

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

**Court of Appeal Case No.**

**CA/WRT/0163/2021**

**CA/WRT/0288/2021**

1. **Ceylon Electricity Board,**  
Technological Engineers and  
Superintendents Union,  
P. O. Box 2254, Colombo 02.
2. **Anhettigama Gamrallage Upul  
Nisthantha,**  
President,  
Ceylon Electricity Board Technological  
Engineers and Superintendents Union,  
P. O. Box 2254, Colombo 02.
3. **Gamini Jayalal Athukorala,**  
General Secretary,  
Ceylon Electricity Board Technological  
Engineers and Superintendents Union,  
P. O. Box 2254, Colombo 02.
- 3A. **Tamara Nalindra Liyanapatabandi,**  
Joint Secretary, Ceylon Electricity Board  
Technological Engineers and  
Superintendents Union, P. O. Box 2254,  
Colombo 02.

**Petitioners**

**Vs**

**1. Ceylon Electricity Board,**

No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

**2. Vijitha Herath,**

Chairman,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

**2A. M. M. C. Ferdinando,**

Chairman, Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

**2B. N. S. Ilangakoon,**

Chairman,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

**3. N. S. Ilangakoon Kumara,**

Vice Chairman,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha, P.O. Box 540, Colombo 02.

4. **M. M. Nayeemudeen,**  
(Board Member - Ceylon Electricity Board)  
Additional Secretary (Projects),  
Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government, Independence Square, Colombo 07.

5. **S. D. J Nilukshan,**  
(Board Member - Ceylon Electricity Board),  
Director General,  
Department of National Budget, Ministry of Finance, Colombo 01.

5A. **M. R. V. R. Meepura,**  
Additional Director General,  
Department of Fiscal Policy, Ministry of Finance, Colombo 01.

6. **V. P. K. Anusha Pelpita,**  
(Board Member - Ceylon Electricity Board),  
State Secretary,  
Ministry of Industries and Supply Chain Management,  
No. 73/1, Galle Road, Colombo 03.

6A. **G. P. N. Mahesh Abeysekara,**  
Additional Secretary Policy Development,  
Ministry of Industries,  
No. 73/1, Galle Road, Colombo 03.

7. **Ruban Wickramarachchi,**  
Board Member,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha, P.O. Box 540, Colombo 02.

8. **Dr. D. Wijeratne,**  
Board Member,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

9. **Nuwarapaksha Jijayakumarage  
Kumuduni Herath,**  
General Manager,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

9A. **Dr. D. C. R. Abeysekara,**  
Acting General Manager,  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

10. **Herath Mudiyanseelage Anura Herath,**  
AGM (Generation),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha, P.O. Box 540, Colombo 02.

10A. A. R. Navamani, AGM (Generation),  
Ceylon Electricity Board, No. 50, Sir  
Chittampalam A. Gardiner Mawatha,  
P.O. Box 540, Colombo 02.

11. **Kodithuwakku Kankannamge Senajith Dasanayake,**

AGM (Assets Management),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha, P.O. Box 540, Colombo 02.

12. **Don Cecil Rohantha Abeysekara,**

AGM (CS),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

12A. **Senajith Dasanayake,**

Acting Additional General Manager (CS),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

13. **Jayavilal Meegoda,**

AGM (DD1),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

14. **Tennakoon Appuhamilage Kamani Jayasekara,**  
AGM (DD2),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
15. **Jogalingam Nanthakumar,**  
AGM (DD3),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
- 15A. **G. J. Aluthge,**  
AGM (DD3),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
16. **Ganegoda Appuhamilage Don Rohan Preminda Senevirathne,**  
AGM (DD4),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
17. **Marawulle Ranhotipedige Ranatunga,**  
AGM (Projects),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.

- 17A. **H. S. Somathilaka,**  
AGM (Projects),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
18. **Mahipala Mudalige Sripali Mahendra  
Kumara Gunarathne,**  
AGM (Transmission),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
- 18A. **P. W. Hendaheewa,**  
AGM (Transmission),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
19. **Tissa Kumara Liyanage,**  
Finance Manager,  
Ceylon Electricity Board,  
No, 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
20. **R. K. Piyadasa,**  
Retired AGM (DD3),  
674/14, Kohawila Road,  
Dalugama, Kelaniya.

21. **Kolonne Appuhamilage Kithsiri Kolonne,**  
Deputy General Manager (Training),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
22. **Mohomed Zubair Mohamed Fowzul,**  
Deputy General Manager (Energy Sales),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
23. **G. Weerasekara,**  
Retired DGM (C & C DD3),  
247/29, Sunnyside Garden,  
Karapitiya, Galle.
24. **Holpitiyage Ramya Pushpakanthi Wanniarachchi,**  
Deputy General Manager (WPS I),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
25. **P.K. N. I. Weeraratne,**  
Deputy General (Manager Corporate  
Strategy & Regulatory Affairs),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.



26. **Mohomed Iqbal Mohomed Irshad,**  
Chief Engineer (Policy), Ceylon Electricity  
Board, No. 50, Sir Chittampalam A.  
Gardiner Mawatha, P.O. Box 540,  
Colombo 02.
27. **Ranasinghe Arachchige Bandula  
Jagath Ranasinghe,**  
Additional Finance Manager  
(Transmission),  
Ceylon Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
28. **Amarasekara Appuhamilage Inoka  
Nilmini Amarasekara,**  
Human Resource Officer - WPN, Ceylon  
Electricity Board,  
No. 50, Sir Chittampalam A. Gardiner  
Mawatha,  
P.O. Box 540, Colombo 02.
29. **Jagath B. Gurusinghe,**  
President - National Organization of  
Engineering Professionals,  
P. O. Box 2293, Colombo.
30. **D. Y. Ilukkumbura,**  
Secretary National Organization  
Engineering Professionals,  
P. O. Box 2293,  
Colombo.

30A. **Nallaiah Kangatharan,**  
Secretary-National Organization of  
Engineering Professionals,  
P. O. Box 2293, Colombo.

31. **Institution of Incorporated Engineers  
Sri Lanka,**  
27/B, Udumulla Road,  
Battaramulla, 10120.

**Respondents**

Before: **M. T. MOHAMMED LAFFAR, J.**  
**S. U. B. KARALIYADDE, J.**

Counsel: Saliya Pieris, P.C. with Anjana Rathnasiri for the Petitioners.

Y. Fernando, D. S. G. for the 1<sup>st</sup> – 28<sup>th</sup> Respondents except  
20<sup>th</sup> and 23<sup>rd</sup> Respondents.

Chandaka Jayasundere, P.C. with Chamara Jayasinghe for  
the 20<sup>th</sup> and 23<sup>rd</sup> Respondents, instructed by  
Ms. Wasana Hewage.

Kanel Maddumage with Ms. Kavindi Weerasekara for the 29<sup>th</sup>  
and 30<sup>th</sup> Respondents

Argued on: 21.06.2023.

Written Submissions on: 22.09.2023 by the Petitioners.

01.02.2024 by 1<sup>st</sup> to 3<sup>rd</sup>, 4<sup>th</sup> to 19<sup>th</sup>, 24<sup>th</sup>  
to 28<sup>th</sup> Respondents.

04.10.2023 by the 20<sup>th</sup> and 23<sup>rd</sup>  
Respondents.

09.10.2023 by the 29<sup>th</sup> and 30<sup>th</sup>  
Respondents.

Decided on: 09.08.2024

**MOHAMMED LAFFAR, J.**

This Judgment is pertaining to the Applications bearing Nos. Writ-163-21 & Writ-288-21. The Ceylon Electricity Board Technological Engineers and Superintendents Union is the 1<sup>st</sup> Petitioner whilst the 2<sup>nd</sup> and 3<sup>rd</sup> Petitioners are the President and the General Secretary of the 1<sup>st</sup> Petitioner Union. The Petitioners in these applications have invoked the supervisory jurisdiction of this Court under Article 140 of the Constitution seeking, *inter alia*, the following reliefs:

1. A Writ of Certiorari quashing the Circular No. 2021/GM/19/Pers **(P24)**.
2. A Writ of Certiorari quashing the decision to call for applications for vacancies of Mechanical Engineer Class II Grade II, Civil Engineer Class II Grade II as reflected in the paper advertisement **(P6)**, and Electrical Engineer Class II Grade II as reflected in the paper advertisement **(P27)**.
3. A Writ of Certiorari quashing the paper advertisements for recruitment marked as **P6** and **P27**.
4. A Writ of Prohibition preventing the Respondents from implementing the amendments made to the 2002 SORP marked as **P3** and preventing the Respondents from approving the draft SORP marked as **P4**.
5. A Writ of Mandamus compelling the Respondents to grant a hearing to all stakeholders involved inclusive of the Petitioners for their suggestions prior to adopting any process of recruitment to the CEB, drafting a new SORP, revising the SORP **P4**, to amend the 2002 SORP **P3**.

**Factual Matrix:**

The document marked **P3** is the Scheme of Recruitment and Promotion (SORP) for the Senior Executive Categories of the Ceylon Electricity Board (CEB) in relation to External Recruitment to Senior Executive Category Class II Grade II level of the Engineering Service of the CEB. According to **P3**, the qualifications and experience required for the said position are as follows;

- 1) K4 salary scale:
  - (a) Engineering Degree (Electrical/Mechanical/Civil) from a University in Sri Lanka. Or
  - (b) I.E.S.L. Part I and Part II (Electrical/Mechanical/Civil). Or (c) any other qualification recognized as equivalent to the I.E.S.L.
- 2) K3 Salary Scale: Those who have Corporate Membership of I.E.S.L. or equivalent.

In terms of **P3**, 85% of the total cadre of Engineering Services will be recruited externally by an interview, 10% of the total cadre of Engineering Services (Internal) will be selected through a competitive examination and 5% of the total cadre of the Engineering Service (Internal) would be selected on merit. The External Recruitment method is available for both internal employees and external applicants. The Internal Recruitment method is available only for internal employees. The internal employees of the CEB who possess qualifications as required in **P3** would be eligible to apply through the External Recruitment method. The Petitioners state that this is the preferred method for the internal employees as the method of selection is only an interview.

In 2020, a new SORP (**P4**) was drafted. In terms of **P4**, the following requirements for External Recruitment to the Senior Executive Category to Class II Grade II Level of Engineering Services are introduced.

1. Four years **full-time degree** in Engineering recognized by the Institution of Engineers Sri Lanka. OR
2. An Associate Member of the Institution of Engineers of Sri Lanka as per the Engineering Council Act No. 4 of 2017.

And the method of recruitment of external applicants is by **examination** and interview.

The Petitioners state that the formulation of **P4** was not made known to the 1<sup>st</sup> Petitioner Union or its members until the draft had been completed in secrecy, and though the Petitioners raised the question to the CEB with regard to this matter they did not receive a viable response or reply from the CEB.

Subsequently, a paper advertisement was published on 03.02.2021 (**P6**) calling for applications for vacancies of Mechanical and Civil Engineers

Class II Grade II of the CEB and accordingly, the required qualifications are as follows;

1. Engineering Degree (Mechanical) from a University of Sri Lanka (four-year engineering degree program which is recognized by the Institute of Engineers Sri Lanka). OR
2. Should have passed as Mechanical Engineers of the Institute of Engineers of Sri Lanka completing the full course and project. OR
3. Any other qualification recognized equivalent or higher in the same field by the Institute of Engineers Sri Lanka.
4. In addition to (1) or (2) or (3), **registration of the Engineering Council of Sri Lanka (ECSL) under the Associate Engineer (AEng) category or higher is mandatory.**
5. The method of selection is by **an examination** and an interview.

The Petitioners state that as per **P6**, the requirement of the mandatory registration of the Engineering Council under the Associate Engineer category or higher and the requirement of an examination have been newly added in accordance with **P4** which is erroneous as the said **P4** has not yet been approved.

The Petitioners further state that the Institute of Engineers Sri Lanka (IESL) has excluded the Open University of Sri Lanka (OUSL) from its 'List of recognized Universities'. This situation has caused injustice to CEB employees already possessing Engineering Degrees awarded by the OUSL since the CEB had made the requirement of being an IESL Associate Member or higher mandatory. As such, such employees are barred from applying for Associate Membership of the IESL. As per Clause No.7 of the Collective Agreement No. 2 of 2018 between the CEB and the Petitioners which is stipulated in Gazette bearing No. 2068/05 dated 23.04.2018 marked as **P10**, any and all matters concerning the employment, employees should be actively made involved in discussions and should be heard and allowed to put forward their proposals, comments, feedback and suggestions. It is averred that the CEB had not given an opportunity to the Petitioners to put forward their contention as to the new SORP (**P4**), and therefore, **P6**, which is prepared as per **P4** is *ultra vires*, arbitrary, irrational, unreasonable and contrary to the said Collective Agreement.

In those circumstances, the Petitioners state that the internal employees of CEB are prejudiced by **P4**, as they are unable to obtain an Associate Member of the IESL and further, they will have to sit for an examination for recruitment and promotion where those requirements are not in the 2002 SORP (**P3**). On this premise, it is averred that 15% of the quota already allocated to the internal applicants would be diminished over the years in accordance with **P4**. Moreover, the Petitioners assert that the marking scheme in **P4** has several defects and causes several complications as set out in paragraph 37 of the Petition.

It is contented by the learned President's Counsel appearing for the Petitioners that the decision of the Board of Management of the CEB to draft **P4** and its attempts to get approval from the CEB board was done secretly, unilaterally and arbitrarily without hearing, discussing, or consulting the Petitioners and stakeholders that amounts to abuse of powers. As per the letter dated 31.01.2021 (**P17A**), dispatched by the Department of Labour, the CEB consented to give an opportunity to the Petitioners to be heard in respect of **P4**. The Petitioners state that instead of giving an opportunity to them to put forward their grievances, the CEB called for applications by **P6** in accordance with **P4**.

In these circumstances, the Petitioners invoked the Writ jurisdiction of this Court in case bearing No. CA Writ 163/2021 seeking *inter-alia* to quash **P6**, a Writ of *Prohibition* preventing the Respondents from implementing **P4** and a Writ of *Mandamus* directing the Respondents to award a hearing to the Petitioners and all stakeholders with regard to **P4**. The said application is pending before this Court.

While the aforesaid case was pending before this Court, the CEB issued a Circular bearing No. 2021/GM/19/Pers dated 06.04.2021 (**P24**) stating that the Board has decided to conduct an examination followed by an interview for recruiting engineers to the CEB and the applicants are required to possess a valid registration in the category of 'Associate Engineers (AEng) or higher at the ECSL'. The Petitioners state that **P24** is in accordance with unapproved **P4** and an amendment to **P3**.

In the meantime, on 21.04.2021, a paper advertisement was published calling for applications for the vacancies of Electrical Engineer Class II Grade II of the Engineering Service of the CEB (**P27**) in terms of **P4** stating

that, *inter-alia*, Registration of the Engineering Council of Sri Lanka (ECSL) under the Associate Engineer (AEng) category or higher is mandatory and the method of selection is by an examination and an interview.

In this context, the Petitioners state that the new SORP draft **(P4)**, paper advertisement **(P6)**, amendment to **P3** by Circular marked **P24** and the paper advertisement **P27** are irrational, unreasonable, *ultra-vires* and arbitrary, and therefore, the Petitioners are entitled to the reliefs as prayed for in the prayer to the Petition.

### **Observation:**

A Petitioner who is seeking relief in an application for the issue of a Writ is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, the Court has the discretion to deny him relief having regard to his conduct, delay, laches, waiver, and submission to jurisdiction which are all valid impediments that stand against the grant of relief. (Vide: **Jayaweera Vs. Assistant Commissioner of Agrarian Services Ratnapura and Another**)<sup>1</sup>. Generally speaking, Courts will not issue writs when the alternative remedies are provided in law. The Court of Appeal in **Tennakoon Vs. The Director General of Customs**<sup>2</sup> held that;

*“the petitioner has an alternate remedy, as the Customs Ordinance itself provides for such a course of action under section 154. In the circumstances, the petitioner is not entitled to invoke writ jurisdiction”.*

In the case of **Ishak Vs. Laxman Perera**<sup>3</sup> Tilakawardane J (P/CA) observed that;

*“the Petitioner has already instituted action, therefore no writ lies.”*

In **Obeysekera Vs. Albert**<sup>4</sup> the Court of Appeal held that;

*“Certiorari is a discretionary remedy and will not normally be granted unless and until the Plaintiff has exhausted other remedies reasonably available and equally appropriate. Section 20 (1) of the*

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<sup>1</sup> 1996 (2) SLR. P70.

<sup>2</sup> 2004 (1) SLR. P53.

<sup>3</sup> 2003 (3) SLR. P18.

<sup>4</sup> 1978-79 (2) SLR. P220.

*Industrial Disputes Act conferred the right on the aggrieved party to repudiate the award and accordingly he cannot seek a discretionary remedy like Certiorari”.*

The Supreme Court in **Union of India Vs. T R Verma**<sup>5</sup> held that

*“it is well settled that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. When such remedy exists, it will be a sound exercise of discretion to refuse to interfere in a petition under Article 226, unless there are good grounds, therefore”.*

*“In the exercise of their supervisory jurisdiction to review administrative and other actions whether it is on an application for a prerogative writ, an injunction or declaration, or like statutory remedy- superior courts of law reserve a discretion not to award the remedy or remedies sought, even though the person or body against whom the remedy is sought is amenable to the particular jurisdiction invoked, and even though grounds for the award of remedy have been made out. One reason why a remedy may be refused is that there is some other remedy, judicial or non-judicial, which is available to the applicant for review which is equally or more appropriate. That alternative remedy may be a statutory right to appeal or a contractual right to review or appeal”<sup>6</sup>.*

The Industrial Disputes Act, No. 43 of 1950 (as amended) defines the phrase ‘Industrial Disputes’ as follows;

*" Industrial dispute" means any dispute or difference between an employer and a workman or between employers and workmen or between workmen and workmen connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in*

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<sup>5</sup> 1957 AIR 882.

<sup>6</sup> S. A. de Smith, *Judicial Review of Administrative Action*, (4th ed., London, Stevens, 1980) 452-7, 562-4; H. Whitmore and M. Aronson, *Review of Administrative Action*, (Sydney, Law Book Co., 1978) 390-2, 444-5; B. Schwartz and H. W. R. Wade, *Legal Control of Government*, (Oxford, Clarendon, 1972) 278-80, 284-6; R. F. Reid and H. David, *Administrative Law and Practice*, (2nd ed., Toronto, Butterworths, 1978) 327-8, 369-72.



*service, of any person, and for the purposes of this definition " 'workmen' includes **a trade union consisting of workmen.**"*

Under Sections 3 and 11 of the said Act, the Commissioner of Labour is empowered to investigate and/or conciliate any industrial disputes arising between the employers and workmen. In the instant Application, the learned President's Counsel appearing for the Petitioners states that in terms of Clause 7 of the Collective Agreement, between the CEB and the Petitioners, marked as **P10**, any and all matters concerning the employment, employees should be actively made involved in discussions and should be heard and allowed to put forward their proposals, comments, feedback and/or suggestions in such events. However, the CEB, instead of adhering to the said clause, secretly introduced the impugned SORP (**P4**) which amounts to a violation of the Collective Agreement by the CEB. The Industrial Disputes Act provides a mechanism by which issues pertaining to a Collective Agreement could be resolved. It is borne out from the affidavit tendered by the Petitioners that they have already invoked the jurisdiction of the Commissioner of Labour in this regard and several discussions have been held by the Commissioner with the CEB and the Petitioners. In fact, the matter is pending before the Commissioner of Labour. In this scenario, I am of the view that since the Petitioners have already invoked the alternative remedy provided in law and the same is pending, before the final determination of the Commissioner of Labour, the Petitioners are not entitled to invoke the Writ jurisdiction of this Court. As such, the instant Application is liable to be dismissed on this ground alone.

Furthermore, it is settled law that a Writ of *Mandamus* compels the performance of a public duty, as distinct from enforcing a duty of a private nature such as a contractual obligation. Such duty to perform that act must be contained in a statute and the applicant should have a legal right to demand performance of such duty. In the case of **Jayawardena Vs. The People's Bank**<sup>7</sup> the Court of Appeal enunciated that;

*"There is a distinction between public duties arising from statutes which are enforceable by mandamus and contractual duties enforceable as matters of private law by ordinary contractual*

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<sup>7</sup> 2002 (3) SLR-p17.

*remedies such as damages, injunctions, etc. Since mandamus now belongs essentially to public law, its applicability cannot be extended to an area where relief is available under private law.”*

*Per Jayasinghe, J.*

*"I am unable to accept the submission that the Circular issued by the Bank regulating the transfer of personnel from one station to another can be equated to an exercise of statutory power or discharge of a public duty to attract the writ jurisdiction of this Court. Contract of employment is solely a matter within the purview of private law and not a matter for judicial review."*

In **Ratnayake Vs. C.D. Perera**<sup>8</sup> the Supreme Court observed that;

*"In my view neither the "Lanka Guru Sangamaya" nor the respondents its officials, are public bodies performing duties of a public nature. The duties that the petitioners want the three respondents to be compelled to perform by a Writ of Mandamus are not duties of a public nature for which such a Writ will lie. They are contractual ditties outside the ambit of Mandamus."*

Furthermore, Wade in his text 'Administrative Law' 4<sup>th</sup> Edition, page 603 correctly stated that;

*"the Court does not issue a Writ of Mandamus in a case in which the right which the petitioner wants to enforce is based on a contract. Contractual duties are enforceable as a matter of private law by ordinary contractual remedies, such as damages, injunctions and specific performance. Duties enforceable by Mandamus are those imposed by law."*

In the instant Applications, the Petitioners are seeking for a Writ of Mandamus to compel the Respondents to consult the Petitioners pertaining to drafting a new SORP, changes made to the existing SORP and adopting any process of recruitment. It is pertinent to note that the aforesaid duties that the Respondents are compelled to perform do not stem from a statute. The Petitioners state that in terms of the provisions

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<sup>8</sup> 1982 (2) SLR-451.

of the said Collective Agreement (**P10**), the Respondents are duty bound to consult the Petitioners before drafting **P4**. In light of the above said legal literature, a breach of the Collective Agreement is not within the purview of judicial review (*Mandamus*). Contractual duties are enforceable as a matter of private law. In those circumstances, it is the view of this Court that the Petitioners are not entitled to Writs of *Mandamus* as prayed for in the prayers to the Petition.

Be that as it may, in terms of section 12K of the Ceylon Electricity Board Act No. 17 of 1969 (as amended), the Board of the CEB is empowered to make rules with regard to the appointment, promotion and administration of the officers and servants of the CEB, which reads thus;

*“subject to the provisions of section 5 and of Part III of this Act, to make rules in relation to the officers and servants of the Board, including their appointment, promotion, remuneration, disciplinary control, conduct and the grant of leave to them.”*

In the case of **Vasantha Dissanayake Vs. Secretary-Ministry of Public Administration and Home Affairs**<sup>9</sup> the Supreme Court observed that;

*“A scheme of recruitment once formulated is not good forever; it is perfectly within the competence of the appropriate authority to change it, rechange it, adjust it and re-adjust it according to the compulsions of changing circumstances. The Court cannot give directions as to how the Public Service Commission should function except to state the obligation not to act arbitrarily and to treat employees who are similarly situated equally. Once the Public Service Commission lays down a scheme, it has to follow it uniformly. Having laid down a definite scheme of promotion, the Public Service Commission cannot follow the irrational method of pick and choose.”*

In the case of **Union of India Vs. S.L. Dutta**,<sup>10</sup> the petitioner who was serving as Air Vice Marshal was considered eligible for the promotion as Air Marshal. However, the scheme was changed by the Government, and as per the changed policy, the petitioner was considered ineligible for the

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<sup>9</sup> SC.FR. Application No. 611/12. SC. Minute of 10-09-2015.

<sup>10</sup> (1991) 1SCC 505;AIR 1991 SC 363.

promotional post. The petitioner challenged the new scheme and the High Court allowed it holding that “the new promotion policy was not framed after an in-depth study” and directed the Government to consider the case of the petitioner under the old scheme of recruitment. In an appeal by the Government to the Supreme Court, the Court observed that;

*“A consideration of policy regarding the promotional chances of officers of the Flying Branch in the Air Force would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and lawyers of Courts can hardly be expected to have much knowledge by reason of their training and experience.”*

**Determination:**

It is borne out from the documents marked as D3 (i), D3 (ii) and D3 (iii) that the CEB had consulted the Petitioners in respect of the new SORP, and the Petitioners had submitted their proposals and suggestions to the CEB. Thereafter, the said proposals, suggestions and recommendations put forward by the Petitioners were submitted to a committee comprised of professionals, duly appointed by the CEB Board. The professionals have evaluated whether the existing scheme was effective, fair and aligned with the needs and standards of the industry. Thereafter, they proposed changes to the existing SORP. In these circumstances, it is abundantly clear, that the CEB is statutorily enabled to amend the SORP without the involvement of the Petitioners. However, in the process of amending the existing SORP, the CEB consulted the Petitioners and considered the recommendations submitted by the Petitioners.

The contention of the learned President's Counsel appearing for the Petitioners was that in P4, the introduction of an examination to the external recruitment method and the mandatory registration of the Engineering Council under the Associate Engineering category or higher are unreasonable. Having scrutinized the affidavits and the documents tendered by the parties, it is well established that the foregoing changes to

the existing SORP are compulsory for an efficient mechanism to select suitable candidates for the posts in the Engineering Service of the CEB.

In those circumstances, it is the view of this Court that the Respondents have not acted in excess of authority. The new SORP **(P4)** is made in the best interest of the CEB and the general public.

For the foregoing reasons, the Applications are dismissed without costs.

*Applications dismissed. No costs.*

***JUDGE OF THE COURT OF APPEAL***

**S. U. B. KARALLIYADDE, J.**

I agree.

***JUDGE OF THE COURT OF APPEAL***