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

In the matter of an application for mandate in the nature of writ of mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

C.A. Writ Application No. 382/2023

1. W.G.D.K. Abeywickrama,
   No. 511/3B, Ovitigama,
   Waharaka

2. R.M.S. Rathnayake,
   No.39/A, Tithta Watta,
   Hanwella,
   Badulla.

3. R.A.I.S. Ranasinghe
   No.126/19, Nagolla.
   Kegalle.

4. N.G.W. Surangi
   Nuwarapakshe,
   No. 132, Godagandeniya,
   Peradeniya.

5. L.P.S.A. Nilmini,
   No. 15/A/12, Mahamudali
   Mawatha, Dadella,
   Galle.

6. P.G.K. Sanjeewa Peramune,
   No. 65, Hospital Place,
   New Town,
   Embilipitiya.

7. P.N.P. Pathirana,
   No. 27/13/2, Kiripattiya
   Watta, Halpe,
   Mirigama.

8. W.H.T.D. Wewalwala,
   No. 960, Yaya 5,
   Wahamalgollawa,
   Anuradhapura.

9. P.D.W.K. Kumari,
   Temple Road,
   Pahala Narangala,
   Govinna.

10. D.M.R. Kumari,
    'Ajantha Niwasa' ,
    Ambanpitiya,
    Galigamuwa Town.

11. Tharanga Darshani
    Galhenage,
    No. 178/2,
    Rathnapura Road,
    Horana.

Petitioners

Vs.

1. Hon. (Dr) Susil
   Premajayantha,
   Hon. Minister of Education,
   Ministry of Education,
   Isurupaya,
   Battaramulla.

1A Hon. (Dr) Harini
   Amarasuriya,
   Hon. Minister of Education,
   Higher Education and
   Vocational Education
   Ministry of Education, Higher
   Education and Vocational
   Education,
   Battaramulla.

2. Nihal Ranasinghe,
   Secretary,
   Ministry of Education,
   Isurupaya,
   Battaramulla.

2A K.M.G.S.N. Kaluwewa,
   Secretary,
   Ministry of Education, Higher
   Education and Vocational
   Education,
   Isurupaya,
   Battaramulla.

3. Mr. Sanath J. Ediriweera,
   Chairman,

Public Service Commission,
No.1200 / 9 , Rajamalwatta Road,
Battaramulla.

4. Mrs. S.M. Mohamed

5. Mr. N.H.M. Chithrananda

6. Prof. N. Selvakkumaran

7. Mr. M.B.R. Pushpakumara

8. Dr. A.D.N. de zoysa

9. Mrs. R. Nadarajapillai

10. Mr. C. Pallegama

11. Mr. G.S.A. de silva, PC

All are members
Public Service Commission,
No. 1200 / 9, Rajamalwatta Road,
Battaramulla.

12. Mrs. Thanuja Murugeson
Secretary (Acting)
Public Service Commission,
No. 1200 / 9, Rajamalwatta Road,
Battaramulla.

13. Honourable Attorney General,
Attorney General's
Department,
Colombo 12.

Respondents

Before	**:**	**Hon. M.T. Mohammed Laffar, J.(Act.P/CA)**
	:	**Hon. K. Priyantha Fernando, J.(CA)**
Counsel	:	Gamini Hettiarachchi for the Petitioners. Maithree Amarasinghe S.S.C. for the Respondents.
Written Submissions	:	Respondents filed on 01.04.2025 Petitioners filed on 29.04.2025
Argued on	:	27.02.2025
Decided on	:	05.06.2025

K. Priyantha Fernando, J. (CA)

The Petitioners are teachers currently employed in government schools. They hold Higher National Diplomas in Accountancy, awarded by the Sri Lanka Institute of Advanced Technological Education.

By way of Gazette Extraordinary No. 2094, dated 19.10.2018, the 2nd Respondent—the Secretary to the Ministry of Education—invited applications from members of the Sri Lanka Teachers' Service to sit for a limited competitive examination for recruitment to Class III of the Sri Lanka Principals' Service. In response, the Petitioners submitted applications for the said examination.

The 2nd Respondent accepted their applications and allowed them to sit for the examination. All Petitioners sat for and successfully passed the exam. Subsequently, they were called for interviews.

However, despite these steps, the Petitioners were not appointed to Class III of the Sri Lanka Principals' Service. The reason cited was that they did not possess the required qualifications—**the Higher National Diploma in Accountancy (HNDA) was not considered equivalent to a degree from a recognized university.**

In light of these circumstances, the Petitioners have filed this Writ application against the 1st to 13th Respondents.

The Respondents raise a **preliminary objection**, arguing that the application is not maintainable due to the constitutional bar in Article 61(A) of the 1978 Constitution. They acknowledge that Public Administration Circular No. 46/90 (marked P4) recognizes certain new educational qualifications as equivalent to existing recruitment requirements where appropriate.

With regard to paragraphs 9 and 10 of the Petition -Documents P5(a) and P5(b) indicate that the University Grants Commission (UGC) has adopted the provisions of this circular for its institutional administration. However, the Respondents stress that neither the Public Service Commission nor its delegates are legally required to recognize these qualifications in all recruitment processes. The circular's applicability is limited to cases deemed necessary, as specified in paragraph 2 of the circular No. 46/90.

In response to the averments in paragraphs 11 and 12 of the Petition - Documents P6 and P7 relate to qualifications for the Sri Lanka Teachers' Service, which range from G.C.E. Advanced Level to degree qualifications. The

Respondents argue that qualifications for the Teachers' Service cannot be equated with those needed for recruitment into the Sri Lanka Principals' Service.

In response to paragraphs 19 and 20 of the Petition, the Respondents state:

1. By letter No. ED/04/60/08/G/2-II/320 dated 11.11.2022 (annexed as R2), the Secretary to the Ministry of Education acknowledged that approximately 20 principals were recruited in 2015/2016 with Higher National Diplomas in Accountancy.

2. This may have occurred because the interview panel treated Public Administration Circular No. 46/90 as applicable to the Sri Lanka Principals' Service.

3. In light of this, the Public Service Commission (PSC) instructed the Secretary to consider those previously recruited with Higher National Diplomas in Accountancy and Commerce as having met the basic qualification requirements, solely for the purpose of confirming their appointments. A response letter dated 12.04.2023 (marked R3) confirms this directive.

4. The Respondents emphasize that this decision applied only to those already recruited due to a misinterpretation of Circular No. 46/90.

5. Therefore, they argue that this isolated instance should not be treated as a precedent for future recruitment.

In response to the Petition as a whole, the Respondents further submit:

a. Circulars P4 and P11 recognize the four-year Higher National Diploma from Sri Lanka Technical College as equivalent to a Bachelor of Commerce degree from a recognized university. However, Section 2 of the circular stipulates that its provisions should only be adopted into recruitment schemes "*where appropriate"* and *"where necessary.*"

b. Though these circulars were cancelled at one point, they were reinstated through Public Administration Circular No. 22/2015 dated 17.11.2015 (annexed as R4). Nonetheless, as noted in the letter dated 11.11.2022, about 20 principals had already been recruited with HND in Accountancy qualifications in 2015/2016, possibly due to the interview panel's incorrect application of Circular No. 46/90.

In response, the Public Service Commission permitted those appointments to be confirmed by recognizing HND in Accountancy and HND in Commerce as alternative qualifications, but **only** for those already recruited.

d. The Respondents reiterate that this recognition was limited and based on a misapplication of the circular, **not a change in policy**.

e. Lastly, the Secretary to the Ministry of Education recommended in a letter dated 23.12.2022 that HNDs in Accountancy and Commerce awarded by SLIATE be officially accepted as degree-equivalent qualifications in the Fifth Amendment to the Minutes of the Sri Lanka Principals' Service. However, this proposal has not yet received formal approval.

Counter Objections of the Petitioners- Dated 13.11.2024

Answering paragraph 8 of the statement of objections- The Petitioners argue that Circular 46/90 explicitly permits alternative qualifications without restrictions.

<u>බදවාගැනීමේ පටිපාටිවලට ඇතුළත් කළයුතු වෙනත් අධ්‍යාපනික සුදුසුකම්.</u>

පහතින් දැක්වෙන අධ්‍යාපනික සුදුසුකම් අදාළ බදවා ගැනීමේ පටිපාටිවල දක්වා ඇති සුදුකම්වලට විකල්ප අධ්‍යාපනික සුදුසුකම් වශයෙන් භාර ගත යුතු යැයි නිගමනය කර ඇත.

The Petitioners reject the claims in paragraph 9 of statement of objections and assert that the circular allows for unconditional use of alternative qualifications, arguing that the phrase "where necessary" does not limit this.

The said paragraph 2 read as follows;

අදාළ බදවාගැනීමෙ පටිපාටි පරීක්ෂා කර බලවා මෙම නව අධ්‍යාපනික සුදුසුකම් යෝග්‍ය අවස්ථාවන්හිදි එම පටිපාටිවලට ඇතුළත් කිරීමට කටයුතු කරනු මැනවි.

The Petitioners argued that it is both irrational and illogical to claim that the UGC's adoption of Circular 46/90 is irrelevant to the present case. **They emphasize that this circular, which allows for the recognition of alternative qualifications, is directly applicable to the matters at hand**.

In response to paragraph 10 of the statement of objections, the Petitioners contend that **if Circular 46/90 is valid and applicable for recruitment into the Sri Lanka Teachers' Service, there is no sound legal or logical reason to exclude its application from recruitment into the Sri Lanka Principals' Service**. They argue that applying the circular selectively undermines consistency and fairness in public service recruitment.

Addressing sub-paragraphs 14(a), 14(b), and 14(c) of the objections, the Petitioners affirm that the interview panel acted in full compliance with the law by appointing officers to the Principals' Service under the provisions of Circular 46/90. The panel, according to the Petitioners, correctly acknowledged the circular's authority and applied it appropriately in the selection process.

1. The Petitioners argue that paragraph 02(ii) of document "R2" reflects a flawed interpretation of Circular 46/90, misrepresenting its intended broad applicability in recruitment.

2. The Petitioners note that paragraph 02(iii) of the same document confirms that the circular has already been used for both recruitment and promotion in the Sri Lanka Teachers' Service, which supports its legitimacy and relevance.

3. The Petitioners point to document "**R3" as evidence that the Public Service Commission has formally approved the circular's use for recruiting principals, further validating its scope**.

4. The Petitioners conclude that excluding them from the application of this circular is unjustified, given its clear acceptance and implementation across similar recruitment processes.

The Preliminary Objection on jurisdiction**.**

The Respondents have submitted that this application is not maintainable, as the Petitioner is barred from proceeding due to the constitutional restrictions outlined in Article 61(A) of the 1978 Constitution.

Article 61(A) of the Constitution states**;**
"Subject to Articles 59 and 126, no court or tribunal shall have the authority or jurisdiction to inquire into, question, or pronounce on any order or decision made by the Commission, a Committee, or any public officer, in the exercise of powers or duties granted under this Chapter or any other law."

The Respondents emphasize that appointments to the Sri Lanka Principals' Service are made by the Secretary to the Ministry of Education **under delegated authority from the Public Service Commission (PSC), pursuant to Article 57(1)** of the Constitution. This delegation was formalized via Gazette Notification No. 2014/3 dated 11.04.2017.

Although the Secretary acts by delegated power, the authority exercised ultimately remains that of the PSC—the delegating body. Therefore, the constitutional bar, imposed by Article 61(A), which restricts judicial review of PSC decisions, is applicable and relevant in this case.

The Respondents rely on established case law supporting this position:

- In CA Writ 850/2008 (decided 03.05.2011), Hon. Sriskandarajah J. held that the Public Service Commission's decisions are not subject to judicial review by courts **other than the Supreme Court**, as the Constitution excludes their jurisdiction in such matters.

- In SC Appeal 177/2013, Hon. Sisira de Abrew addressed whether the Court of Appeal had jurisdiction under Article 61(A). He concluded that the **Court of Appeal lacked authority to review the examination conducted by the Secretary to the Ministry of Agriculture**

Development, stating that the Petitioner-Petitioners could not invoke the Court of Appeal's jurisdiction to challenge that decision.

- In CA Writ Application No. 468/2012, Hon. Nawaz J affirmed that the exercise of writ jurisdiction under Article 140 is constrained by Article 61(A). He explained that **once judicial review of PSC decisions is barred at the outset, attempts to revisit such decisions through writs of mandamus or certiorari fall outside the court's jurisdiction**, and mandamus will not be granted.
- Finally, in CA Writ 55/2020, Hon. U. B. Karalliyadde J, in *K.G.J.N. Deshapriya v. Justice N.E. Dissanayake, Chairman of the Administrative Appeal Tribunal*, confirmed that under the Constitution and case law, a Petitioner cannot invoke writ jurisdiction against acts or decisions of the PSC.

The Petitioners submitted that the Secretary of the Ministry of Education (the 2nd Respondent) is the appointing confirmed by Gazette Notification "P 2." The Petitioners were called for interviews by the 2nd Respondent (document "P 9") but were subsequently refused appointment on the basis that Petitioners were not officers of the Sri Lanka Teachers' Service. One Petitioner filed a complaint with the Human Rights Commission (document "P 10a").

Although the Public Service Commission is a party to this case, the Petitioners assert that the contested decisions were made by the 2nd Respondent. Therefore, the Court has jurisdiction to issue a writ of mandamus against the 2nd Respondent, and Article 61A of the Constitution does not bar such relief when an unlawful omission has occurred.

The Petitioners rely on the case of ***W.V. Karunarathna and Others v. Justice N.E. Dissanayake, Chairman, Administrative Appeals Tribunal and Others*** (CA Writ Application No. 88/2021, decided on 17.06.2022), where the Court issued a writ of mandamus against the Public Service Commission and the Administrative Appeals Tribunal **despite the Tribunal having affirmed the Commission's decision**.

Additionally, reference is made to ***Pradeep Hemantha Chrisanthas Ratnayake v. Sanath J. Ediriweera, Chairman, Public Service Commission and Others*** (CA Writ Application No. 0291/2023), in which the Court issued an interim relief by *inter partes* order on 07.07.2023 against the Public Service Commission.

I am unable to act on the 2nd case since it is not a considered order and it is given with regard to an interim relief only.

Regarding the preliminary objection, when I perused the judgment cited by the Petitioners, viz. ***W.V. Karunarathna and Others v. Justice N.E. Dissanayake, Chairman, Administrative Appeals Tribunal and Others (supra),*** I am unable to find that the effect of Article 61A of the Constitution has been considered in the said judgment.

In the said case, the petitioners have requested the PSC to backdate their promotions to the date on which each of them became eligible to promotions. They have had filed a Fundamental Rights Application in the Supreme Court against the said decision of the PSC. The Supreme Court by its judgment dated 16.06.2017 has directed the PSC to backdate the promotions of the Petitioners. However, the petitioners were not paid arrears of salary w.e.f. from the date on which their promotions took effect. In fact, the PSC has issued its direction requiring the petitioners be paid the arrears of their salary from the date of the SC judgment. The said decision of the PSC has been challenged before the Administrative Appeals Tribunal (AAT) and it has dismissed the said appeal by its decision dated 30.07.2020. The petitioners' contention was said decision of the AAT to dismiss the appeal is unreasonable and ultra vires.

Thus, it clear that the decision challenged in the said case was not a direct decision of the PSC.

In the instant case, the Sri Lanka Principals' Service are made by the Secretary to the Ministry of Education **under delegated authority from the Public Service Commission (PSC), pursuant to Article 57(1)** of the Constitution.

When carefully considered the judgments cited by the Respondents, it is evident that the Court of Appeal lacked authority to review the examination conducted by the Secretary to the Ministry of Education since Public Service Commission's decisions are not subject to judicial review by courts other than the Supreme Court, as the Constitution excludes their jurisdiction in such matters.

For the foregoing reasons, the Preliminary Objection is upheld. The Application is dismissed. No costs.

Judge of the Court of Appeal

M.T. Mohammed Laffar, J.(Act.P/CA)

I agree.

Judge of the Court of Appeal