

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

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

Yakupitiya Kuruppu Arachchige
Rohanajith,
47/1, Palatino Hill Housing Scheme,
Walpola,
Mulleriyawa New Town.

PETITIONER

C.A. Case No. WRT-0136/20

Vs.

1. Justice N. E. Dissanayake, Chairman,
2. A. Gnanathanasan, Member,
3. G. P. Abeykeerthi, Member,
1st to 3rd Respondents of;
Administrative Appeals Tribunal,
Silva Lane,
Sri Jayawardenepura Kotte.
4. Secretary, Public Service Commission,
No.1200/9, Rajamalwatta Road,
Battaramulla.
5. Ravinatha Ariyasinha. Secretary,
Ministry of Foreign Relations,

Republic Building,
Sir Baron Jayathilake Mawatha,
Colombo 01.

RESPONDENTS

BEFORE : **M. SAMPATH K. B. WIJERATNE, J**
 WICKUM A. KALUARACHCHI, J

COUNSEL: Uditha Egalahewa, PC with Damitha Karunaratne
 for the Petitioner.
 Sumathi Dharmawardene, ASG, PC with
 A. Jayakody, SC for the 4th and 5th Respondents.

ARGUED ON : 17.07.2023

WRITTEN SUBMISSIONS

TENDERED ON : 01.09.2023 (On behalf of the Petitioner)
 04.09.2023 (On behalf of the 4th and
 5th Respondents)

DECIDED ON : 21.09.2023

WICKUM A. KALUARACHCHI, J.

The petitioner seeks the following reliefs in this writ application.

1. Grant an Order in the nature of Writ of Certiorari quashing the order of the Administrative Appeals Tribunal in AAT/101/2018(PSC) dated 10-02-2020 [marked P19].
2. Grant an Order in the nature of Writ of Certiorari quashing the decision of the Public Service Commission as reflected in P-12 dated 13-09-2018 bearing reference PSC/EST/07-05/05/2017.

3. Grant an Order in the nature of Writ of Mandamus compelling the 5th Respondent to implement the recommendation reflected in P16 dated 25-02-2019.
4. Grant an Order in the nature of Writ of Mandamus compelling the 1st to 3rd Respondents to direct 5th Respondent to backdate the granting of the diplomatic rank of Ambassador of the Petitioner from 01-03-2014 to 28-03-2012 [i.e., the date of his promotion to Grade I.
5. Grant an Order in the nature of Writ of Mandamus compelling the 1st to 3rd Respondents to direct the 5th Respondent to pay to the Petitioner, all due arrears of the Overseas Allowance and any other salaries and emoluments due to the diplomatic rank of Ambassador for the period between 28-03-2012 and 01-03-2014.
6. Grant an Order in the nature of Writ of Mandamus compelling 5th respondent to pay to the Petitioner, all due arrears of the Overseas Allowance and any other salaries and emoluments due to the diplomatic rank of Ambassador for the period between 28-03-2012 and 01-03-2014.

After filing the petition, the 4th respondent and the 5th respondent filed their statement of objections, the petitioner filed his counter affidavit. At the hearing, the learned President's Counsel for the petitioner and the learned Additional Solicitor General for the 4th and 5th respondents made oral submissions. After the hearing, further written submissions with relevant judicial authorities were filed on behalf of the petitioner and the 4th and 5th respondents.

Briefly, the facts relating to the application are as follows:

The petitioner in this application has been serving in the Sri Lanka Foreign Service at the time of retirement. He was serving in various capacities in foreign service. The petitioner was posted in Tehran, Iran as Minister, Embassy of Sri Lanka in Iran with effect from 01.12.2009. Also, he has been awarded the diplomatic rank of Minister with effect from the said date. As per the letter marked P4-e, while the petitioner was serving at the Embassy of Sri Lanka, Iran, he was promoted to Grade-I in the foreign service with effect from 17.05.2013. Subsequently, as per the letter marked P6-a, the petitioner's promotion to Grade-I was amended and backdated to take effect from 28.03.2012. Furthermore, the petitioner stated that he was given the Head of Mission status by the letter P4-f. The petitioner has been appointed as the Ambassador of Sri Lanka to the Islamic Republic of Iran with effect from 15.07.2015 by the said letter P4-f. As per the letter marked P5-b, the petitioner has been informed that his ambassador rank has been approved with effect from 01.03.2014 and he is entitled to draw the Overseas Service Allowance and other allowances applicable to the rank of ambassador.

The grievance of the petitioner is that although he was promoted to Grade-I in the Foreign Service with effect from 28.03.2012 (as per letter P6-a), he gets his allowances from 01.03.2014 because the said letter P5-b states that his ambassador rank has been approved with effect from 01.03.2014.

In 2017.09.27, the petitioner has requested from the Secretary of the Public Service Commission (hereinafter sometimes referred to as the "PSC"), through Secretary to the Ministry of Foreign Affairs, by the letter marked P8-b, to approve the payment of overseas allowances applicable to the rank of ambassador for the period from 28.03.2012 to 01.03.2014. The Public Service Commission, informed the Ministry of Foreign Affairs by the letter marked P8-C to take appropriate action

with regard to the petitioner's appeal. However, the Ministry of Foreign Affairs has rejected the petitioner's request.

Again, the petitioner has forwarded his grievance to the Public Service Commission but was unsuccessful. The petitioner's appeal was rejected by the Public Service Commission by its decision dated 13.09.2018, marked P-12, mainly on the ground that the allowances could be paid only from the date that he was appointed to the rank of ambassador. Aggrieved by the said decision of the PSC, the petitioner made an appeal to the Administrative Appeals Tribunal (hereinafter sometimes referred to as the "AAT"). However, the said appeal has also been dismissed by the Administrative Appeals Tribunal order dated 10.02.2020 marked P-19. On the said circumstances, the petitioner has come to this court seeking the aforesaid reliefs.

At the hearing of the application, the learned President's Counsel for the petitioner contended that the decision of the PSC is unreasonable, irrational, and ultra vires because the petitioner is entitled to the overseas allowances of the diplomatic rank ambassador with effect from 28.03.2012, the date that he was promoted to Grade-I. Substantiating the said argument, the learned President's Counsel submitted in detail how the petitioner became entitled to the said overseas allowances. Further the learned President's Counsel contended that the Administrative Appeals Tribunal also failed to consider the defects and non-considerations shown in the appeal and as a result the appeal was dismissed wrongfully. The learned President's Counsel submitted further that the petitioner was entitled for the Overseas Service Allowances applicable to the rank of Ambassador from 28.03.2012 but the entire problem arose because the letter P5-b mentioned the arbitrary date of 01.03.2014.

Before dealing with the main issue pertaining to the application, I wish to deal with the jurisdictional objection taken by the learned Additional

Solicitor General that this Court has no jurisdiction to quash the decision of the Public Service Commission marked P-12 according to Article 61A of the Constitution. Both parties were allowed to file further written submissions after hearing especially to address the above issue. It has been held in all decided cases tendered on behalf of both parties that the writ jurisdiction of this court does not lie to review a decision made by the Public Service Commission, but an order of Administrative Appeals Tribunal can be challenged by way of a writ application.

Article 61A of the Constitution reads as follows:

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.

Chapter IX of the Constitution deals with the “Public Service.” Therefore, the “Commission” mentioned in Article 61A, which comes under the said chapter refers to the “Public Service Commission.” Hence, it is apparent from Article 61A of the Constitution that this Court has no jurisdiction to review a decision made by the Public Service Commission by way of an application for writ.

The following judicial authorities clearly demonstrate that a writ does not lie against a decision of the Public Service Commission. In the case of ***Ratnasiri and Others V Ellawala and Others- (2004) 2 Sri LR 180***, the effect of Article 61A of the Constitution has been discussed in the following way:

“Article 61A of the Constitution, which was introduced by the Seventeenth Amendment to the Constitution certified by the Speaker on 3rd October, 2001, seeks to oust the jurisdiction of courts to review

determinations of the Public Service Commission, a committee thereof or any public officer, in the following terms: -

Subject to the provisions of paragraphs (1), (2), (3), (4) and (5) 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 any other law.” It was held in the said case that Article 61 A seeks to oust the jurisdiction of courts to review determination of the P.S.C. except where there has been a violation or imminent violation of a fundamental right.

Also, in ***K.V. Gamini Dayarathna v. P.B. Wickremarathna, Senior D.I.G (Administration) and Five Others*** - CA (Writ) Application No: 347/2018 decided on 30th April 2021, it was held that “while any public officer aggrieved by a decision of the Public Service Commission or a committee or public officer to whom the powers of the Public Service Commission have been delegated, could challenge such decision, either by way of a fundamental rights application in terms of Article 126 of the Constitution, or by preferring an appeal to the Administrative Appeals Tribunal in terms of Article 59, Article 61A has shut out the writ jurisdiction of the Court of Appeal to review decisions of the Public Service Commission.”

However, no article of the constitution shut out the writ jurisdiction of the Court of Appeal to review decisions of the Administrative Appeals Tribunal. It was held in ***Wickramasinghe Arachchilage Waruna Sameera, v. Justice N.E. Dissanayake, Chairman, Administrative Appeals Tribunal, and 50 others*** - Case No: CA/WRIT/73/2016 decided on 20.02.2019 that “Article 61A of the Constitution provides immunity from legal proceedings of the decisions of the Public Service Commission and not those of the Administrative Appeals Tribunal. As

held by the Supreme Court in *Ratnayake v. Administrative Appeals Tribunal* [2013] 1 Sri LR 331, Article 61A of the Constitution has no application to the decisions of the Administrative Appeals Tribunal and there is no corresponding provision in the Constitution which ousts the jurisdiction of the Court of Appeal conferred by Article 140 of the Constitution in regard to the decisions of the Administrative Appeals Tribunal.”

Therefore, it is evident from the aforesaid judicial authority that an order of Administrative Appeals Tribunal can be challenged by way of a writ application although decision of the PSC could not be challenged. Hence, apart from the prayer (c) to the petition, this application can be maintained for the other reliefs prayed for in the petition.

It was contended by the learned President’s Counsel that although by the letter P-16, Public Service Commission was informed by the Ministry of Foreign Affairs to pay the due allowances from 28.03.2012 to 01.03.2014, the PSC disregarded the said recommendation and decided that the petitioner is not entitled for further allowances. The learned President’s Counsel also contended that even the AAT has not taken into consideration the said recommendation made in letter P-16. In the said letter marked P-16, it is mentioned that the petitioner became entitled to the overseas service allowance from the date he was promoted to Grade-I, i.e., 2012.03.28, but during the period from 2012.03.28 to 2014.03.01, the petitioner was paid the allowances entitled to a Grade-II Officer, and thus this should be rectified.

The reply of the learned Additional Solicitor General was that the AAT has considered the said recommendation but accepted the letter dated 07.07.2018 (P11-a) written by the Secretary, Ministry of Foreign Affairs to the Public Service Commission recommending that the Overseas Service Allowance could not be paid to the petitioner. It is correct that the AAT has relied upon P11-a and dismissed the petitioner’s appeal.

The learned Additional Solicitor General contended that the petitioner is not entitled to the allowance for the period from 28.03.2012 to 01.03.2014 because at that time, the petitioner was not the Head of Mission, but as stated in the order of the AAT, the petitioner was serving as Deputy Head of Mission in Iran. Even according to paragraph 5(h) of the petition, the petitioner was placed as the Deputy Head of Mission at the Embassy in Iran. He was appointed as the Ambassador of Sri Lanka to Iran in 2015.07.15.

The learned President's Counsel contended that AAT has not stated any reason in its order why the recommendation contained in P-16 was rejected and his contention was that there was no reason to reject the same. In the order of the AAT, the grievance of the petitioner has been correctly identified as having a legitimate expectation that he would be awarded the diplomatic rank of Ambassador from the date of his promotion to Grade 1 of the Sri Lanka foreign service. What is stated in paragraph 10 of the petition filed by the petitioner is also the same.

However, it is apparent from the comparison schedule set out in the statement of objections of the 5th respondent with regard to the determination of diplomatic ranks and payment of allowances in 1994, 2001, and 2016, that on some occasions, Ambassador rank was given even to officers of Grade II. On the other hand, there were instances where officers were promoted to Grade I, but Ambassador rank was not given. The contention of the learned Additional Solicitor General appeared for the 4th and 5th respondents was that Ambassador rank was never automatically conferred upon promotion to Grade 1. Therefore, there is no basis to substantiate the petitioner's claim on legitimate expectation.

In the letter P-16, it is stated that although the petitioner served as a Grade 1 officer from 28.03.2012 to 01.03.2014, he was paid allowances entitled to a Grade II officer during that period, and this should be

rectified. The issue here is whether the petitioner is entitled to the allowances applicable to the rank of Ambassador from the date that he obtained Grade I promotion. The observation in paragraph 10 of P11-a, the letter of recommendation written by the Secretary, Ministry of Foreign Affairs, is that there is no procedure to award the rank of Ambassador or to pay overseas service allowance just because he is promoted to Grade I of the foreign service. In the petition or even at the hearing of the application, no such procedure or a clause in a Gazette notification was shown to demonstrate that the petitioner becomes entitled to the overseas service allowance with his promotion to Grade I. In Schedule "A" of the Gazette Extraordinary No. 1996/28 dated 2016.12.06, it is mentioned that "On promotion to Grade I, the Officer in Grade I, holding the ranks of Deputy Chief of Mission, Deputy High Commissioner, Consul General, or Minister shall be given the rank of Ambassador." However, in the instant application, the petitioner seeks to backdate the rank of Ambassador from 28.03.2012 and to pay the allowances entitled to the rank of Ambassador from 28.03.2012 to 01.03.2014. For the said period, the relevant gazette notification is Gazette Extraordinary No. 1168/17 dated 2001.01.24 marked P3-b. In clause 8.3 of the said gazette marked P3-b, as pointed out by the learned Additional Solicitor General, it is mentioned that "On the recommendation of the Head of Mission, an officer of the SLFS may be granted the next higher rank by the secretary. The only additional monetary benefit that such an officer will be entitled to is the Representational Allowance applicable to the higher post in lieu of the allowance applicable to the officer's substantive rank." In this gazette notification, nowhere, it is stated that an officer in Grade I shall be awarded the rank of Ambassador. Even the learned President's Counsel for the petitioner did not show in the gazette marked P3-b, a clause where the rank of Ambassador is automatically conferred with the Grade I promotion. Therefore, there is no basis to pay the allowances applicable to the rank of Ambassador from 28.03.2012 acting on the recommendations contained in P-16.

In the case at hand, when the letter P4-e was received by the petitioner stating that he had been promoted to Grade I with effect from 17.05.2015, he requested by letter dated 04.11.2013 marked P5-a, that he be awarded the rank of Ambassador with effect from 17 May 2013. After considering his request, the Ambassador rank was approved with effect from 01.03.2014 by the letter P5-b but not with effect from 17.05.2013. In the same letter, it was mentioned that the petitioner is entitled to the overseas service allowance and other allowances applicable to the rank of Ambassador. Although the petitioner's complaint was that the date 01.03.2014 has been fixed arbitrarily, I regret that I am unable to agree with that argument because the decision to award the rank of Ambassador is made by the relevant authority, and the relevant authority is not bound to inform the petitioner of the basis for fixing the effective date. Furthermore, the relevant authority is not legally or statutorily obligated to award the rank of Ambassador from the date of promoting the officer to Grade I.

The petitioner is entitled for the above allowances when the Rank of Ambassador is awarded and there was no dispute that he was paid the said allowances from 01.03.2014. What is stated in the PSC decision P-12 is that although his Grade I promotion was backdated to 28.03.2012, the date of awarding the rank of Ambassador was not back dated and thus the petitioner is not entitled to the aforesaid allowances from the date that he was promoted to Grade I.

When the petitioner was awarded the rank of Ambassador with effect from 01.03.2014, he accepted the same and continued his service. Although the petitioner stated in his petition that he had legitimate expectations, that he would be awarded the diplomatic rank of Ambassador, with his promotion to Grade 1, due allowances for the rank of Ambassador could only be paid to him when he becomes entitled to the said allowances.

As the petitioner is not entitled to the allowances applicable to the rank of Ambassador until he is awarded the rank of Ambassador for the reasons stated above, the AAT is correct in not relying on the recommendations made in P-16, although the reason for not relying on P-16 is not specifically stated in the order of the AAT.

For the reasons stated above, I hold that the order of the AAT to dismiss the appeal against the decision of the PSC relying on the recommendations made in the letter dated 07.07.2018 marked P11-a, written by the Secretary, Ministry of Foreign Affairs is correct.

Since the application for writ of certiorari prayed for by the petitioner to quash the order of the AAT could not be issued in this application before us, there is no need to consider the ultimate effect of quashing the order of the AAT without quashing the decision of the PSC. Furthermore, since the order of the AAT should stand as it is, not only the writ of certiorari against the order of the AAT but also the other writs sought in the prayers (d), (e), (f), and (g) of the petition cannot be granted.

For the foregoing reasons, the application for writs prayed for in the petition is dismissed.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M. Sampath K. B. Wijeratne J.

I agree.

JUDGE OF THE COURT OF APPEAL