

KATUGAMPOLA
v
COMMISSIONER-GENERAL OF EXCISE AND OTHERS

COURT OF APPEAL
TILAKAWARDENA, J. (P/CA)
C.A. 283/2003
SEPTEMBER 11, 2003

Writ of Certiorari – Decision of Public Service Commission – Applicability of the 17th Amendment – Constitution. Article 55 and 61A (17th Amendment) – Is there a difference? – Proper Court?

The petitioner sought (1) to quash the decision taken by the Public Service Commission to cancel the examination (2) a writ of mandamus to release and declare the results of the examination already held.

Held:

- (i) Art 55 (5) restricted the application to orders or decrees concerning appointment, transfer, dismissal or disciplinary control of a public officer. Whereas Article 61A (17th amendment) dealt with any type of decision so long as it is made pursuant to a power conferred.
- (ii) The only ground upon which the writ jurisdiction could be sought under circumstances where a challenge was being made regarding the promotion and/or appointment, transfer etc., was where the person who made the impugned decision, did not have any legal authority to make such a decision.

No claim has been made that the person who make the promotion had no legal authority to make such decision.
- (iii) 'Ouster clause' precluded the jurisdiction of the Court of Appeal and grants exclusive jurisdiction to the Supreme Court. A person aggrieved by the decision would have to invoke the jurisdiction of the Supreme Court under Article 126.

APPLICATION for a writ of certiorari.

Cases referred to:

1. *Abeywickrema v Pathirana* 1986 1 SRI LR 120
2. *Gunarathne v Chandrananda de Silva* – 1998 3 SRI LR 265

3. *Kotakadeniya v Kodithuwakku* – 2000 2 SRI LR 175
4. *Atapattu v People's Bank* – 1997 1 SRI LR 208
5. *Bandaranayake v Weeraratne* – 1981 1 SRI LR 10 at 16

L. Hettiarachchi for the petitioner.

M.R. Ameen, State Counsel for the respondents.

Cur.adv.vult

October 23, 2003

SHIRANEE TILAKAWARDANE, J., (P/CA)

The petitioner has preferred this application seeking a writ of certiorari to quash the decision and/or order of the 5th-13th respondents to cancel the examination held on the 30th of November 2001 for the selections of candidates for promotion to the rank of Excise Inspector. He has also sought a writ of mandamus to direct the 5th-13th respondents to release and declare the results of the candidates of the examination held on the 30th of November 2001 for the selections of candidates for promotion to the rank of Excise Inspector. 01

It was the contention of the petitioner that he had been informed by the 1st respondent by a circular dated 31st of January 2003, which letter was received by the petitioner on the 7th of February 2003, that the examinations held on the 30th of November 2001 for appointments of the post of Excise Inspector had been cancelled by the Secretary of the Public Service Commission by letter dated 18th of January 2002. The application was based on the fact this cancellation was arbitrary and capricious and therefore illegal as no proper inquiry had been had prior to the making of such order. 10

The State Counsel appearing on behalf of the Attorney-General and the other respondents raised a preliminary objection pertaining to jurisdiction, stating that this Court did not have jurisdiction to entertain this application in view of Article 61 A, which has been introduced by the 17th Amendment of the Constitution of the 20

Democratic Socialist Republic of Sri Lanka. An analysis of Article 61 A shows that it was introduced by an amendment to Article 55 (5) of the Constitution which had been applicable to decisions made by the Public Service Commission until the introduction of this amendment by the 17th Amendment to the Constitution. An analysis of these two provisions which are as follows;

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Article 55 (5):-

Subject to the jurisdiction conferred on the Supreme Court under paragraph (1) of Article 126 no court or tribunal shall have power or jurisdiction to inquire into, pronounce upon or in any manner call in question, any order or decision of the Cabinet of Ministers, a Minister, the Public Service Commission, a Committee of the Public Service Commission or of a Public Officer, in regard to any matter concerning the appointment, transfer, dismissal or disciplinary control of a public officer.

Article 61A of the 17th Amendment to the Constitution:-

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Subject to the provisions of paragraph (1), (2), (3), (4) and (5) of Article 126, no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.

show that the Article 61 A clearly enlarged this scope and ambit of Article 55 (5).

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Admittedly, both these articles were applicable to a decision made by the "Public Service Commission" or a Public Officer who exercises delegated authority either from the Cabinet of Ministers or from the Public Service Commission, or a Committee of such Commission. However, Article 55 (5) restricted the application to orders or decisions concerning "appointment, transfer, dismissal or disciplinary control of a public officer". Article 61 A on the other hand concerned any type of decision so long as it was made pursuant to a power conferred or imposed on such body. It is of significance however to note that whether it was Article 61 A or Article 55 (5)

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nevertheless these Articles would have precluded the jurisdiction of this Court as the decision that has been challenged before this Court relates to the promotion being made by the Public Service Commission. Therefore whether to consider the application of Article 55 (5) or Article 61A nevertheless the decisions by the Public Service Commission have been precluded and the jurisdiction was vested even prior to the amendment of the Constitution in the Supreme Court which has jurisdiction to inquire into the validity of the decision of the Public Service Commission in terms of article 126 of the Constitution, that is in the exercise of the fundamental rights jurisdiction. 70

This aforesaid Article 55 (5) and 61A of the said amendment precluded the correctness of a decision being investigated into upon except by the Supreme Court of Sri Lanka, which had sole jurisdiction to inquire into this matter. No claim has been made in this case by the petitioner to the fact that the person who made the promotion had no legal authority to make such decision. In other words, the only grounds upon which the writ jurisdiction could be sought under circumstances where a challenge was being made regarding the promotion (and/or appointment, transfer etc.) was where the person who made the impugned decision did not have any legal authority to make such decision. (*Abeywickrema v Pathirana*⁽¹⁾, *Gunaratne v Chandrananda de Silva*⁽²⁾, *Kotakadeniya v Kodituwakku*⁽³⁾) In considering the writ jurisdiction of this Court, it is important to observe that Article 140 of the Constitution stipulates that the Court of Appeal may issue writs "subject to the provisions of the Constitution". Therefore the ouster clauses contained in ordinary legislation would not effectively restrict or preclude the jurisdiction granted by Article 140 of the Constitution. Nevertheless the restriction contained in Article 55 (5) and the Amended Article 61 A 80 as these are ouster clauses stipulated in the Constitution itself, the powers of this Court would be restricted by these provisions contained in the Constitution. It was held in the case of *Atapattu v People's Bank*⁽⁴⁾, *Bandaranayake v Weeraratne*⁽⁵⁾ that the ouster clauses contained in the Constitution would bar jurisdiction that has been granted within the Constitution and would therefore such ouster clause adverted to above would be a bar to the entertaining of writ applications to invoke the writ jurisdiction by this Court. 90

Accordingly, this Court holds that the ouster clause contained in Article 61 A of the Constitution precludes the jurisdiction of this Court and grants exclusive jurisdiction to the Supreme Court to hear and determine all such matters envisaged within the scope and ambit of such Article. In these circumstances, the person aggrieved by the decision would have to invoke the jurisdiction of the Supreme Court to inquire into the matter in terms of Article 126 of the Constitution as a violation of a fundamental right. Accordingly, we accept the preliminary objections raised by the respondents in this case and the application of the petitioner is dismissed in limine. No costs.

Application dismissed