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

In the matter of an application for Writ of Certiorari, Writ of Mandamus and Writ of Prohibition under and in terms of the Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka

C. A. / WRIT No. 156/2025

1. A.K. Deepika
   "Chandana" Wetiya,
   Barawakumbuka, Embilipitiya.

2. A.J.R.S. Kumari
   Pallegama, Hungama.

3. M.K.D. Jayarani
   "Sumudu" Godawela,
   Nihiluwa.

4. N.C. Kasige
   24/1/2, Hathagala,
   Hungama

5. K. A. Nilmini
   No. 164, "Nilmini"
   Hathagala, Hungama.

6. B.I. Priyangani

Gatagahakoratuwa, Walawela,
Nihiluwa.

7. E. A. P. Waruni
   24/1/3, Hathagala,
   Hungama.

8. G. P. R. I. Kumari
   24/2, Samuel Mawatha,
   Tangalle.

9. K. A. Sanjeewani
   200/4, Nethmitha,
   Gurugodalla, Badigama,
   Witharandeniya.

Petitioners

-Vs-

1. K. M. G. S. N. Kaluwewa
   The Secretary,
   The Ministry of Education,
   Isurupaya,
   Battaramulla.

2. Thamara Vithanage
   Director School (Private School)
   Ministry of Education,
   No. 1200/6,
   Rajamalwatta Road,
   Battaramulla.
3. A. U. Velaratne

The Secretary,
Provincial Ministry of Education,
Southern Province,
Dakshinapaya,
Labuduwa,
Galle.

4. O. P. G. Nilani
   Zonal Director,
   Zonal Office of Education,
   Hambantota.

5. W. A. S. D. Kalyani
   Zonal Director,
   Zonal Office of Education,
   Tangalle.

6. Ven. Pallegama Vangeesa Thero,
   Managing Director,
   Nilwala Ananda Vidyalaya,
   Hathagala,
   Hungama.

7. Hon. Attorney-General
   Attorney-General's Department,
   Hulftsdorp,
   Colombo 12.

Respondents

Before	:	**Hon. M.T. Mohammed Laffar, J.(Act.P/CA)**
	:	**Hon. K. Priyantha Fernando, J.(CA)**
Counsel	:	Dr. Wijedasa Rajapaksha, PC Nilupul Galappaththi instructed by Danuka Lakmal for the Petitioners. Panchali Witharana, SC for all the Respondents except the 6th Respondent. Harshanee Liyanage for the 6th Respondent.
Supported on	:	30.05.2025
Decided on	:	17.06.2025

K. Priyantha Fernando, J. (CA)

The Petitioners, all Sri Lankan citizens, and teachers at H/Nilwala Ananda Vidyalaya, a government-approved private school established on 1st April 1999, seek reliefs including writs of certiorari, mandamus, and prohibition against the 1st to 6th Respondents, which include officials of the Ministry of Education and the school's Managing Director.

They were appointed as assistant teachers at this school between 1999 and 2001, with official appointment letters issued by the Provincial Director of the Southern Province and approved by the Secretary to the Ministry of Education. They hold varying qualifications—some are graduates with primary training, others have G.A.Q. with training, and some have G.C.E. A/L with training, while one holds a postgraduate degree.

Despite the COVID-19 pandemic's disruptions, they continued to work diligently, ensuring uninterrupted education for the students. Their salaries were paid by the Ministry of Education, which also deducted 12% as pension contributions.

However, due to a decline in the student population, the authorities decided to reduce the number of teachers from 33 to 21, identifying 12 teachers as "in excess." The 4th Respondent informed the 3rd Respondent on 13th March 2024 that these 12 teachers—including the Petitioners—were willing to serve in other schools.

The 2nd Respondent, on behalf of the 1st Respondent, wrote to the Managing Director of Nilwala Ananda Vidyalaya on 8th April 2024, stating that the appointments of these teachers were only valid in private schools and could be cancelled if student numbers declined, the school closed, or state funding was reduced or stopped.

Subsequently, the 1st Respondent directed the transfer of these 12 teachers to other schools in the Southern Province for the period from 1st June to 31st December 2024, with consent from the relevant school managements. The relevant letters also noted that under pension statutes, teachers in excess could retire at age 50 or after 20 years of service, whichever came first.

On 18th June 2024, the Provincial Educational Director of the Southern Province instructed the 4th Respondent to assign these 12 teachers to other schools. Consequently, 9 out of the 12 teachers were transferred to schools within the Hambantota and Tangalle zones, while one retired. The Petitioners were reassigned as follows:

a) 1st Petitioner: H/ Welangahawala Vijaya Parathamika Vidyalaya, Welangahawala, Barawakumbuka
b) 2nd Petitioner: H/ Ambalanthota Maha Vidyalaya, Malpeththawa, Ambalanthota
c) 3rd Petitioner: H/ Godawela Kanishta Vidyalaya, Godawela, Nihaluwa, Beliaththa

d) 4th Petitioner: H/ Ambalanthota Maha Vidyalaya, Malpeththawa, Ambalanthota
e) 5th Petitioner: H/ Deniya Kanishta Vidyalaya, Deniya, Hungama
f) 6th Petitioner: H/ Godawela Kanishta Vidyalaya, Godawela, Nihaluwa, Beliaththa
g) 7th Petitioner: H/ Koggalla Maha Vidyalaya, Koggalla, Ambalanthota
h) 8th Petitioner: H/ Unakurua Kanitu Viduhala, Unakuruwa
i) 9th Petitioner: H/ Vitharandeniya Maha Vidyalaya, Vitharandeniya

The 4th Respondent confirmed salary payments for these teachers and gave further directions to the 6th Respondent regarding these assignments. However, letters dated 15th January 2024 stated that these assignments would not extend beyond 26th January 2025.

Since 26th January 2025, the Petitioners report to H/Nilwala Ananda Vidyalaya but have not been given timetables, and there is uncertainty about whether they will be paid their salaries.

The Petitioners argue that these decisions and actions by the 1st to 3rd Respondents constitute a tactical termination of their services—**in violation of their legitimate expectation to continue employment until retirement age**. They assert there was no valid legal or transparent criterion for categorizing them as "excess," especially since two of the 12 teachers (Mrs. Karunarathne and Mrs. Nisansala) remain in active service.

The Petitioners also highlight that there are vacancies in the educational zones of Hambantota and Tangalle, and they have expressed their willingness to serve in any such schools.

They argue that the letters and decisions of the 1st and 2nd Respondents (P7, P8, P9) are illegal, unreasonable, and ultra vires. They contend that their appointments carried a legitimate expectation to continue until retirement and

were not subject to the conditions in those letters. The categorization of them as "excess" was not based on any valid legal basis.

Therefore, the Petitioners request:

a) A declaration that they are eligible to continue their service until retirement age.
b) A writ of prohibition restraining the 1st to 6th Respondents from discontinuing their services or withholding salaries until retirement.
c) A writ of certiorari quashing the decisions/letters (P7, P8, P9).
d) A writ of mandamus compelling the 1st to 6th Respondents to continue their service and pay salaries and other entitlements until lawful retirement.
e) Interim relief to maintain their services and salary payments until final determination of the petition.

The position of the 1st to 5th and 7th Respondents:

1. No Illegality or Ultra Vires Action by the Respondents**:**

    - The 6th Respondent's school, Nilwala Ananda Vidyalaya, Hathagala, has been a state-approved private institution registered since 15.09.1959.
    - In accordance with Ministry of Education Circulars No. 17/2018 and 01/2016, the Ministry has the power to control and manage the number of teachers based on student enrolment.
    - Following the student-teacher ratio, the 2nd Respondent informed the 6th Respondent through letters dated 06.02.2024 and 31.12.2024 that the approved number of teachers is 21.
    - Additional letters (dated 25.03.2024, 08.04.2024, and 22.04.2024) from the 2nd Respondent provided instructions on handling the excess teachers.

- The 2nd Respondent also informed the Education Director–Southern Province by letters dated 16.12.2024, 10.01.2025, and 24.01.2025 regarding necessary actions for the excess teachers.
- The Respondents assert that these actions, including issuing documents P7, P8, and P9, were in compliance with the relevant circulars and regulations and were therefore neither illegal, unreasonable, nor ultra vires.

2. **Petitioners' Knowledge of Their Appointments and Non-Disclosure:**
   - The Petitioners claim they were not fully informed about their appointments and believed they would be absorbed into the government teacher cadre.
   - The Respondents argue that the Petitioners were aware of the nature of their appointments from the outset, as their appointment letters clearly specified the regulations and conditions of employment.
   - Some letters even outlined the circumstances for termination.
   - Further, the appointment letters for their subsequent temporary assignments at government schools reaffirmed these conditions.
   - The Petitioners' failure to disclose this information to the Court is seen as suppression of material facts and is itself grounds for dismissal of the Petition.
3. <u>Two Distinct Teacher Recruitment Schemes</u>**:**
   - Recruitment to teacher service in state-approved government institutions and to the Sri Lanka government Teacher Service are separate, though both regulated by the Ministry of Education.
   - There is no mechanism for transferring teachers recruited under one scheme to another.

- While state-approved private institutions receive partial government funding for salaries and pensions, these teachers are not considered government sector teachers, who are typically recruited through gazette notifications, open exams, and interviews.

The Petitioners' main contentions are

i. Since the recruitment till up to date, they have not been informed by the Ministry of Education or the Provincial Ministry of Education that their appointment could be cancelled due to the fact set out in the letter P7 which is also not addressed to the Petitioners, but to the 6th Respondent.

ii. They have legitimate expectation that they can serve until their legitimate age of retirement.

iii. The Respondents have acted arbitrarily and in violation of the principles of natural justice when they indirectly and illegally deprived employment of the Petitioners.

The learned President's Counsel for the Petitioners has drawn the Court's attention to the Article 27(2)(h) of the Constitution which states that:

"*27 (2) The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include:*

a. The full realization of fundamental rights and freedoms of all persons;

b. …..

h. the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels."

It was further submitted that before the enactment of Free Education Bill in 1947, there were schools established by the private sector, the State while recognizing its obligation to ensure equal level of education to every child. Legislature enacted further legislation in 1961 and decided to pay the salaries of

the teachers of the private schools recognized by the Ministry of Education. Thereby, the expenses of the State become lessor as the private sectors bear the cost of all other expenses except the salary of the teachers.

The attention of the Court has been drawn to following case laws by the Petitioners:

1. ***Haputhanthrige vs. A.G***. (2007) 1 SLR 101, Sarath N. Silva C.J. cited the judgment of Brown vs. Board of Education (Topika, 347 U.S. 483) in which Chief Justice Warren has held that: "*Today, education is perhaps the most important function of State and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to be succeed in life if he is denied the opportunity of an education. Such an opportunity, where the State has undertaken to provide it, is a right which must be made available to all on equal terms.*"
2. His Lordship Chief Justice Sarath N. Silva, while referring to limitation in Article 27, insisted the duty cast on the State ensure the education of every child. "*As regards education, the policy objective is stated in section 27(2)(h) as follows: The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include: "h. the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels"*
3. ***Wickremaratne vs. Jayaratne and Others***: 2001 (3) SLR 161, Justice Gunawardana held: "*The doctrine of legitimate expectation is not limited to cases involving a legitimate expectation of a hearing before some right or*

expectation was affected but is also extended to situations even where no right to be heard was available or existed but fairness required a public body or officials to act in compliance with its public undertakings and assurances."

4. ***Dayaratne vs. Ministry of Health***; (1999) 1 SLR 393, Dr. Amarasinge, J. held that:
   "*When a change of policy is likely to frustrate the legitimate expectation of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatment, arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the executive*".
5. ***Multinational Property Development Ltd. Vs. Urban Development Authority*** (1996) 2 SLR 51, Dr. Ranaraja J. held:
   "(1) A substantive change to policy resulting from a change in the Executive Presidency cannot be avoided, but where a New Policy is to be applied, the individuals who have legitimate expectations based on promises made by public bodies that they will be granted certain benefits, have a right to be heard before those benefits are taken away from them on the ground that there had been a change of policy. (2) In the public law field, individuals may not have strictly enforceable rights but they have legitimate expectations. Decisions affecting such legitimate expectations are subject to judicial review."

The attention of this Court further drawn to Administrative Law by Wade and Forsyth (10th Edition) page 443: "***A further reason for the protection of legitimate expectations lies in the trust that has been reposed by the citizen in what he has been told or led to believe by the official.*** *Good government depend upon trust between the governed and the governor. Unless that trust is sustained and protected, officials will not be believed and government becomes a choice between chaos and coercion. The protection of trust as a concept*

has its origin in German Law and it plainly overlaps with the protection of 'legal certainty'. But it has this particular advantage: it is a ***simple concrete question of fact whether trust has been reposed in an official's promise****, so this principle does go 'some distance' to indicate which expectations should be protected and which should not. It captures precisely why legitimate expectations should be protected.*".

It was contended that since the recruitment till up to date, the Petitioners have not been informed by the Ministry of Education or the Provincial Ministry of Education that their appointment could be cancelled due to the fact set out in the letter P7 which is also not addressed to the Petitioners, but to the 6th Respondent.

However, according to the appointment letters of some of the petitioners marked R11 and R12, said letters clearly stipulate the regulation under which their appointments are subject to.

The petitioners have been made aware of the nature of the appointments at the time of their initial stage.

According to R13, the terms and conditions are clearly laid down in point form in their appointment letters. Therefore, the contention of the Petitioners that they were not informed of the condition that their service can be terminated before the retirement age is untenable. They had been made aware of the nature of the appointment at the time of the initial appointment.

The letter P12, which has been issued to the 1st Petitioner states in the 1st paragraph that the said letter written in connection with the letter dated 19.06.2024 issued by the Zonal Education Office of Hambantota ton the 1st Petitioner assigning the Petitioner to H/Bolana Maha Vidyalaya. It is evident from P12 that the 1st Petitioner had been received a letter on or about 19.06.2024 assigning her to H/Bolana Maha Vidyalaya.

It is evident from P12 that all Petitioners were sent assignment letters from the Zonal Education Office on or around June 2024. As per paragraph 2 of 12, the 1st Petitioner has by a subsequent letter dated 01.07.2024 has requested that she be transferred to H/Welangahawela Primary School and the same has been approved by the Zonal Education Office of Hambantota.

It is seen that the 1st Petitioner after being assigned to H/Bolana Maha Vidyalaya, has herself requested to be assigned to H/Welangahawela Primary School which has been approved by P12.

Letter P12 clearly states that, said assignment is only valid till 31.12.2024 (Clause 01); after 31.12.2024, the 1st Petitioner should find a suitable alternative appointment with a government approved private school with the agreement of the manager of the said school (Clause 03); in case the 1st Petitioner fails to find alternative employment in a private school, the 1st Petitioner will either have to go for early retirement as provided for in the Pension Code Clause 2:14 or that her services will be terminated from H/Nilwala Ananda Vidyalaya (Clause 04 read together with letter P9)

The 1st Petitioner has agreed to the said conditions and reported to work at H/Welangahawela Primary School, which she herself requested to be assigned to, from July 2024 to January 2025 without any complaint.

It is apparent that all 9 Petitioners have received letters assigning them to the relevant schools subject to identical conditions as specified in P12.

The Petitioners have been informed of the conditions specified in the letters P8 and P9 as far back as June 2024, when their assignments were effected. However, the Petitioners have only come before this Court on 4th March 2025 almost 8 months after becoming aware of P8 and P9. They have not explained the delay.

All the Petitioners have completed 20 years of service and all are female teachers.

As per Clause v(a) in letter marked P8, which states that as per Clause 2:14 of the Pension Code, when a teacher or nurse completes 20 years of service, they are entitled to go on pension. Thus, all the Petitioners can go on pension since they have completed 20 years of service and accordingly, will receive pension from the State. There is no grave prejudice to the Petitioners if the relief prayed for is not granted since they will still receive a pension income. Conversely, it was submitted for the 6th Respondent that if the reliefs are granted, that may open a floodgate wherein the power of the State to remove teachers from private schools when student population decrease may be challenged. It was submitted that this would create an additional financial burden on the State to remove teachers from private schools even when there is an excess of teachers in the said schools. The balance of convenience favours the Respondents.

Thus, it is my view that, available material does not place a prima facie case before this court. Accordingly, application for Interim Relief and formal notices refused. No costs.

Judge of the Court of Appeal

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

I agree.

Judge of the Court of Appeal