

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

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

CA/WRIT/561/2021

1. The Union of Revenue Inspectors of
Local Government Service
Revenue Inspector Division
Municipal Council of Kandy
Kandy.
2. M. P. S. Marasinghe
President- Revenue Inspectors' Union
of Local Government Service
'Jayanthi' Rabbegamuwa,
Handessa.
3. K. H. P. Sujeeva Fernando
No. 59, Vihara Road, Meegammana,
Wattegama.
4. N. S. A. Tennkoon
Kirimetiya, Herangalagama,
Nawalapitiya.
5. K. M. A. Kulasekara
No.133, Niyabepola, Medawala,
Harispattuwa.
6. R.G. Bandula Kulasekara
Putuhapuwa,
Theldeniya.
7. M. S. M. Rizvi
No.67, Udathalavinna, Madihe.

8. R. M. Mangala Rathnayake
No. 229/D/1, Mangalagama
Muruthalawa.
9. K. G. P. N. Ranathunga
No. 278D, Neratheldeniya,
Pilimathalawa.
10. K. M. M. Priyanka Thamel,
No. 208/A, Meewaladeniya,
Handessa.
11. H. W. N. Haththotuwa,
115/3, Kambiadiya,
Yahalathanna.

Petitioners

Vs.

1. Hon. Lalith U. Gamage
Governor- Central Province,
Governor's Office,
P.O. Box 06, Maligawa Square,
Kandy.
2. Mr. J. J. Rathnasiri
Secretary- Ministry of Public Services,
Provincial Councils and Local
Government,
Independence Square,
Colombo 07.
3. Gamini Rajarathna
Chief Secretary- Central Province
Chief Secretary's Office,
P.O. Box 102, Pallekelle,
Kundasale.

4. Mr. Anton Thilakarathna
Secretary to the Governor
Central Province,
Central Provincial Council,
Pallekele, Kundasale.
5. Mr. H. M. M. U. B. Herath
Commissioner of Local Government
Central Province,
Central Provincial Council,
Pallekele, Kundasale.
6. Mr. K. G. Upali Ranawaka
Secretary,
Chief Ministry & Education Ministry –
Central Province),
Central Provincial Council,
Pallekele, Kundasale.
7. Ms. Hiransa Kaluthantri
Director General
Department of Management Services,
Room No. 347, 3rd Floor, Ministry of
Finance,
The Secretariat, Colombo 01.
8. Mr. P. G. Amarakoon
Chairman – Provincial Public Service
Commission-
Central Province,
9. Mr. T. A. D. W. Dayananda
Secretary – Provincial Public Service
Commission-
Central Province,
10. Mr. W.M.S.D. Weerakoon
Member– Provincial Public Service
Commission-
Central Province,

11. Mr. J. D. K. Wickramaratne
Member– Provincial Public Service
Commission-
Central Province,

12. Mrs. W. M. K. K. Karunaratne
Member– Provincial Public Service
Commission-
Central Province,

13. Mr. A. M. R. S. Tennakoon
Member– Provincial Public Service
Commission-
Central Province,

14. Mr. A. M. Wais
Member– Provincial Public Service
Commission-
Central Province,

15. Prof. H. M. D. R. Herath
Member– Provincial Public Service
Commission-
Central Province,

The 8th to 15th Respondents all of
No. 244, Katugasthota Road, Kandy

16. Mr. Upali Wijayaweera
Chairman- National Pay Commission,

17. Mrs. Chandrani Senarathne
Secretary- National Pay Commission,

18. Mr. Gotabhaya Jayarathne
Member- National Pay Commission,

19. Mr. Sujatha Cooray
Member- National Pay Commission,

20. Dr. Madhura Wehella
Member- National Pay Commission,

21. Mr. M. S. D. Ranasiri
Member- National Pay Commission,
22. Dr. Ananda Hapugoda
Member- National Pay Commission,
23. Mr. Sanjeewa Somarathne
Member- National Pay Commission,
24. Mr. Ajith Nayanakantha
Member- National Pay Commission,
25. Dr. Ravi Liyanage
Member- National Pay Commission,
26. Mr. Sanath Ediriweera
Member- National Pay Commission,
27. Prof. Ranjith Senarathne
Member- National Pay Commission,
28. Mr. R. M. Amarasekara
Member- National Pay Commission,
29. Mr. Siri Ranaweera
Member- National Pay Commission,
30. W. H. Piyadasa
Member- National Pay Commission,

The 16th to 30th Respondents all of
National Pay Commission,
Room No. 2-116, BMICH,
Buddhaloka Mawatha,
Colombo 07.

Respondents

Before : Sobhitha Rajakaruna J.
Dhammika Ganepola J.

Counsel : Saliya Peiris, PC with Varuna De Saram and Susil Wanigapura for the Petitioners.

Sumathi Dharmawardena PC, ASG with Hashini Opatha SC for the 1st, 4th, 7th, 16th to 19th, 21st, 24th, 28th and 29th Respondents.

Supported on : 08.11.2022

Written Submissions: Petitioner - 10.01.2023

Respondents- 02.01.2023

Decided on : 30.01.2023

Sobhitha Rajakaruna J.

The Petitioners in the instant Application seek for a mandate in the nature of a writ of Certiorari quashing the Gazette Notification No.2237 dated 16.07.2021, marked 'P18', by which applications have been called to conduct the examination to recruit to the post of Revenue Inspectors to the Revenue Inspection Service in Local Government Institutions of the Central Province. The Scheme of Recruitment ('SOR') dated 20.06.2018, marked 'P9', is also sought to be quashed by way of a writ of Certiorari.

The Petitioners contend that the SOR, marked 'P9', is contrary to the Public Administration Circulars No. 06/2006 and 03/2016 and the Guidelines issued by the Public Service Commission in relation to the preparation of Schemes of Recruitment.

The 1st, 4th, 7th, 16th to 19th, 21st, 24th, 28th and 29th Respondents ('Respondents') raising a preliminary objection assert that the subject matter of this Application falls within the Jurisdiction of the Provincial High Court of the Central Province in terms of Article 154P(4) of the Constitution and as such this Court has no jurisdiction to hear and determine this Application. In addition, the Respondents also claim that the Petitioners are guilty of laches.

Based on the precedent laid down in my order in *Senaka Sebidra Lewis vs. D.G. Ajith Priyantha and others CA/WRIT/368/2021 decided on 14.09.2022* in which the same preliminary objection has been raised on identical issues, I take the view that this Court has the Jurisdiction to hear and determine this Application. At this stage, I need to examine whether the instant Application should be heard and determined by this Court and also whether the preliminary objection should be dealt with at this stage.

As pleaded by the Petitioners, some other members of the Union of Revenue Inspectors of Local Government Service (1st Petitioner) have filed an application bearing case No. 07/2021 in the Provincial High Court of the Central Province holden in Kandy seeking for a Writ quashing (a) the Scheme of Recruitment dated 20.06.2018, (b) Gazette Notification No. 2237 dated 16.07.2021 and (c) the decisions taken thereto. The same Gazette Notification and the SOR are being impugned in the instant Application as well.

A copy of the Petition of the said case No. 07/2021 is marked as 'P19'. The learned President's Counsel for the Petitioners has informed this Court that the Provincial High Court had issued even an interim relief in the said Case No. 07/2021. (vide-Journal entry of 24.05.2022)

The provisions of Section 12 of the High Court of the Provinces (Special Provisions) Act No. 19 of 1990 are vital to consider whether this matter should be taken up for hearing before this Court, after formally issuing notice on the Respondents.

Section 12 (a);

Where any appeal or application is filed in the Court of Appeal and an appeal or application in respect of the same matter has been filed in a High Court established by Article 154P of the Constitution invoking jurisdiction vested in that Court by paragraph (3) (b) or (4) of Article 154P of the Constitution, within the time allowed for the filing of such appeal or application, and the hearing of such appeal or application by such High Court has not commenced, the Court of Appeal may proceed to hear and determine such appeal or application or where it considers it expedient to do so, direct such High Court to hear and determine such appeal or application.

Proviso to Section 12(a);

Provided, however, that where any appeal or application which is within the jurisdiction of a High Court established by Article 154P of the Constitution is filed in the Court of Appeal, the Court of Appeal may if it considers it expedient to do so, order that such appeal or application be transferred to such High Court and such High Court shall hear and determine such appeal or application.

Now, it is important to draw the attention to the paragraph 14 and 16 of the written submissions filed on behalf of the Petitioners.

Paragraph 14;

“It is respectfully submitted that when the matter came up before Your Lordships’ Court on 09th August 2022, learned President’s Counsel on behalf of the Petitioners, requested that the matter be kept alive in the event a jurisdictional issue arose as a result of the National Salaries and Cadre Commission being made party in the Provincial High Court.”

Paragraph 16;

“In the said circumstances it is respectfully submitted that the present application before Your Lordships’ Court be kept alive and if necessary fixed for support in the future.”

It is abundantly clear that the Respondents of the instant Application have taken up the position that the subject matter of the instant Application falls within the jurisdiction of the Provincial High Court of the Central Province. The Secretary to the National Pay Commission is the 6th Respondent in the said case No. 07/2021. Based on the reason expressed by the Petitioners as to why this Application should be maintained and the stand taken by the Respondents upon the jurisdictional question, I see no reason to take up this matter for hearing in this Court or to consider on issuance of formal notice at this stage.

Taking in to consideration the circumstances of the whole case and also the effect of the above provisions in Section 12 of the High Court of the Provinces (Special Provisions) Act, I hold that this is a fit case to be transferred to the High Court of the Uva Province, holden in Badulla. I have exercised my discretion to arrive at the said conclusion by reasons of the circumstances of this case and also due to the reason which is, in my opinion, it is expedient to hear and determine this case in the Provincial High Court.

In arriving at the above conclusions this Court was guided by the principles enunciated in the cases of *Court of Appeal Application No. 736/93, decided on 12.10.1993*; *Senaka Sebidra Lewis vs. D.G. Ajith Priyantha and others, CA/WRIT/368/2021 decided on 14.09.2022*; *Adasuriya Mudiyansele Rohana Bandara vs. The Governor, Wayamba Provincial Council, Kurunegala CA/Writ/762/08 decided on 19.05.2015*; *Weragama vs. Eksath Lanka Wathu Kamkaru Samithiya and others (1994) 1 Sri. L.R. 293*; *Kamalawathie and others vs. The Provincial Public Service Commission, North-Western Province and others (2001) 1 Sri. L.R. 1*; *Sunil Chandra Kumar vs. Veloo (2001) 3 Sri. L.R. 91¹*; *Madduma Banda vs. Assistant Commissioner of Agrarian Services and another (2003) 2 Sri. L.R 80*; *Kalu Arachchige Allen Nona vs. Sunil Weerasinghe, Commissioner of Agrarian Development and others CA/Writ/23/2013 decided on 10.06.2016*; *Nilwala Vidulibala Company (Pvt) Ltd. vs. Kotapala Pradeshiya Sabha and others (2005) 1 Sri. L.R. 296* and *Ramalingam vs. Parameswary and others (2000) 2 Sri. L.R. 340*.

In the circumstances, the Application is transferred to the High Court of the Central Province, holden in Kandy. Thus, the Hon. High Court Judge is directed to hear and determine this Application after making an appropriate order at the initial stage on the issuance of notice and the interim relief as prayed for by the Petitioners. Further, the Hon. High Court Judge may consider the other preliminary objections raised by the Respondents at an appropriate stage.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal

¹ Supreme Court