

**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 Writs of Certiorari Prohibition and Mandamus, under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

Dr. H Amarathunga,

No. 41K, Negenahira Mawatha,

Kirillawala,

Kadawatha.

CA (Writ) Application No. 319/2017

**PETITIONER**

**Vs.**

1. The Monetary Board of Central Bank,  
P.O Box 590,  
No. 30, Janadhipathi Mawatha  
Colombo 01.
2. Dr. Indrajit Coomaraswamy,  
Governor,  
Central Bank of Sri Lanka

P. O Box 590,  
No. 30, Janadhipathi Mawatha,  
Colombo 01.

Professor W. D. Lakshman  
Governor,  
Central Bank of Sri Lanka  
P. O Box 590,  
No. 30, Janadhipathi Mawatha,  
Colombo 01.

Substituted 2<sup>nd</sup> Respondent

Ajith Nivard Cabraal  
Governor,  
Central Bank of Sri Lanka  
P. O Box 590,  
No. 30, Janadhipathi Mawatha,  
Colombo 01.

Substituted- Substituted 2<sup>nd</sup> Respondent

Dr P. N. Weerasinghe  
Governor,  
Central Bank of Sri Lanka  
P. O Box 590,  
No. 30, Janadhipathi Mawatha,  
Colombo 01.

Substituted- Substituted-Substituted 2<sup>nd</sup>  
Respondent

3. Dr. R. H. S Samarathunga.  
Secretary,  
Ministry of Finance,  
The Secretariat,  
Colombo 01.

Mr. S. R. Attygalle  
Secretary,  
Ministry of Finance,  
The Secretariat,  
Colombo 01.

Substituted 3<sup>rd</sup> Respondent

Mr. Mahinda Siriwardena  
Secretary,  
Ministry of Finance,  
The Secretariat,  
Colombo 01.

Substituted- Substituted 3<sup>rd</sup> Respondent

4. Mrs. M. Ramanathan,  
Member,  
Monetary board,  
P. O Box 590,

No. 30 Janadhipathi Mawatha,  
Colombo 01.

Dr. (Ms) Dushni Weerakoon  
Member,  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

Substituted 4<sup>th</sup> Respondent

Mr. Sanjeewa Jayawardena P.C  
Member,  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

Substituted- Substituted 4<sup>th</sup> Respondent

5. Mr. C. P. R Perera  
Member,  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

Dr. (Mrs) Ranee Jayamaha

Member,  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.  
Substituted 5<sup>th</sup> Respondent

6. Mr. A. N. Fonseka,  
Member,  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

Mr. Samantha Kumarasinghe  
Member,  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

Substituted 6<sup>th</sup> Respondent

Mr. A. N. Fonseka,  
Member,  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

Substituted- Substituted 6<sup>th</sup> Respondent

7. H. A. Karunaratne  
Monetary board,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.
  
8. Dr. P. N. Weerasinghe,  
Deputy Governor,  
Central Bank  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.
  
9. K. D. Ranasinghe  
Deputy Governor,  
Central Bank  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.
  
10. C. J. P Siriwardana  
Deputy Governor,  
Central Bank  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.
  
11. K. M. Abeykoon.  
Director,

Human Resources Department  
Central Bank  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

12. Mrs. K.M.A.N Daulagala.

Assistant Governor,

13. Mrs. S. Gunaratne

Assistant Governor,

14. Mr. N. W. G. R. D Nanayakkara,

Assistant Governor,

15. Mrs. T. M. J. Y. P Fernando,

Assistant Governor,

16. Mr. J. P. R. Karunaratne

Assistant Governor

17. Mrs. K. Gunatilake,

Assistant Governor,

12<sup>th</sup> to 17<sup>th</sup> Respondents,

**All of**

Central Bank of Sri Lanka,  
P. O Box 590,  
No. 30 Janadhipathi Mawatha,  
Colombo 01.

18. Hon. The Attorney-General,  
Attorney-General's Department,  
Colombo 12.

**RESPONDENTS**

**Before:** C.P Kirtisinghe, J  
Mayadunne Corea, J

**Counsel:** Lankmini Warusavithana for the Petitioner  
instructed by Sanjeewa Kaluarachchi

Dr. K. Kanag-Iswaran. P. C  
instructed by Mrs. Julius Creasy for the 1<sup>st</sup> to 11<sup>th</sup> Respondents

A. S. M. Perera, P. C. with Chathurika Vitharana for the 12<sup>th</sup>,  
13<sup>th</sup>, 14<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> Respondents

**Argued on:** 24.11.2022

**Written Submissions:** Tendered by the 1<sup>st</sup> to 11<sup>th</sup> Respondents on 23.01.2023

**Decided on:** 01.03.2023



**Mayadunne Corea J**

The Petitioner filed this application and sought the following reliefs among other things.

(c) Call for and issue a Mandate in the nature of a writ of Certiorari, quashing the decision and/or approval of the 1<sup>st</sup> and/or the 2<sup>nd</sup> to 7<sup>th</sup> Respondents, made at its meeting No. 31/2017 held on 31/08/2017, to promote the 12<sup>th</sup> to 17<sup>th</sup> Respondents in Staff Class Special Grade, in the post of Assistant Governor, communicated by the memorandum dated 31/08/2017, issued by the 11<sup>th</sup> Respondent, produced marked as P-36;

(d) Call for and issue a Mandate in the nature of a Writ of Certiorari, quashing the decisions made by the 2<sup>nd</sup>, 4<sup>th</sup>, to 6<sup>th</sup>, 8<sup>th</sup>, to 10<sup>th</sup> Respondent, i.e., the interview panel, appointed for the selection of officers for the promotion to Staff Class Special Grade, in the post of Assistant Governor, on 30/08/2017, promoting and/or recommending the promotions of the 12<sup>th</sup> to 17<sup>th</sup> Respondents;

(e) Issue a mandate in the nature of a Writ of Certiorari, quashing the memorandum dated 31/08/2017, issued by the 11<sup>th</sup> Respondent, produced marked as P-36;

(f) Call for and issue a Mandate in the nature of a Writ of Certiorari, quashing the decision/decisions of the 1<sup>st</sup> and/or the 2<sup>nd</sup> to 7<sup>th</sup> Respondents, setting out selection criteria for the promotion to Staff Class Special Grade, in the posts of Assistant Governor and Senior Heads of Department, reflected in the issuance of the HRD Circular bearing No. 05/2017/14, dated 21/06/2017, issued by the 11<sup>th</sup> Respondent, produced marked P-25;

(g) And/or issue a Writ of Certiorari quashing the said HRD Circular bearing No. 05/2017/14, dated 21/06/2017 issued by the 11<sup>th</sup> Respondent, produced marked P-25;

(h) Grant and issue a Mandate in the nature of Writ of Mandamus, directing the 1<sup>st</sup> and/or 2<sup>nd</sup> to 7<sup>th</sup> Respondents and/or anyone or more of them to forthwith formulate and/or approve a new and/or

amended scheme of promotion based on objective criterion and indicia of selection and assessment, with intelligible differentia, including provisions for: -

I. A structured and striated interview marking scheme that is logical and rational and one which ensures for the Central Bank, the best possible candidates, with suitable reference to seniority as well,

AND

II. Make the said scheme known and published in advance and

AND

III. Oral interview, which will ensure fairness and transparency in awarding marks to candidates, pursuant to granting a hearing to all stakeholders, including the Petitioner;

(i) Direct that the interviews should not be conducted without the participation of the independent member of the interview panel, in order to ensure balance, objectivity and transparency, and confidence in the process;

(j) Grant and issue a Mandate in the nature of Writ of Prohibition, restraining the 1<sup>st</sup> to 7<sup>th</sup> Respondents and/or the 11<sup>th</sup> Respondents and/or anyone or more of them from calling for applications/expression of interests for the promotion to Staff Class Special Grade, in the posts of Assistant Governor and Heads of Department, based on the selection criteria reflected in HRD Circular bearing No. 05/2017/14, dated 21/06/2017, issued by the 11<sup>th</sup> Respondent, produced marked P-25;

(k) Call for and issue a Mandate in the nature of Writ of Certiorari quashing the specific letters of appointment/promotion issued to the 12<sup>th</sup> to 17<sup>th</sup> Respondents promoting them to Staff Class

Special Grade, in the post of Assistant Governor, issued in pursuance of the decision of the 1<sup>st</sup> and/or 2<sup>nd</sup> to 7<sup>th</sup> Respondents, made at its meeting No. 31/2017 held on 31/08/2017;

AND/OR

(1) Issue a Mandate in the nature of a Writ of Mandamus, directing the 1<sup>st</sup> to 11<sup>th</sup> Respondents to forthwith promote the Petitioner to Staff Class Special Grade, in the post of Assistant Governor with due seniority and back wages.

The Respondents filed their objections and took several preliminary objections. Thereafter this case was taken for argument on 24.11.2022. On this day, the learned President's Counsel appearing for 1-11 Respondents, raised additional preliminary objections, on the maintainability of this application. It was further submitted that with the lapse of time, this application is now futile and further raised an objection on futility, and invited the Court to determine the said objections before proceeding to the merits of the case.

All parties agreed to dispose of the preliminary objections by way of written submissions. Accordingly, the Court allowed all parties to file their additional written submissions pertaining to the preliminary objections. However, only 1 to 11 Respondents had filed their additional written submissions dated 23.01.2023. The Petitioner was relying on the written submissions already filed however, this Court observes that the said written submissions do not address the objection based on futility.

Accordingly, this Court will now consider the said preliminary objections raised by the 1 to 11 Respondents. The said preliminary objections raised are as follows,

- Futility

- The writ of mandamus lies only to secure the performance of a statutory duty and not an obligation of a private character.
- *Ex facie* the petition, the grounds urged in paragraph 35 of the petition for invoking the jurisdiction of the Court under Article 140 of the Constitution is misconceived and untenable in law and do not constitute grounds to invoke this Court's jurisdiction.
- The circulars challenged and adverted to in the petition are not instruments having statutory force
- Non-compliance with the Court of Appeal (Appellate Procedure) Rules 1990
- The Petitioner has *ex facie* violated the mandatory provisions of section 123 of the Evidence Ordinance.
- Has not come to court with clean hands

It is common ground that the Petitioner as well as the 13<sup>th</sup>, 14<sup>th</sup>, and 17<sup>th</sup> Respondents have now retired. The learned President's Counsel appearing for 1<sup>st</sup> to 11<sup>th</sup> Respondents also submitted that most of the Respondents named in the original petition are no longer holding office, especially the members consisting of the interview panel.

It was also submitted that the members of the monetary board who were originally named to this petition have ceased to hold office. It was specifically mentioned that the 7<sup>th</sup>, 9<sup>th</sup>, and 11<sup>th</sup> Respondents have retired and the 10<sup>th</sup> Respondent is now deceased, while the 8<sup>th</sup> Respondent is the present Governor. It was also submitted that these were some of the members of the monetary board and the interview panel at the relevant time. Counsel for the Petitioner in turn informed this Court, that he does not intend to take any steps regarding the above-mentioned Respondents.

It was the contention of 1 to 11 Respondents that the reliefs prayed by the Petitioner, especially the prayer seeking the Petitioner to be promoted also becomes nugatory as the Petitioner too has retired. Thus, the argument that this application is now futile. However, in response the Petitioner while generally conceding that some of the prayers would be futile, maintained that this application can still be pursued.

This Court has considered the written submissions that have been submitted by the Petitioner as well as 1 – 11 Respondents. Though 1 – 11 Respondents have extensively dealt with futility in the written submissions filed with permission of this Court on 22<sup>nd</sup> August 2022, we find that the Petitioner has failed to file any written submissions on the said objection.

This Court also observes that to adjudicate upon some of the preliminary objections that have been raised, it becomes necessary for the Court to venture into the merits of this case. It is also pertinent to note that this Court is of the view that the submissions that have been tendered to this Court are insufficient to wholly adjudicate on the objections raised. Accordingly, we are of the view that these preliminary objections raised should be considered with the merits of the case.

**Judge of the Court of Appeal**

**C.P Kirtisinghe, J**

I agree.

**Judge of the Court of Appeal**