

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

C.A. Writ Application No.

456/2020

In the matter of an application for writs in the nature of Mandamus, Certiorari and Prohibition under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Dr. Vidana Gamage Suranga Chandimal Ubeysekara,
No. 6/A,
Kurunduwattha Lane,
Issadeen Town, Matara.

Petitioner

Vs.

1. Minister of Health,
Ministry of Health, 385,
Ven. Baddegama Wimalawansa Thero Mawatha,
Colombo 10
2. The Secretary,
Ministry of Health, 385,
Ven. Baddegama Wimalawansa Thero Mawatha,
Colombo 10.
And 5 Others

Respondents

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Ravindranath Dabare with Ms. Savanthi Ponnampereuma instructed by

Sanjaya Edirisinghe for the Petitioner

Vickum De Abrew ASG for the Respondents

Argued on: 31.01.2022

Decided on: 04.08.2022

S.U.B. Karalliyadde, J.

This Order pertains to the issuance of formal notices on the Respondents and the application of the Petitioner for interim reliefs. We heard the learned Counsel appearing for the Petitioner and the learned ASG appearing for the Respondent. This Application revolves around the anomalies of the marks given to the Petitioner at an interview held on 01.10.2018 for the appointment of Medical Officers to the posts of Deputy Medical Administrative Grade and the steps taken by the Secretary to the Ministry of Health (the 2nd Respondent) to call applications from the Officers in the Senior Medical Administrative Grade and the Deputy Medical Administrative Grade to fill the vacancies for covering up/ Acting Appointments for the vacant posts of Senior Medical Administrative Grade. The Petitioner to this Application is a Grade 1 Medical Officer who is working under the Ministry of Health (1st Respondent) for 14 years. By way of General Circular Letter No. 02-54/2016 dated 2016.04.06 issued by the 2nd Respondent marked as X3, applications were called to fill about 147 vacancies in the posts of Deputy Medical Administrative Grade. Officers who have fulfilled the qualifications in terms of Section 11.1.2.2 of the Medical Service Minutes of the Sri Lanka Health Service No. 1883/17 were eligible to apply for the posts and the Petitioner also submitted an application for a post (marked as X4). He was called for an interview by letter dated 2018.08.27 and the interview was held on 01.10.2018. Thereafter, 146 candidates were appointed to the Deputy Medical Administrative Grade by the 2nd

Respondent by the Notice marked as X7. As per the results of the interviews the Petitioner was placed in the 174th merit position (page 8 of X7) according to the order of merits. The Petitioner alleges that he has not been allocated marks at the interview for his Publications as per Clause 7.3 of the marking scheme published along with the General Circular Letter No. 02-54/2016 and that in contravention to the approved procedure for allocation of marks, the marks of the candidates were subsequently altered by the interview panel on several occasions after the conclusion of the interviews, on the influence of then Minister of Health and some other Officials, to place their preferred candidates in higher positions in the merit list. The Petitioner further alleges that the marks obtained by each candidate were not published along with the merit list, which was the custom adhered to in the past.

This writ Application is based on the fact that at the interview, the Petitioner has not been given full marks which he is entitled to get according to the approved procedure for allocation of marks and the marks given to the candidates at the interviews were substantially altered consequent to which the Petitioner was not selected for a post in the Deputy Medical Administrative Grade. Against the decision of the interview board about the section of candidates, the Petitioner has made appeals to the 2nd Respondent, the Secretary of the Health Service Committee of the Public Service Commission (the 4th Respondent) and the Public Service Commission (the PSC). The PSC has dismissed the appeal made by the Petitioner consequent to which he has appealed against the order of the PSC to the Administrative Appeal Tribunal (the AAT). In the meantime, the 2nd Respondent by the publication marked as X31 has called applications from the Medical Officers in the Senior Medical Administrative Grade and the Deputy Medical Administrative Grade to fill the vacancies in the Senior Medical Administrative Grade. Had the Petitioner appointed to a post in the Deputy Medical Administrative Grade he could have eligible to apply for a post advertised in X31.

Out of the reliefs sought in the Amended Petition dated 05.07.2021, the reliefs sought in prayers 'd', 'f' to 'j' are the permanent reliefs and as follows;

d) Grant and issue an order in the nature of a Writ of Certiorari quashing the decision taken in the document marked "X31" to call applications for the post of Senior Medical Administrative Grade;

f) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st and the 2nd Respondents to rectify the anomalies in the marks given for the Petitioner during the interviews and the subsequent changes made to the marks, to place the Petitioner in the correct position in the merit list and submit it to the Health Service Committee of the Public Service Commission for approval and to back date the date of appointment;

g) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st and 2nd Respondents to assign a station to the Petitioner according to his corrected merit position and to back date his appointment with all entitlements and grant him the permission to apply for the post of Senior Medical Administrator;

h) Grant and issue an order in the nature of a Writ of Prohibition refraining the 1st and 2nd Respondents from transferring the Petitioner from the current post he holds until all the above anomalies are rectified;

i) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st and 2nd Respondents to take steps to issue proper appointment letters to the Petitioner for the posts he had held and currently holding as an acting Medical Administrator;

j) Grant and issue an order in the nature of a Writ of Mandamus directing and/or compelling the 1st and 2nd Respondents to compensate for the delay of three years for calling for applications and holding interviews for the post of Deputy Medical

Administrative Grade by backdating the date of appointment of all the candidates including the Petitioner to a reasonable date from calling for applications in 2016;

The reliefs ‘f’ to ‘j’ are based on the alleged irregularities taken place when giving marks to the Petitioner at the interview and the subsequent changes of marks given to the candidates by the interview board. With this regard, the Petitioner has appealed to the PSC and after considering the appeal the PSC has decided to dismiss the appeal. Thereafter, the Petitioner has made an appeal to the AAT against the decision of the PSC. By the instant writ application, the Petitioner indirectly attempts to challenge the decision of the PSC to dismiss the appeal. Nevertheless, in terms of Article 61A of the Constitution a PSC decision could not be challenged in any forum subject to the provisions of Articles 59 and 126. Article 61A provides that;

“[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.”

Article 140 of the Constitution states thus;

“Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against the judge of any Court of First Instance or tribunal or other institution or any other person”

In the case of *Ratnasiri v. Ellawala and Others*¹ Marsoof J (P/CA as he then was) held; *"I am inclined to the view that since this court exercises a supervisory jurisdiction in terms of Article 140 of the Constitution which commence with the words "Subject to the provisions of the Constitution", the constitutional ouster contained in Article 61A excludes judicial review even in the situations contemplated by the proviso to section 22 of the interpretation Ordinance as Mark Fernando J observed in Migultenne v. Attorney General*² *at 491 in connection with sections 106 and 107 of the Republican Constitution of 1972."*

In the case of *Katugampola v. Commissioner General of Excise & others*³ Tilakawardena J observed that the ouster clauses contained in the Constitution would bar jurisdiction that has been granted within the constitution and would therefore such ouster clause adverted to above would be a bar to entertain a writ application by the Court of Appeal.

When considering all the above stated facts and law, I am of the view that the Petitioner is not entitled to maintain this writ application.

In prayer 'd', the Petitioner seeks to issue a Writ of Certiorari quashing the decision of the 2nd Respondent marked as X31 to call the applications from the Medical Officers in the Senior Medical Administrative Grade and Deputy Medical Administrative Grade to fill the vacancies in the Senior Medical Administrative Grade. The Petitioner is neither a Medical Officer in the Senior Medical Administrative Grade nor an Officer in the Deputy Senior Medical Officer Grade to make an application for a post advertised by X31. He is a Grade 1 Medical Officer. Therefore, no prejudice could be caused to the Petitioner by calling application from the Medical Officers in the Senior Medical Administrative Grade and the Deputy Medical Administrative Grade to be appointed to

¹ (2004). 2 Sri LR 180 at 190.

² (1996) 1 Sri LR 408.

³ (2003) 3 SLR 207.

the posts of Senior Medical Administrative Grade. Under such circumstances, the Petitioner is not entitled to the relief sought in prayer 'd'. Be that as it may, the Court can observe that in the affidavit filed by the 2nd Respondent, along with the statement of objections, he has affirmed that the 1st Respondent does not wish to carry out the appointments advertised by X31. An internal memo dated 02.08.2021 marked as 2R1 has also been tendered to the Court into that effect.

The Petitioner in the instant application has preferred an appeal against the decision of the PSC in terms of Article 59 of the Constitution to the AAT which means that he has exhausted the alternative remedy he had. A writ will not lie where an alternative remedy is available. In the case of *Ishak v Director General of Customs and Others*⁴ the court held that;

“The point urged by these respondents is that there is an alternative statutory remedy for the petitioner before a Court of law and not the availability of any administrative remedy. In these circumstances this Court finds that as there is an alternative, adequate remedy provided in Section 154 of the Customs Ordinance, and as the petitioner himself has already instituted action admittedly in the competent Court of civil jurisdiction, the Court would not exercise its discretion in favour of the issue of its writ jurisdiction ...”

In the case of *Thajudeen v Sri Lanka Tea Board and another*⁵ Ranasinghe, J (as he then was) referring to De Smith's *Judicial Review of Administrative Action* (4th Edition) held as follows;

“...Even though all other requirements for securing the remedy have been satisfied by the Applicant, the Court will decline to exercise its discretion in his favour if a specific alternative remedy "equally convenient, beneficial and effectual" is available ... ”

⁴ (2003) 3 SLR 18 at page 23.

⁵ (1981) 2 Sri.L.R. 471.

Since, the Petitioner in the instant application has appealed against the decision of the PSC he is not entitled to invoke the writ jurisdiction of this Court. Under all the above stated circumstances, I decide not to issue formal notices on the Respondents and to dismiss the Application.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL