

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

In the matter of an Application for
Orders in the nature of Writs of
Prohibition, Certiorari and Mandamus in
terms of Article 140 of the Constitution
of the Democratic Socialist Republic of
Sri Lanka

C.A. (Writ) Application No. 1800/2006

1. Migel Hettige Sumanaratna Tissera,
Embillapitiya,
Neligama,
Meerigama.
2. A.H. Chandrathilleke,
"Vidyasagara", Katukurunda,
Habaraduwa.
3. P.A.P. Shirani Perera,
1/69, Asiri Pedesa,
Raja Mawatha,
Ratmalana.
4. L.V. Sarath Kumara,
23/3, DambuwaWatta,
Pilikuththuwa.
Buthpitiya.
5. A. M. Ariyapala,
56/A, Dumriya Mawatha, Navinna,
Maharagama.

Petitioners

Vs.

1. Hon. A.D. Susil Premajayantha,
Minister of Education,
Ministry of Education,
"Isurupaya", Battaramulla.
2. Ariyaratna Hewage,
Secretary, Ministry of Education,
"Isurupaya", Battaramulla.
3. Thillai Nadaraja,
Additional Secretary,
(Educational Service Establishment),
Ministry of Education,
"Isurupaya", Battaramulla.
4. M.D. Bandusena,
Former Secretary,
Education Services Committee of
the Public Service Commission,
"Isurupaya", Battaramulla.
5. Justice P.R.P. Perera,
Chairman.
6. Prof. Dayasiri Fernando, Member.
7. W.P.S. Jayawardena, Member.
8. Palitha Kumarasinghe, P.C., Member.
9. Prof. S. Mookiah, Member.
10. Prof. M. Rohanadeera, Member.
11. Gunapala Wickramaratna, Member.

12. S.A. Wijeratna, Member.

13. Dr. Bernard Soyza, Member.

5th to 13th Respondents

All of Public Service Commission,
46, Vauxhall Street, Colombo 2.

14. L.G. Wijerathna,
271, Managalagama, Muruthalawa.

15. M.A. Nimal Ananda Wijesooriya
Rathmalawinna, Balangoda.

16. T.M.I. Princy Perera
No. 234, Bandarawatta, Seeduwa.

17. K.A. Nayanakanthi,
558/E, Eriyawetiya Road,
Kiribathgoda.

18. G.R. Rajapaksha,
6/2, Bandarawatte, Magelegoda,
Veyangoda.

19. C.D.C.T.R. Jayawardena,
107/31, Shalawa Road, Mirihana,
Nugegoda.

20. K.R. Pathirana,
Bathgamagewatta, Lalpe, Hakmana.

21. W. Weerasinghe,
Near 21 Mile Post, Buluthota.

22. H.M. Chandrasiri,

Orutota, Gampaha.

23. M. Gunasiri,
Pahla Embawa, Kuliypitiya.
24. D.G. Rathnaweera
20/A, Pangirikade, Dagetamanna,
Getamanna.
25. D.K . Cyril
Nugagaha
Asala, Pohoragedara, Katupotha.
26. K.M.S. Wijedasa.
"Wimala" Lee
Badu, RohalaHandiya
Pallebadda.
27. S.P. Kasun Dharmaratne,
Bangalawatta, Palliyapitiya,
Dunagaha.
28. R.M.B.S.D.K. Wanninayake,
62, PunchiBogahapitiya,
Balagalla, Kengalla.
29. J.N. Kathiriarachchi,
17, Old Road, Batugedera,
Rathnapura.
30. M.R.M.R.B. Rathnayake,
21, Liyanegama, Dompe.
31. D.M.B.K.B. Dissanayake
Mahakumbura, kahataruppe,
Badulla.

32. D.G.P. Chandrakanthi,
100 F/360, Samagiwatta,
Dangedara, Galle.
33. A.P. Benson,
246/36, MunamaleMawatha,
Negombo Road, Kurunegala.
34. A.H. Abeysinghe Banda,
"Jayahanda",
Perawanguwa, Hanguranketha.
35. N.S.K. Rajapaksha,
41, "RankothaNiwasa",
Muruthalawa.
36. S.H. Sarath Karunarathna,
103/B, Wewa Road,
Boralesgamuwa.
37. A.M.W.K. Adikaram,
31-D, Gonawala Road,
Sapugaskande, Makola.
38. K.D. Somarathna,
Kandewatta, IhalaBope,
Padukka.
39. H.M.K.S. H.K.N. Bandara,
1598, Horahena Road,
Kottawa, Pannipitiya.
40. H.G.W. Perera,
42/2, RansiriMawatha,
Kottawa, Pannipitiya.
41. W.M.U. Jayasekara,

Principal's Quarters,
Kengalla Maha Vidyalaya, Kengalla.

42. P. Chandrathilake,
70, Rohini, ParakramaMawatha,
Peliyagoda.
43. D.M.R. Bandara Dissanayake,
Kandepola, Buluwala,
Kurunegala.
44. M.M.N.D. Bandara,
Secretary, Ministry of Education
"Isurupaya", Battaramulla.
45. Hon. Bandula Gunawardena,
Minister of Education
Ministry of Education
"Isurupaya", Battaramulla.
46. Sunil Sirisena,
Secretary, Ministry of Education
"Isurupaya", Battaramulla.
47. H.M. Gunasekera,
Secretary, Ministry of Education
"Isurupaya", Battaramulla.
48. Vidyajothi Dr. Dayasiri Fernando,
Chairman.
49. Palitha Kumarasinghe, P.C.
Member.
50. Mrs. Sirimavo S. Wijeratne,
Member.

51. S.C. Mannapperuma, Member.
52. Ananda Seneviratne, Member.
53. N.H. Pathirana, Member.
54. S. Thillanadarajah, Member.
55. M.D.W. Ariyawansa, Member.
56. A. Mohamed Nahiya, Member.

48th to 56th Respondents,
All of Public Service Commission,
46, Vauxhall Street, Colombo 2.

57. Gotabhaya Jayaratne,
Secretary, Ministry of Education
"Isurupaya", Battaramulla.
58. Anura Dissanayake,
Secretary, Ministry of Education
"Isurupaya", Battaramulla.
59. Justice SathyaHettige P.C.,
Chairman.
60. S.C. Mannapperuma, Member.
61. Ananda Seneviratne, Member.
62. N.H. Pathirana, Member.
63. S. Thillanadarajah, Member.
64. A. Mohamed Nahiya, Member.

- 65. Mrs. Kanthi Wijetunga, Member.
- 66. Sunil Sirisena, Member.
- 67. Dr. I.M. Zoysa Gunasekera, Member.

59th to 67th Respondents
All of Public Service Commission,
177, Nawala Road, Narahenpita,
Colombo 5.

- 68. Hon. Akila Viraj Kariyawasam,
Minister of Education
Ministry of Education
"Isurupaya", Battaramulla.
- 69. Upali Marasinghe,
Secretary, Ministry of Education
"Isurupaya", Battaramulla.
- 70. W. M. Bandusena
Secretary, Ministry of Education
"Isurupaya", Battaramulla.
- 71. Dharmasena Dissanayake,
Chairman.
- 72. A.W.A. Salam, Member.
- 73. Mrs. Dhara Wijayatilleke, Member.
- 74. Dr. P. Ramanujam, Member.
- 75. Mrs. V. Jegarajasingham, Member.
- 76. Nihal Seneviratne, Member.

77. S. Ranugge, Member.
78. D.L. Mendis, Member.
79. Sarath Jayatilleke, Member.

71st to 79th Respondents,
All of Public Service Commission,
177, Nawala Road, Narahenpita,
Colombo 5.

80. Sunil Hettiarachchi,
Secretary, Ministry of Education,
"Isurupaya", Battaramulla.

Respondents

**Before: P. PadmanSurasena, J/ President of the Court of Appeal
ArjunaObeyesekere, J**

Counsel: Ronald Perera, P.C, with Anslem Kaluarachchi for the Petitioners

Milinda Gunatilake, Senior Deputy Solicitor General for the 1st – 13th
and 48th – 56th Respondents

Written Submissions of the Petitioners

tendered on: 06th March 2018

**Written Submissions of the 1st – 13th and
48th – 56th Respondents tendered on:**

01st June 2018

Decided on:

28th September 2018

Arjuna Obeyesekere, J

When this application was mentioned before this Court on 11th July 2018, on a motion filed by both parties, the learned Counsel appearing for the parties informed Court that they have already tendered written submissions and moved that this Court deliver judgment on the said written submissions. The learned Counsel for all parties also agreed that the judgment of this Court in this application would be binding on the parties in Writ Application Nos. 156/2001, 165/2001, 170/2001 and 171/2001.

The Petitioners have filed this application seeking inter alia the following relief:

- a) A Writ of Mandamus directing the 1st – 13th Respondents to appoint the Petitioners and the 14th – 43rd Respondents to Class III of the Sri Lanka Educational Administrative Service with effect from 18th March 1995;
- b) A Writ of Prohibition preventing the 1st – 13th Respondents from filling the cadre of Class III of the Sri Lanka Educational Administrative Service from candidates who sat for the Limited Competitive examination held on 11th February 2006, unless the Petitioners and the 14th - 43rd Respondents are also given appointments in Class III of the Sri Lanka Educational Administrative Service.

The facts which are relevant to a consideration of the above relief are as follows.

The 1st, 3rd and 5th Petitioners belonged to the Sri Lanka Principals Service while the 2nd and 4th Petitioners belonged to the Sri Lanka Teacher Service. By a notification published in Gazette No. 823 dated 10th June 1994 annexed to the petition marked 'P3', applications were called for the Limited Competitive Examination to select persons for appointment to Class III of the Sri Lanka Educational Administrative Service.

Paragraph 16 of the Notice marked 'P3' sets out the basis of selection, as follows:

“තේරීමේ ක්‍රමය - (අ) පත්වීම් දීම සඳහා තෝරාගනු ලබන්නේ, ලිඛිත විභාගයේ දී, ලබාගත් ලකුණුවල කුසලතා අනුපිළිවෙල අනුව සුදුසුකම් පරීක්ෂා කිරීමේ පරීක්ෂණ මණ්ඩලයකට කැඳවා තනතුර සඳහා සුදුසුකම් තිබේදැයි පරීක්ෂා කිරීමෙන් අනතුරුවය. විවිධ ජන වර්ග යටතේ වෙන වෙනම කුසලතා ලේඛණ සකස් කරනු ලැබේ. සමාන ලකුණු ලබා ඇති අපේක්ෂකයින් එක් අයෙකුට වඩා සිටිනම් මණ්ඩලය විසින් තීරණයක් ගනු ලැබේ.

(ආ) පත්වීම් සඳහා තේරීමේ දී පාහික ජනවාර්ගික අනුපාතය අනුගමනය කරනු ලැබේ.”

Thus, in terms of paragraph 16, selection was on the basis of merit, determined in accordance with the results of the limited competitive examination, and with merit lists being prepared for each ethnic group, by applying the National Ethnic Ratio.

A large number of candidates including the Petitioners and the 14th – 43rd Respondents had submitted their applications and sat for the said competitive examination held on 18th March 1995. The Petitioners state that appointments were made to Class III of the Sri Lanka Educational Administrative Service with effect from 4th January 1999 from those who sat for the said examination. The list of the appointees has been annexed to the petition, marked 'P6'. Three unsuccessful candidates, who had sat for the said examination including the 4th

Petitioner in this application, filed Fundamental Rights Application Nos. 129/99 – 131/99 in the Supreme Court challenging the legality of the selection scheme and the basis on which the said selections were made.

The Supreme Court, by its judgment delivered in SC (FR) 131/99 on 29th October 1999, annexed to the petition marked 'P7', had determined that the recruitment had been made on the basis of language in which the candidates sat for the examination and for that reason, the recruitment was not in accordance with the scheme set out in 'P3'. The Supreme Court had therefore proceeded to quash the appointments made by 'P6' and had further directed that selections be made on the basis of paragraph 16 of 'P3'.

The 1st – 13th Respondents had accordingly submitted to the Supreme Court the revised list of appointees prepared under each ethnic group and setting out the marks obtained by each appointee. This list has been annexed to the petition marked 'P8'. The Petitioners state that pursuant to 'P8' being filed, proceedings in SC (FR) 129/99 and 130/99 were closed and taken off the list on 29th of August 2000, as borne out by the journal entry in SC (FR) 130/99 annexed to the petition, marked 'P9'. At the time 'P8' was tendered to the Supreme Court, the Petitioners had no issues with its contents. The persons whose names appeared in 'P8' had accordingly been appointed to Class III of the Sri Lanka Educational Administrative Service. Thus, appointments to Class III of the Sri Lanka Educational Administrative Service based on the results of the limited competitive examination held on 18th March 1995 and the National Ethnic Ratio have been conclusively dealt with by the Supreme Court in SC (FR) 131/99 and the matter ought to have ended there.

Several other persons who had sat for the examination held in 1995 but had not received their appointment to Class III of the Sri Lanka Educational Administrative Service had filed Writ Application Nos. 156/2001, 165/2001, 170/2001 and 171/2001 claiming that the application of the National Ethnic Ratio should ensure the appointment of 263 Sinhalese candidates.

The Petitioners, who are Sinhalese candidates, claim that they found out in 2003 that the revised list of appointees marked 'P8' contained those who obtained lesser marks than the Petitioners at the exam held in 1995. These appointees belonged to other ethnic groups and therefore had been given appointments on the basis of their ethnicity, in terms of paragraph 16 of 'P3'. Alleging that such a course of action is discriminatory, the Petitioners in this application and several others had filed Fundamental Rights Application No. 451/2003 in the Supreme Court challenging the appointments of those who had less marks than the Petitioners. By a judgment delivered on 29th November 2004, the Supreme Court dismissed the said application, having held as follows:

"Accordingly, it was directed¹ that the appointments should be made in terms of paragraph 16 of P3² which specifies the National Ethnic Ratio as the basis of selection. In compliance with that judgment, the appointments that had been already given were revoked by letter dated 13.03.2000 and new letters had been issued dated 29.03.2000 in favour of 12th – 83rd respondents. **It is not disputed that the letters sent on 29.03.2000 are based on the National Ethnic Ratio.** Learned Counsel for

¹ Directed by the Supreme Court in SC(FR)131/99.

² The document referred to as 'P3' in the judgment in SC (FR) 451/2003 is identical to the document marked as 'P3' in this application.

the petitioners submits that there is no basis to make appointments on the basis of National Ethnic Ratio and that the petitioners have been adversely affected by a measure taken to give benefit to persons of ethnic minorities. **We are of the view that it is not open to this court at this stage to examine the validity of the scheme of recruitment in P3, which was published in 1994 and on the basis of which the petitioners applied and sat the examination. Furthermore, the final appointments have been made strictly in compliance with the judgment given by this court.**" (emphasis added)

The Respondents had conducted a further limited competitive examination on 11th February 2006 to recruit persons to Class III of the Sri Lanka Educational Administrative Service. The Petitioners who admittedly had not sat for this limited competitive examination, filed this application in December 2006 when the authorities took steps to conduct interviews for those who had passed the aforementioned limited competitive examination held in February 2006, with the Petitioners arguing that the vacancies in Class III should be given to them as opposed to those who have passed the examination conducted in February 2006.

While the precise complaint of the Petitioners is not evident from the petition, it appears to this Court that the Petitioners complaint is that the Education Service Committee of the Public Service Commission has failed to follow the National Ethnic Ratios declared by the Department of Census and Statistics, annexed to the petition marked 'P12' or the National Ethnic Ratios set out in Public Administration Circular No. 15 / 1990 annexed to the petition marked 'P13', when it made the list of appointees 'P8'. The Petitioners also claim that

had all the vacancies that existed been filled, more Sinhalese candidates could have been appointed and that since the Petitioners had sufficient marks, the Petitioners ought to have been given appointments to Class III of the Sri Lanka Educational Administrative Service, along with the other appointees in 'P8'. On this basis, the Petitioners claim that they have a legitimate expectation of being appointed to Class III of the Sri Lanka Educational Administrative Service in terms of the Notification 'P3' and the judgment of the Supreme Court, marked 'P7'.

At the outset, this Court must note that the Petitioners are guilty of undue delay, which has not been explained by the Petitioners. The application of the National Ethnic Ratio was evident in 'P8'. If the Petitioners were unhappy with its application, they ought to have complained at the time 'P8' was tendered to the Supreme Court, which they have failed to do. The number of vacancies available in Class III and the number of vacancies available for Sinhalese would have been known to the Petitioners at the time SC (FR) Application No. 131/99 was filed. Even if one accepts the date given by the Petitioners – August 2003 – as being the time at which they came to know of their marks and the number of vacancies³, the Petitioners do not appear to have taken any steps at that time to seek appointment for the vacancies that the Petitioners claim exists nor has this argument been taken up in SC (FR) 451/2003. Thus, there has been a long delay in filing this application and the said delay, as set out earlier, has not been explained by the Petitioners. It has been held in a long series of cases decided by this Court⁴ that this Court is entitled to refuse to exercise the Writ

³ The Petitioner in CA Writ Application No. 171/2001 has stated that the number of Sinhala officers to be recruited should be 263.

⁴ See the judgment of Justice Marsoof, P/CA (as he then was) in *Dahanayake and others vs Sri Lanka Insurance Corporation Limited and others* 2005 (1) Sri LR 67.

jurisdiction of this Court where there is delay and where such delay has not been explained to the satisfaction of Court or not explained at all. Thus, on this ground alone, this application is liable to be dismissed.

However, given the fact that there has been a series of cases filed by the Petitioners and others who were not successful at the examination held in 1995, this Court has decided to examine the alleged grievances of the Petitioners in this case and the connected cases, with a view of putting to rest any doubts that the Petitioners may have of their right to receive an appointment to Class III.

It is agreed between the parties that the first step in this entire process – the Gazette notification marked 'P3' - very specifically states that recruitment shall be on merit basis and that a separate merit list will be prepared in respect of each ethnic group on the basis of the National Ethnic Ratio.

The revised list of appointees marked 'P8' prepared on the basis of the National Ethnic Ratio was filed in SC (FR) 131/99 and has been accepted by the Supreme Court. The issue as to whether the said list was not in accordance with the ratios given in 'P12' or 'P13' or whether a proper application of the National Ethnic Ratio should have resulted in a higher number of Sinhalese candidates being appointed, are matters that should have been raised when 'P8' was tendered to the Supreme Court. None of these issues had been raised at the time 'P8' was accepted by the Supreme Court or at the time SC (FR) 451/2003 was filed. In fact, the Supreme Court has held in SC (FR) 451/2003 that 'it is not disputed that the letters sent on 29.03.2000 are based on the National Ethnic Ratio'. In these circumstances, this Court cannot at this stage,

examine if the correct National Ethnic Ratio had been applied in the preparation of 'P8'.

The second complaint of the Petitioners is that sufficient vacancies were available to grant more appointments to Sinhalese candidates. According to the Respondents, the total number of vacancies available was 350. Thus, going by the Petitioners own argument that by applying the ethnic ratio given in 'P13' that 75% of the appointments should be given to Sinhalese, the number of Sinhalese candidates entitled to appointments will only be 262. According to 'P8', 241 Sinhalese candidates have been appointed. The Respondents have explained that '21 vacancies were not filled as the next 34 candidates had obtained equal marks at the said examination'. Paragraph 16 of 'P3' provides that where candidates have equal marks, a decision needs to be taken by the Education Services Board of the Public Service Commission. This Court is of the view that the decision taken by the Respondents to not offer appointments to 21 out of the 34 candidates who had obtained 171 marks⁵ is reasonable, as the number of appointees cannot exceed the vacancies in the cadre. To have selected 21 persons out of 34 equally qualified candidates would have been arbitrary. This is a decision that a sensible person who had applied his mind to the issue at hand could have arrived at. In these circumstances, this Court cannot term the said decision as being irrational.

The Petitioners have sought to dispute the position of the Respondents, that the number of vacancies was only 350, and have submitted several documents with their counter affidavit purporting to support their position. The first such

⁵ Only the 2nd and 5th Petitioners have obtained 171 marks. The other Petitioners have only obtained 170 marks.

document is a letter dated 25th September 1998 marked 'P17'⁶, issued by the Ministry of Education and Higher Education to the Education Service Committee informing that 450 vacancies exists in the Sinhalese medium and requesting that steps be taken to recruit 200 Sinhalese medium candidates. This letter does not support the Petitioners as the request is to fill only 200 vacancies and the Petitioners do not come within the first 200 candidates. In any event, 'P17' had formed part of the Respondents case in SC (FR) 131/99, and ought to have been agitated in that case.

The next document relied on by the Petitioners is 'P19', which is a document they claim was given to them by the 3rd Respondent after the filing of this application. 'P19' does not bear a signature nor a date and its authenticity is unknown. In any event, according to 'P19', the total number of vacancies in Class III that can be filled on the basis of the limited competitive examination was 333, which is less than what the Respondents state are the total number of vacancies. Thus, 'P19' does not assist the Petitioners.

The final document relied by the Petitioners is a letter dated 4th September 2003, sent by the Public Service Commission, marked 'P20'. This letter confirms that the appointments in 'P8' are based on the National Ethnic Ratio of 75% Sinhalese. 'P20' does not contradict the position of the Respondents that the number of vacancies was 350 and therefore does not assist the Petitioners. Thus, the second complaint of the Petitioners that sufficient vacancies existed in Class III for them to be appointed is devoid of any merit.

⁶ The Petitioners state that 'P17' was tendered to the Supreme Court by the Respondents in SC (FR) 131/99.

In these circumstances, this Court is of the view that the Petitioners have not established that they have a legal right to be appointed to Class III of the Sri Lanka Educational Administrative Service on the basis of the results obtained by them at the examination held in 1995 and therefore have failed to satisfy the legal basis for the issuance of a Writ of Mandamus. Hence, the necessity to consider the Writ of Prohibition prayed for does not arise. This application is accordingly dismissed, without costs.

As has been agreed upon by the learned Counsel President's Counsel and the learned Senior Deputy Solicitor General, this Order must apply to CA (Writ) Application Nos. 156/2001, 165/2001, 170/2001 and 171/2001. Accordingly, CA (Writ) Application Nos. 156/2001, 165/2001, 170/2001 and 171/2001 must also stand dismissed without costs.

Judge of the Court of Appeal

P. Padman Surasena, J/ President of the Court of Appeal

I agree.

President of the Court of Appeal