

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

*In the matter of an application for
mandates in the nature of Writs of
Certiorari and Prohibition under
and in terms of Article 140 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.*

**CA/Writ Application No:
694/2025**

1. P.G.C. Bimal Dissanayake
No. 469/5, Pola Road,
Hettipola,
Wilgamuwa.
2. E.M.B.B. Ekanayake
No.150/1,
Athawudagama,
Ma Elya.
3. R.A.P.C. Jayawardana,
No.465/85,
Nelum Place A, Jalthara,
Ranala.

Petitioners

Vs.

1. Hon. Dr. Harini Amarasuriya,
Hon. Prime Minister and Minister
of Education,
Ministry of Education, Higher
Education and Vocational Education,

Isurupaya,
Battaramulla.

2. Mr. Nalaka Kaluwewe,
Secretary,
Ministry of Education, Higher Education
and Vocational Education,
Isurupaya,
Battaramulla.
3. Ms. Anoja Guruge,
Additional Secretary
(Administration),
Ministry of Education, Higher
Education and Vocational Education,
Isurupaya,
Battaramulla.
4. Senior Assistant Secretary
(Administration),
Ministry of Education, Higher
Education and Vocational Education,
Isurupaya,
Battaramulla.
5. Public Service Commission,
6. Mr. Sanath J. Ediriweera,
Chairman,
Public Service Commission.
7. Mr. G. S. A. De Silva, P.C.
Member

8. Dr. A.D.N. De Soysa
Member
9. Mrs. S.M. Mohamed
Member
10. Mrs. Ranjani Nadarajapillai
Member
11. M.B.R. Pushpakumara
Member
12. Prof. N. Sellvakumaran
Member
13. Eng. Sanath Panawennage
Member
14. Mrs. W.H.M.M.C.K. Dayaratne,
Secretary,
Public Service Commission,

From 5th to 14th Respondents

Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
15. Mr. J.A. Ranjith,
Chairman,
Education Service Committee,

16. Mrs. A.K.W.W.M.N.K.
Weerasekara,
Member,
Education Service Committee,

17. Mr. W.M.N.J. Pushpakumara,
Member,
Education Service Committee,

18. Mr. A.W.R. Wimalaweera,
Secretary,
Education Service Committee,

From 15th to 18th Respondents

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

19. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : **Hon. Rohantha Abeyesuriya PC, J.(P/CA)**

: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Dr. Wijeyadasa Rajapakshe PC with V.P.
Thilinida AAL instructed by K. Danuka Lakmal
for the Petitioners.

Indumini Randeny SC for the Respondents.

Written Submissions on : 03.12.2025 for the Petitioners.
24.12.2025 for the Respondents.

Decided on : 19.02.2026

K. Priyantha Fernando, J.(CA)

1. The Petitioners by way of Petition dated 24th June 2025, invoked the jurisdiction of this court under and in terms of Article 140 of the Constitution. The Petitioners sought a Writ of Mandamus directing the 1st to 18th Respondents to recruit the candidates who qualified under the limited competitive examination first in a manner that maintains the seniority between those who were placed through the Open competitive examination and a Writ of prohibition preventing the 1st Respondent from recruiting the candidates who qualified from the open competitive examination in a manner that affects the seniority of the Petitioners who were placed through the limited competitive examination.
2. A preliminary objection in light of Article 61A of the Constitution was raised by the Respondents in this matter and as such it was decided that the jurisdictional issue would be settled by way of written submissions.

FACTUAL BACKGROUND:

3. The Petitioners are officers engaged in serving as teachers, principals and advisors in government schools of the Central Provincial Administration. Pursuant to Extraordinary Gazette No. 2231 dated 04.06.2021, they applied to sit for the Limited Competitive Examination for recruitment to the Sri Lanka Educational Administrative Service – Grade III (2020/2021). The limited competitive examination was open only to teachers and principals who have more than 5 years of education sector service experience. The Petitioner stated that the Gazette set out that 442 vacancies were intended to be filled in the General and Special Staff categories.

4. Subsequently, the Petitioners stated that the officers of the Public Service Commission and education service committee comprising of the 5th to 18th Respondents, then recruited 99 candidates through an Open Competitive Examination pursuant to Extraordinary Gazette No. 2237 dated 16.07.2021 as evidenced through the document marked P9. The appointments for the same were made effective from 01.07.2025, whereas those who sat for the Limited Competitive Examination were appointed on 14.08.2025. The Petitioners submitted that this has resulted in a “loss of seniority” to the Petitioners and has caused them “severe and irreparable prejudice”.

POSITION OF THE RESPONDENTS:

5. On the other hand, when this matter was taken up for support on 10.10.2025, the Respondents raised a preliminary objection to the jurisdiction of this court to hear and determine this application. The objection was that Article 61A of the Constitution acts

as a complete bar to the entire writ jurisdiction under Article 140 of the Constitution. The Respondents further submitted and relied on the position taken by the Supreme Court in the case bearing No. SC/Appeal/89/2024 by judgment dated 04.06.2025 which they state, supports their contention. The judgment reads;

*“It is clearly an instance of a Constitutional ouster of the jurisdiction of the Courts from instituting actions before them, seeking to adjudicate upon the “orders” and “decisions” made by the PSC. Article 61A, not only ousts the jurisdiction of the Courts of First Instance, but also ousts the jurisdiction conferred on the Court of Appeal under Article 140, as that Court, although a superior Court of record, must exercise that jurisdiction subject to the provisions of the Constitution. The case of *Ratnasiri and Others v Ellawala and Others* (supra) was decided on this very point.”*

6. The Respondents considered the judgment delivered in **T.M. Sanjaya Tennakoon v The Director General, Department of Customs, Sri Lanka Customs** bearing No. CA/WRIT/350/2024 decided on 07.08.2025, in which it was held that Article 61A does not oust the Court of Appeal’s jurisdiction. The Respondent contended in direct response that CA/WRIT/350/2024 is *per incuriam* and the decision in it has been given in “ignorance or forgetfulness of that case or that statute”.
7. The Respondent relied on the judgment given by Basnayake J in the case of **Alaspillai v Yavetpillai** (1949 [39] CLW 107 and 108) which defines the same. Furthermore, the Respondent submitted that as evidenced through the judgment **W.**

Jane Nona Kumbuka and 3 others v H. D. Chalo Singho and another bearing case No. CA Application 499/98(F) and 499 A/98(F) decided on 25.07.2013, there are three exceptions to the rule that “the decisions of the Court of Appeal...are binding”, and one such exception is in the instance of a judgment given *per incuriam*. As such the Respondents have submitted that they are of the view that the judgment in CA/WRIT/350/2024 is contrary to the Constitution, and as such believe that Article 61A does completely oust the jurisdiction of the Court of Appeal.

POSITION OF THE PETITIONERS:

8. The Petitioners in response to the objection taken up by the Respondents submitted that the objection is “untenable as the judiciary has recognized that review is applicable in cases where the authorities have legitimacy in this application”.
9. The Petitioners relied on the case of Karavita and others Welikanna v Inspector General of Police and others ([2002] 2 SLR 287) where it was held that the scope of *Mandamus* is wide and courts may use it to prevent injustice. The Petitioners submitted that the PSC was prevented from acting in a manner which contradicted the process approved by the law i.e introducing a second merit list and departing from established procedure.
10. They also relied on the case of Shanthi Aluthge v Janaka Bandara Tennakoon bearing case No. CA/WRIT/207/2020 decided on 21.03.2024 where the decision by D. N. Samarakoon J. considered the scope of Article 61A of the Constitution where it is submitted that the article only applies in instances where an “order or decision has been

made by the Commission” and not when a failure on the part of the PSC has been committed resulting in a nullity as “it amounts to no decision”.

ANALYSIS:

11. It is common ground that the recruitment to Sri Lanka Education Administrative Service - Grade III takes place under three categories; namely those who are eligible based on Merit and Seniority, those who are qualified from a Limited Competitive Examination and those who are qualified from an Open competitive examination. Section 07 of the Service Minute of the Sri Lanka Education Administrative Service (vide P2) dated 21.08.2015 deals with the recruitment procedure and the required qualifications. By order of the Public Service Commission, Section 07 has been subsequently amended by Gazette Extraordinary no. 2203/8 dated 24.11.2020 (vide P2a).

12. The appointing authority of the Sri Lanka Education Administrative Service is the “Public Service Commission”. (vide page 1, section 02 of the Service Minute). according to Scheme of Recruitment/Service Minute approved by the PSC, it can be seen that the Education Service Committee appointed by the PSC is vested with the delegated power to make appointment to Sri Lanka Education Administrative Service. Such delegation has taken place by Gazette Extraordinary No. 2014/3 dated 11.04.2017 published by the Public Service Commission in terms of Article 56(1) of the Constitution. (vide X1). It is also common ground that the advertisements for the Limited Competitive Examination were called by Gazette Notification dated 04.06.2021 (P1) by the Education Service Committee appointed by the Public Service

Commission. In fact, the Petitioners have conceded in paragraphs 15, 16 and 21 of the Petition that the impugned decision was taken by the Public Service Commission.

13. Rule 159 of the PSC Rules which binds the decision-making powers of the PSC regarding Seniority states:

“159. The seniority of officers in a class or grade of a particular service shall be determined based on the dates which each of such officers were appointed to such class or grade in that particular service and the seniority of officers serving in the posts carrying equal status in a particular department or institution shall be determined based on the dates on which each of such officers assumed duties of that particular department or institution.” (vide X2)

14. Thus, it is apparent that the impugned decision which the Petitioners seek to quash as well as the reliefs of Manadamus and Prohibition all pertain to the decisions that should be taken by the PSC or its delegated authority-the Education Committee of the Public Service Commission. Thus, this Court cannot grant relief prayed for without inquiring into the vires of decisions and acts that are done by the PSC.

IS THE ARTICLE 61A, A COMPLETE BAR TO THE ENTIRE WRIT JURISDICTION UNDER ARTICLE 140 OF THE CONSTITUTION?

15. Article 140 of the Constitution which confers Writ Jurisdiction on the Court of Appeal reads as follows:

“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...”

16. The Article 140 clearly states that the exercise of the Writ Jurisdiction is subject to the provisions of the Constitution. Therefore, when exercising the jurisdiction under Article 140, care must be taken not to violate or transgress other provisions of the Constitution which restricts the Court of Appeal’s jurisdiction. One such restriction is contained in Article 61A of the Constitution which reads as follows:

“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”.

The language of Article 61A is framed in a way of express exclusion.

17. The Supreme Court in SC Appeal 89/2024 decided on 04.06.2025 categorically stated that save and except for the Administrative Appeals Tribunal under Article 59 and the Supreme Court under Article 126 of the Constitution, “no Court or tribunal shall have

power or jurisdiction has the power to inquire into, pronounce upon or in any manner call in question” any order or decision of the Public Service Commission.

18. Upon plain reading of the said Article in the context of the instant appeal, the phrase “...no court or tribunal shall have power or jurisdiction” is clear in what was meant. The Article is clear in that, the jurisdiction of the Court or tribunals “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” was effectively and explicitly taken away by this Constitutional provision. The words “jurisdiction of Courts or tribunals” that used in the Article 61A, indicate that what exactly the Parliament intended by the enactment of that Article. The said Article was to intended to prevent the Courts or other institutions established under the Constitution from adjudicating upon any “orders or decisions” made by the PSC, after assuming jurisdiction conferred on them under Constitutional provisions and other Statutes. This declared intended purpose was achieved by taking away the jurisdiction already conferred on the Courts and other such institutions, which otherwise enabled those institutions to inquire into such matters”.
(vide pages 26-27)

19. The Supreme Court opined that Article 61A of the Constitution altogether ousts the competence of courts to adjudicate matters relating to the PSC. The constitutional analysis intent which Article 61A embodies is that courts and tribunals are to be prevented from adjudicating on PSC decisions through the removal of jurisdiction. As the Supreme Court has explained, the reference in Article 61A to the “jurisdiction of

Courts or tribunals” discloses “what exactly the Parliament intended”, and that intention was to prevent adjudication on such PSC decisions “by taking away the jurisdiction already conferred” on courts and tribunals. The mischief addressed is the availability of adjudicative routes outside the constitutional scheme; the remedy adopted by the Constitution is the removal of those routes through an ouster of jurisdiction. It follows that the constitutional analysis cannot stop at courts of first instance. The Court of Appeal’s writ jurisdiction under Article 140 is a constitutional jurisdiction but, it is exercised within the architecture of the Constitution and cannot be asserted in derogation of an express constitutional limitation.

20. This point has been confirmed by the Supreme Court in SC Appeal 89/2024 as follows:

“It is clearly an instance of a Constitutional ouster of the jurisdiction of the Courts from instituting actions before them, seeking to adjudicate upon the “orders” and “decisions” made by the PSC. Article 61A, not only ousts the jurisdiction conferred on the Court of Appeal under Article 140, as that Court, although a superior Court of record, must exercise that jurisdiction subject to the provisions of the Constitution. The case of Ratnasiri and Others v Ellawala and Others (supra) was decided on this very point”.

The effect of the above decision is determinable of the Court of Appeal’s competence under Article 140 where the substance of the dispute is the legality or validity of a PSC order or decision. Where Article 61 applies, the Court of Appeal cannot invoke Article 140 as a means to do what the Constitution forbids—namely to “look into” and determine the validity of the PSC decision.

DOES THE OUSTER CLAUSE PRECLUDE THIS COURT FROM ISSUING WRITS OF MANDAMUS AND PROHIBITION?

21. When the Respondent raised the preliminary objection, the learned President’s Counsel for the Petitioners sought to confine his relief to prayers (c) and (d) of the Petition.
22. The jurisdiction under Article 140 is itself prefaced by the controlling words ‘subject to the provisions of the Constitution’ and the effect of Article 61A is to remove the power or jurisdiction of judicial tribunals (except under Article 59 and 126) from inquiring into or pronouncing upon or calling in question PSC decisions. Granting a writ of mandamus would require the Court to revisit, impugn or negate a PSC decision (directly or indirectly). As such, the grant of Mandamus would necessarily would necessarily entail the very judicial engagement which Article 61A constitutionally forbids.
23. The Court of Appeal has articulated this principle in terms that are directly applicable to mandamus. In *Dr. M.D.W. Lokuge v. Vidyajothi Dr. Dayasiri Fernando, Chairman, Public Service Commission and Others* (CA Writ 160/2013), Nawaz J. held:

“The exercise of writ jurisdiction in terms of Article 140 of the Constitution is subject to the provisions of the Constitution in that Article 61A of the Constitution would preclude judicial review of decisions of the PSC. When jurisdiction of this Court to judicially review PSC decisions by certiorari is shut out at a threshold stage, a revisit of that decision in the guise of a mandamus or certiorari mandamus will be beyond the pale of our jurisdiction and on that

score we are inclined to hold with the submissions of the learned Deputy Solicitor General that mandamus will not lie in the instant case before us.”

The above reasoning explains as to why *mandamus* cannot be used by the litigants to achieve, indirectly, what is constitutionally prohibited directly. The legal maxim "what cannot be done directly, cannot be done indirectly" (*quando aliquid prohibetur ex directo, prohibetur et per obliquum*) reflects this very principle.

24. Furthermore, I wish to specifically address the judgment of the case **T.M. Sanjaya Tennakoon v The Director General, Department of Customs, Sri Lanka Customs** bearing No. CA/WRIT/350/2024 in which it was held that Article 61A does not completely oust the Court of Appeal’s jurisdiction and the Respondent’s contention that the judgment is *per incuriam*. I am of the considered view that the judgment above did not take sufficiently take into account the existing case law on the matter, not only delivered in this court but by the Supreme Court as well, and as such I opine that the judgment cannot be relied upon.

25. In CA/RT/612/2024 decided on 30.01.2025, the Petitioner requested the Court to quash a decision by the PSC and sought a writ of Mandamus to compel the PSC to recruit the Petitioner. The Court has cited with approval Justice Nawaz’s observations.

“In dealing with the preliminary objections raised by the 1st to 4th to 53rd Respondents, upon analysis of Article 140 of the Constitution, it is clear that this Court has the absolute power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and issue

writs of certiorari, prohibition, procedendo, mandamus and quo warranto accordingly.

The exercise of writ jurisdiction in terms of Article 140 is subject to the provisions of the Constitution in that Article 61A would preclude judicial review of decisions of the PSC. When the jurisdiction of this Court to judicially review the PSC decisions by certiorari is shut out at a threshold stage, a revisit of that decision in the guise of mandamus or certiorari will be beyond the pale of our jurisdiction and on that score, we are inclined to hold with the submissions of the learned Deputy Solicitor General that mandamus will not lie in the instant case before us. Given the clear language of Article 61A, this Court is barred from inquiring into or questioning the decisions of the Public Service Commission, unless the case falls within the exceptions provided under Articles 59 or 126. The petitioner has not invoked Article 126, nor has it been demonstrated that the case involves Article 59. Therefore, the ouster clause in Article 61A applies, and this Court lacks jurisdiction to entertain the Petitioner's application."

26. In the instant case, the final decision with regard to recruitment is made by the Education Service Committee of the PSC. The document sought to be quashed - P6 contains the decision by the said Committee acting as the delegatee of the PSC. Therefore, in view of the foregoing judicial authorities on Article 61A, this decision cannot be challenged under Article 140 of the Constitution.

27. Accordingly, the preliminary objection is upheld and this application is dismissed. No costs.

Judge of the Court of Appeal

Hon. Rohantha Abeysuriya PC, J.(P/CA)

I agree.

President of the Court of Appeal