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 Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Dr. R.T. Hewage,
No. 06, First Floor, Block 'G',
Government Flats,
Bambalapitiya,
Colombo 04.
Presently at:
No. 06,
Periwinkle Way, Point Cook,
Victoria 3030,
Australia.

CA (Writ) App. No. 1054/2025

PETITIONER

Vs.

1. Dr. P. Athapattu,
   Director,
   Tertiary Care Services,
   Ministry of Health,
   Sri Lanka.

2. Dr. Pandula Siribaddana,

Acting Director,
Postgraduate Institute of Medicine,
University of Colombo,
No. 160,
Prof. Nandadasa Kodagoda Mawatha,
Colombo 07.

3. Dr. Seneka Rajapaksa,
Director (Retired),
Postgraduate Institute of Medicine,
University of Colombo,
No. 160,
Prof. Nandadasa Kodagoda Mawatha,
Colombo 07.

4. Professor Vasanthi Pinto,
Chairman,
Board of Study (Anaesthesiology),
Postgraduate Institute of Medicine,
University of Colombo,
No. 160,
Prof. Nandadasa Kodagoda Mawatha,
Colombo 07.

5. Dr. Asela Gunawardena,
Director General of Health Services,
Ministry of Health,
"Suwasiripaya",
No. 385, Rev. Baddegama-Wimalawansa Thero Mawatha,
Colombo 10.

6. Dr. Anil Jasinghe,
Secretary,
Ministry of Health,
"Suwasiripaya",
No. 385, Rev. Baddegama-Wimalawansa Thero Mawatha,
Colombo 10.

7. Dr. Nalinda Jayatissa,
   Minister of Health,
   "Suwasiripaya",
   No. 385, Rev. Baddegama-Wimalawansa Thero Mawatha,
   Colombo 10.

8. Dr. Sunil De Alwis,
   Consultant in Medical Administration,
   Additional Secretary (Medical Services),
   Ministry of Health,
   "Suwasiripaya",
   No. 385, Rev. Baddegama-Wimalawansa Thero Mawatha,
   Colombo 10.

9. Hon. Attorney General,
   Attorney General's Department,
   Hulfsdorp,
   Colombo 12.

RESPONDENTS

Before: Dr. D. F. H. Gunawardhana, J.

Counsel:

Shavindra Fernando, P.C. with Rishnie Fernandopulle for the Petitioner.

Sehan Soysa for the Respondents.

Supported on: 10.11.2025

Order delivered on: 26.11.2025

Dr. D. F. H. Gunawardhana, J.

Order

Introduction

The Petitioner is a qualified MBBS doctor, and after having obtained his qualifications, has enrolled in the Government health sector and has served in many stations as reflected in documents marked **P3** annexed to the Petition. Thereafter, the Petitioner has followed the post-graduate qualifications to be qualified as an anaesthetist, and he has passed two parts of the exams conducted by the Postgraduate Institute of Medicine, University of Colombo. Thereafter, the Petitioner, having undergone his local training, chose Australia to undergo the second phase of the training. Before he left, he had to enter into a bond marked as **P10**, and an agreement marked as **P11** annexed to the Petition.

After securing his appointment as a trained anaesthetist in Australia, he decided to leave the medical service by paying off the bond that the Petitioner had entered into with the 1st Respondent before he left for foreign training in Australia.

After the completion of relevant training, when the Petitioner sought to pay and resign from his employment, the 1st Respondent has informed the Petitioner by letter marked **P13**, to pay not only the bonded amount but also certain other amounts which the 1st Respondent claims is due from the Petitioner for his post-graduate training. However, the Petitioner claims that the 1st Respondent is claiming the salary that the Petitioner received during his service while he pursued his post-graduate studies in Sri Lanka. Therefore, unless there is a breakdown in the amount claimed by the 1st Respondent, the decision to claim the said is not reasonable. Thus, the Petitioner has sought

to invoke the writ jurisdiction of this Court to quash the decision contained in the said document marked **P13**.

Arguments

The thrust of Mr. S. Fernando's main argument is that the Respondent is trying to recover what is stated in **P13**. This includes the salary that the Petitioner has drawn during the period that he worked as a medical practitioner attached to the Ministry. What is reflected in **P13** is a decision to recover the said money without showing any breakdown amount; therefore, it is illegal and is amenable to be quashed by a *Writ of Certiorari*.

The second argument advanced by Mr. Fernando is that **P13** is based on **P11** which are doctored documents, since there are amendments after the Petitioner signed the same. The amendments made after the Petitioner had signed the said documents have been included not by the Petitioner but by some other officer who has also signed as a witness to the same document, **P11**. Based on that doctored document (**P11**), the Petitioner cannot recover what is reflected in **P13**. As such, Mr. Fernando moves for a *Writ of Certiorari* as well as a *Writ of Mandamus* compelling the Respondents to discharge him and allow him to pay the required amount and go away. At the same time, the Petitioner seeks interim relief, and moves for relief prayed for in prayer (b) of the Petition.

In addition to that, he argues that what is prayed for in prayer (b) is irrelevant to other substantive relief of Writs in the nature of *Mandamus* and *Certiorari,* because the Petitioner is seeking to compel the Respondents to hold the exam before the Petitioner is released form service.

When a question was posed by the Court on whether the Petitioner is indebted to the Government as he has continuously been educated with public money, which his answer is that the Government has not sought to recover any money spent on his primary and secondary education.

Factual matrix

The Petitioner, having secured his MBBS qualification, joined the government sector and has worked in a little more than forty stations during his tenure before he left for Australia. While serving, the Petitioner has followed his postgraduate qualifications in anaesthesiology, and has passed the same, Part 1A in 2016 and Part 1B in 2018. Thereafter, he has worked as a Registrar of Anaesthesiology and completed his MD final examination in 2021, which is the Part 2 of the said examination.

Thereafter, he commenced his postgraduate training with effect from 1st April 2021 till April 2022; this is a component of local training in the capacity of a Senior Registrar. To complete his training, he has chosen to go to Australia and secured employment in the Mercy Hospital for Women in Australia, where he is attached to a Registrar of Anaesthesiology. Before he left for his foreign training in Australia, he was required to enter into a bond and an agreement with the Ministry of Health; accordingly, **P10** (the bond) and **P11** (the agreement) have been entered into between the Government and the Petitioner.

However, after the Petitioner completed his foreign training, he had decided to resign from his Sri Lankan employment and to go in search of greener pastures in Australia. Therefore, he has requested the Ministry to hold his final examination to qualify him as a fully pledged anaesthetist and indicating his willingness to pay the bonded amount. Accordingly, he has written to the relevant authorities via email, **P12**. However, since he had not returned to the Island after the completion of his foreign training period, the Ministry, by the letter marked as **P14**, has served the Petitioner with a Vacation of Post dated 11.09.2025. Through letter **P13**, the Ministry has also

informed him of the aggregate amount of Rs. 11,253,141.33 (Eleven Million Two Hundred Fifty-Three Thousand One Hundred Forty-One Rupees and Thirty-Three Cents), that he has to pay.

Consequently, the Petitioner has instituted the above-styled application before this Court and has, *inter alia*, sought the following reliefs:

> *"b) Grant and issue an interim order directing the 2nd and 4th Respondent to have the exit interview to get the clearance from the Board and the PGIM.*
>
> *c) Grant and issue a mandate in the nature of a Certiorari directing to quash the impugned decision given by 1st Respondent and to accept the correct bond amount payable.*
>
> *d) Grant and issue a Writ of Mandamus in favour of the Petitioner, directing the 1st –9th Respondent to accept the correct compensation from the Petitioner and to duly acknowledge Petitioner's resignation in accordance with the legal and contractual obligations."*

Grounds of challenging P13 and P14

The Petitioner challenges **P13** and **P14** and seeks a *Writ of Certiorari* to quash the decisions contained in both; first in **P14**, since it is a letter of Vacation of Post by which the Petitioner is now being treated as he had already vacated the post. If **P14** is in operation, the Petitioner might not be able to face the final part of his examination to be qualified as a fully pledged anaesthetist; therefore, he is seeking to quash that decision.

The second matter is that the Petitioner is seeking to quash the amount set out in the letter **P13**, as it contains an amount that is not included in the bond which is only Rs. 3,155,175.00 (Three Million One Hundred Fifty-Five Thousand One Hundred Seventy-Five Sri Lankan Rupees). According to the Petitioner, a further Rs. 8,066,618.58 (Eight Million Sixty-Six Thousand Six

Hundred Eighteen Sri Lankan Rupees And Fifty-Eight Cents) was added to the payable amount as the salary that he had received during his time of training while he was working as a doctor, which he claims that he is entitled to receive as he was attached to the Ministry and served the nation during that time in the capacity of a medical practitioner. However, he is agreeable to pay the amount borne by the Government (if any) for the purpose of his training at the Postgraduate Institute of Medicine. Therefore, the Petitioner is seeking to obtain the above-mentioned reliefs.

The grounds for challenging **P13** are that it is irrational and capricious because what is reflected as the amount due from the Petitioner is not the bonded amount, but something exorbitant; and if the breakdown amount is given to him, he is prepared to pay either upfront or in instalments.

In addition to that, in the same Petition, he has in effect challenged the agreement **P11**, where certain clauses have been re-numbered and initialled not by the Petitioner but by some other person unknown to the Petitioner. Therefore, the Petitioner states that he has never received a copy of the agreement prior to his departure, although he had signed the bond and the agreement prior to his departure. Thus, the said document is a doctored document. However, it is to be noted that there are initials at every place where a change is effected in the agreement.

On the other hand, Mr. Soysa argued that the Petitioner should have gone to the District Court and obtained relief from there since the said document **P11** itself is challenged by the Petitioner in his Petition claiming that it is a doctored document, and the Respondents are claiming the amount payable by the Petitioner based on this document. In addition to that, it is further argued for and on behalf of the Respondents that there should be more evidence to ascertain and establish the Petitioner's claim; therefore, the Petitioner cannot obtain reliefs as prayed for in the Petition by way of a writ application.

Furthermore, the Respondents have challenged the relevancy of the reliefs prayed for in the Petition. Now I will consider them.

Letter of vacation of post (P14)

As the Petitioner claims, he has sought to first quash the decision contained in **P14**, which is the letter of vacation of post. In fact, the Petitioner has not returned and reported back to work as required by the bond and the agreement, which states that he has to serve the nation for eight more years after returning from training; which he has failed to do. **P12** is an email sent by the Petitioner from Australia on 21.04.2025, which indicates that he did not report back to Sri Lanka upon the conclusion of his foreign training in Australia. Therefore, it is quite reasonable for the authorities to serve such a decision to vacate the Petitioner's post, in view of clause (9) of **P11**, the Agreement, which reads thus,

> *"The said trainee shall after completion of his/her study and training in Australia return forthwith to Sri Lanka, unless otherwise directed by the (4) Director General of health Services and resume his/her duties under the government and shall serve. The government if so required for a term of not less that (5) Eight Years from the date of resumption of duties."*

Therefore, the Petitioner, by invoking writ jurisdiction of this Court, is trying to in effect justify his unwarranted conduct by not reporting back to work, which cannot be condoned. Therefore, to complain against **P14**, the Petitioner should first comply and then complain.

The agreement P11

The Petitioner seeks to obtain a *Writ of Mandamus* in addition to the *Writ of Certiorari*, quashing the decisions contained in **P13** and **P14**, compelling the Respondents to hold the exam and release him after making the due payments reflected in **P10** and **P11**. However, as argued by the Respondents, if the Petitioner has vacated the post, the question arises whether the Petitioner is still entitled to obtain a qualification as a government servant. In addition to that, the Petitioner has challenged the very document **P11** on the basis that it is doctored. Therefore, although he has not sought any *Writ of Certiorari* or any other relief to quash or obtain a declaration that **P11** is a doctored document, for that purpose, he has to go to the District Court. Even if his vacation of post is illegal, he can still go to the District Court and obtain a declaration.

The letter P13

The next matter is that what the Petitioner has to pay is not ascertained nor decided according to him. If it is to be ascertained, it should be after evidence; according to the Petitioner, what is set out in **P13** as the amount due from him not only based on the bond and the agreement, but also something exorbitant which the Petitioner is not liable to pay.

Accordingly, the argument of the Petitioner cannot be accepted, since evidence must be examined prior to the decision being taken[1], including whether the Respondents have included what the Petitioner has received as his salary for the service that he rendered to the Government during the time that he was attached while undergoing his postgraduate training. Thus, the Court has to consider the evidence, which this Court cannot do. Therefore, the proper forum for the Petitioner is to institute action before the relevant forum which does not include this Court.

[1] *Thajudeen v Sri Lanka Tea Board and Another* [1981] 2 Sri LR 471.

Conclusion

Accordingly, as clearly argued by Mr. Soysa, this Court cannot go into the matters concerned in this Petition; therefore, notice should not be issued in this case. Accordingly, I refuse notice and dismiss this Application *in limine*. No cost.

JUDGE OF THE COURT OF APPEAL