

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

J.P.A. Jagath Keerthi
No.25C, Pradeshiya Sabha Road,
Geliyoa.

PETITIONER

CA (Writ) Application No. 634/2021

Vs.

1. Lalith U. Gamage
Governor-Central Province
P.O.Box- 06,
Palace Square,
Kandy.
- 1A. Prof: Sarath Abeykoon
Governor-Central Province,
P.O. Box -06,
Palace Square,
Kandy.
2. Gamini Rajarathne
Chief Secretary,
Chief Secretary's Office,
Provincial Council Complex,
Pallekele,
Kunadasale.
- 2A. G.H.M.A. Premasinghe,
Chief Secretary,
Chief Secretaries' Office,
Provincial Council Complex,
Pallekele,
Kunadasale.
3. K.G.Upali Ranawaka
Secretary to the Chief Ministry,

Ministry of Education Sports of the
Central Provincial Council,
Provincial Council Complex,
Pallekele,
Kundasale.

3A. H.M.M.U.B. Herath
Secretary to the Chief Ministry,
Ministry of Education and Sports of
the Central Provincial council,
Provincial Council Complex,
Pallekele,
Kundasale.

3B. Mrs. Madupani Piyasena.
Secretary to the Chief Ministry,
Ministry of Education and Sports of the
Central Provincial council,
Provincial Council Complex,
Pallekele,
Kundasale.

4. P.G. Amarakoon
Chairman,

4A. Gamini Rajakaruna
Chairman,

5. W.M.S.D. Weerakoon
Member,

5A. T.B.M.S.D. Thoradeniya
Member,

6. J.D.K Wickramarathne
Member,

6A. G.L.G. Tissa G Marahela
Member,

7. W.M.K.K Karunarathne
Member,

7A. P.T.G. Gunathilake
Member,
Former Member
(No longer in office)

8. A.M.R.B. Tennakoon
Member,
Former Member
(No longer in office)

9. A.M. Wais
Member,
Former Member
(No longer in office)

10. Prof: H.M.D.R. Herath
Member,
Former Member
(No longer in office)

The 4th to 10th Respondents all of:

Members of the Public Service
Commission of the Central Provincial
Council,
No.244, Katugastota Road,
Kandy.

11. T.A.D.W. Dayananda.
Secretary,
Provincial Public Service Commission
of the Central Province,
No.244, Katugastota Road,
Kandy.

11A. Kumuduni S.Premachandra
Secretary,
Provincial Public Service Commission
of the Central Province,
No.244, Katugastota Road,
Kandy.

12. M.G.A. Thilakarathne
Secretary to the Governor the Central
Province,
Governor's Secretariat,
P.O. Box 6,Place Square,
Kandy.

12A. M.W.M.M. Madahapola
Secretary to the Governor of the
Central Province,

Governor's Secretariat,
P.O. Box 6,
Place Square,
Kandy.

13. Hiransa Kaluthanthri
Director General,
Department of Management Services,
Room No.343,
3rd Floor, Ministry of Finance,
The Secretariat,
Colombo 01.
14. Secretary to the Ministry Finance and
Treasury
Ministry of Finance,
The Secretariat,
Colombo 01.
15. M.A.D.S.Perera
Provincial Department of Sports,
Central Province Sports Complex,
Digana, Rajawella.
- 15A. Y.M.A. Mihiran Bandara
Provincial Department of sports,
Central Province Sports Complex,
Digana, Rajawella.
- 15B. S.M.C. Samarakoon
Provincial Department of sports,
Central Province Sports Complex,
Digana, Rajawella.
- 15C. R.Thilageshwari
Provincial Department of sports,
Central Province Sports Complex,
Digana, Rajawella.
- 15D. M.U. Nishantha
Provincial Department of sports,
Central Province Sports Complex,
Digana, Rajawella.

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: Shantha Jayawardena with Ms. Niroshika Wegiriya, Hirannya Damunupola, Ms. Azra Basheer, Ms. Wihangi Tissera and Tharuka Ranathunga for the Petitioner.

Sumathi Dharmawardena PC, Additional Solicitor General with Ms. Abigail Jayakody, State Counsel for the 1st to 14th Respondents.

Sanjeewa Dasanayake with Naamiq Nafath and Akash Rafeek instructed by Athula de Silva for the 15D Respondent.

Argued on: 28.04.2025 and 23.06.2025

Written Submissions: Petitioner on 27.08.2025 and 09.10.2025
1st - 14th Respondents on 29.08.2025
15D Respondent on 10.09.2025

Decided on: 12.12.2025

Mahen Gopallawa, J.

Introduction

In the instant application, the Petitioner, who is an officer in Class III Grade III of the Combined Service in the Sports Field of the Central Provincial Council, has impugned the decision made by the 1st Respondent (Governor of the Central Province) to appoint the 15th Respondent as the Provincial Director of Sports of the Central Province contained in the letter dated 23.11.2021 ('P56'). The Petitioner has sought a writ of *Certiorari* to quash the said appointment of the 15th Respondent, and the appointments of the 15A, 15B, 15C and 15D Respondents, who replaced the 15th Respondent successively in the said post, during the pendency of this application. The said 15, 15A, 15B, 15C and 15D Respondents are all officers of the Sri Lanka Administrative Service. In addition, the Petitioner has sought writs of *Mandamus* directing the 1st to 10th Respondents to appoint the Provincial Director of Sports in terms of the procedure and criteria laid down in the Service Minute ('P9') or, in the alternative, to appoint the Petitioner to the said post.

The 1st to 14th Respondents and the 15D Respondent have objected to the reliefs sought by the Petitioner and moved for the dismissal of the instant application. In addition, the 1st to 14th Respondents have also raised several legal objections. Since the said legal objections are

closely intertwined with the factual background, I propose to consider them after examining the merits of the case presented by the Petitioner.

Accordingly, the application was taken up for argument, and the parties were also afforded an opportunity to file post-hearing written submissions.

Factual Background

In the first instance, I propose to set out a brief narrative of the factual background extracted from the pleadings and submissions of the parties, which will be helpful in examining the grounds of review in their proper context.

The Petitioner, who had been involved in sports in the capacity of an athlete later as a trainer and official, had joined the Ministry of Sports of the Central Provincial Council in the post of a Sports Officer with effect from 15.09.1992 ('P4'). Thereafter, he had been appointed to the post of Coach in Class IV Grade I of the Combined Service in the Sports Field of the Central Provincial Council ("Combined Service in the Sports Field") by the Provincial Public Service Commission of the Central Provincial Council ("Provincial Public Service Commission") with effect from 01.01.2008 and to the post of District Sports Officer in Class III Grade III of the said Service with effect from 01.09.2014 ('P6'). The Petitioner had been appointed by the Governor at the time to act in the post of Provincial Director of Sports on 20.01.2017 ('P10'), and according to the Petitioner, such appointment was granted as he was the most senior officer in Class III Grade III of the said Combined Service in the Sports Field.¹

In terms of the Service Minute of the Combined Service in the Sports Field, 1999 ('P9') the post of Provincial Director of Sports is designated as a post in Class III-Grade II of the said Service and requires 5 years of satisfactory service in Class III-Grade III in order to be eligible to be substantively appointed to such post. The method of promotion specified in the said Service Minute contemplate applications being called internally from officers in the Department of Sports of the Central Provincial Council and the selection being made according to the order of merit at an interview.

Since the Petitioner had completed 5 years' service in Class III-Grade III on 01.09.2019, he had made a request to the Governor that he be appointed to the post of Provincial Director of Sports on permanent basis by letter dated 04.11.2019 ('P11'). The Secretary to the Chief Ministry and the Ministry of Education and Sports of the Province had recommended such request by letter dated 19.11.2019 ('P12'). However, the Petitioner had been informed by the Secretary to the Governor by letter dated 16.09.2020 ('P15'), *inter alia*, that, according to the cadre approved by the Department of Management Services, the post of Provincial Director

¹ vide paragraph 15 of the petition.

of Sports had been designated as a post in the Sri Lanka Administrative Service (SLAS) bearing salary code SL-1/2006, and, as such, a non-SLAS officer could not be permanently appointed to the said post. Although the Petitioner had submitted an appeal on 05.10.2020 ('P16'), it appears that such position has not changed.

Thereafter, the 1st Respondent Governor had proceeded to appoint the 15th Respondent, who was an officer Grade II of the SLAS, to the post of Provincial Director of Sports by letter dated 23.11.2021 ('P56'/'1R1'). The Petitioner has alleged that such appointment has been made without calling for applications or holding interviews. In the instant application, the Petitioner has sought to quash the appointment of the 15th Respondent and the appointments of the 15A, 15B, 15C and 15D Respondents, who succeeded the 15th Respondent, all being officers of the SLAS and who were appointed in the same manner.

The position taken up by the 1st to 14th Respondents is that pursuant to the establishment of the Department of Management Services of the Ministry of Finance (DMS) in the year 1999 ('P36'/'1R11'/'3R11'), the cadre and salaries of the said Provincial Department of Sports had been revised by the DMS. Accordingly, by letter dated 19.12.2012 ('P21'/'1R6'/'3R6' and 'P22'/'1R6a'/'3R6a'), cadre had been approved for a period of three years commencing from 01.01.2013 and the post of Provincial Director of Sports was designated therein to be filled by an officer in SLAS Grade II.

The Public Service Commission, which is the appointing authority in respect of the SLAS, had also amended the Service Minute of the SLAS including the post of "Director" in Provincial Departments in the Schedule of Posts of the SLAS, as per Gazette Notification dated 23.12.2013 ('P66'), thereby enabling SLAS officers to be appointed to such posts, including to the post of Provincial Director of Sports.

The said Respondents have further pointed out that the schemes of recruitment in respect of the posts of District Sports Officer, Trainer and Sports Officer in the Combined Service in the Sports Field, which are the posts apart from the post of Provincial Director that are referred to in the Service Minute ('P9') have been since amended in the years 2018-2019, as evidenced by the documents '1R2'/'3R2'-'1R4'/'3R4'.² Thus, the Respondents contend that the Service Minute is no longer in effect.

The 13th Respondent Director General, DMS had informed the 2nd Respondent Chief Secretary by letter dated 22.11.2021 ('P55'/'1R10'/'3R10') that the cadre approved from 01.01.2013 ('1R6' and '1R6a'/'3R6' and '3R6a') will continue in effect until the next cadre review for Provincial Councils is conducted.

Accordingly, the 1st to 14th Respondents contend that the 15th Respondent, who was an SLAS officer, was appointed to the post of Provincial Director of Sports on 23.11.2021

² In addition, approval for the creation of a new post called Assistant Director (Technical) had been granted by the DMS suppressing the post of Senior District Sports Officer, as evidenced by the document 1R5/3R5.

(‘P56’/’1R1’/’3R1’) as the Petitioner was not an officer in the SLAS and did not meet the code approved for the said post by the DMS. The position taken up by the 15D Respondent, as reflected in his written submissions, is in line and consistent with the position taken up by the 1st to 14th Respondents.

It is observed that, after the hearing into the application had concluded, the 1st to 14th Respondents, by way of a motion dated 16.07.2025, tendered to this Court a report of a preliminary investigation dated 28.12.2022 and a charge sheet dated 24.04.2024 issued against the Petitioner based thereon. In their written submissions, based on such disciplinary action, they have alleged unmeritorious conduct on the part of the Petitioner and have sought to raise a legal objection that he has not come to Court with clean hands.³

Grounds of Review

In the petition, the Petitioner has urged that the decision of the Respondents to appoint the 15th Respondent to the post of Provincial Director of Sports is *ultra vires* the provisions of the Constitution, the Provincial Councils Act, No. 42 of 1987, the Sports Statute of the Central Provincial Council No. 09 of 1990, for the following reasons;

- (a) It is illegal to designate the post of Provincial Director of Sports of the Central Province as a post belonging to the Sri Lanka Administrative Service;
- (b) It is in derogation of the power of the Provincial Council under the 13th Amendment to the Constitution;
- (c) It is contrary to the Provincial Councils Act No. 42 of 1987;
- (d) The Department of Management Services has no power to dictate terms to the Provincial Councils in respect of their cadres;
- (e) It is in violation of the Service Minute marked ‘P9’;
- (f) The 2nd, 3rd, 11th, 12th and 13th Respondents, who are officers in the Sri Lanka Administrative Service, are biased against the Petitioner and are acting with an ulterior motive;
- (g) It is arbitrary;
- (h) It is irrational and unreasonable;
- (i) It is in violation of the Petitioner’s legitimate expectation;
- (j) The 1st to 14th Respondents have failed to take into account relevant considerations;

³ Vide paragraph 17 of the Written Submissions of the 1st to 14th Respondents.

- (k) The 1st to 14th Respondents have acted on irrelevant considerations with an ulterior motive;
- (l) The actions/ recommendations/ observations of the 1st to 14th Respondents against the Petitioner are tainted with malice;
- (m) The post of Provincial Director of Sports of the Central Province is a position belonging to the Provincial Public Service of the Central Province; and
- (n) The Service Minute of the Sri Lanka Administrative Service ('P66') does not override the Service Minute/ Scheme of Recruitment formulated and approved according to law by the Governor and/or the Provincial Public Service Commission in relation to the Provincial Public Service.⁴

I propose to examine the aforementioned grounds of review and the responses of the Respondents after considering the constitutional and statutory framework underpinning such grounds.

Constitutional and Statutory Framework

Reference has been made to the subject of "sports" in item 29(2) of the Provincial Council List (List 1) of the Ninth Schedule to the Constitution in the following manner;

29:2 Encouragement and development of sports (other than national sports associations).

In exercise of the legislative competence conferred under Article 154G(1) of the Constitution in respect of such subject, the Provincial Council of the Central Province had enacted the Provincial Sports Statute No. 09 of 1990 of the Central Provincial Council ('P7').⁵ The said Statute, *inter alia*, provides for the appointment of a "Director of Sports" in section 3(1) thereof.

In terms of section 2(1) of the Provincial Councils Pensions Act, No. 17 of 1993, which was enacted to make provision for the payment of pensions to officers of provincial public services, the post of "Provincial Director of Sports" has been declared as a pensionable post in the Central Provincial Council. The relevant Gazette Notification dated 08.07.1994 has been tendered to this Court by the Petitioner marked 'X'.⁶

⁴ Vide paragraph 64 of the petition.

⁵ The Sports Statute had been passed by the Central Provincial Council on 26.12.1991 and the Hon. Governor had given his assent thereto on 08.01.1992. The said Statute had been published in Part IV (A) of the Gazette Notification dated 16.10.1992.

⁶ The said Gazette Notification ('X') has been tendered to Court by motion dated 09.01.2024 and the reference to the post of Provincial Director of Sports of the Central Provincial Council is in Schedule 'C' thereof.

Pursuant to the enactment of the Thirteenth Amendment to the Constitution, provisions relating to the provincial public service of a Province were enacted through the Provincial Councils Act, No. 42 of 1987. Section 32 of the said Act is of particular significance to the instant case and provides as follows;

32(1) Subject to the provisions of any other law the appointment, transfer, dismissal and disciplinary control of officers of the provincial public service of each Province is hereby vested in the Governor of that Province.

(2) The Governor of a Province may, from time to time, delegate his powers of appointment, transfer, dismissal and disciplinary control of officers of the provincial public service to the Provincial Public Service Commission of that Province.

(3) The Governor shall provide for and determine all matters relating to officers of the provincial public service, including the formulation of schemes of recruitment and codes of conduct for such officers, the principle to be followed in, making promotions and transfers, and the procedure for the exercise and the delegation of the powers of appointment, transfer, dismissal and disciplinary control of such officers. In formulating such schemes of recruitment and codes of conduct the Governor, shall, as far as practicable, follow the schemes of recruitment prescribed for corresponding offices in the public service and the codes of conduct prescribed for officers holding corresponding offices in the public service.

The aforementioned section 32 of the Provincial Councils Act, *inter alia*, sets out the basic structure a provincial public service should take, identifies authorities which exercise control over it and prescribes the manner in which such control should be exercised. Significantly, it also confers autonomy on the Governor of a Province and the Provincial Public Service Commission to the extent that powers of the Governors are delegated, in the administration and control of the provincial public service.

Article 55(4) of the Constitution has re-enforced such conferment of autonomy on provincial authorities in the following manner;

55 (4). The Commission shall not derogate from the powers and functions of the Provincial Public Service Commission as are established by law.

Accordingly, the Service Minute of the Combined Service in the Sports Field of the Central Provincial Council, 1999 ('P9') had been formulated by the Provincial Public Service

Commission of the Central Provincial Council and had been approved by the Governor.⁷ The enactment of the schemes of recruitment in respect of the posts of District Sports Officer, Coach and Sports Officer referred to the said Service Minute in the years 2018-2019 ('1R2'/ '3R2'-'1R4'/ '3R4') have been similarly approved by the Provincial Public Service Commission and the Governor.

Analysis of the Grounds of Review and Submissions of the Parties

In this segment of the Judgement, I wish to address the key issues arising from the aforementioned grounds of review and the submissions made by the parties.

In the first instance, it is observed that the provisions of the Sports Statute of the Central Provincial Council and the declaration made under the Provincial Councils Pensions Act cited by the Petitioner clearly establish that the post of Provincial Director of Sports has been duly established as a pensionable post in the provincial public service of the Central Provincial Council. Further, the Service Minute of the Combined Service in the Sports Field, 1999 ('P9') has also been enacted by the Provincial Public Service Commission of the Central Provincial Council and approved by the Hon. Governor in accordance with the provisions of section 32 of the Provincial Councils Act.

Thus, the principal issue of contention between the parties that this Court must determine is whether the post of Director of Sports has been transformed into a cadre post of the SLAS, as contended by the Respondents. Such transformation appears to have commenced with the establishment of the DMS in 1999 and the review and approval of the cadre and salaries of the Provincial Department of Sports in 2012 ('P21' and 'P22'/ '1R6' and '1R6a'/ '3R6' and '3R6a'). Although the approval of cadre and salaries was for a period of three years, such period of validity had been indefinitely extended by the DMS on 22.11.2021 until the next cadre review for Provincial Councils is conducted ('P55'/ '1R10'/ '3R10').

The Petitioner took up the position that the DMS has no power to dictate terms to the Provincial Councils in respect of their cadre. Thus, it is incumbent upon this Court to examine the validity or otherwise of the conduct of the DMS in this instance. All parties rely on the Circular No. DMS/E1/99 dated 05.05.1999 ('P36'/ '1R11'/ '3R11') relating to the establishment of the DMS, and as such, I too intend to be guided by the said Circular in identifying its mandate and functions. I wish to observe that the said Circular is not addressed to Provincial Councils and further, the only reference to Provincial Councils therein is in item 15 of Annex A, which states that the DMS can provide consultancy services to Provincial Councils and Local

⁷ The Service Minute of the Combined Service in the Sports Field ('P9') had been approved by the Provincial Public Service Commission of the Central Provincial Council on 07.05.1999 and by the Governor on 28.05.1999.

Authorities in respect of management matters such as institutional reviews, cadre and salaries. In the interests of clarity, item 15 is reproduced below;⁸

පළාත් සභාවල සහ පළාත් පාලන ආයතනවල ආයතනික සමාලෝචන, සේවක සංඛ්‍යා, වැටුප් පිළිබඳ කරුණු යනාදිය කළමනාකරණය පිළිබඳව උපදේශනාමක සේවා සැලසීම.

I am of the view that the text of item 15 above is clear and unambiguous, and, as such, it only enables the DMS to tender consultancy services to Provincial Councils. By their very nature, consultancy services are provided upon request and are not automatically binding upon the requesting party.

In its approval of cadre and salaries for the period 2013-2015 ('P21' and 'P22'/ '1R6' and '1R6a'/ '3R6' and '3R6a'), the DMS has, *inter alia*, sought to approve cadre, designate services for posts and directed compliance with the contents thereof. By virtue of the extension of the validity period of such approval, the approvals and directions contained therein continue in force, to date. Of particular significance to the instant case is the fact that the post of Provincial Director of Sports has been designated therein as a post reserved for the SLAS.

Thus, the next issue to be considered is whether any request has been made by the Hon. Governor as the head of the provincial public service to designate the post of Provincial Director of Sports as a post reserved for the SLAS. The following evidence is before this Court on this issue.

The 1st to 14th Respondents have tendered to Court by way of a motion dated 06.11.2024, after the pleadings had closed, certain correspondence including a letter dated 15.03.2006 addressed by the Governor at the time to the Secretary, Ministry of Public Administration and Home Affairs indicating his consent for the inclusion of posts belonging to the Provincial Public Service of the Central Provincial Council in the new Service Minute of the SLAS published on 14.11.2005. The letter addressed by the Chief Secretary to the Hon. Governor dated 20.02.2006, which is referred to in the aforementioned Governor's letter, has also been tendered to Court with the said motion. Several observations may be made regarding its contents and context. In the first instance, the correspondence by which such letter was submitted to the Hon. Attorney General⁹ indicates that only a photocopy of the said letter is available and that there are no office copies or any further information thereon in the official records. Notwithstanding such matter, it appears that the Governor's letter is based on the information and request contained in the Chief Secretary's letter dated 20.02.2006, and, in fact, attached such letter as an annexure. It is observed that the Provincial Director of Sports

⁸ In the official web page of the Department of Management Service in the website of the Ministry of Finance, Planning and Economic Development <<https://www.treasury.gov.lk/web/department-of-management-services/section/responsibilities>>, item 15 of the responsibilities of the DMS is stated as follows;

15. Providing consultancy services in relevant to institutional reviews, cadre management and salaries of the Provincial Councils and Local Authorities.

⁹ Letter addressed by the Chief Secretary-Central Province dated 21.10.2024.

is not among the posts recommended in the Chief Secretary's letter to be included in the SLAS Service Minute. If so, it may also indicate that Provincial Director of Sports was not a post held or reserved for SLAS officers, at least up to such time. Thus, I am of the view that the aforementioned Governor's letter cannot *per se* be accepted as granting approval for the inclusion of the post of Provincial Director of Sports as a post reserved for the SLAS.

On the other hand, the Petitioner has submitted information obtained through a series of requests made under the Right to Information Act, No. 12 of 2016 (RTI requests) to several agencies, including the DMS, the Governor, Chief Secretary and other provincial authorities. Of particular significance is the response received from the Secretary to the Governor dated 08.03.2021 ('P43') to RTI request dated 25.01.2021 ('P25'). In the said letter ('P43'), it has been stated, *inter alia*, that there was no order issued by the Governor to either abolish or suppress the Service Minute of the Combined Service in the Sports Field in the subject file, and, similarly there was no record of any letter of consent or concurrence issued by the Governor to the DMS or to any other official in the Treasury for the designation of the post of Provincial Director of Sports as a post approved for the SLAS. I observe that, since any request should have been made or approval granted to designate such post as a post in the SLAS or to abolish a Service Minute could only have been lawfully made by the Governor in his capacity of the head of the provincial public service, evidence of such matters should necessarily reside and be available in the official records maintained in the Governor's Secretariat. Hence, the only reasonable conclusion that could be drawn from the response to the Petitioner's right to information request ('P43') is that no request has been made or approval granted to either abolish the Service Minute of the Combined Service in the Sports Field or to designate the post of Provincial Director of Sports as a post reserved for the SLAS.

The response of the Chief Secretary dated 23.02.2021 ('P38') to a further RTI request ('P29') resulted in the disclosure of the recommendations made by the Chief Secretary to the DMS for the cadre review conducted in 2012 ('P39'). In relation to the Sports Department, such recommendations specifically state that the post of Provincial Director of Sports should be a post in the Combined Service in the Sports Field and that the said post is also included in the Sports Statute. Thus, it would appear that, at the time of the cadre review in 2012, a specific request had been made to retain the post of Provincial Director of Sports as a post in the Combined Service in the Sports Field, and, that the DMS acted contrary to such request.

Consequently, I will proceed to consider whether the DMS is legally empowered to unilaterally designate posts in the provincial public service as posts reserved for the SLAS. In so far as its status is concerned, the DMS is a Government Department within the Ministry of Finance. It is re-iterated that its mandate in terms of the Circular marked 'P36' relating to Provincial Councils is limited to the provision of consultancy services. Neither the Respondents nor the Petitioner has submitted to this Court that the DMS is vested with any other statutory powers. Hence, I hold that the DMS is not empowered to unilaterally designate posts in the provincial

public service as posts reserved for SLAS officers, and to do so would violate the provisions of section 32 of the Provincial Councils Act. Therefore, I categorically reject the contention of the 15D Respondent that the cadre approval of the DMS supersedes the Service Minute of the Combined Service in the Sports Field ('P9').¹⁰

Representations to this Court was made to say that the Public Service Commission (PSC), which is the appointing authority in respect of the SLAS, had amended the Service Minute of the SLAS including the post of "Director" in Provincial Departments in the Schedule of Posts of the SLAS ('P66'), thereby enabling an SLAS officer to be appointed to the post of Provincial Director of Sports. Furthermore, the 1st to 14th Respondents have raised a legal objection in their written submissions based on Article 61A of the Constitution that this Court has no jurisdiction to inquire into a decision of the PSC. Whilst I will address the said legal objection elsewhere, I wish to observe herein that neither has the PSC been made a party to this application nor has any relief been sought against it in the petition by the Petitioner. In its reply written submissions, the Petitioner has expressly declared that he is not directly or indirectly impugning the Service Minute ('P66'). Keeping such position in mind, I intend to confine myself to a few observations on the issue, as the Respondents have sought to rely on the said SLAS Service Minute to justify the appointment of SLAS officers to the post concerned. Firstly, the material before this Court does not indicate any request or justification for the post of Director of Sports in the Central Provincial Council, at least to be declared as a scheduled post of the SLAS in the said Service Minute. In such circumstances, at the very least, the inclusion of such post in the SLAS Service Minute would appear to raise serious questions regarding compliance with Article 55(4) of the Constitution, as pointed out by the Petitioner.

The final issue to be addressed relates to the scheme of recruitment applicable to the post of Provincial Director of Sports. The position of the Petitioner is that the Service Minute of the Combined Service in the Sports Field ('P9') remains in force. The Respondents contend that such Service Minute has been abolished, and, as such, only an officer of the SLAS could be appointed on a permanent basis to such post, as provided for in the SLAS Service Minute ('P66').

The said Respondents have further pointed out that the schemes of recruitment in respect of the posts of District Sports Officer, Trainer and Sports Officer in the Combined Service in the Sports Field, are the posts other than the post of Provincial Director which are referred to in the Service Minute ('P9') have been since amended in the years 2018-2019, as evidenced by the documents '1R2'/ '3R2'-'1R4'/ '3R4'.¹¹ Thus, the Respondents contend that the Service Minute ('P9') is no longer in effect.

¹⁰ Vide paragraphs 13 to 15 of the Written Submissions of the 15D Respondent.

¹¹ In addition, approval for the creation of a new post called Assistant Director (Technical) had been granted by the DMS suppressing the post of Senior District Sports Officer, as evidenced by the document 1R5/3R5.

The Petitioner's response to such position of the Respondents is that, although separate schemes of recruitment have been formulated for the posts of District Sports Officer, Trainer and Sports Officer, which are lower posts, no separate scheme of recruitment has been formulated for the post of Provincial Director of Sports, and, as such, appointment to the said post continues to be governed by the Service Minute.¹²

I am inclined to accept the aforementioned position taken up by the Petitioner, that the appointment to the post of Provincial Director of Sports continues to be governed by the Service Minute ('P9') for several reasons. Firstly, it is a well-established principle in the public service that there should be a scheme of recruitment for every post¹³ and that any amendment/alteration should be expressly incorporated into the said scheme of recruitment.¹⁴ It is also well established that a scheme of recruitment should not be changed to meet transitional problems and that prior approval should be obtained for any deviations.¹⁵ There is no evidence that any attempt has been made to amend the Service Minute ('P9') by the authorities which formulated it. Secondly, the position taken by the Respondent presupposes that a scheme of recruitment may be amended or abolished by implication. Not only is such a practice unknown to the aforementioned existing legal provisions governing the public service, but it would also lead to uncertainty and abuse. Thirdly, and perhaps most significantly, the purported change to the scheme of recruitment envisaged under 'P9', by changing the designation of the post from a post in the provincial public service to a SLAS post, has been effected by the DMS, which had no lawful authority to do so, and as such, the purported change itself is illegal.

Upon consideration of the aforementioned matters, I am of the view that the 1st to 14th Respondents were in error in concluding that the post of Provincial Director of Sports was not a post in the provincial public services and that it was a post designated or reserved for the SLAS. Consequently, I hold that the decision of the 1st Respondent to appoint the 15th Respondent ('P56') and thereafter the 15A - 15D Respondents to the post of Provincial Director of Sports, upon the basis that only SLAS officers were entitled to be appointed to that post on permanent basis, and the decision not to consider the Petitioner for such post ('P15') is bad in law. In arriving at such decisions, the 1st Respondent has not only acted *ultra vires* the provisions of the Provincial Councils Act, the Sports Statute of the Central Provincial Council and the Service Minute of the Combined Service in the Sports Field ('P9') but has also abdicated and fettered the discretion conferred thereunder.

¹² vide paragraph 6 of the Petitioner's counter-affidavit.

¹³ vide clause 2:1 of Chapter II of the Establishments Code (Volume 1) and section 38 of the PSC Procedural Rules, 2022.

¹⁴ vide clauses 2:9 and 2:10 of Chapter II of the Establishments Code (Volume 1) and Sections 42 to 44 of the PSC Procedural Rules, 2022.

¹⁵ vide clause 2:7 of Chapter II of the Establishments Code (Volume 1).

As cited by the Petitioner, in **Ranjani Priyalatha v. Provincial Public Service Commission**,¹⁶ this Court (per Sriskandarajah, J.) considered the provisions of the Service Minute of the Sri Lanka Ayurvedic Medical Service and the Ayurvedic Statute No. 18 of 1990 of the Central Provincial Council. The Court held that provisions of the Service Minute that are inconsistent with the Provincial Statute will be inoperative within the Central Province so long as the Statute is in force. Accordingly, the Court concluded that the power or authority to appoint the Provincial Commissioner of Ayurveda is vested in the Governor and/or the Provincial Public Commission and not the Public Service Commission, which was the appointing authority in terms of the Service Minute.

I am of the view that the reasoning in the aforementioned case should be followed in determining the application of the SLAS Service Minute ('P66'), insofar as the appointment to the post of Provincial Director of Sports of the Central Provincial Council is concerned.

The Petitioner has also contended that his legitimate expectation has been defeated by the conduct of the 1st Respondent in not considering him for appointment to the post of Provincial Director of Sports despite having fulfilled the requisite eligibility criteria set out in the Service Minute of the Combined Service in the Sports Field ('P9'). The doctrine of legitimate expectation, in both its substantive and procedural form, is well entrenched in our law and has been given effect to by the Superior Courts in the exercise of the fundamental rights¹⁷ and writ¹⁸ jurisdictions. It is observed that the fact that the Petitioner had fulfilled the eligibility set out in clause 8(iii) of the Service Minute ('P9') (page 6), has not been expressly denied by the Respondents. Furthermore, the Petitioner was also appointed to act in the said post by the 1st Respondent ('P10'/'1R9'/'3R9') and his appeal to have such acting appointment made permanent had been recommended by the 3rd Respondent. I am of the view that the aforementioned factors demonstrate that the Petitioner could have lawfully and reasonably entertained a legitimate expectation to be considered for appointment to the post of Provincial Director of Sports.

The Petitioner has further alleged that the 2nd, 3rd, 11th, 12th, and 13th Respondents, who are officers of the SLAS, are biased against the Petitioner and are acting with an ulterior motive. The Petitioner has attached the Seniority List of Special Grade Officers of the SLAS as at 02.01.2023 ('P67') in support of his contention. However, whilst such Seniority List only

¹⁶ Lakshman Marasinghe & Jayampathy Wickramaratne (eds.) *Judicial Pronouncements on the 13th Amendment* (Institute for Constitutional Studies, Stamford Lake Publication, 2018) 522. Also reported in 2010 BALJ 44.

¹⁷ Vide **Siriwardene v. Seneviratne and others** [2011] 2 BLR 336; **M.R.C.C. Ariyaratne & others v. N.K. Illangakoon, Inspector General of Police & others** [2019] 1 Sri L.R. 100 and **Vavuniya Solar Power (Private) Limited v. Ceylon Electricity Board and others**, SCFR Application No. 172/2017, SC Minutes dated 20.09.2023.

¹⁸ Vide **Ranasinghe Bandara v. The Director, District Land Reform Commission & others**, CA Writ Application No. 233/217, decided on 17.06.2019 (per Janak de Silva, J.); **Captain (Temporary) H.D.C. Perera v. Lt. Gen N.U.M.M.W. Senanayake & Others**, CA Writ Application No. 408/2018 CA Minutes 31.08.2020 (per Arjuna Obeyesekere, J.); **Rathnappulige Sandun Chinthaka & others v. National Water Supply and Drainage Board & others**, CA Writ Application No. 289/2020, decided on 13.03.2023 (per Sasi Mahendran, J.)

establishes the fact that the said Respondents are officers of the SLAS, no further material has been placed by the Petitioner to substantiate the allegation of bias and ulterior motive. In such circumstances, such ground has not been established.

Legal Objections raised by the Respondents

The following legal objections have been raised by the Respondents;

(a) Constitutional Ouster Clause -Article 61A of the Constitution

In their post-hearing written submissions, the 1st to 14th Respondents have raised the objection that the appointment of the 15th Respondent to the post of Provincial Director of Sports ('P56') has been made pursuant to the Service Minute of the SLAS ('P66').¹⁹ They have pointed out that the SLAS Service Minute has been issued by the Public Service Commission (PSC) and that decisions of the said Commission are not amenable to judicial review by this Court by virtue of Article 61A of the Constitution. Hence, the Respondents allege that the Petitioner is indirectly seeking to challenge a decision of the Public Service Commission, contrary to the legal maxim "*quando liquid prohibetur ex directo, prohibetur et per obliquum*" (what cannot be done directly cannot be done indirectly). They have submitted several authorities in support of the aforementioned constitutional ouster clause Article 61A²⁰ and the legal maxim.²¹

In his reply written submissions, the Petitioner has stated that the impugned appointment has been made by the 1st Respondent and not by the PSC.²² He has further expressly stated that he is not directly or indirectly impugning the Service Minute ('P66'). In addition, he has pointed out that such objection had been raised belatedly after the pleadings had closed and should not be entertained.

I wish to observe that, as pointed out by the Petitioners, the appointment that has been impugned in this application ('P56') is an appointment which has been made by the 1st Respondent Governor. The letter ('P56') expressly declares that the said appointment has been made in the exercise of the powers vested in the Governor under section 32(1) of the Provincial Councils Act. Such an appointment is fully amenable to review by this Court and is not protected by Article 61A of the Constitution. Further, the Petitioner has not impugned the SLAS Service Minute or sought any relief against the PSC in the instant application. Hence, I

¹⁹ Vide paragraphs 15 and 16 of the Written Submissions of the 1st to 14th Respondents.

²⁰ The authorities cited by the said Respondents were *K.G. Subasinghe v N.E. Dissanayake, Chairman, the Administrative Appeal Tribunal*, CA Writ Application No, 850/2008, decided on 03.05.2011; *Hewa Pedige Ranasinghe and others v. Secretary, Ministry of Agricultural Development and Agri Service and others*, SC Appeal 117/2013, SC Minutes dated 18.07.2018; and *K.G.J.N. Deshapriya v. Justice N.E. Dissanayake, Chairman, Administrative Appeals Tribunal and others*, CA Writ Application No. 55/2020 decided on 25.10.2023.

²¹ The Respondents sought to rely on *Frewin & Co. Ltd. v. Dr. Ranjith Atapaththu and others* [1993] 2 Sri L.R. 53.

²² Vide paragraphs 6 to 20 of the Reply Written Submissions of the Petitioners.

am of the view that the objection raised by the 1st to 14th Respondents are misconceived in law and should be rejected. Moreover, the position taken up herein by the said Respondents regarding the nature of the 15th Respondent's appointment is also contrary and inconsistent with the position that has been maintained by them in their objections that such appointment has been validly made by the 1st Respondent and was not *ultra vires*.

In this context, I also note that the 15D Respondent, in his written submissions, has raised the objection that, in order to succeed, the Petitioner ought to have challenged the SLAS Service Minute ('P66') and that he has failed to do so.²³ Such position appears to run counter to the above objection raised by the other Respondents. In any event, whilst re-iterating my observations above, I am of the view that it is not necessary for the Petitioner to impugn 'P66' in order to obtain the reliefs sought in the instant application. Hence, this objection raised by the 15D Respondent is rejected.

(b) Lack of *Uberrima Fides*

Once again in their written submissions, the 1st to 14th Respondents have taken up the position that the Petitioner had suppressed information about complaints of irregularities made against him and a preliminary investigation conducted in respect same, and, as such, he lacked *uberrima fides* and had suppressed and misrepresented facts to this Court.²⁴ The material upon which such objection is based, namely, a report of a preliminary investigation dated 28.12.2022 and a charge sheet issued against the Petitioner dated 24.04.2024, has been tendered to this Court by the said Respondents by way of a motion dated 16.07.2025, after the hearing into the application was concluded. I find the manner in which such objection has been raised and the supporting material tendered to this Court highly irregular.

In this context, I also wish to observe that the aforementioned preliminary investigation appears to have been completed by the time objections were filed by the Respondents in this application. Hence, if they wished the Court to take cognizance of such matter, reference could have been made and documents tendered through their objections. They failed to do so. However, by raising such matter after the hearing has been concluded, the Respondents have effectively prevented the Petitioner from responding to the allegations made and explaining his conduct.

I further observe that the Respondents have not apprised this Court whether the Petitioner had responded to the charge sheet or as to the current status of the disciplinary proceedings. Although it is a well-established principle that a litigant has to come to Court with clean hands and that prerogative relief will be denied to a litigant that lacks *uberrima fides* (vide ***Liyanage and another v. Ratnasiri, Divisional Secretary, Gampaha and others***²⁵), I am inclined to the

²³ Vide paragraph 10 of the Written Submissions of the 10D Respondents.

²⁴ Vide paragraphs 17 and 18 of the Written Submissions of the 1st to 14th Respondents.

²⁵ [2013] 1 Sri L.R. 6.

view that a full and fair account of the disciplinary action has not been presented to this Court. Thus, considering the totality of the aforementioned matters, and particularly the very belated stage and irregular manner in which it has been raised, I am not inclined to entertain such objection.

(c) *Laches*

The 15D Respondent has raised the objection that the Petitioner is guilty of *laches* on the footing that he has sought to impugn the cadre approval granted by the DMS after a period of nine years.²⁶ However, the appointment by which the rights and interests of the Petitioner had been violated and which he has sought to impugn is the appointment of the 15th Respondent, which had been made on 23.11.2021 ('P56'). Hence, such decision of the DMS cannot be considered as the sole or most decisive or proximate decision that has been challenged in the instant application. It is observed that the Petitioner has invoked the jurisdiction of this Court on 15.12.2021, impugning the appointment of the 15th Respondent within a period of less than one month. Such period cannot be considered as an inordinate delay, and accordingly, I reject the objection raised by the 15D Respondent on *laches*. I further re-iterate my findings on the illegality of the aforementioned conduct on the part of the DMS.

Conclusions and Orders of Court

In view of the foregoing, I hold that the post of Provincial Director of Sports of the Central Province is a post in the Provincial Public Service of the Central Province and that the appointment to the said post should be made in accordance with the Service Minute of the Service Minute of the Combined Service in the Sports Field ('P9'). Therefore, the appointment of the 15th Respondent, who is not an officer in the said service and who is an officer of the Sri Lanka Administrative Service, by the 1st Respondent(P56), and the subsequent appointments of the 15A, 15B, 15C and 15D Respondents made on similar basis, are illegal and *ultra vires* the provisions of the Provincial Councils Act, the Sports Statute of the Central Provincial Council and the Service Minute of the Combined Service in the Sports Field.

Accordingly, I proceed to issue a writ of *Certiorari* quashing the appointment of the 15th Respondent to the post of Provincial Director of Sports of the Central Province by the 1st Respondent communicated by the letter dated 23.11.2021 ('P56') and the subsequent appointments of the 15A, 15B, 15C and 15D Respondents to the said post. I further issue a writ of *Mandamus* directing the 1st to 14th Respondents to take appropriate steps forthwith to make the appointment to the said post Provincial Director of Sports strictly in accordance with the provisions of the Service Minute of the Combined Service in the Sports Field ('P9'). I make no order as to costs.

²⁶ Vide paragraphs 6 and 7 of the Written Submissions of the 15D Respondent.

In conclusion, I must observe that, if the devolution of power envisaged under the Thirteenth Amendment to the Constitution is to be meaningfully achieved and the benefits anticipated thereby are to be tangibly realised, provincial authorities to whom such powers have been devolved should be granted the freedom to exercise their powers to the fullest extent permitted by law. As observed in the instant application, the encroachment and unlawful interference by central authorities remain a serious impediment to the realisation of such ideal.

Application is allowed.

Judge of the Court of Appeal

Mayadunne Corea, J.

I agree.

Judge of the Court of Appeal