic Socialist Republic of Sri Lanka.

.....Accordingly, this Court holds that the ouster clause contained in Article 61 A of the Constitution precludes the Jurisdiction of this Court.”

In Ratnasiri & Others v. Ellawala [2004] 2 SLR 180 his Lordship Marsoof, PC, J. held,

“In view of the elaborate scheme put in place by the Seventeenth Amendment to the Constitution to resolve all matters relating to the public service, this Court would be extremely reluctant to exercise any supervisory jurisdiction in the sphere of the public service. I have no difficulty in agreeing with the submission made by the learned State Counsel that this Court has to apply the preclusive clause contained in Article 61A of the Constitution in such a manner as to ensure that the elaborate scheme formulated by the Seventeenth Amendment is given effect to the fullest extent.”

In Hewa Pedige Ranasinghe & Others v. Secretary, Ministry of Agricultural Development and Agri Service & Others, SC Appeal 117/2013 decided on 18.07.2018, his Lordship Sisira J de Abrew J. held,

“When I consider Article 61A of the Constitution, I hold that the Court of Appeal has no power to inquire into the above examination conducted by the Secretary to the Ministry of Agricultural Development. Therefore the Petitioner-Petitioners could not have invoked the jurisdiction of the Court of Appeal to quash the said examination”

And most recently in K.V. Gamini Dayarathna v. P.B. Wickremarathna and Others CA (WRIT) Application No. 347/2018 decided on 30th April 2021, his Lordship Arjuna Obeysekere, J. held,

“Thus, I am of the view that the Petitioner cannot challenge the decision of the Public service Commission in this application. Even though the Petitioner has appealed the said decision to the Administrative Appeals Tribunal, the Petitioner is not seeking to quash the findings of the Administrative Appeals Tribunal in this application. In these circumstances, I am of the view that the Petitioner is not entitled to the relief sought in paragraphs (d)- (g) of the prayer to the Petition relating to his dismissal from service.”

In the light of the foregoing authorities, we are of the view that this Court has no jurisdiction to intervene by exercising its writ jurisdiction against the decisions made by the Public Service Commission or its lawful delegate.

It must be noted that Article 61A has not ousted the fundamental rights jurisdiction of the Supreme Court. As observed by his Lordship Janak De Silva J. in CA (Writ) 1009/2008 decided on 10.05.2019:

“Furthermore, the ouster clause in Article 61A of the Constitution does not insulate the PSC from all forms of judicial supervision as the fundamental rights jurisdiction vested in the Supreme Court by Article 126 of the Constitution is preserved in all its vigour and any party whose fundamental rights are infringed or is in imminent danger of infringement has recourse to that jurisdiction.”

In the instant case, there is a provision for the Petitioner to appeal the decision to the Administrative Appeals Tribunal as per Article 59 of the Constitution. Article 59 (2) reads;

The Administrative Appeals Tribunal shall have the power to alter, vary or rescind any order or decision made by the Commission.

The Petitioner has failed to exhaust this remedy available in the Constitution. There is no reason given for the Petitioner’s failure to do so. Therefore, as judicial review is a remedy of last resort, an applicant must exhaust all the possible alternative remedies prior to applying to this Court. In Halwan v. Kaleelul Rahuman [2000] 3 SLR 50, his Lordship S.N. Silva J. (as he then was) held:

“The reason is that such appellate procedure as established by law being the ordinary procedure should be availed of before recourse is had to the extraordinary jurisdiction by way of judicial review as provided in Article 140 of the Constitution. The remedy by way of judicial review should not be allowed to supplant the normal statutory appeal procedure and should be available only in exceptional circumstances.”

This application is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

D.N. SAMARAKOON, J.

I AGREE

JUDGE OF THE COURT OF APPEAL