

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

In the matter of an Application for mandates in Writ *Certiorari* in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No.  
55/2020**

K.G.J.N. Deshapriya,  
No. 121/3, St. Jude Mawatha,  
Jayasamarugama,  
Kandana.

**PETITIONER**

**-VS-**

1. Justice N.E. Dissanayake,  
Chairman,  
Administrative Appeals Tribunal,  
No. 35, Silva Lane,  
Rajagiriya,
- 1A. Justice Anil Goonaratne,  
Chairman,  
Administrative Appeals Tribunal,  
No. 35, Silva Lane,  
Rajagiriya
2. A. Gnanathan, PC.  
Member,  
Administrative Appeals Tribunal  
No 35, Silva Lane.  
Rajagiriya
3. G.P. Abeykeerthi  
Member.  
Administrative Appeals Tribunal  
No, 35, Silva Lane,  
Rajagiriya

4. Dharmasama Dissanayaka,  
Chairman,  
Public Service Commission,  
No: 1200/9, Rajamalwatte Road,  
Battaramulla

4A. Justice Jagath Balapatabendi,  
Chairman,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

5. Prof. Hussain Ismail,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

5A. Mrs. Indrani Sugathadasa,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

6. Dr. Prathap Ramanujam,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

6A. V. Shivagnanasothy,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

6B. Suntharam Arumainayaham,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

7. V. Jegarasasingam,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

7A. Dr. T.R.C. Ruberu,  
Member  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

8. S. Ranugge,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

8A. Ahamed Lebbe Mohamed Saleem,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

9. D. Laksiri Mendis,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

- 9A. Leelasena Liyanagama,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.
10. Sarath Jayatilaka,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla
- 10A. Dian Gomes,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.
11. Sudharma Karunarathna,  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.
- 11A. Dilith Jayaweera,  
Member,  
Public Service Commission  
No. 1200/9, Rajamalwatte Road,  
Battaramulla
12. G.S.A de Silva, PC  
Member,  
Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.

- 12A. W.H. Piyadasa,  
Member, Public Service Commission,  
No. 1200/9, Rajamalwatte Road,  
Battaramulla.
13. Nadun Guruge,  
Commissioner General of Inland  
Revenue,  
Department of Inland Revenue,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
- 13A. H.M.W.C. Bandara,  
Commissioner General of Inland  
Revenue,  
Department of Inland Revenue,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.
- 13B. Ranjith Hapuarachchi,  
Commissioner General of Inland  
Revenue,  
Department of Inland Revenue,  
Sir Chittampalam A. Gardiner Mawatha,  
Colombo 02.

**RESPONDENTS**

**Before: M. T. Mohammed Laffar, J.**

**S. U. B. Karalliyadde, J.**

**Counsel:** Kapila Liyanagamage for the Petitioner.

R. Aluwihare, SC for the Respondents.

**Written submissions tendered on:**

05.09.2023 by Respondents.

**Argued on:** 29.05.2023

**Decided on:** 25.10.2023

**S.U.B. Karalliyadde, J.**

The Petitioner in this Writ Application is functioning as a Deputy Commissioner in the Sri Lanka Inland Revenue Service and is an officer belonging to the Sri Lanka Inland Revenue Service. A charge sheet was served on him on 25.02.2016 (marked as A1) by the Public Service Commission (the PSC) containing eight charges alleging that he had committed several offences by neglecting official duties and/or misconducts that fall under the 1<sup>st</sup> Schedule of Chapter XLVIII of the Establishments Code. Thereafter the charge sheet was amended twice on 29.07.2016 and 20.09.2016 (A2 and A3) by adding two new charges. After a formal disciplinary inquiry was held the PSC decided that the Petitioner was guilty of the charges I - VIII and X and not guilty of the charge IX in the charge sheets and decided to defer one salary increment and reprimand him severely (A4). The Petitioner appealed to the Administrative Appeal Tribunal (the AAT) against that decision of the PSC. The AAT dismissed the appeal on 28.10.2019 (A6). By this Writ Application, the Petitioner challenges the decision of the AAT.

The substantive reliefs sought by the Petitioner in this Writ Application are as follows;

- b) Issue a Writ of Certiorari quashing the Order of the Administrative Appeals Tribunal marked as X6;
- c) Issue a Writ of Certiorari quashing the Decision and/or Order of the Public Service Commission contained in the letter dated 31<sup>st</sup> May 2018 marked A4 annexed to the Appeal marked X1;
- d) Issue a Writ of Certiorari quashing the Charge Sheet dated 25<sup>th</sup> February 2016 as amended by amended Charge Sheets dated 29<sup>th</sup> July 2016 and 20<sup>th</sup> September 2016 marked A1, A2 and A3 respectively annexed to the Appeal marked X1;

The charges that the Petitioner was found guilty of at the formal disciplinary inquiry and subsequently affirmed by the PSC as stated in the charge sheets are as follows;

**Charge I**

That the Appellant had committed an offence in terms of Clause 13 of the first Schedule of Chapter XLVIII of the Establishments Code by sending a letter through electronic media drawing the attention of A.A.T.P. Amarasinghe, I.P. Apsara, B.D.P.B. Bulanawewa, N.M. Corea, and some others about an interview by the Lankadeepa newspaper with the Commissioner General of Inland Revenue, Mallika Samarasekara, on 15.07.2014 about “Why taxation is required?” on or around 8.40 a.m. under the caption “The best joke of the day!”.

**Charge II**

That the Appellant 28.05.2017 around 8.45 a.m. had sent a letter by electronic media to persons mentioned above, containing disgraceful statements aimed at one or more officers, under the title “The truthful note for review of intelligence!” thereby violating Clause 13 of the 1<sup>st</sup> Schedule of Chapter XLVIII of the Establishments Code.

**Charge III**

That the Appellant on 03.06.2014, around 10.56 a.m. had sent a letter by electronic media to persons mentioned in charge I above, containing disgraceful statements under the title “Tax alert/golden key” aimed at one or more officers, thereby violating Clause 13 of the 1<sup>st</sup> Schedule of Chapter XLVIII of the Establishments Code.

**Charge IV**

That the Appellant had released or allowed other parties to review a document containing information on matters relating to making aware the top management about a document relating to “Matters I have come to know about a deceitful transaction/file

No 114146889/ WHEELS LANKA (Pvt.) Ltd”, thereby committing an offence falling under Clause 11 of the 1<sup>st</sup> Schedule of the Chapter XLVIII of the Establishments Code.

**Charge V**

That the Appellant had given copies of the letter titled “Committing a deceitful transaction of 50 million /TIN/114146889/WHEELS LANKA/GA branch (LTU)” DATED 07.02.2013 which had been addressed to the Commissioner General of the Inland Revenue, to another party/ parties or allowing to receive copies thereby committing an offence falling under Clause 11 of the 1<sup>st</sup> Schedule of Chapter XLVIII of the Establishments Code.

**Charge VI**

That the Appellant had given copies of the letter titled “Matters I have come to know about a deceitful transaction - file no 114146889 – the name of the company when WHEELSLANKA Pvt Ltd”, of 05.06.2014, containing charges made against one or more officers in the Department by him, thereby committing an offence under Clause 13 of the 1<sup>st</sup> Schedule of the Chapter XLVIII of the Establishments Code.

**Charge VII**

That the Appellant had sent copies of a letter dated 07.02.2013 addressed to the CGIR “Committing a deceitful transaction of Rs.50m – tin 114146889- WHEELSLANKA Pvt Ltd – 6A branch (LTU)” dated 07.02.2013.

**Charge VIII**

That the Appellant had evaded making a statement to A.M. Jabeer, Director of the Department of Development of Finance of the General Treasury who had been appointed by the CGIR by his letter No. (දේ/අ/ විනය/පොදු) of 19062016 as the Preliminary Investigation Officer, thereby committing an offence under Clause 15 of the 1<sup>st</sup> Schedule of Chapter XLVIII of the Establishments Code.



### **Charge X**

That he had committed an offence under Clause 10 of the 1<sup>st</sup> Schedule of the Establishments Code by committing one or more or all the above offences.

The charges for which the Petitioner was found guilty can be grouped mainly into two segments. Charges No. 1 - 3, 6 and 7 were identical and the allegation was that the Petitioner by circulating certain e-mails had violated Clause 13 of the 1<sup>st</sup> Schedule of 'Offences Committed by Public Officers'. At the Argument, the learned Counsel appearing for the Petitioner admitted that the said e-mails originated from the Petitioner's e-mail account and were sent by the Petitioner even though at the formal disciplinary inquiry the Petitioner had taken up the position that the prosecution has not proved that those e-mails were sent by the Petitioner. However, since the emails had originated from the Petitioner's official e-mail account, in terms of Section 114 of the Evidence Ordinance the Court can presume that those e-mails were sent by the Petitioner. The oral submissions of the learned Counsel for the Petitioner based on that the AAT has failed to take into consideration that the charges against the Petitioner were not proved and therefore, not proved that the Petitioner had violated any provision in the Establishments Code.

The relevant e-mails are tendered by the Respondents marked as R1a - R1e. One of the allegations against the Petitioner is based on the fact that by circulating those e-mails the Petitioner had committed an offence listed under Item 13 of the 1<sup>st</sup> Schedule in the Establishments Code. Item 13 provides that, "conduct oneself or act in such manner as to obstruct a public officer in the discharge of his duties, or insult, or cause or threaten to cause bodily harm to a public officer."

The learned Counsel drew the attention of the Court to the fact that at the formal disciplinary inquiry, no officer had given evidence to the effect that those e-mails had obstructed his/her official duties or caused any insult or threat of bodily harm. Therefore, the learned Counsel argued that the prosecution had failed to prove that the Petitioner had committed an offence listed under Item 13 of the 1<sup>st</sup> Schedule in the Establishments Code.

The second segment of charges in the 4<sup>th</sup>, 5<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> charges are based on the two letters sent by the Petitioner to the Commissioner General of the Inland Revenue Department and the allegation is that the Petitioner had made available those letters to the outside parties and committed an offence listed under item II of the 1<sup>st</sup> Schedule of the Establishments Code. Item 11 is as follows;

“Divulge information that may harm the State, the State Service or other State Institution or make available or cause to make available State documents or copies thereof to outside parties without the permission of an appropriate authority.”

The argument of the learned Counsel appearing for the Petitioner is that those letters were circulated among the officers within the Department and not to the outside parties and those letters are not State documents. The contention of the learned Counsel for the Petitioner is that the AAT has failed to consider the fact that at the formal disciplinary inquiry, those facts were not considered.

In respect of charge No. 08 that the Petitioner had evaded making a statement to the Officer appointed from the General Treasury to conduct the preliminary investigation and by that, he had committed an offence under Item 15 of the 1<sup>st</sup> Schedule of the Establishments Code, the learned Counsel for the Petitioner submitted to Court that the

Petitioner did not refuse to make a statement but he insisted to appoint an Officer to conduct the inquiry within the Inland Revenue Department and objected for appointing an Officer from the Treasury.

The Section 13.10 of Chapter XLVIII in the Establishments Code states thus;

“It would be an act of grave misconduct for an officer to refuse to make a statement about an investigation when he is required to do so by an officer duly appointed to conduct a preliminary investigation. ...”

The learned Counsel appearing for the Petitioner contended that the provisions in Section 13.10 which refers to grave misconduct do not apply to a suspected or suspect officer and since the Petitioner was a suspected officer either he could explain or remain silent. The position of the learned Counsel is that the AAT has failed to consider that fact also. Accordingly, the learned Counsel appearing for the Petitioner argued that for the reasons above-mentioned, the Order of the AAT dated 28.10.2019 is illegal. On that basis, the Petitioner prays for the reliefs sought in the Petition.

In the e-mail marked R1(c)/R3 XIV, the Petitioner has stated that “මෙහි පාලකයන් සමග මතවාදීව ගැටෙන”. This Court is of the view that the said statement of the Petitioner itself amounts to an obstruction in the functioning of official duties of the entire officers in the Inland Revenue Department and necessity does not arise to adduce any further oral evidence to establish that the Petitioner had obstructed the official duties of the officers to find him guilty to the offence listed under Item 13 of the 1<sup>st</sup> Schedule of the Establishments Code.

In respect of the 2<sup>nd</sup> charge under Item 11 of the 1<sup>st</sup> Schedule of the Establishments Code about divulging information to the outside parties, the learned State Counsel

appearing for the Respondents submitted that the structure of the Inland Revenue Department consists of many Units and the work dealing with financial records and tax records of tax payees by every Unit should keep in secret and should not divulge even to the officers who work in another Unit. The learned SC submitted to the Court that the charge under Item 11 of the Establishments Code is based on the letter sent by the Petitioner marked as R3-VIII to the Commissioner General with copies to the Trade Unions in the Inland Revenue Department. In that letter, the Petitioner has mentioned a certain taxpayer and his Tax Identification Number (TIN number). The learned SC argued that the names of the taxpayers and their TIN numbers are confidential information and should not be divulged to anybody. Nevertheless, the Petitioner has copied R3-VIII to all the Trade Unions in the Inland Revenue Department which constituted an offence under Item 11 of the Establishments Code and the learned SC argued that the decision that the Petitioner has committed an offence under Item 11 of the 1<sup>st</sup> Schedule in the Establishments Code is according to the evidence of the case. Section 209 of the Inland Revenue Act, No.10 of 2006 provides that the officers in the Inland Revenue Department shall preserve secrecy about all matters relating to the affairs of any person that may come to his knowledge in the performance of his duties under the Inland Revenue Act and shall not communicate any such matter to any person other than the person such matter relates. Furthermore, in terms of the Code of Ethics issued to the officers in the Inland Revenue Department marked as R2-a, they should protect the secrecy of the information and data of the Department. As stated by Sanjiv Khanna, J. in *Central Public Information Officer, Supreme Court of India vs Subhash Chandra Agarwal*<sup>1</sup>,

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<sup>1</sup> Civil Appeal No. 10044 of 2010 in page 39.

*“The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. If the beneficiary has entrusted anything to the fiduciary, to hold the thing in trust or to execute certain acts in regard to or with reference to the entrusted thing, the fiduciary has to act in confidence and is expected not to disclose the thing or information to any third party.”*

The term “fiduciary” was defined in the case of *Central Board of Secondary Education v. Aditya Bandopadhyay*<sup>2</sup> as follows,

*“a person having a duty to act for the benefit of another, showing good faith and candour, where such other person reposes trust and special confidence in the person owing or discharging the duty. The term “fiduciary relationship” is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction(s). The term also refers to a person who holds a thing in trust for another (beneficiary).”*

Considering all the above-stated facts, the Court can conclude that the acts committed by the Petitioner are against the provisions of the Establishments Code, the Inland Revenue Act, and the Code of Ethics applicable to the officers in the Inland Revenue Department.

A preliminary inquiry is a fact-finding investigation to ascertain whether there is any material to frame charges against an officer to conduct a formal disciplinary inquiry. Up until a charge sheet is served the officer concerned is not a suspect. Therefore, the Petitioner should have given a statement to the officer who had conducted the

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<sup>2</sup> (2011) 8 SCC 497 para 21.

preliminary inquiry and failure to do so constitutes an offence under Section 13.10 read with Item 15 of the 1<sup>st</sup> Schedule of the Establishments Code. When considering all the above-stated facts and circumstances the Court can conclude that the decision of the AAT is according to law and has no basis to interfere with the findings of the AAT.

The learned SC appearing for the Respondents submitted to the Court that since the reliefs sought in prayers (c) and (d) in the Petition deals with the decision of the PSC and the charge sheet issued on behalf of the PSC, in terms of Article 61A of the Constitution this Court has no jurisdiction to grant reliefs sought in those prayers.

It is trite law that the writ jurisdiction could not be invoked in respect of the decisions of the PSC.

Article 61A of the Constitution 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."*

In the case of *Dr. M.D. W. Lokuge vs. Vidyajothi Dr. Dayasiri Fernando, Chairman, of the Public Service Commission and 11 Others*<sup>3</sup>, Justice A.H.M.D. NAWAZ, J, held,

*"The exercise of writ jurisdiction in terms of Article 140 of the Constitution is subject to the provisions of the Constitution in that Article 61A of the Constitution would preclude judicial review of decisions of the PSC. When the*

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<sup>3</sup> C.A. (Writ) Application No. 468/2021 at page 8.

*jurisdiction of this Court to judicially review PSC decisions by certiorari is shut out at a threshold stage, a revisit of that decision in the guise of mandamus or certiorari will be beyond the pale of our jurisdiction and on that score, we are inclined to hold with the submissions of the learned Deputy Solicitor General that mandamus will not lie in the instant case before us."*

In the case of *Locomotive Operators Engineers Union and 2 Others Vs. Justice N.E. Dissanayake (Chairman of the Administrative Appeals Tribunal) and 29 Others*<sup>4</sup>, Sobhitha Rajakaruna, J. held that,

*"Firstly, I observe that it is now settled law that a decision of the AAT on a PSC decision can be impugned under Article 140 of the Constitution. The AAT is not a body exercising any power delegated to it by the PSC but is an appellate tribunal constituted in terms of Article 59(1) of the Constitution (See *Rathanayake y Administrative Appeals Tribunal & others, (2013) 1 Sri LR 331; Lakmini Delapola v Justice SI Imam & others, CA Writ Application, 263/2013, CA minutes 26.07.2019; and K.N. Mankotte v Justice S.I. Imam & others, CA Writ 249/2015, CA Minutes 06.03.2019*). However, the jurisdiction of the Court of Appeal under Article 140 would be limited to a review of the decision of the AAT, and would not extend to quashing decisions of the PSC or of a committee or public official to whom the powers of the PSC have been delegated. (See *W.A.G. Weerasinghe v P.M.K. Malalasekara & others, CA Writ Application No. 256/2018, CA Minutes 19.03.2021*)"*

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<sup>4</sup> C.A. (Writ) Application No. 160/2013 at page 19.

In the case of *Mohamed Ismail Wahabdeen Vs. His Lordship Jayantha Jayasuriya, Chairman, Judicial Service Commission*<sup>5</sup>, Sobhitha Rajakaruna, J. held as follows;

*"On a careful perusal of the provisions of the said Article 61A, it is apparent that a wider spectrum of indemnity has been conferred to the PSC precluding even the issuance of prerogative writs against the PSC by the Court of Appeal in as much as the said Article specifically spell out the words "no court or tribunal". Therefore, it appears that the legislature has made a clear distinction between Article 111K and 61A. However, in terms of the said Article 61A, the jurisdiction of the Supreme Court under Article 126 (along with the jurisdiction of AAT) has not been precluded."*

Therefore, in terms of the Constitutional provisions and the court decisions, the Petitioner has no right to invoke the Writ jurisdiction of this Court against the acts and/or decisions of the PSC. Therefore, the Petitioner is not entitled to the reliefs sought in the prayers (c) and (d) to the Petition.

In prayer (b) the Petitioner seek a Writ of Certiorari to quash the decision of the AAT. Even if the decision of the AAT is quashed the decision of the PSC stands. The Petitioner has not sought to refer the matter back to the AAT to revisit its Order. Therefore, even if the Court quashes the decision of the AAT it cannot refer the matter back to the AAT for reconsideration. In that context this Writ Application is futile. Under the above-stated circumstances, we hold that this Writ Application is without

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<sup>5</sup> C.A. (Writ) Application No. 339/2019 at page 12.



merits and should be dismissed. Accordingly, the Writ Application is dismissed. No costs ordered.

**JUDGE OF THE COURT OF APPEAL**

**M.T. MOHAMMED LAFFAR, J.**  
**I agree.**

**JUDGE OF THE COURT OF APPEAL**