

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

CA/COC : 26/2024

In the matter of Contempt of Court
under Article 105 (3) of the
Constitution of the Democratic
Socialist Republic of Sri Lanka and
under and in terms of Contempt of
Court, Tribunal or Institution Act No.8
of 2024.

1. R.M.B. Maharoo,
No. 77, Buwelikada, Handessa.
Presently at: No. 44, Elamaldeniya,
Muruthalawa.
2. G.G.P.K. Abeyratne,
No. 416/1, Kehelwala,
Kiribathkumbura.
Presently at : No. 349/3,
Enbilmeegama Terrace,
Pilimathalawa.
3. S.M.M.C.K. Samarathunga,
No. 258/6A, Ranawana Road,
Katugasthota.
4. Priyanka Lakmali Hewaheta,
No. 248, Endandduwawa, Peradeniya.

5. P.L.D.R. Dilrukshi,
No. 25, Sri Amarawansa Mawatha,
Bathalawatta.

Presently at : No. 107,
Kaladuru Kotuwa Road,
Illukwatta, Pilimathalawa.

6. M.M. Dhananjani Marasinghe,
No. 111/E/03, Pothgul Vihara
Mawatha, Angunawala, Peradeniya.

7. D.A.R. Dissanayake,
Ekanayaka Place,
Bomure, Medamahanuwara.
Presently at : No. 177/2, Ambawatta,
Madapatha, Teldeniya.

8. A.D.S. Ironika,
No. 173, Wathurekumbura,
Muruthalawa.
Presently at : No. 15/2, Dematagolla,
Ukuwela.

9. R.M.M. Wijekoon, Ethipola West,
Dullewa, Matale.

10. H.M. Prabha Kumari Herath,
No. 209, Wedaniwasa, Gettapola,
Muruthalawa, kandy.

11. H.H.R.N. Hettige,
No.45, Thurunusavigama, Pallekele.
Presently at: No. 210/1, Soorya
Garden 2, Pilapitiya, Muruthalawa.
12. D.M. Chandrawathi,
Kurundukotuwa, Kaikawala, Matale.
Presently at: No. 138, Owlawatta
Janapadaya, Kaikawala, Matale.
13. W.M. Malani Wanasinghe,
No. 73, Wawulambe, Thalakiriyagma.
14. T.M.J. Tennakoon,
Tennakoon Sewana, Kaikawala,
Matale.
15. A.M.K.P.K. Seneviratne,
No. 28, 1st Lane, MC Road, Matale.
Presently at: No. 49, Irrigation Office
Road, Matale.
16. D.P.H. Rajapaksha,
No. 100/B/1, Godagandeniya,
Peradeniya.

PETITIONERS

VS.

1. Central Provincial Council,
P.B. 07, Pallekele,

Kundasale.

2. Lalith U. Gamage,
The Governor, Governor's Office,
P.B. 6, Palace Square,
Kandy.

2A Sarath Abeysingha,
The Governor, Governor's Office,
P.B. 6, Palace Square,
Kandy.

3. G.H.M.A. Premasinghe
Chief Secretary,
Central Provincial Chief Secretariat,
Central Provincial Council,
P.B. 07, Palkelele,
Kundasale.

4. Gamini Rajarathna,
Chairman,
Provincial Public Service
Commission,
Central Provincial Council,
P.B. 07, Palkelele,
Kundasale.

5. Kumudini S. Premachandra
Secretary,

Provincial Public Service
Commission,
Central Provincial Council,
P.B. 07, Palkekele,
Kundasale.

6. W.M.S.D. Weerakoon

7. J.D.K. Wickramarathne

8. P.T.G. Gunathilake

9. A.M.R.B. Tennakoon

10. A.M. Wais

11. Prof. H.M.D.R. Herath

6th – 11th Accused are members of the
Central Provincial Public Service
Commission,
No. 244, Katugasthota Road,
Kandy.

RESPONDENTS

Before : Hon. Rohantha Abeysuriya PC, J.(P/CA)
: Hon. K. Priyantha Fernando, J. (CA)

Counsel : A.R.P. Bandara for the Petitioners instructed by
Mrs. Purnima Gnanasekara.

Indumini Randeny, S.C. for all the Respondents.

Written Submissions : Petitioners filed on 06.08.2025
Respondents filed on 14.08.2025

Supported on : 15.07.2025

Decided on : 02.09.2025

K. P. Fernando, J. (CA)

The Petitioners, under Article 105(3) of the Constitution and in terms of Contempt of Court, Tribunal, or Institution Act No. 8 of 2024, having filed a Petition along with an affidavit move that the Respondents be held for Contempt of Court. The Court heard the submissions of both sides and allowed them to file written submissions.

It is decided in the case of *Media Intake Ltd v. Dissanayake* (2006 (3) SLR 215) that a court must be satisfied of sufficient grounds for contempt before issuing summons.

THE POSITION OF THE PETITIONERS:

In the amended petition dated 21.01.2025 the Petitioners state that they are public service officials employed under the Central Provincial Council. They instituted a Writ Application bearing No. Writ 33/2012 in the High Court, seeking relief against the Respondents.

They were recruited in the year 2000 to the Combined Provincial Public Graduate Administrative Assistants Service of the Central Province and were subsequently confirmed in the permanent cadre. They later applied for promotion from Grade II to Grade I of the said service. After sitting for the required examination, the Petitioners secured the necessary marks for promotion. However, the 4th to 11th Respondents failed to take any steps to effectuate the promotions.

The Learned High Court Judge issued a Writ of Mandamus directing the 4th to 11th Respondents to effect the Petitioners' promotions within six months from the date of the judgment.

Following the judgment, the 5th Respondent communicated that the Petitioners had been promoted to Grade I and that their salary scales would be adjusted accordingly. However, the Respondents failed to implement the salary upgrades, thereby continuing to defy the court's order.

In 2023, the Petitioners informed the 2nd Respondent by letter regarding the prolonged injustice they had suffered for over a decade due to the inaction of the 4th to 11th Respondents.

Upon further inquiries with the Central Provincial Public Service Commission (CPPSC), the Petitioners were shocked to learn that, by letter dated 31st October 2017, the 5th Respondent had decided to place them as Grade II Development Officers, in direct contravention of the High Court's judgment.

THE POSITION OF THE RESPONDENTS:

The Respondents argue that they have “fully complied” with the High Court Judgment of 11.09.2015, which directed only (i) the promotion of the Petitioners from Class II to Class I, and (ii) that such promotion be effected within six months. The Respondents submit that no direction was made with respect to salary or career progression. Document C6 dated 30.11.2015 is cited as proof that the Petitioners were duly promoted within the stipulated timeframe.

The alleged contempt, the Respondents submit, arises solely from the subsequent absorption of the Petitioners under Public Administration Circular No. 6/2006. They argue this was not a contravention but a necessary consequence of restructuring, as the former service ceased to exist. The Petitioners were placed in Grade II of the new service, alongside all contemporaries promoted to Class I under the old scheme.

The Respondents contend that absorption was never part of the writ proceedings and thus cannot form the basis of contempt.

In their objections, the Respondents contended that while the Petitioners' promotions were under consideration, the National Salaries and Cadre Commission (NSCC) had introduced a new service code. Consequently, promotions could only be considered under the provisions of the new code dated 17th October 2012, and not under the previous scheme.

GROUND FOR CONTEMPT:

The Petitioners submit that there is sufficient material to establish a case of contempt against the Respondents, based on the following:

1. The failure of the 1st Respondent and/or other Respondents to comply with the judgment of the High Court of the Central Province.
2. The deliberate action by the 4th to 11th Respondents in appointing the Petitioners as Grade II Development Officers, contrary to the High Court's directive to promote them as Grade I officers in the Combined Provincial Public Graduate Administrative Assistants Service.

SUBMISSIONS OF THE PETITIONERS:

The Petitioner has filed written submissions on 6th August 2025. Following the High Court's judgment, the 3rd Respondent (Governor-Central Province) acknowledged there were no grounds for appeal and that the promotions should be implemented. The 5th Respondent (Secretary-Provincial Public Service Commission), however, effected the promotions without upgrading the Petitioners' salary scales, while granting promotions to other officers who had failed the same examination. This disparity was acknowledged in meetings with relevant officers, yet corrective action was not taken. Although the 3rd Respondent later directed the 5th Respondent to place the Petitioners on salary scale MN-07, and the Governor issued an order under

Section 32(3) of the Provincial Councils Act No. 42 of 1987 to the same effect, these directives were ignored.

The Petitioners stress that their demotion to Grade II Development Officers was deliberate and based on a misinterpretation of an application submitted during the pendency of the writ case, and that they never intended to abandon the relief sought. They reject the Respondents' claim that Grade II Development Officers and Class I Combined Provincial Public Graduate Management Assistants are on the same salary scale, noting that PED Circular 06/2006 clearly places Graduate Management Assistants at MN-07, while the Petitioners have been relegated to MN-04.

The Petitioners argue that the Respondents' actions constitute continuous disobedience. Citing Howitt Transport v. Transport and General Workers Union (1973 ICR 1), the submission stresses:

“an order of any court must be complied with strictly in accordance with its terms... the only way... is by achieving the state of affairs ordered.”

Further reliance is placed on Borrie & Lowe: The Law of Contempt and Spokes v. Banbury Board of Health (1865 LR 1 ER 42), affirming that an order must be obeyed until set aside.

The Petitioners maintain that the Respondents have had ample opportunity to raise issues of public policy during proceedings but failed to do so. Their continued non-compliance, despite acknowledging the Petitioners' entitlement, shows wilful contempt causing prolonged harm, particularly as some Petitioners near retirement.

The significance of contempt jurisdiction is underscored by Croos v. Dabrera (1999 1 SLR 205):

“A well-regulated system of law cannot be sustained without sanctions... Without such respect, public faith in the administration of justice would be undermined.”

In conclusion, the Petitioners submit that a clear prima facie case of contempt is established and pray for summons/rule to be issued against the Respondents.

SUBMISSIONS OF THE RESPONDENTS:

The Respondents have filed written submissions on 15th July 2025 and submit that contempt of court is a criminal offence arising only from “wilful disobedience” to a judgment. Section 3(2) of the *Contempt of Court, Tribunal or Institution Act No. 8 of 2024* defines contempt as “*wilful disobedience to any judgment, decree, direction, order, writ or other process of a court.*”

The Respondents emphasize that the conduct must be deliberate and conscious. This principle is reinforced in *Re Bramblewale Ltd.* [1969] EXCA Civ J0721-3, where Lord Denning MR held:

“A Contempt of Court is an offence of a criminal character. A man may be sent to prison for it. It must be satisfactorily proved ... beyond reasonable doubt.”

Similarly, in *Knight v. Clifton*, [1971] Ch. 700 (18.12.1970) Lord Justice Russell stressed that;

“the evidence required to establish it must be appropriately cogent.”

Citing *Debabrata Bandopadhyay v. The State of West Bengal* (AIR 1969 SC 189), the Respondents emphasize that contempt jurisdiction must be exercised with caution:

“Punishment under the law of contempt is called for when the lapse is deliberate and in disregard of one’s duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measures and is not to be encouraged.”

They further rely on *Kamalawathie v. Provincial Public Service Commission, North Western Province* [2001] 1 SLR 1, where Fernando J. held:

“While powers in respect of education have been devolved to Provincial Councils those powers must be exercised in conformity with national policy.”

Applying this principle, the Respondents argue that they lacked discretion over salary placement, as these matters fall under national policy decided by the Central Government. They relied on SC Contempt 2/2023 and 3/2023 (SCM 14.11.2023), where the Supreme Court held that officials cannot be held in contempt for non-compliance when the matter lies beyond their control. By analogy, they contend they cannot be punished for alleged errors in absorption or salary steps, as these were outside their authority.

In conclusion, the Respondents submit that there has been complete compliance with the High Court judgment, that subsequent issues of absorption fall outside its scope, and that no evidence exists of “wilful disobedience” or “contumacious refusal.” They pray that the Petitioners’ application for contempt be dismissed.

CONCLUSION:

Dayawathie and Peiris v. Dr. Fernando and Others [1988] 2 SLR 314, where Amerasinghe J. cited with approval the following views of the Supreme Court of India in Debabrata Bandopadhyay v The State of West Bengal (AIR 1969 SC 189) and in *rai v P. Sahai* (1968 S.C. 189,193);

“A question whether there is contempt of court or not is a serious one. The court is both the accuser as well as the Judge of the accusation. It behoves the Court to act with as great circumspection as possible making all allowances for errors of judgment and difficulties arising from inveterate practices in courts and tribunals. It is only when a clear case of contumacious conduct not explaining otherwise, arises that the contemnor must be punished.....Punishment under the law of contempt is called for when the lapse is deliberate and is in disregard of one’s duty and in defiance of authority. To take action in an unclear case is to make the law of contempt do duty for other measure and is not to be encouraged”. (Debabrata – supra)

“Whether in a particular case contempt has been committed or not, has to be decided in the light of the circumstances of each case. While zealously safeguarding the dignity of the Court, it is also to be borne in mind that it is of equal importance that contempt proceedings should not be abused and that utmost care must be taken to avoid resort to such proceedings in such cases where such action is not appropriate. Though disregard of a Court’s order may itself amount to contempt even in the absence of disobedience; it would still be necessary, in my opinion, to prove in most cases, that even the disregard was wilful and not bona fide”

The above observations in Dayawathi’s case have been recently approved by a Divisional bench of 5 Judges of the Supreme Court in SC Contempt 02/2023 and 03/2023 at page 12-13. Their lordships have cited with approval the following passage from *Perkier Foods Ltd. V halo & Mr. Tague* [2019] EWEC 3462 (QB)

“... Contempt of court, whether criminal or civil, was at common law a misdemeanour: see Dean v Dean [1987] 1 FLR 517, per Neil LJ, cited in Arlidge, Eady & Smith on Contempt (5th ed.) 12-51. That together with the fact that its potential consequences include imprisonment and other penal sanctions, is why its elements must be proved to the criminal standard. In Sectoguard, Briggs J. reasoned that a person who has no choice, because the compliance with the order is impossible, does not have even the modest mens rea required for contempt. It is for the applicant to prove to the criminal standard that the respondent had the necessary mens rea. In a case where the respondent says that compliance was impossible, and there is some evidence to that effect, mens rea is in issue and it should be for the applicant to prove to the criminal standard that compliance was possible, in the sense that the respondent had a choice about what to do. That result is consistent with the general rule in criminal law...”
(p. 11 of SC Contempt 2/2023 and 3/2023)

The standard required for establishing a prima facie case of contempt of court is to demonstrate there was wilful and deliberate failure on the part of the Respondents.

In the instant application, it is revealed that the subsequent absorption of the Petitioners to Grade II of the new service has been occasioned by the passage of Public Administration Circular No. 6/2006. The said Circular has restructured the public sector and the salary scales with effect from 1.1.2006. To wit, it has brought down the then existing 126 salary scales to 37 salary scales to give effect to the restructuring.

The implementation of the Public Administration Circular No. 6 of 2006 has taken place in three stages:

- a. Absorption of the incumbent employees into the new salary structure,
- b. Recategorization of the all posts in the public service in accordance with the new employee categories as set out in Annexure II to the Circular,
- c. Amendment to existing schemes of recruitment to be made in line with the restructuring at (b) above.

It was revealed by the Respondents that, as the first step of the implementation, the employees who were already drawing the salary designated for their posts under the previous circular had to be absorbed and placed in the new salary scale that best commensurate with their posts. This is because with the passage of Circular No. 06/2006, the former service/categories of employment have ceased to exist. Only those employees who had specifically not consented to absorption have been allowed to remain and retire in the previous posts. Admittedly, the Petitioners also have consented to absorption (vide C3 at page 444-445 of the brief) and with their consent, they had to be absorbed into their new posts and placed on a commensurate salary scale.

IS THE PETITIONERS' ABSORPTION INTO GRADE II OF THE NEW SERVICE A DEMOTION?

It is revealed that because of the Circular No. 6/2006, the Combined Graduate Management Assistant Service has ceased to exist. The new Service Minute has come into effect on 17.10.2012. The classification of Classes under the old service minute

has become Grades in the new Service Minute. Absorption into the new service minute has happened as follows:

<u>Old Service</u>	<u>New Service</u>
Class II	Grade III
Class I	Grade II
-	Grade I

With the new Service minute, a new tier has been introduced-Grade I. Promotions to Grade I was to be given to those who completed the minimum number of years in Grade II and earned their due increments.

The Petitioners, as at the point of absorption, have already been promoted to Grade I of the earlier service pursuant to the High Court Judgement. The logical next step of their career progression was to be absorbed to Grade II under the new Service Minute which is the Grade commensurate with their existing post.

The Petitioners had had to be treated alongside all their contemporaries who were placed in the same promotion step. Everybody who has been promoted to Class I of the previous service has been absorbed and placed in Grade II of the new Service.

There has never been an exception to this normal procedure. It is seen that the High Court Judgment at no point directed the Respondents to follow a different process when it comes to the Petitioners. They have been duly given their promotion in old service scheme. Once the promotion was given, the Judgment was complied with and the career progression could only be determined according to the promotion system introduced by the new Service Minute. It is seen that the Petitioners would not have been absorbed into Grade II of the new Service unless they had already been promoted to Class I in the old service Minute. That has been done in compliance of the High Court Judgment. Thus, the Petitioners' absorption into Grade II of New Service cannot be considered as a demotion.

DID THE RESPONDENTS HAVE THE POWER TO DECIDE ON APPLICABLE SALARY SCHEMES?

It was decided in *Kamalawathie v The Provincial Public Service Commission- North Western Province and Others* [2011] 1 SLR 1, by Mark Fernando J. that provincial public service or provincial authorities must abide by National Policy.

“While powers in respect of education have been devolved to Provincial Councils those powers must be exercised in conformity with national policy.”

The National Policy regarding salaries and structure of the Public Service is one that is carried out by the Central Government. The Provincial Public Service Commission and the Provincial Public Authorities cannot deviate from the National Policy. At page 194 of the brief, there is a direction by the Secretary to the President to all provincial Governors as far back as in October 2010, directing that all provinces must abide by the national policy on salaries and carders.

The National Policy relating to salaries and cadres are not within the power of the Provincial Authorities. It is decided by the National Salaries and Cadre Commission (NSCC). Accordingly, the Provincial Public Service Commission does not have any discretion to deviate from the National Policy which has been already decided by the Central Government through the NSCC via Public Administration Circular No. 6/2006. It is clear that the Provincial Public Service Commission has had no option but to give effect to it. Therefore, when the Public Administrative Circular No. 6/2006 came into effect restructuring the entire public service, the Provincial Public Service Commission too was duty bound to align with the said national policy. They have no power to decide on their own as to the applicable salary scheme of the Petitioners.

The circumstances of this case are similar to the circumstances in SC Contempt 2/2023 and 3/2023. Wherein the Supreme Court took cognizance of the fact that the Respondent in that application (Secretary to the Treasury) cannot be held in contempt for not releasing money to hold local authorities' election when such power

to release money did not reside with them. The Court noted that the Secretary to the Treasury has taken all steps that were within his scope to comply with the order, and that he cannot be held responsible for the ultimate act of releasing money.

Similarly, in the present case, the Respondents cannot be held in ‘contempt’ for alleged wrongful placement of salary step, when such matters are outside the scope of their powers.

It is apparent that the Respondents have done all within their power to comply with the High Court Judgment. The Petitioners were duly promoted, with promotions being given within the timeline prescribed by the High Court. After the promotion, the Respondents have ensured the Petitioners career progression by absorbing them into the correct Grade of the new service and placing them in the correct salary step.

For all the above reasons, this Court is of the view that there is no prima facie case to issue summons/rule against the Respondents for contempt. Accordingly, the application of the Petitioners 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