

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

*In the matter of an application under Article 140 of
the Constitution for mandates in the nature of Writs
of Certiorari, Prohibition and Mandamus.*

CA/WRIT/35/2023

1. Dr. Nayake Bandaralage Dileepa Namal
Bandara Balalle
President-High Court Judges' Association,
High Court Judge,
High Court Judges' Chambers,
Colombo 12.

2. Wagoda Pathirage Sujeewa Nishshanka
Secretary-High Court Judges' Association,
High Court Judge,
High Court Judges' Chambers
Colombo 12.

Petitioners

Vs.

1. Chief Accountant
Ministry of Justice,
No. 19, Sangaraja Mawatha,
Colombo 10.

2. Secretary
Ministry of Justice,
No. 19, Sangaraja Mawatha,
Colombo 10.

3. Commissioner General of Inland Revenue
Sir Chittampalam A. Gardiner Mawatha,
Colombo 2.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Neil Iddawala J.

Counsel : Dr. Romesh de Silva P.C with Sugath Kaldera and Niran Anketell

instructed by H.C. De Silva for the Petitioners.

Decided on : 25.01.2023

Sobhitha Rajakaruna J.

Heard learned President's Counsel for the Petitioners in support of this Application. The learned President's Counsel submits that the Petitioners as Judicial Officers are not part of the Executive or the Legislature and they are not liable to income tax from the income received qua Judicial Officers. He further submits that the Petitioners do not receive any money from employment in that they are not employed within the meaning of the Inland Revenue Act. Accordingly, he submits that the Respondents are wrongly and/or unlawfully and/or in violation of the law taking up the position that the Petitioners are liable to pay income tax.

The learned President's Counsel for the Petitioners points out that the Petitioners have taken all endeavors to serve notices of this application on the Respondents and the proof of service of notice have been tendered to Court by way of the motion dated 24.01.2023. As per the

document annexed to the said motion dated 24.01.2023, notice of this application has been hand delivered to all three Respondents on 23.01.2023. However, considering the complexity of issues relating to this application, this Court is of the view that all Respondents should be heard before making an order on issuance of notice and interim relief. However, the learned President's Counsel submits that if no interim relief is issued, this application would be rendered nugatory as the salaries of the Petitioners will be deducted within the course of the day.

The learned President's Counsel referring to the Inland Revenue Amendment Act No. 45 of 2022 submits that the Judges are not liable to pay the Advance Personal Income Tax in view of the amendment introduced therein to Section 83A of the Inland Revenue Act. The fundamental argument of the learned President's Counsel is that the Judges are not employees of any employer as defined in the Interpretation Section of the Inland Revenue Act. He further submits that the judicial behavior cannot be controlled by His Excellency the President or anybody else.

At this stage the Court needs to consider the submissions made by the learned President's Counsel on the relevant amendment introduced to the Inland Revenue Act and also the submissions made on the Independence of Judiciary. The Petitioners plead that the executive committee of the High Court Judges' Association so reluctantly but resolutely has decided to file this application on the basis that no other alternative was available to vindicate the rights of the Judges of the High Court and the independence of the judiciary.

Considering all the circumstances, including the paramount aspect of the Independence of Judiciary, this Court is of the view, that an order to maintain the status quo should be issued under Rule 2 (i) of the Court of Appeal Rules. The Court takes the view that the status quo

will be maintained to a certain extent by preventing the 1st and 2nd Respondents from deducting the Advance Personal Income Tax from the monthly salaries of the Judges of the High Court. Accordingly, 1st and 2nd Respondents and their officers, servants, agents are directed not to deduct Advance Personal Income Tax from the income of the Judges of the High Court received qua Judges and/or any part of the said income until the next date of this case .

The learned President's Counsel undertakes to re-issue direct notices on the Respondents.

The Registrar of this Court is directed to communicate this order to the 1st and 2nd Respondents forthwith. The Registrar of this Court must communicate this order over the telephone at the first instance and thereafter via usual channels.

Support on 09.02.2023 at 1.00 p.m.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal

Neil Iddawala J.

I agree.

Judge of the Court of Appeal