

1953

*Present : Gratiaen J.*

C. L. DE SILVA WIJESUNDERA, Petitioner, and PUBLIC SERVICE COMMISSION, Respondent

*S. C. 595—Application for a Mandate in the nature of a Writ of Certiorari under Section 42 of the Courts Ordinance*

*Public officer—Dismissal by Public Service Commission—Cannot be canvassed by Certiorari.*

*Certiorari* does not lie against the Public Service Commission in regard to any alleged procedural irregularity in the appointment, transfer or dismissal of a public officer.

**A**PPPLICATION for a writ of *certiorari*.

*Cyril E. S. Perera, Q.C.*, with *T. B. Dissanayake*, for the petitioner.

*M. Tiruchelvam*, Crown Counsel, with *J. W. Subasinghe*, Crown Counsel, for the respondent.

*Cur. adv. vult.*

July 14, 1953. GRATIAEN J.—

The petitioner, who was a member of the General Clerical Service, was dismissed from his office on 7th June, 1950, by order of the Public Service Commission. He complains that this order was illegal and unjust on the ground of certain procedural irregularities in the investigation which led to his dismissal, and prays for a mandate in the nature of a writ of *certiorari* quashing the order of dismissal.

The application is clearly misconceived. *Certiorari* lies only where a tribunal vested with functions of a judicial nature purports to make an order in excess of its jurisdiction. The Constitution of Ceylon provides that (subject to certain exceptions which do not apply to the present case)

the appointment, transfer, dismissal and disciplinary control of all public officers shall be vested in the Public Service Commission. None of these functions can properly be described as functions of a judicial nature over which the Supreme Court can exercise any form of supervisory control. In *Suriyawansa v. The Local Government Service Commission* <sup>1</sup> Canekeratne J. held, after full argument upon the point, that *certiorari* did not lie against the Local Government Service Commission in similar circumstances. I am aware that in *Abeygunasekera's case* <sup>2</sup> Nagalingam J. expressed doubts as to the correctness of the earlier decision, but he disposed of the matter before him on other grounds. Having considered the matter afresh, I would respectfully follow the decision in *Suriyawansa's case*.

A most incongruous situation would arise if the petitioner's contention were to be adopted by me. On 7th June, 1950, he ceased to be a public servant holding office under the Crown by virtue of a decision of the only authority vested with power to decide whether or not he should continue to serve the Crown. Were I to accede to the present application, I would, in effect, be purporting to re-instate the petitioner in the public service, and, if that were done, I would be usurping functions which are not mine to exercise.

I refuse the application with costs which I fix at Rs. 262/50.

*Application refused.*

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