

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

*In the matter of an Application for
Orders in the nature of Writs of
Certiorari, Prohibition and
Mandamus under Article 140 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.*

CA (Writ) App. No. 350/2024

T.M. Sanjaya Tennakoon

G271, Niwasipura,
Kotagoda, Ja-Ela.

PETITIONER

Vs.

1. The Director General,
Department of Customs, Sri
Lanka Customs,
Customs House, Bristol Street,
Colombo 01.
2. Sanath J. Ediriweera – Chairman
3. N.H.M. Chithrananda, Member,
4. G.S.A. de Silva PC, Member,
5. Dr. A.D.N. de Zoysa, Member,
6. Mrs. S.M. Mohamed, Member,

7. Mrs. Ranjani Nadarajapillai,
Member,
8. C. Pallegama, Member,
9. M.B.R. Pushpakumara, Member,
10. Prof. N. Selvakkumaran -
Member,
11. Secretary, Public Service
Commission,

The 2nd to 11th Respondents all
of:

The Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.

12. M.A.M. Nazeer,
Director Customs (Acting)
Sri Lanka Customs, Customs
House, No. 40
Main Street, Colombo 11.

RESPONDENTS

Before: S. U. B. Karalliyadde, J

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

Counsel:

Shantha Jayawardene with Thilini Vidanagamage and Dimuthu Priyashantha instructed by Salitha Perera for the Petitioner.

I. Randeny, S.C. for the Respondents.

Argued on: 03.07.2025

Decided on: 07.08.2025

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

Background facts

This application has arisen consequent to the appointment of the 12th Respondent as an acting Director of the Department of Customs of Sri Lanka by the 1st Respondent, the Director General of the Department of Customs of Sri Lanka, pending the confirmation of the Public Service Commission, of which the 2nd Respondent is the Chairman and the 3rd to 10th Respondents are the members, whilst the 11th Respondent functions as the Secretary.

As asserted by the Petitioner, he being a graduate having responded to an advertisement appeared in Government Gazette, applied to join the Department of Customs of Sri Lanka as a Class 2 officer. Thereafter, having sat for the open competitive exam held on 22nd August 1992 followed by a *viva voce* interview, he successfully secured an appointment as an Assistant Superintendent Class 2 officer of Department of Customs. He asserts that the 12th Respondent also sat for the same open exam, faced a *viva voce* interview, and secured an appointment along with

the Petitioner; however, he was placed below the Petitioner on the order of seniority on the basis of merits.

A new Scheme of Recruitment related to the Executive Grade of the Department of Customs was introduced in the year 2009; consequently the restructuring of the Department of Customs of Sri Lanka in the year 2010. The designation of the post held by the Petitioner as well as the 12th Respondent was also changed and re-designated as the Assistant Superintendent Class 2 Grade I officer. Thus, the post held by the Petitioner and the 12th Respondent was redesigned.

As the Petitioner asserts that, in the course of his service in the Department of Customs, the Petitioner was promoted to the Executive Grade III Officer with effect from 28th June 2016; and the 12th Respondent was also appointed to a similar post with effect from 13th of January 2017.

There had been an amendment to the Consolidated Scheme of Recruitment in 2020, and the new structure of the cadre was formed; and thus, three new Grades were created.

As the Petitioner asserts, he was promoted to a Grade II Officer with effect from 31st December 2021 (in terms of Clause 10.1.1 of the Scheme of Recruitment of 2020) [**P16**]. Subsequently, the 12th Respondent was also appointed to a similar post on 20th June 2022. The Petitioner further asserts that he was promoted to the post in the Executive Grade I on or about 9th January 2023 and during the same time, the 12th Respondent was also promoted to the same grade.

The Petitioner asserts that prior to the impugned appointment of the 12th Respondent, the Petitioner had been either promoted before the 12th Respondent or placed above the 12th Respondent at every promotional opportunity. It was the complaint of the Petitioner, that the 12th Respondent was appointed over and above him by the letter marked as **P29** by the 1st

Respondent, which the Petitioner impugns, violative of Rules 160 and 161 of the document marked as 'P35'. The 1st Respondent's explanation, when sought, was that, the Petitioner had obtained his postgraduate qualifications after the 12th Respondent's similar qualifications. The said explanation is contained in the document marked as 'P33'. Therefore, the Petitioner assails that the decision of the 1st Respondent contained in 'P29' to promote the 12th Respondent on the basis of 'P16', is violative of Rules 160 and 161 of 'P35' and therefore, *ultra vires*.

The Petitioner assails the appointment of the 12th Respondent over him on the second ground as well. He asserts that on two early occasions, one Mr. Premaratne and one Mr. Alahakoon, who were senior officers at the time of their respective promotions, were made to the same post (Director of Customs); and then the 1st Respondent and the members of the Public Service Commission only considered their seniority, and never considered the fact that had obtained their postgraduate qualifications even after the Petitioner. The 2nd Respondent and the Public Service Commission only considering the terms of the rules contained in 'P35', despite Rule 10.1.1 contained in 'P16' internal rules issued by the circular existed at that time. Therefore, the Petitioner attributes capris against the 1st Respondent as well as the 1st Respondent's decision reflected in 'P29'; and he fears that there is a likelihood that the 2nd to 11th Respondents in confirming the appointment of the 12th Respondent, to the substantive post of the Director of Customs.

Once the 12th Respondent was appointed in an acting appointment as Director of Customs, the Petitioner by document marked 'P30' has protested and made an appeal to the Director General of Customs, the 1st Respondent. In addition to that, the Petitioner has made a complaint to the Human Rights Commission by the annexure to the Petition under 'P31(b)'. The Petitioner further states that the Petitioner has received the reasons for appointing the 12th Respondent over

the Petitioner to the acting appointment by the 1st Respondent is that he had obtained a postgraduate degree prior to the Petitioner, as per the document marked 'P33'. In these circumstances, the Petitioner's complaint is that the 12th Respondent's acting appointment by 'P29' is arbitrary, unreasonable, irrational, and illegal. The Petitioner further states that the said appointment of the 12th Respondent by the 1st Respondent is violative of the rules of the Public Service Commission (PSC Procedure Rules) published in the Gazette 1589/30 dated 20th February 2009, full set of it is annexed 'P34' and the relevant rules are annexed as 'P35'.

Accordingly, the Petitioner has sought the following relief *inter alia*;

- (a) Issue notice on the Respondents in the first instance;
- (b) Call for and examine the record pertaining to the subject matter of this application, including the following:
 - (i) The letter of appointment issued by the 1st Respondent to the 12th Respondent for the post of Senior Deputy Director (Customs);
 - (ii) The letter of appointment issued by the 1st Respondent to the 12th Respondent for the post of Director (Customs);
 - (iii) The letter of appointment issued by the Public Service Commission (PSC) and/or any decision made by the PSC relating to the promotion of the 12th Respondent to the post of Senior Deputy Director (Customs), if any; and/or
 - (iv) Seniority list for the post of Deputy Director (Customs) and/or Executive Grade II of the Department of Sri Lanka Customs approved by the Public Service Commission;
- (c) Grant and issue an order in the nature of *Writ of Certiorari* quashing the letter dated 04th April 2024 - P29 and/or decision(s) contained therein to grant the 12th Respondent an acting appointment to the post of Director Customs;

- (d) Grant and issue an order in the nature of *Writ of Certiorari* quashing any decision(s) made consequent to the letter dated 04th April 2024 - P29, in the manner contrary to the PSC Procedural Rules - P35(a) and P35(b) and/or the Scheme of Recruitment - P16;
- (e) Grant and issue an order in the nature of *Writ of Certiorari* quashing the letter dated 06th May 2024 - P33 and/or adverse decision(s) and/or reasoning contained - P33;
- (f) Grant and issue an order in the nature of a *Writ of Prohibition* preventing the 1st Respondent and his successors/servants or agents thereof, and/or any Added or Substituted Respondents thereof from taking steps to get the approval of the Public Service Commission for the appointment made in the letter dated 04th April 2024 - P29;
- (g) Grant and issue an order in the nature of a *Writ of Prohibition* preventing the 1st Respondent and/or his successors/servants or agents thereof, and/or any Added or Substituted Respondents thereof from proceeding further with regard to confirming the appointment and/or decision(s) made in the letter dated 04th April 2024 – P29;
- (h) Grant and issue an order in the nature of a *Writ of Mandamus* directing the 1st Respondent or their successors and/or any Added or Substituted Respondents to grant the Petitioner a covering appointment for Director (Customs) with effect from 04th April 2024; and/or
- (i) Grant and issue an order in the nature of a *Writ of Mandamus* directing the 2nd to 10th Respondents and their successors/servants or agents thereof, and/or any Added or Substituted Respondents thereof to appoint the Petitioner as Director Customs and/or grant the approval to appoint the Petitioner as Director Customs;
- (j) Grant and issue an order in the nature of a *Writ of Mandamus* directing the 1st to 11th Respondents and their successors/servants or agents thereof, and/or any Added or Substituted Respondents thereof to treat the Petitioner as having held the post as

Director Customs or an equivalent appointment in the Executive Grade I, at the time of retirement, when paying the Petitioner's retirement entitlements, including pension/commuted pension, if the Petitioner is retired from the service as at the time of final determination of this application;

Arguments

The following arguments were advanced by the Counsel on either side during the hearing.

Mr. Jayawardene assailed the decision of the Respondents to appoint the 12th Respondent as a Director of Customs on two grounds; number one is the unreasonableness of the decision since the decision is violative of the Public Service Commission rules contained in the document marked as '**P35**' along with the Petition; and he heavily relies on Rules 160 and 161. He argues that a Director of Customs is appointed or a person who is holding any post in the capacity of Grade I officer is promoted to the position of a Director in terms of rules based only on seniority. Since the 12th Respondent at the recruitment stage, and right throughout every stage of promotion, even the final promotion stage to Grade I which took place in 2022, was placed below the Petitioner who was always placed above the 12th Respondent in the order of seniority based on merits.

Mr. Jayawardene further contended that, in between the Petitioner had never lost his seniority as stipulated or provided for in the rules itself. Therefore, he argued that, to promote the 12th Respondent based on certain internal circulars issued in 2009 which is marked as '**P16**' along with the Petition is unreasonable and the decision taken there under is violative of the very Rules 160 and 161.

The next contention advanced by Mr. Jayawardene is that, having drawn our attention to 'P16' by which two officers, Mr. Premaratne and Mr. Alahakoon, who had obtained master's degrees long after the Petitioner and the 12th Respondent as well, were promoted on the basis of seniority as stipulated in terms of Rules 160 and 161 of the Public Service Commission contained in 'P35'.

It was further contented that the appointing authority never considered the master's degree obtained by them long after the Petitioner and the 12th Respondent as well; however, when it came to the Petitioner's case, they made use of only the internal circular 'P16' based on the master's degree to promote the 12th Respondent above the Petitioner. Therefore, the decision so taken is capricious.

However, on the other hand, the State Counsel, Ms. Randeny contented that the Petitioner's application challenging 'P29' seeking a *Writ of Certiorari* to quash the final decision taken by Public Service Commission cannot be obtained in view of Article 61A of the Constitution. Answering a question posed by the court, whether the objection based on Article 61A can be maintained in view of the judgement in *Peter Atapattu v People's Bank*¹, and her reply was that *Peter Atapattu* was decided in 1997, whereas Article 61A was brought into the Constitution long thereafter. Therefore, the principles laid down in *Peter Atapattu* does not apply to the case at hand as preliminary objection was raised as to the maintainability of the Petitioner's application in view of Article 61A of the Constitution.

The next contention of Ms. Randeny was that the Petitioner was seeking a *Writ of Mandamus* as well. A *Writ of Mandamus* cannot be obtained in view of the fact that there is only one post of

¹*Peter Atapattu and Others v People's Bank and Others (1997) 1 SLR 208*

Director of Customs in the cadre which the Petitioner is seeking to obtain for himself; since the said vacancy was already filled by the appointment of the 12th Respondent that cannot be done. Therefore, the Petition has to be dismissed.

The last contention of Ms. Randeny was based on the acquisition of the postgraduate qualification by the 12th Respondent (without prejudice to the preliminary objections), in view of 'P16' which is the circular issued by the Sri Lanka Customs. She argued that the Rule 10.2.1. of 'P16' deals with the situation where seniority is given based on the acquisition of postgraduate qualifications. Since the 12th Respondent's acquisition of postgraduate qualifications is long prior to the Petitioner, the Petitioner is not entitled to the relief as prayed for.

Ms. Randeny further contended that Mr. Premaratne's and Mr. Alahakoon's appointments may have been in violation of the rules contained in 'P16'. Therefore, such violations should not be repeated in granting relief to the Petitioner. If the Petitioner's application sort or relate in the nature of a *Writ of Mandamus* is granted, such violation will take place.

However in reply, Mr. Jayawardene contended that in any case Article 61A does not apply as clearly stated by 'P32'; what is reflected in 'P29' is not the approved or delegated powers of Public Service Commission as reflected by 'P32' issued by the Public Service Commission. Further answering a question posed by the court on whether *Peter Atapattu*'s principles applied here or not, his submission was that the principles applied here and further he relied on the principles of the House of Lords in the *Anisminic* case².

²*Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147

It was finally contented by Mr. Jayawardene that, this Court is empowered to issue a *Writ of Mandamus* after quashing the orders given in respect of decisions taken by the Public Service Commission in view of *Sampayo v Upuldeniya Commissioner General of Prisons*³.

Undisputed facts

It is undisputed that the Petitioner and the 12th Respondent were recruited to the same post as way back as in 1992 through an open competitive exam followed by a *viva voce* interview. It is also undisputed that after appointment, both the Petitioner and the 12th Respondent had climbed up the ladder and, at all times, held similar or equal posts in the cadre of the Department of Customs of Sri Lanka.

During their tenure of employment, there had been restructuring in the cadre; in addition to that, there were amendments to the designations of the executive classes in the cadre of the Department of Customs of Sri Lanka, as described below.

On a perusal of the record I found that there was a restructure of the cadre of the Department of Customs, and consequently the designation and post held by the Petitioner and the 12th Respondent were changed in 2009 (as per '**P9**' annexed to the Petition), which was followed by the restructuring of the cadre of the Department of Customs of Sri Lanka in the year 2010 (as per '**P10**' annexed to the Petition).

Accordingly, the following Grades were created (as per document annexed to the Petition under '**P13**');

³*R.W.U.D.A Sampayo vs. H.M.T.N. Upuldeniya, the Commissioner General of Prisons* [CA WRIT/259/2022]

- (a) Grade I – Director (Customs);
- (b) Grade II – Deputy Director (Customs); and
- (c) Grade III – Superintendent of Customs.

On a further perusal of the record as asserted by the Petitioner, I found that in the course of his service, he has been promoted to Executive Grade III officer with effect from 28th June 2016 and with effect of 15th August 2018 he was promoted as the Assistant Superintend Class 2 Grade III officer (as per document annexed to the Petition under 'P14').

I further found that the Petitioner along with the 12th Respondent had faced an interview in 2016; consequently, both were promoted to the post of Superintendent of Customs Executive Grade III officer with effect from 13th January 2017.

As it is found on the record, the Consolidated Scheme of Recruitment of the Department of Customs was further amended in 2020, and later approved by the Public Service Commission. Accordingly, the following grades were created as a new structure as reflected in document annexed to the Petition under 'P16'.

- (a) Grade I – Customs Director
Senior Deputy Director;
- (b) Grade II – Senior Superintendent of Customs;
Deputy Director (Customs);
- (c) Grade III – Superintendent of Customs / Assistant Director (Customs).

It is an undisputed fact that the Petitioner has acquired the postgraduate qualifications by obtaining a master's degree in 2021 as required by Clause 10.1.1 of the Scheme of Recruitment

of 2020 (as per 'P16' annexed to the Petition). Thereafter, the Petitioner further asserts that he was appointed to the Executive Grade II officer of the Cadre with effect from 31st December 2021 (as per paragraph 24 of the Petition). It is an undisputed fact that consequently the 12th Respondent was also appointed to a similar post with effect from 20th June 2022 (as per paragraph 25 of the Petition).

It must also be noted that it is not disputed that the Petitioner's assertion that he was promoted to a post in the Executive Grade I on or about 9th January 2023; and during the same time, the 12th Respondent was also promoted to the same grade (as per paragraph 29 of the Petition).

As such I found that at all times prior to the impugned appointment of the 12th Respondent from the date of initial recruitment to the service of the Petitioner, that the Petitioner has been placed above the 12th Respondent on the order of seniority. Even when it came to every promotion he was placed above the 12th Respondent in the order of seniority. Nevertheless, the Petitioner complains that the 12th Respondent was promoted to an acting appointment as Director of Customs superseding the seniority of the Petitioner by the 1st Respondent, subject to the approval of the Public Service Commission whose members are cited as the 2nd to 11th Respondents, and the said appointment letter is marked as 'P29'. Therefore, the Petitioner challenges the decision taken by the 1st Respondent reflected in the said document.

The Petitioner further asserts that the 12th Respondent has been appointed over him solely on the basis that the 12th Respondent had obtained a master's degree prior to him, in compliance of the internal rules contained in 'P16', whereas, the Petitioner asserts that he himself also secured a master's degree after the 12th Respondent but he had the necessary qualifications at the time the 12th Respondent was appointed over him. Furthermore, the Petitioner asserts that even at the last

stage of the promotions reflected in the seniority list in 'P21', he was placed above him. Therefore, the Petitioner's complaint against the 1st Respondent is that the 1st Respondent has violated the rules contained in 'P35' which is the relevant rules relating the recruitments and promotions of the officers of the Customs.

The Petitioner, who at the recruitment stage, had been placed above the 12th Respondent, continued to be placed as such right throughout the course of his employment, even at each and every promotion. Therefore, he reasonably expected when the promotions are made, for him to be promoted first or before the 12th Respondent.

It is also common ground that the 12th Respondent has been appointed by 'P29' as a Director of Customs pending the final approval of the Public Service Commission. Therefore, if the 12th Respondent is confirmed in his substantive post as a Director in the cadre of the Department of Customs of Sri Lanka, this decision will definitely affect the rights of the Petitioner.

In those circumstances, the Petitioner complains, that such an appointment made by the 1st Respondent is violative of rules contained in 'P35' (sub laws relating to the recruiting process). In addition to that, it is violative of Rules 160 and 161, and it is reasonableness and the decision was arbitrary and capricious as well.

Since two earlier officers of the cadre were promoted, and appointed as Directors of Customs despite the fact that they had obtained their master's qualifications long after the Petitioner. However, in the present instance, the only reason given by the 1st Respondent to promote the 12th Respondent over the Petitioner is that the 12th Respondent had obtained his master's degree in term of Rules contained in P16 (Internal Rules). Therefore, such decision is capricious.

Therefore, there are certain issues that have arisen for our consideration. The first issue is whether the Petitioner has a reasonable expectation to be promoted before the 12th Respondent or whether he has any legal right consequent thereof.

The second matter is whether the 1st Respondent has violated any rules relating to recruitment or has failed to follow any particular rules for the recruitment and promotion of the officers of the cadre of the Department of Customs.

The third issue is whether, the 1st Respondent's decision has affected the rights of the Petitioner.

The fourth matter is whether this Court can issue writs in the nature of *Certiorari*, *Mandamus* or *Prohibition* against the Respondents.

Seniority and supersession

As I have mentioned above, it is very clear that at the recruitment stage, the Petitioner was placed above the 12th Respondent based on performance. This includes how he had performed and obtained results or marks at the initial competitive recruitment exam followed by the *viva voce* interview. Therefore, the Petitioner's performance should have been better than that of the 12th Respondent. In addition to that, up until the last promotion that took place in 2023, the Petitioner was placed above the 12th Respondent in the cadre. Therefore, on every occasion, when the Petitioner along with the 12th Respondent was promoted, the Petitioner was placed above the 12th Respondent on merits. As such, the Petitioner has a reasonable expectation to be promoted at least prior to the 12th Respondent. Nevertheless, the 1st Respondent has decided to consider the rules contained in 10.1.1 in '**P16**', an internal circular of the Customs, as against Rules 160 and 161 General Recruitment Rules.

Now I will reproduce the relevant Rules relied upon by the Respondents contained in ‘**P16**’ to justify the decision taken by the 1st Respondent.

“10.2.1 සපුරාලිය යුතු සුදුසුකම්

- (i) *I ශ්‍රේණියට පත්වීමට පෙර විශ්ව විද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව විසින් පිළිගත් විශ්ව විද්‍යාලයකින් හෝ පශ්චාත් උපාධි ආයතනයකින් අදාළ ක්ෂේත්‍රයේ පශ්චාත් උපාධියක් ලබා තිබිය යුතුය. (2006.01.01.) දිනට පෙර සේවයට බඳවා ගත් නිලධාරීන් අතුරෙන් ඉහත දැක්වූ පශ්චාත් උපාධි ලබා ගෙන නොමැති නිලධාරීන් රේගු අධ්‍යක්ෂ ජෙනරාල් විසින් නම් කරනු ලබන මණ්ඩලයක් වෙත ඉදිරිපත් කරනු ලබන රේගු අධ්‍යක්ෂ ජෙනරාල්ගේ පූර්ව අනුමැතිය ලත් රේගු විෂයට අදාළ වචන 5000 කට නොඅඩු නිබන්ධනයක් පිළිගනු ලැබීමෙන් මෙකී අවශ්‍යතාවයෙන් නිදහස් කරනු ලැබිය යුතුය.”*

The above rules were considered against the General Recruitment Rules made by the Public Service Commission, contained in the document marked as ‘**P35**’, which is also relied upon heavily by the Petitioner to buttress his argument that the 1st Respondent has violated the Rules contained in ‘**P35**’.

“160. Where more than one public officer had assumed duties on a particular day, their seniority shall be determined in the order of cumulative total of marks obtained by them at all the tests held for recruitment in accordance with the Service Minute or Scheme of Recruitment. Where there are officers who had obtained equal marks, all of them shall be treated as having the same seniority.

161. Seniority of an officer in a grade or class shall only be altered in the following instances;

- I. Where he fails to pass the Efficiency Bar Examination as at the due date;*
- II. Where his probationary period is extended in terms of Section 125 of Chapter VIII of these Procedural Rule III.*
- III. Where an order of demotion in seniority is made as a disciplinary punishment.”⁴*

The General Recruitment Rules, contained in ‘**P35**’, are by-laws made by the Public Service Commission in terms of Article 55(3) of the Constitution of the Democratic Socialist Republic of Sri Lanka. Therefore, the authority for the Public Service Commission to make those rules is given by the supreme law of the country, the Constitution. When it is considered as against the rules contained in Rule 10.2.1 of the Customs Rules ‘**P16**’, they are mere by-laws issued within the Department of Customs. Therefore, those rules are not as strong as the rules made by the Public Service Commission contained in ‘**P35**’ with the authority directly stemming from the Constitution. Since the 1st Respondent only relied on the Rule 10.2.1 in ‘**P16**’ in promoting the 12th Respondent; it has therefore, violated Rules 160 and 161 contained in ‘**P35**’.

If at all, the Petitioner maybe disqualified when he has not passed through the required test provided in Rules 160 and 161 contained in ‘**P35**’. However, there is nothing against the Petitioner, except the postgraduate qualification which he has obtained 10 years after from that of the 12th Respondent, the 1st Respondent cannot and should not have made the acting appointment of the 12th Respondent before or above the Petitioner, superseding him.

Therefore, the decision to promote the 12th Respondent before or above the Petitioner is violative of the General Recruitment Rules, contained in ‘**P35**’. Thus, such a decision affects the rights of

⁴ P35 of the Brief

the Petitioner, who has a reasonable expectation to be promoted before the 12th Respondent, as I mentioned above.

As the Petitioner's rights have been adversely affected by the decision of the 1st Respondent contained in 'P29', the Petitioner is entitled to obtain a *Writ of Certiorari* to quash the said decision contained in 'P29'.

The 1st Respondent's failure to consider the Petitioner for promotion under these circumstances is irrational. Therefore, this also gives the Petitioner the right to seek relief in the realm of administrative law in the nature of a *Writ of Certiorari*, as the non-consideration of the Petitioner and the consideration of the 12th Respondent over the Petitioner in these circumstances is irrational.

P29 is capricious

The next issue is whether the decision of the 1st Respondent, as reflected in 'P29', is capricious. On two occasions, long after the rules in 'P16' came into existence and became operative, two other employees, Mr. Alahakoon and Mr. Premaratne, who served in the same cadre and capacity of the Petitioner, were considered for promotion to the posts as a Director of the Customs. These two employees were granted their promotions despite having obtained their master's degrees, namely the qualifications required by Rule 10.2.1 as required by 'P16', long after the Petitioner had obtained his qualifications. These promotions were granted in due course, notwithstanding the timing of their postgraduate qualifications. In contrast, the decision to promote the 12th

Respondent over the Petitioner, who even long before Rule 10.2.1 contained in **'P16'** came to exist, was considered for promotions right up to the last promotion (just before the promotion made through **'P29'**) shows capris on the part of the 1st Respondent. Therefore, based on this second ground, the Petitioner should be successful in attacking the decision in **'P29'**; therefore, a *Writ of Certiorari* lies. In addition to that, I hold the reasons given in document marked as **'P33'** is capricious, and therefore, it should be quashed.

Now I will consider whether the Petitioner is entitled to the other two Writs; namely, *Prohibition* against the 1st Respondent to obtain the confirmation of the Public Service Commission, and *Prohibition* against the Public Service Commission to confirm the 12th Respondent in this substantive position.

As I have decided to issue a *Writ of Certiorari* on two grounds; firstly, irrationality coupled with illegality, along with the decision being violative of the rules contained in the General Recruitment Rules in **'P35'**, and secondly, on the ground of capris on the part of the 1st Respondent. It is my view that a *Writ of Prohibition* also lays as an ancillary relief, alongside a *Writ of Certiorari*, to prevent the 1st Respondent from obtaining confirmation from the members of the Public Service Commission, the 2nd to 11th Respondents. Therefore, I venture to issue that relief in terms of the prayer (f) and (g).

In addition to that, the Petitioner has sought a writ in the nature *Mandamus* compelling the 1st Respondent to consider him above the 12th Respondent. Since the Petitioner has been promoted at every stage before the 12th Respondent from the time of their recruitment, and also the Petitioner was overlooked solely on the grounds of the fact that late acquisition of postgraduate qualifications than the 12th Respondent which is violative of Rules 160 and 161 of 'P35', I hold that he is entitled to a *Writ of Mandamus* compelling the 1st Respondent to consider the Petitioner over the 12th Respondent.

The Public Service Commission is amenable to writs

In this case, at the main argument before us, it was contended for and on behalf of the Respondents that no writ in the nature of *Certiorari*, *Mandamus* or *Prohibition* lies against, or in respect of the decisions of the Public Service Commission in view of provisions of Article 61A of the Constitution which reads thus.

“61A. [Subject to the provisions of Article 59 and of Article 126], no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.”

However, by motion filed on the 14th July 2025, the learned Counsel, Ms. Randeny, later moved to withdraw the argument advanced on the basis of Article 61A of the Constitution, on the

footing that she is not pursuing the said contention in view of the fact that no decision has been taken by the Public Service Commission on this matter.

On the perusal of the Petition, I found that in certain prayers, namely prayer (i) and (j) are directly aimed at the future decisions of the Public Service Commission, for which, the 2nd to 10th Respondents are responsible in taking such decisions. Therefore, the question arises whether the Petitioner is entitled to those writs.

To answer this question, I have to consider whether the Public Service Commission is amenable to the jurisdiction of this Court conferred on it in terms of Article 140 of the Constitution, to issue writs in the nature of *Certiorari*, *Mandamus*, or *Prohibition*.

I wish to approach this issue on a different footing. Sri Lanka is a sovereign country. Its Second Republican Constitution of 1978 declares that its 'sovereignty' is vested in the People. This 'sovereign power' of the people can be exercised in the ways provided in Article 4 of the Constitution. Accordingly, the Legislative power of the people is to be exercised through the representatives of the people or at a referendum by the people; the Executive powers can only be exercised by the President, while the Judicial powers of the people should be exercised by the Parliament, through 'the courts' and tribunals created and established by law and recognised by the Constitution. It should be noted that 'judicial power' includes taking decisions affecting the rights of the people. Such power is given by the Constitution and other laws conferring onto the

courts. The Court of Appeal is an institution or a court established by the Constitution itself, and when the Constitution was promulgated in 1978, in the original draft, the Court of Appeal was there; and Article 140 clearly confers that the writs in the nature of *Certiorari*, *Mandamus*, *Quo Warranto*, or *Prohibition* against a judge of any Court of first instance or tribunal or any other institution or any other person, can be issued by this Court. For clarity I reproduce the same;

“140. Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against the judge of any Court of First Instance or tribunal or other institution or any other person:

¹³⁰[Provided that Parliament may by law provide that in any such category of cases as may be specified in such law, the jurisdiction conferred on the Court of Appeal by the preceding provisions of this Article shall be exercised by the Supreme Court and not by the Court of Appeal.]”

This power was vested in the Judiciary since 1833 when the entire country was brought under a single judicial system, and such power to issue writs in the nature of *Habeas Corpus* was conferred on the Supreme Court and District Courts then established under the 1833 Royal

Charter⁵. This power has been there right through out. Justice Mark Fernando in his celebrated judgement in *Peter Atapattu v People's Bank* clearly recognised, enunciated and further elaborated this principle in no uncertain terms in the following way.

*“But there is one difference between those Articles and Article 140. Article 140 (unlike Article 126) is ‘subject to the provisions of the Constitution’. Is that enough to reverse the position, so as to make Article 140 subject to the written laws which Article 168(1) keeps in force? Apart from any other consideration, if it became necessary to decide which was to prevail - an ouster clause in an ordinary law or a Constitutional provision conferring writ jurisdiction on a Superior Court, ‘subject to the provisions of the Constitution’ - I would unhesitatingly hold that the latter prevails, because the presumption must always be in favour of a jurisdiction which enhances the protection of the Rule of Law, and against an ouster clause which tends to undermine it (see also *Jailabdeen v. Danina Umma*). But no such presumption is needed, because it is clear that the phrase ‘subject to the provisions of the Constitution’ was necessary to avoid conflicts between Article 140 and other Constitutional provisions - such as Article 80(3), 120, 124, 125, and 126(3). That phrase refers only to contrary provisions in the Constitution itself, and does not extend to provisions of other written laws, which are kept alive by Article 168(1). Where the Constitution contemplated that its provisions may be restricted by the provisions of Article 138 which is subject to ‘any law’ ...”*⁶

⁵ Section 49 of the Royal Charter of 1833; *Visuvalingam and Others v Liyanage and Others* [1983] 1 SLR 203

⁶ [1997] 1 SLR 222

Furthermore, I must emphasize that although a new court system was introduced under the 1972 Constitution, through the Administration of Justice Law of 1973, the judicial powers previously vested in the Courts were never done away with, except in terms of the new court system, such as the abolition of the Privy Council as the apex court. In addition, the quasi-judicial authorities established under the said law were also acknowledged, thereby deviating from certain principles laid down in *Senadhira v. Bribery Commissioner*⁷, *Ranasinghe v. Bribery Commissioner*⁸, and the *Liyanage v Queen*⁹.

Accordingly, the powers conferred on this Court cannot be denied, nor even hypothetically, can it be contended that such powers are non-existent. In addition to that, it was argued on behalf of the Petitioner, that the *Anisminic* principles are also applicable in this context. The *Anisminic* principle was an extension of the writ jurisdiction on the aspect of matters where there is a clearly expressed provision in a statute, to the exclusion of the jurisdiction of the court when judicial or quasi-judicial authority has already taken a decision.

However, in expanding the principles of writ jurisdiction, the House of Lords in the *Anisminic* case held that such exclusion cannot be upheld, as prerogative writs are issued in the name of the Sovereign, especially when there is an error apparent on the face of the record, or when a decision is tainted with insufficient evidence, or is *ultra vires*.

⁷ [1961] 63 NLR 313

⁸ [1962] 64 NLR 449

⁹ [1967] 1 AC 259

However, under the written Constitution of 1978, this situation becomes even more nuanced. Under the Second Republican Constitution of 1978, all powers are derived from the Constitution, which stands as the supreme legal instrument from which all the powers are delegated to the three branches; namely the Executive, the Legislature, and the Judiciary. It must also be noted that there is a procedure to amend the Constitution.

However, Article 3 is an entrenched provision; therefore no law inconsistent with or violative of, or amending the Article 3 can be promulgated unless such a law is passed by two-third majority of the Parliament, and also approved by the people at a Referendum¹⁰. To give meaning to Article 4, it has to be read with Article 3 of the Constitution; therefore, when Article 3 and 4 are to be amended, the same applies to any law inconsistent with Article 3 and 4¹¹. Thus, it cannot be amended solely by a two-thirds majority in Parliament; it must also receive the approval of the people at a Referendum, as provided by Article 80(2) of the Constitution.

Article 61A was introduced into the Constitution in a manner not contemplated by Articles 80(2) and 83 of the Constitution, which since the passage of 17th and 19th amendments took place only by a two-thirds majority in Parliament. None of those amendments were approved by the people at a Referendum to follow the specified process. Therefore, the patchwork effected on the Constitution by the 17th or the 19th Amendments cannot be conceived as effective amendments to Article 3 and 4, read with Article 140. Further, I hold that such cosmetic patchwork has not done

¹⁰ Article 83(a) of the Constitution

¹¹ S.C. Determination on the 13th Amendment of the Constitution; *Marbury v Madison* [1803] 5 U.S. 137

away with the judicial power of this Court, as conferred by Article 140, which their Lordships mentioned above in their respective judgements have clearly accepted and enunciated, and have right throughout exercised in the Judiciary from the year 1833 with the promulgation of Royal Charter¹².

In addition to that, I wish to cite the following *dictum* of the judgement of Justice P.A. Ratnayake in S.C. Referral No. 03/2008 on the judicial power of the people. His Lordship was of the view that the judicial power of the people conferred on the courts by Article 3 read with Article 4 cannot simply be done away with by mere passage of a statute without following the proper procedure as provided in Article 83 of the Constitution. This was enunciated in respect of the statutory rape law introduced in 1995, in which minimum custodial sentence was imposed by statute; thereby, removing the judicial discretion considered as part of the ‘judicial powers’ conferred by Articles 3 and 4 of the Constitution to the Judiciary. His Lordship stated the following;

“As far as Section 364(2)(e) of the Penal Code [as amended by Penal Code (Amendment Act No. 22 of 1995] is concerned, the High Court has been prevented from imposing a sentence that it feels is appropriate in the exercise of its judicial discretion due to the minimum mandatory punishment prescribed in Section 364(2).

¹² Section 49 of the Royal Charter of 1833; *Visuvalingam and Others v Liyanage and Others* [1983] 1 SLR 203

Having regard to the nature of the offence and the severity of the minimum mandatory sentence we hold that the minimum mandatory sentence in Section 364(2)(e) is in conflict with Articles 4(c), 11 and 12(1) of the Constitution.

Learned Senior State Counsel submitted that making a pronouncement conferring judicial discretion in respect of this offence will amount to judicial review of legislation and will contravene Article 80(3) of the Constitution.

Learned Senior State Counsel drew the attention of this Court to Articles 120, 121, 122 and 123 and submitted, that the Supreme Court could only exercise jurisdiction in respect of Bills.

Learned Senior State Counsel cited the decisions in Mendis, Fowzie & others- v Gunewardena & GP.A. Silva (1978-79) 2 SLR 322, Moonesinghe & others vs Attorney General (1987) 2 SLR 20, Joseph Perera alias Brutten Perera Vs. The Attorney General & Others (1992)1 SLR 199, P.R. de Silva vs. Kaleel & Others (1994) 3 SLR, 138 and the decision of the Supreme Court in Re:International Covenant on Civil and Political Rights (ICCPR) (SC Ref:01/2008) in support of the contention that a validity of a law cannot be challenged once it is enacted by Parliament. We are also conscious that Section 364(2)(e) of the Penal Code [as amended by Penal Code (Amendment) Act No. 22 of 1995] is a law as opposed to a Bill and that the decisions in Re: Essential Public Services Bill (supra), Re: Prohibition of Ragging and Other Forms of Violence in Educational Institutions Bill (supra) and Re:Prevention of Organized Crime Bill (supra) related to constitutionality of bills.

Article 80(3) of the Constitution reads as follows:-

'Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever.'

Article 80(3) only applies where the validity of an Act is called into question. However, Article 80(3) does not prevent a Court from exercising its most traditional function of interpreting laws. Interpretation of laws will often require a Court to determine the applicable law in the event of a conflict between two laws. This is a function that has been exercised by this Court from time immemorial."

The same principle was followed by Justice Eva Wanasundara in subsequent cases¹³ on similar issues and also by Justice Nimal Amaratunga in similar judgements¹⁴.

I will rephrase the reasoning in a different way. Article 61A was introduced into the Constitution of 1978 through the 19th Amendment, which was passed by a two-thirds majority in Parliament without a referendum; even at the determination stage, it was determined that it need not be referred to a referendum. Article 61A is not an entrenched provision. As such, it can be repealed merely by a two-thirds majority of Parliament, reverting to the original provisions either as they were under the 18th Amendment or in the original status of the Constitution as it was then at the promulgation (since this does not affect the entrenched provisions). However, on the other hand, if the powers conferred on the Court of Appeal under Article 140 of the Constitution are to be

¹³ *Samantha Sampath v Hon. Attorney General* [2015] (S.C. Appeal No. 17/2013)

¹⁴ *Rohan Alias Loku v Hon. Attorney General* [2011] 2 SLR 174

removed, since Article 140 must be read with Articles 3 and 4 of the Constitution, it cannot be done simply the same way. Article 3 is an entrenched provision which gives the judicial power of the people to different courts. The Court of Appeal is established and recognized by the Constitution itself; therefore, its powers are part of the judicial power of the people deriving from Article 3 and 4 of the Constitution. As such, these powers cannot be removed solely by a two-thirds majority without a referendum.

Accordingly, Article 61A alone cannot be used to say (argue) that it had removed the powers conferred on the Court of Appeal by Article 140 read with Articles 3 and 4. Thus, I am not engaging in a constitutional interpretation or judicial review of Article 61A or the manner in which it was incorporated into the Constitution. I am stating that the said Article 61A cannot take away the 'judicial powers' exercised by the Court of Appeal vested in it by Article 140 read with Articles 3 and 4 of the Constitution.

Therefore, it is my view that Article 61A does not afford absolute immunity or blanket protection to the Public Service Commission or to decisions made by it that are illegal, *ultra vires*, unsupported by evidence, or otherwise vitiated by a manifest error on the face of the record. No power is totally immunized as manifested in the part of the following determination;

“Thus, in terms of Articles 3 and 4 of the Constitution, fundamental rights and franchise constitute the sovereignty of the People, and is inalienable. The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution.

Even the immunity given to the President under Article 35, has been 100 limited in relation to Court proceedings specified in Article 35 (3). Moreover, the Supreme Court has entertained and decided the questions in relation to Emergency Regulations made by the President [Joseph Perera v. Attorney-General - (1992 - 1 Sri L.R. pg 199) and Presidential Appointments (Silva v. Bandaranayake - (1997)1 Sri LR. pg 92)]¹⁵

The final question to be decided is whether a *Writ of Prohibition* should be issued against the 2nd to 11th Respondents, the Commissioners and the Secretary of the Public Service Commission. In this case, the members of the Public Service Commission have not yet made a decision on the appointment of the 12th Respondent in the substantive post in the cadre of the Department of Customs. In any case, the Public Service Commission can still consider the reasonableness, arbitrariness, and fairness of the decision made by the 1st Respondent to appoint the 12th Respondent over and above the Petitioner contained in documents marked **'P29'** and **'P35'**. Therefore, at this stage a *Writ of Prohibition* should not be issued against the Public Service Commission, its Chairman and its members, preventing them from taking such a decision because they are empowered by the law to take such reasonable decisions. However, as mentioned above, if they take an unreasonable decision or decision that is *ultra vires*, or unsupported by evidence, such decision will be subject to writ jurisdiction of this Court.

¹⁵ S.C. Determination into the Bill entitled (as it is reported) *Re the Eighteenth Amendment of the Constitution* [dated 3rd October 2002]

Thus, I believe I should refrain from issuing a *Writ of Prohibition* against the 2nd to 11th Respondents, who are Members and the Secretary of the Public Service Commission.

Accordingly, I grant relief in terms of prayers (c), (d), (e), (f), (g), and (h) and refrain from granting reliefs in (i) and (j) of the Petition.

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

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL