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

In the matter of an application for mandates in the nature of writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution.

**C.A. CASE NO. WRT/0708/23**

1. Puvanendran Madhusha Piyamali,
   No. 27, Bogaharawa Road,
   Hidikiwula, Monaragala.

2. Rajapaksha Watte Widanalage Sanjeewani Jayantha,
   No. 250/3, Thalapitaoya South,
   Padiyathalawa.

3. Punchi Wedikkarage Thushantha Ruwan Kumara,
   No. 38, Wagawa,
   Mahiyanganaya.

4. Dissanayake Mudiyanselage Sarangi Maheshika Thilakarathne,
   Moragolla, Gangodarawa,
   Mariarawa, Monaragala.

5. Herath Mudiyanselage Chathurika Udari Herath,
   Senanayana Niwasa, Upland,
   Ridipana, Badulla.

6. Rathnayake Mudiyanselage Harshani sandunika Karunarathne,
   No. 67, Ellegama, Mirahawatta,
   Welimada.

7. Lindamulage Vidushani Shalika De Silva,
   No. 46, Rajakeeya Viduhala Road,
   Monaragala.

8. Rathnayake Mudiyanselage Uthpala Nuwangani Kusum Jayawardena,
   No. 416, Polwatte, Hulandawa,
   Monaragala.

9. Herath Mudiyanselage Sanjeewani Gunarathne,
   No. 130/A,
   Siyambalanduwa.

10. Hettiarachchige Naduni Madushanki Hettiarachchi,
    "Naduni", Lunuatugama,
    Uva Paranagama.

11. Chandra Kanthi Wijeratne,
    Wolekade, Galahitiyawa,
    Maspanna.

12. Tennakoon Mudiyanselage Saumyamali Dilini Kumari,
    Amarakoongama,
    Kalabululanda.

13. Dhananja Gnanakshi Thewarapperuma,
    71/A, Anthalwa,
    Haliela.

14. Kodituwakku Arachchilage Priyangani Nilusha Kumari,
    Galwaduwatta, Diganathenna,
    Bandarawela.

15. Delgoda Arachchige Pradeepa Kanchana Kumari,
    No. 33, “Primali”, Walawwatta,
    Haliela.

16. Ranaweera Patabendige Jeewika Rathnamali,
    “Methsiri”, Wewpahaliya,
    Dikkapitiya, Welimada.

17. Rathnayake Mudiyanselage Hasini Nuwanga Attanayake,
    “Nuwanga Niwasa”, Kuruhela,
    Dombagahawela.

18. Herath Mudiyanselage Wathsala Manohari Herath,
    228 B, Maniyangama,
    Avissawella.

19. Rathnayake Mudiyanselage Samudrika Tharangani Rathnayake,
    “Jayantha”, Kumbalwela,
    Ella.

20. Sooriya Arachchige Athila Samadhi,
    Ishan Maduka Bhare,
    No. 32, Deiyanmewela,
    Badulla.

21. Rajasinghe Mudiyanselage Chamali
    Nilushika Rajasinghe,
    Udapara, Hewandana,
    Baduluoya.

22. Kumarawanthi Unnahelage Madhara Kumara
    Wanni,
    "Gampathi Niwasa", Ambagolla,
    Bibila.

23. Marasinghe Mudiyanselage Kavindi
    Kaushalya,
    "Kasuni", Mahawelathenna,
    Bibiligamuwa, Bogahakumbura.

24. Rajapaksha Bandara Mudiyanselage Sajana
    Nisansala Rajapaksha Bandara,
    65, Wee Gabadawa Asala,
    Bandarawela.

25. Hegoda Makalandage Nuraji Nelka
    Makalanda,
    Polwatta, Hulandawa,
    Monaragala.

26. Rajapaksha Dewayannahalage Erajini
    Lakshani Rajapaksha,
    282, Kanupelalla,
    Badulla.

**PETITIONERS**

**Vs.**

1. Hon. Harini Amarasuriya,
   Minister of Education,
   Ministry of Education,
   Isurupaya,
   Battaramulla.

2. Nalaka Kaluwewa,
   Secretary,
   Ministry of Education,
   Isurupaya, Battaramulla.

3. Wasana P. Gunaratne,
   Senior Assistant Secretary,
   Ministry of Education,
   Isurupaya, Battaramulla.

4. Kapila Jayasekera,
   Governor of Uva Province,
   Governor's Office,
   Rajaweediya, Badulla.

5. R.H.C. Priyanthi,
   Secretary,
   Governor's Office,
   Rajaweediya, Badulla.

6. Damayanthi Paranagama,
   Chief Secretary,
   Chief Secretariat – Uva Province,
   Provincial Council Complex,
   Uva Provincial Council,
   Badulla.

7. Nihal Gunaratne,
   Secretary,
   Uva Province-Ministry of Education,
   Uva Provincial Council, Badulla.

8. H.M. Ariyananda Hennayake,
   President,
   Uva Province-Public Service Commission,
   No. 14/4, Pilipothagama Road,
   Pinarawa, Badulla.

9. Gamini Mahindapala Jopiyas,
   Secretary,
   Uva Province-Public Service Commission,
   No. 14/4, Pilipothagama Road,
   Pinarawa, Badulla.

10. Sali Mohammad Faruk,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

11. R.M. Ubayawansha Kondapperuma,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

12. B.M. Gamini Premaratne Rambakenpura,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

13. S.P. Dayananda,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

14. Thakshila Kumari Sooriyaarachchi,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

15. S.K. Hettiarachchi,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

16. B.M. Munaweera Dassanayake Banda,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

17. Hon. Attorney General,
    Attorney General's Department,
    Colombo 12.

18. A.M. Mohandas,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla.

19. G.B. Harith Lakshitha De Silva,
    Member,
    Uva Province-Public Service Commission,
    No. 14/4, Pilipothagama Road,
    Pinarawa, Badulla

**RESPONDENTS**

**BEFORE : K.M.G.H. KULATUNGA, J**

**COUNSEL :** H.G.G. Pushpakumara for the Petitioner instructed by Dishan Dharmasena.
Chaya Sri Nammuni, DSG for the Respondents.

**SUPPORTED ON :** 23.06.2025

**DECIDED ON :** 26.06.2025

**ORDER**

**K.M.G.H. KULATUNGA, J**

1. This application is supported. The petitioner had then on several occasions amended the petition and supported the amended petition dated 04.03.2025, according to which the substantive relief sought are a writ of certiorari to quash the action taken on P-7 and P-10, and also a writ of mandamus directing the respondents to grant appointments to the petitioners as English Teachers.

2. According to the learned Counsel, the petitioners have faced an interview held in 2019. All the petitioners are diploma holders. According to them, upon the said interview, a prospective list of successful candidates based on their marks had been compiled, which was marked and produced as P-8. Then, based on the said merit list the recruitments have been made on three occasions namely on 27.09.2019, on 22.02.2020, and on 31.03.2021. The petitioners' complaint is that on the first occasion (on 27.09.2019), eight persons who are alleged to have obtained less marks than the petitioners have been recruited, in proof of which the document X-1a was tendered to this Court. It was submitted that the persons appearing at lines 12, 14, 15, 16, 17, 18, 19, and 20 of X-1a were the persons so recruited. The petitioners had obtained this information on an application made under the Right to Information Act. The following matters were raised by the learned State Counsel by way of objections to granting of Leave:

    a) delay;
    b) failure to name necessary parties;
    c) no prayer or relief sought to quash X-1a; and
    d) failure to comply with Rule 3(2) of the Court of Appeal Rules.

3. At the outset, it is necessary to determine if the said successful persons referred to in X-1a were considered on the marks obtained at the initial interview and the examination which is reflected in P-8. The main argument advanced in support of this application is that the 26 petitioners have not been treated equally and the differential treatment has caused an injustice and prejudice to the petitioners. This is on the basis that upon the initial advertisement and interviews held in 2019, a list of 418 successful candidates was so listed by P-3, but some of whom who have obtained marks less than the petitioners have been recruited. Based on the said list P-3, recruitments have been made on three occasions namely on 26.09.2019, on 22.02.2020 and on 31.03.2021. On the said dates the respondents have recruited 79, 21, and 50 persons respectively, from the said list P-3. According to the learned Counsel for the petitioners, the names of such persons appearing in the list X-1a are 8 persons appearing in lines 12, 14, 15, 16, 17, 18, 19, and 20 (hereinafter referred to as 'the selected persons'). It is admitted that the said selected persons have been granted appointments on 27.09.2019. This application has been preferred on 13.11.2023. It is almost three and a half years after the alleged appointments were so made. It is settled law that laches defeat and disentitle a petitioner to seek relief by way of a writ, and that a petitioner is required to invoke and seek a writ within a reasonable time of the alleged action, inaction, or decision. However, the petitioners have failed to aver any reason for the delay. Therefore, the objection raised by the learned State Counsel cannot be rejected and is sustained by this Court.

4. The petitioners do not seek the quashing of the appointments granted to the said successful persons. The petitioners merely are seeking a writ of mandamus to compel the respondents to appoint the 26 petitioners. These appointments have been made as far back as 2019 and according to the pleadings, it appears that, as and when there were vacancies such recruitments have been made based on the financial allocations.

In these circumstances, unless there were vacancies at that point, it would not be possible to order the appointment of 26 petitioners without quashing the impugned appointments of the successful candidates. The appointments are impugned and relief is not sought on the basis of the invalidity of the appointments so made of successful parties. As submitted by the learned Counsel, the petitioners' complaint is of inequal treatment in violation Article 12 of the Constitution. In these circumstances, the proper remedy, if at all, would be the invocation of the Fundamental Rights jurisdiction under the Constitution.

5. In the course of the hearing, it also transpired that the petition does not contain an averment in compliance with Rule 3(2) of the Court of Appeal Rules. The said Rule provides as follows:

> "*The petition and affidavit, except in the case of an application for the exercise of the powers conferred by Article 141 of the Constitution shall contain an averment that the jurisdiction of the Court of Appeal has not previously been invoked in respect of the same matter. If such jurisdiction has previously been invoked the petitioner shall contain an averment disclosing relevant particulars of the previous application. Where any such averment as aforesaid is found to be false or incorrect the application may be dismissed.*"

This averment is neither pleaded in the original petition nor in the subsequent amended petition. Superior Courts have considered the failure to comply with Rule 3(2) as being a mandatory requirement, the failure of which warrants the dismissal of an application under Article 140 of the Constitution.

6. In **Woodman Exports (Pvt) Ltd vs. The Commissioner of Labour and Others** 2010 (BLR) 238, the Supreme Court has held as follows:

> *"The non-compliance with a mandatory Rule by a party could lead to serious erosion of well-established Court procedures maintained*

*by our Courts throughout several decades and therefore the failure to comply with Rule 8(3) of the Supreme Court Rules would necessarily be fatal."*

Similarly, Amaratunga, J in the case of **Caderamanpulle and Others V. Caderamanpulle and Others** (2005) 1 SLR 397, cited the following dicta from **Perera vs. Perera** (2001) 3 Sri LR 30 with approval:

*"This Court on numerous occasions held that in applications for leave to appeal, compliance with Rule 3(1) of the Supreme Court Rules 1990 pertaining to appellate procedure is mandatory." (page 31) Having made the above observation, this Court proceeded to dismiss the application with the following words, "I am compelled to hold that non-compliance with the Supreme Court Rules is fatal to the application and proceed to sustain the preliminary objection raised by the defendant-petitioner-respondent and dismiss this application with costs."*

This was also followed by Mayadunne Corea, J in the Case of **Upul Nishantha vs. Prof. Rohan Fernando and others** (CA (Writ) 379/17, CAM 31.05.2022). Accordingly, the sum total of the aforesaid authorities is that compliance of Rule 3(2) is couched in the mandatory form and the non-compliance and failure to specifically aver would entail a dismissal of an application of this nature.

7. The objection of the State Counsel is the failure to name all necessary parties. In this context, the necessary parties will be those successful candidates. No doubt, the petitioners have not directly sought the quashing of their appointments. However, the petitioners seek the quashing of the advertisements/notices marked P-7 and P-10. This relief is so sought by the prayer (c) of the amended petition. This relief so sought if granted would directly affect the appointments made in pursuance and in consequence of the said two advertisements. As such those who have obtained appointments consequent upon the said

advertisements are necessary parties to this application. In **Rawaya Publishers vs. Wijedasa Rajapakse and Others** (2003 3 SLR 213), it was opined as follows:

> "*In the Context of writ applications as a necessary party is one without whom no order can be effectively made. A proper party is one in whose absence an effective order can be made but whose presence in necessary to a complete and final decision on the question involved in the proceedings. If they are not made parties then the petition can be dismissed in limine. It has also been held that persons vitally affected by the writ petition are all necessary parties. If their number is very large, some of them could be made respondents in a representative capacity*."

Such persons, being persons virtually affected by the writ petition are necessary parties. The petitioners clearly aver and the documents establish that recruitments had been so made and appointments granted to persons in consequence of the advertisements P-7 and P-10. To that extent, the petitioners have failed to name necessary parties, in the sense of persons who are virtually affected by the writ as sought in this application.

8. Accordingly, I hold that in the above circumstances, the petitioners are guilty of laches, have failed to name the necessary parties and the relief sought being on the basis of Article 12 disentitle the petitioners to have and maintain this application. Accordingly, I see no basis in law or otherwise to issue notices as prayed for. Accordingly, issuing of notices is refused and this application is dismissed. However, I make no order as to costs.

**JUDGE OF THE COURT OF APPEAL**