

**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 in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Udagedara Chandrasena Bandara  
No. 77, School Area, Wijayapura, Diyasenpura.

**Petitioner**

**Case No. C. A. Writ Application 231/2016**

**Vs.**

1. R.M. Wanninayaka,  
Secretary,  
Provincial Public Service Commission North  
Central Province,  
District Secretariat, Anuradhapura.
- 1B. S. M. Thilakabandara  
Secretary,  
Provincial Public Service Commission North  
Central Province,  
District Secretariat, Anuradhapura.
2. Chandra Karunaratne,  
Secretary of Governor,  
Secretariat of the Governor North Central  
Province,  
Office of the Governor, Anuradhapura.
- 2A. Ananda Kularatne  
Secretary of Governor,  
Secretariat of the Governor North Central  
Province,  
Office of the Governor, Anuradhapura.
3. Hon. P. B. Dissanayake  
Governor,  
Secretariat of the Governor North Central  
Province,  
Office of the Governor, Anuradhapura.

4. Maheshika Kodippilli Arachchi  
Commissioner of Local Government North  
Central Province,  
Department of Local Government North Central  
Province,  
Provincial Complex Council,  
Dharmapala Mawatha, Anuradhapura.
5. Hon. Attorney General  
Attorney General's Department, Colombo 12.

**Respondents**

**Before:** Janak De Silva J.

N. Bandula Karunarathna J.

**Counsel:**

Lakshan Dias with Dayani Panditharathna for the Petitioner

Susantha Balapatabendi P.C. ASG with Manohara Jayasinghe SSC for the Respondents

**Written Submissions tendered on:**

Petitioner on 17.09.2019

Respondents on 07.08.2019

**Argued on:** 13.06.2019

**Decided on:** 26.09.2019

**Janak De Silva J.**

The Petitioner is working as a Management Assistant in the Madirigiriya Pradeshiya Sabha and is seeking a promotion to Management Assistant Class II. The Petitioner claims that he has not been granted the promotion although he has fulfilled the necessary requirements. The Respondents state that he is not entitled to the promotion as he has neither passed the promotion examination nor completed five years of active service as required by the scheme of recruitment [paragraph 24 of the objections].

The Petitioner has sought the following reliefs from this Court:

- (a) A Writ of Certiorari quashing the letter dated 30/12/2015 bearing reference no. NCP/PSC/9/9/2(99)-I marked P-15A;
- (b) A Writ of Mandamus to 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents to honour their legal obligation and award the promotion for the post of Management Assistant Class II with effect from 01/11/2009 and pay the relevant back wages and award other relevant entitlements and due promotions.

On 13.06.2019 the learned Additional Solicitor General raised a preliminary objection that necessary parties have not been made respondents to this application and as such it must be dismissed in limine. Parties were granted time to file written submissions on the preliminary objection as well as the merits which has been done.

The preliminary objection is based on the failure of the Petitioner to add all the members of the North Central Provincial Public Service Commission as respondents to this application.

*Amaratunga J. in Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* [(2011) 2 Sri.L.R. 258 at 267] held as follows:

“The first rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application. (i) If it is a body of persons whose decision or exercise of power is sought to be quashed each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made respondent. The failure to make him or them respondents to the application is fatal and provides in itself a ground for the dismissal of the application in limine. (*Jamila Umma vs. Mohamed, Karunarathna vs. the Commissioner of Cooperative Developments; British Ceylon Corporation vs. Weerasekara*).”

The Petitioner is seeking to quash letter marked P-15A dated 30.12.2015 sent by the Secretary, Provincial Public Service Commission of the North Central Province. This letter does not on the face of it indicate that the decisions reflected therein were taken by the Provincial Public Service Commission of the North Central Province. However, the minutes of the meeting of the Provincial Public Service Commission of the North Central Province held on 14.12.2015 (R6) shows that these decisions were made by the members of the Provincial Public Service Commission of the North Central Province who have not been made Respondents.

Even if it can be contended that the Petitioner could not have done so since P-15A does not on the face of it show the decision to have been taken by the members of the Provincial Public Service Commission of the North Central Province, once the Respondents filed their objections the Petitioner was put on notice and should have at the least then sought to add them as Respondents which he failed to do.

In the above circumstances, the application for a Writ of Certiorari must fail in limine.

A necessary party to an application for a Writ of Mandamus is the officer or the authority who has the power vested by law to perform the act or the duty sought to be enforced by the Writ of Mandamus [*Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* (supra)]. The pleadings establish that the promotion claimed by the Petitioner is a matter within the purview of the Provincial Public Service Commission of the North Central Province. As the members of the Provincial Public Service Commission of the North Central Province have not been made Respondents to the application the application for a Writ of Mandamus must also fail in limine.

For all the foregoing reasons, Court upholds the preliminary objection raised by the learned Additional Solicitor General and dismiss the application in limine but without costs.

Judge of the Court of Appeal

N. Bandula Karunaratna J.

I agree.

Judge of the Court of Appeal