

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

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

C.A. (Writ) Application
No: 0759/ 2024

Kothuwakkara Gedara Sena Harischandra Kumar
No. 6/1,
Haloya Nadza,
Haloya,
Hindagala.

PETITIONER

Vs

1. C.D. Kaluarachchi,
Director General,
Department of Samurdhi Development,
4th Floor,
Sethsiripaya,
Battaramulla.

2. W.G.Y.P. Dayarathna,
Divisional Secretary,
Divisional Secretariat – Doluwa,
Doluwa,
Gampola.

3. A.P. Gunathilaka
Disciplinary Inquiry Officer,
No. 1/04,
Mandandawela,
Jambugahapitiya,
Kandy.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Pulasthi Rupasinghe with Ms. Nayanthi Wanninayake instructed by
R.M.S.P. Rathnayake for the Petitioner.

P. Jayasuriya, S.C for the Respondents.

Argued on : 14.10.2025.

Decided on : 18.12.2025.

Adithya Patabendige, J.

By this application, the Petitioner prays for a *writ of certiorari* to quash the findings contained in the disciplinary order marked **P20**, as well as the decisions and/or directives set out in the orders marked **P21** and **P27**. The Petitioner further seeks a *writ of Mandamus* directing the Respondents to restore him to the position he occupied prior to the imposition of the aforesaid disciplinary orders. In addition, the Petitioner seeks *inter alia* a *writ of prohibition* restraining the Respondents from taking action against him based on the said decisions marked **P21** and **P27**.

The facts relevant to this application, as submitted by the parties, are as follows.

The Petitioner joined the Samurdhi Development Department as a Samurdhi Development Officer with effect from 02/12/1996, and was absorbed into the permanent cadre on 03/01/2014.

Meanwhile, the Petitioner was served with a charge sheet bearing No. DSD/02/DPT/08/2019 dated 24/03/2022, for alleged misconduct and financial irregularities marked **P2**. Thereafter, the above charge sheet was amended, and the amended charge sheet dated 27/01/2023 marked **P5**, was served. Based on said charge sheet, formal disciplinary proceedings were conducted by the 3rd Respondent. After the inquiry, the Petitioner was found guilty on charges Nos. I to X and XII to XV, and the inquiry report was tendered marked **P20**. Consequently, punishment was imposed on the Petitioner, including a five-year suspension of salary increments, a transfer to another office, a six-year suspension of promotions, and a direction to pay Rs. 96,700.00 with penal interest. The aforesaid disciplinary order dated 27/08/2024 is marked **P21**.

He requested that the disciplinary order dated 27/08/2024 be suspended, as he intended to appeal to the **Public Service Commission (PSC)** by letter dated 18/09/2024, marked **P24**. However, he was informed that such suspension could not be effected unless an appeal was made to the Public Service Commission (**PSC**). The Petitioner thereafter lodged an appeal with the PSC and sought to have the disciplinary order suspended pending final determination marked **P26**. The aforesaid disciplinary order was revised, and the revised disciplinary order dated 25/10/2024, marked **P27**, was served on the Petitioner.

The Petitioner contends that the disciplinary orders marked **P21** and **P27** are irrational, unlawful, contrary to his legitimate expectations, contrary to natural justice, issued without granting him a fair hearing, mala fide, and vexatious.

When this application was taken up for hearing on 14/10/2025, the learned State Counsel raised the following objections regarding its maintainability.

- That an alternative remedy is available in terms of Section **26(1) and 26(6) of the Establishments Code**, and
- That the jurisdiction of this Court is constitutionally ousted in terms of **Article 61A of the Constitution**.

It is common ground that the disciplinary order under challenge is presently pending before the Public Service Commission.

It is also common ground that the Petitioner is a Public Servant. Chapter IX of the Constitution of the Democratic Socialist Republic of Sri Lanka deals with the establishment of the PSC, appointment, removal, and disciplinary control of the Public Service.

Article 58 of the Constitution provides a comprehensive appellate framework for an officer aggrieved by an order relating to promotion, transfer, dismissal, or disciplinary control made under **Articles 56 or 57**. The PSC is vested with the authority to alter, vary, rescind, confirm, or direct further inquiry upon such appeal.

For ease of reference, **Article 58** is reproduced below.

(1) Any public officer aggrieved by an order relating to a promotion, transfer, dismissal or an order on a disciplinary matter made by a Committee or any public officer under Article 56 or Article 57, in respect of the officer so aggrieved, may appeal to the Commission against such order in accordance with such rules made by the Commission from time to time, relating to the procedure to be followed in the making, hearing and determination of an appeal made to the Commission and the period fixed within which an appeal should be heard and concluded.

(2) The Commission shall have the power upon such appeal to alter, vary, rescind or confirm an order against which an appeal is made, or to give directions in relation thereto, or to order such further or other inquiry as the Commission shall seem fit.

(3) The Commission shall cause to be published in the Gazette the rules made by it under paragraph (1) of this Article.

Based on such, the learned State Counsel argued that, in terms of Article 61A of the Constitution, the jurisdiction of this Court is constitutionally ousted to entertain this application.

Article 61A of the Constitution states as follows.

Subject to the provisions of paragraphs (1), (2), (3), (4) and (5) 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.

This Article was introduced to the Constitution by the **17th Amendment**. The Seventeenth Amendment significantly altered the constitutional framework governing the PSC's decisions. Upon considering Article 61A, ***Justice Shirani Thilakawardhane in the case of Katugampola v Commissioner General of Excise and others 2003 (3) SLR 207*** held that,

i) Article 55 (5) restricted the application to orders or decrees concerning the appointment, transfer, dismissal, or disciplinary control of a public officer. Whereas Article 61A (17th amendment) dealt with any type of decision so long as it is made pursuant to a power conferred.

(ii) The only ground upon which the writ jurisdiction could be sought under circumstances where a challenge was being made regarding the promotion and/or appointment, transfer, etc., was where the person who made the impugned decision did not have any legal authority to make such a decision. No claim has been made that the person who made the promotion had no legal authority to make such a decision.

(iii) 'Ouster clause' precluded the jurisdiction of the Court of Appeal and grants exclusive jurisdiction to the Supreme Court. A person aggrieved by the decision would have to invoke the jurisdiction of the Supreme Court under Article 126.

Similarly, in ***Rathnasiri and others v Ellawala and Others 2004 (2) SLR 180, Justice Saleem Marsoof***, held that Article 61A, introduced by the Seventeenth Amendment, completely ousts the jurisdiction of the Court of Appeal to review decisions made by the Public Service Commission, its committees, or any public officer acting under delegated PSC authority. Justice Marsoof explained that the ouster applies to all categories of decisions made under PSC powers, not merely those relating to appointments, transfers, dismissals, or disciplinary control.

Justice Marsoof further emphasized that even allegations of acting without jurisdiction, procedural defects, or errors of law cannot be reviewed by way of writs as Article 61A expressly prohibits any court or tribunal from questioning such decisions. The proper way to address any grievance of public officers is twofold;

- An Appeal to the Administrative Appeals Tribunal under Article 59, where applicable, and
- A fundamental rights application to the Supreme Court under Article 126, in appropriate circumstances.

Upon considering the legal framework of the post-Seventeenth Amendment, at pages 189 and 190, states as follows.

*“The Seventeenth Amendment to the Constitution has also introduced several other features which seek to enhance the independence of the public service while providing greater security of tenure for the public officers. **Firstly**, the appointment, promotion, transfer, disciplinary control, and dismissal of public officers other than Heads of Departments have been taken out of the Cabinet of Ministers and vested in the Public Service Commission. **Secondly**, while the Cabinet of Ministers is vested with the power of appointment and disciplinary control of Heads of Department, it also has the power of formulating policies concerning the public service. **Thirdly**, the Public Service Commission, which is bound to conduct its affairs in accordance with the policy laid down by the Cabinet of Ministers, is answerable to Parliament in regard to the exercise and discharge of its powers and functions. **Fourthly**, the Seventeenth Amendment provides for the appointment of the members of the Public Service Commission on the recommendation of the Constitutional Council established under the said Amendment. **Fifthly**, while the Public Service Commission is empowered to delegate to a Committee or a public officer its powers of appointment, promotion, transfer, disciplinary control and dismissal of specified categories of public officers, **it is expressly provided that any public officer aggrieved by an order made by any such Committee or public officer may appeal first to the Public Service Commission and from there to the Administrative Appeals Tribunal which is appointed by the Judicial Service Commission. All this is in addition to the beneficial jurisdiction created by Article 126 of the Constitution, which is expressly retained by Article 61A of the Constitution. These are the many pillars on which the edifice of the Public Service rests.***

In view of the elaborate scheme put in place by the Seventeenth Amendment to the Constitution to resolve all matters relating to the public service, this Court would be extremely reluctant to exercise any supervisory jurisdiction in the sphere of the public service. I have no difficulty in agreeing with the submission made by the learned State Counsel that this Court has to apply the

preclusive clause contained in Article 61A of the Constitution in such a manner as to ensure that the elaborate scheme formulated by the Seventeenth Amendment is given effect to the fullest extent.”

Thus, the judgment confirms a strict and comprehensive ouster of the powers of judicial review of the Court of Appeal concerning PSC-related decisions.

In the case of ***Dr. M.D.W. Lokuge v Vidyajothi Dr. Dayasiri Fernando, Chairman and Eleven Others C.A.(Writ) 160/2013 decided on 16/10/2015 His Lordship Justice Navaz***, considering Article 61 A, at page 21 stated as follows;

“3). Article 61A of the Constitution which falls within the phrase “subject to the provisions of the Constitution” in Article 140 of the Constitution, would operate as a constitutional ouster to shut out the jurisdiction of this Court to judicially review decisions of the PSC.”

The same view was once again upheld by ***His Lordship Justice Janak De Silva in the case of Hemantha Chamindra Ovitigama v. Inspector General of Police and Nineteen Others C.A.(Writ) 1009/2008*** decided on 10/05/2019.

The constitutional ouster embodied in Article 61A of the Constitution was also considered by the Supreme Court in ***Athauda Archchige Patrine Dilrukshi Dias Wickramasinghe v. Dr. Prathap Ramanujam and Others, S.C. Appeal No. 89/2024***, decided on 4th June 2025. In that judgment, ***His Lordship Justice Achala Wengappuli***, upon an analysis of the wording of Article 61A and prior judicial authorities, affirmed that the constitutional ouster operates to exclude not only the Court of First Instance but also the writ jurisdiction of the Court of Appeal under Article 140 of the Constitution.

Upon considering the facts of the instant case and the foregoing legal position, this Court also observes an inconsistency in the inquiry report. The inquirer, in analyzing Charge No. 9, expressly concluded that the evidence did not establish the said charge and that the Petitioner was therefore not guilty. However, in the conclusion of the same report, the Petitioner is recorded as having been found guilty of that charge. The Court further observes that, in terms of Section 26(1) of the Establishments Code, the Disciplinary Authority is empowered to revise, vary, or cancel a disciplinary order for the purpose of correcting an error or irregularity apparent on the face of the record. Therefore, if the Petitioner considers the inconsistency between the body of

the report where he has been found not guilty of charge No. 9 and the conclusion which records a find him guilty to be an error on the face of the record, nothing prevents him from bringing such matter to the attention of the inquirer or the Disciplinary Authority to correct under Section 26(1). However, my considered view is that this Court lacked jurisdiction to address this issue in view of the express constitutional ouster contained in Article 61A.

In the instant application, the impugned disciplinary order was issued by the duly empowered authority. The Petitioner does not allege that the disciplinary authority or inquirer had no power or that the impugned order was made without having authority. His challenge is confined to alleged errors in the assessment of evidence, procedural defects, and the proportionality of the punishment imposed. As noted earlier, it is apparent that such considerations fall within the ambit of Article 61A. The constitutional ouster prohibits this Court from reconsidering the merits of the decision, such as its factual conclusions, procedural irregularities, or the fairness of the decision, once the authority acts within the scope of its conferred power.

Moreover, the Petitioner has already invoked the Public Service Commission's appellate jurisdiction, and that appeal remains pending. It is well established that the writ jurisdiction should not be exercised where an adequate and efficacious alternative remedy exists. The combined operation of Article 61A and Sections 26(1) and 26(6) of the Establishments Code prohibits the intervention of this Court.

In the above circumstances, I hold that the instant application is not maintainable in law and is accordingly dismissed. I make no order as to costs.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL