

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

*In the matter of an application for mandates in  
the nature of writ of Certiorari and Mandamus  
under and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

**CA/WRIT/661/2023**

1. Gamini Edirisinghe  
152/1,  
Neegrodarama Road,  
Madampagama,  
Ambalangoda,
2. Mohomed Thaha Mohomed Muzney  
71/02,  
Rock Hill Garden,  
Polgolla.
3. Wannakuwaththawaduge Harshana  
Renold Fernando  
39/A,  
Sunethra Mawatha,  
Galawilawatta,  
Homagama.

**PETITIONER**

Vs.

1. Secretary  
Ministry of Education,  
"Isurupaya",  
Sri Jayawardhanapura Kotte,  
Battaramulla.

2. Minister of Education  
Ministry of Education,  
Sri Jayawardhanapura Kotte,  
"Isurupaya",  
Battaramulla.
3. Hon. Attorney General  
Attorney General's Department  
Colombo 12.

**RESPONDENTS**

**Before:** Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel:** Dr.Thashira Gunatilake with Hashan Gunaratne for the Petitioners.  
Nirmalan Wigneswaran DSG for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents.  
Faiszer Musthapha PC with Amila Dissanayake, Amila Perera for the 2<sup>nd</sup>  
Respondent.

**Supported on:** 02.11.2023

**Decided on:** 03.11.2023

**Sobhitha Rajakaruna J.**

The primary task of the Court at this stage is to consider whether the material disclosed to Court demonstrates an arguable case which needs further consideration after issuing formal notice on the Respondents. Several preliminary objections were raised by the Respondents who vehemently resisted issuing such formal notice.

The cardinal objection raised by the learned Deputy Solicitor General (DSG) and the learned Presidents' Counsel who appear for the Respondents is that 'no necessary parties before Court'. The contention of the Respondents is that several other persons who are not party to

the instant Application will be severely affected if this Court grants the reliefs including the interim relief sought by the Petitioners. Based on such preliminary objections the Respondents move that this Application be dismissed in limine.

The Petitioners in addition to the substantive reliefs sought in the prayer of the Petition seek an interim order directing the 1<sup>st</sup> Respondent - Secretary to the Ministry of Education to stay the issuance and grant of appointments to the candidates whose names are reflected in the list of names marked 'P8'. Apparently, the said list of names contains the names of the candidates who are selected to be appointed to the Sri Lanka Principals Service Grade III, consequent to a general and structured interview. It appears that such appointments are due to be made by the 1<sup>st</sup> Respondent during the forthcoming weekend. It is paramount to note that none of those candidates who were successful at such interviews have been made parties to the instant Application.

It is no doubt that the candidates mentioned in the said 'P8' will be affected if this Court proceeds to grant an interim relief as prayed for by the Petitioner. Apart from the said interim relief the attention should be drawn to the contents of the first paragraph of the letter dated 08.05.2023 marked 'P5' by which the Petitioners have been called for an interview. The 1<sup>st</sup> Respondent has categorically stated therein that the Petitioners were called for a general and structured interview in accordance with the Minute of the Sri Lanka Principals Service (published in Gazette extraordinary 1885/31 on 22.10.2014, marked 'P1') and also in reference to a settlement entered into by the parties to the Fundamental Rights Applications bearing Nos. SC/FR/93/2021, SC/FR/40/2022, SC/FR/26/2022, SC/FR/476/2019. The Order of the Supreme Court in relation to all the above 4 Applications issued on 12.12.2022 is annexed to the Petition marked 'P4'. The said Order of the Supreme Court clearly demonstrates that the Petitioners of those Applications have informed Court that they do not wish to pursue with those Applications based on the undertaking given by the learned DSG that the respective Respondents would not take any steps as per the Cabinet Decision dated 01.03.2021 and however, such Respondents would take steps to fill up 4,718 vacancies (vacancies of the Sri Lanka Principals Service Grade III) that existed as at 30.06.2021 by calling for interviews of the successful candidates from the examination held on 10.02.2019. Ironically, the Petitioners in those Fundamental Rights Applications are not party to the

instant Application and this leads no option for me to pronounce that those Petitioners will be affected if this Court proceeds to grant any of the reliefs prayed for by the Petitioners.

If there is a power to decide and decide detrimentally to the prejudice of a person, duty to act judicially is implicit in exercise of such power and that the rule of natural justice operates in areas not covered by any law validly made. Where there is nothing in the statute to actually prohibit the giving of an opportunity of being heard, the nature of the statutory duty imposed on the decision-maker itself implies an obligation to hear before deciding (Vide - *M.P. Jain & S.N. Jain 'Principles of Administrative Law' 9th edition 2022 p.386*)<sup>1</sup>. I have no hesitation in arriving at a finding that the above proposition directly applies to the decision making process of this Court as well and similarly, it goes to the roots of this case. Hence, I hold that the necessary parties are not before Court which restricts this Court from a fuller and proper adjudication of this matter. Morefully, this is not a fit and proper case for his Court to use its inherent powers to consider the relief sought by the Petitioner even if the necessary parties are not before Court. There is no averment in the Petition of the Petitioners seeking permission to add necessary parties in due course owing to any exceptional circumstances.

Furthermore, I am not convinced that there is a substantial question of law which needs consideration of this Court. The Petitioners' primary contention is that the decisions reflected in 'P5' to 'P8' are bad in law as much as no competitive examination as required in the Minute of the Sri Lanka Principals Service, has been held. It is not disputed that the above-named Petitioners have sat the limited competitive examination conducted in the year 2018 or 2019 in terms of the said Service Minute for the purpose of these appointments. There is no contrary evidence to establish that the Petitioners became aware of the fact that a limited competitive examination 2018/2019 have been held in line with the provisions of the said Service Minute when the Petitioners received the letter dated 08.05.2023 marked 'P5'. The heading of 'P5' and its first paragraph speaks itself to that effect. Having sat the competitive examination in 2018 or 2019 and facing the interviews in the month of May 2023, based on the results of the aforesaid examination, the Petitioners have waited until an ancillary decision, which is

---

<sup>1</sup> Also see: *Prakash Ratan Sinha v State of Bihar*, (2009) 14 SCC 690,694 (para 13 and 14)

unfavorable to them, was taken by the Respondents to challenge the subject recruitment process.

Hence, in view of considering the issuance of formal notice, this is a fit case to take into consideration the conduct of the Petitioners and their acquiescence in respect of the steps taken at the early stages of the subject recruitment process. In the circumstances, this Court takes the view that the Petitioners have not made out an arguable case or a prima facie case for this Court to issue formal notice on the Respondents. We refuse notice and dismiss this Application as the Petitioners have failed to satisfy the initial threshold requirements which warrants this Court to issue formal notice of this Application on the Respondents.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree

**Judge of the Court of Appeal**