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.

Ahamed Lebbe Badurudeen,
No. 16, Jinnah Masjid South Road,
Nintavur-16.

CA (Writ) App. No. 017/2024

PETITIONER

Vs.

1. Justice Anil Gooneratne,
   Chairman,
   Administrative Appeals Tribunal,
   No. 35, Silva Lane,
   Rajagiriya.

1(a). Justice K. T. Chitrasiri,
Chairman,
Administrative Appeals Tribunal,
No.35, Silva Lane,
Rajagiriya.

2. A. Gnanathasan,
   Members,
   Administrative Appeals Tribunal,
   No.35, Silva Lane,

Rajagiriya.

2(a). S. Nandaserkeran,
Member,
Administrative Appeals Tribunal,
No.35, Silva Lane,
Rajagiriya.

3. G.P. Abeykeerthi,
Member,
Administrative Appeals Tribunal,
No.35, Silva Lane,
Rajagiriya.

3(a). J. J. Rathnasiri,
Member,
Administrative Appeals Tribunal,
No.35, Silva Lane,
Rajagiriya.

4. Secretary,
Public Service Commission,
No. 1200/9, Rajalwatte Road,
Battaramulla.

5. Secretary,
Ministry of Education,
Isurupaya,
Battaramulla.

6. Additional Secretary,
Skills Development,
Vocational Education Division,
"Nipunatha Piyasa",
Colombo 05.

7. Director General,
Department of Technical Education and Training
Colombo 10.

RESPONDENTS

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

Counsel:

Raazi Mohammadh for the Petitioner.

Rajika Aluwihare, S.C. for the 1st to 7th Respondents.

Supported on: 22.09.2025

Order delivered on: 26.11.2025

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

Order

Introduction

The Petitioner has secured employment as a Class III Grade 2 Lecturer in the Sri Lanka Technical Education Service with effect from 2nd December 1991. Thereafter, he secured a promotion with effect from 15th June 1992 to the Class III Grade 1 Lecturer position. Although the Petitioner has been promoted to the Sri Lanka Technical Education Service Class I with effect from 31st December 2005, he had successfully secured a placement in the recruitment of Sri Lanka Technical Education Service Class I officers, held as way back as in 1997. The said exam was held in terms of **P20**. Nevertheless, the marks were given according to **P15**, and as **P26** indicates, he has secured

45 marks. Since 3 people have obtained similar marks including the Petitioner, none of the candidates were promoted to Class I. However, it is his complaint that some other person who has secured only 40 marks in the examination secured a Class I appointment by invoking the fundamental rights jurisdiction of the Supreme Court. The Petitioner then made an appeal to the Public Service Commission (hereinafter referred to as the "PSC"), to obtain his relief. By **P22**, the Public Service Commission has refused to entertain his appeal.

Thereafter, having explored several avenues to obtain his relief, finally, decided to invoke the writ jurisdiction of this Court and when his appeal was finally made to the Administrative Appeals Tribunal (hereinafter referred to as the "AAT"), they refused to entertain his appeal by its order marked as **P2** dated 09th November 2023. According to **P2**, though the Petitioner has some reasonable grievance to complain of, and is also entitled to relief, the AAT is prevented from granting such relief by reason of the fact that it has been established after 25th March 2023 by an Act of Parliament bearing No. 04 of 2002, which is a date after the said incident that took place in 1997.

Aggrieved by the said order, the Petitioner has sought to invoke the writ jurisdiction of this Court conferred on this Court in terms of Article 140 of the Constitution. Thereafter, the Respondent has also filed respective objections and one of the objections taken up is delay, and the second is that the Petitioner cannot now invoke this jurisdiction in respect of an order made by the Public Service Commission rejecting his appeal to the Public Service Commission made in 1998. The said appeal has been rejected by **P22** also in 1998.

Thereafter, this was argued before us on the 22nd of September 2025, and the following arguments were advanced.

Argument

The first contention of the Counsel for the Petitioner, Mr. Mohammadh, is that part of **P2** is erroneous to the extent that members of the Administrative Appeal Tribunal (AAT) decided that the tribunal does not have any jurisdiction since it has been established by Act No. 04 of 2002, after the 25th March 2002; and the incident complained of had taken place in 1997. In addition to that, it further referred to the fact that the Public Service Commission has refused to entertain the appeal made by the Petitioner dated 01st January 1998, by **P22** which is dated 08th October 1998. Therefore, the Administrative Appeal Tribunal cannot make any decision in respect of the error or incident that had taken place long prior to the establishment of the Administrative Appeal Tribunal.

However, on the other hand, Mr. Aluwihare, having conceded that the error was committed by the Public Service Commission is reflected in **P22**, argued that the only question that is to be decided in the application is whether the Administrative Appeal Tribunal erred when it decided when it decided that it cannot redress any grievance which took place as way back as 1997, long prior to the establishment of the Administrative Appeal Tribunal. Mr. Aluwihare further argued that there is a long delay on the part of the Petitioner in canvassing the decision contained in **P22** which is dated 08th October 1998. Therefore, this Court cannot now supplant or indirectly direct the Public Service Commission to correct its decision.

Factual matrix

In this case, the Petitioner has challenged mainly the document marked as **P2**, annexed to the Petition, which is the decision of the Administrative Appeal Tribunal, by which the Administrative Appeal Tribunal has held that the Petitioner has a grievance to be complained of, since he has been subjected to certain illegal treatment; nevertheless, the Administrative Appeal Tribunal is further

of the view that it cannot redress the same, since it has been established subsequent to the incident complained of, which took place as way back as in 1997, and the Administrative Appeal Tribunal has been set up in 2002.

There are certain common grounds on which the parties are not at variance. Therefore, I wish to advert to those facts and mention them as much as possible in chronological order to avoid repetition in analyzing the facts relating to this case to come to my conclusion.

It is also an undisputed fact that the Petitioner has secured the post of Lecturer Class III Grade 2 by appointment letter dated 18th November 1991 marked as **P4**. Thereafter, the Petitioner has been promoted to Class II Grade 1 Lecturer with effect from 15th June 1993 by the letter marked as **P5**. When there were vacancies available in the cadre of the Sri Lanka Technical Education Service, the relevant authority has called the Petitioner for the interview by **P14**, on the application submitted by the Petitioner for the same post. The Petitioner had submitted the Application to be elevated to Class I in response to the Gazette Notification dated 11th April 1996 and marked as **P13**. The mark sheet is produced as **P15**, where the Petitioner ranked 25th out of the 28 candidates who had been shortlisted therein.

On a perusal of the record, I found that by the document marked as **P14**, the Petitioner was called for the interview for the post of Technical Education Service Class I cadre. The document marked as **P15** is the result sheet which shows that there were 28 candidates who passed the exam in the Ampara area. According to **P16**, though the Petitioner had passed the exam, he was given only 44 marks out of 100, and according to the said document, the people who were shortlisted were recommended for promotion. There were three candidates who received 44 marks each at the exam, and the Petitioner was the last of the three, ranking 27th in the list marked as **P16**.

However, the Director General of Vocational and Technical Training had addressed the Secretary to the Ministry of Vocational and Technical Training by the document marked as **P17**, stating that out of the 28 vacancies, only 24 were filled after the results of the exam. The same is confirmed by the document marked as **P18**, which shows that only 24 candidates were given Class I appointments.

Resorting to alternative avenues

Thereafter, the Petitioner complained to the Public Service Commission and relied heavily on the Gazette marked as **P20**, which mentioned the criteria for the interview where merits would be considered and not seniority. Accordingly, having relied upon merit, he appealed again to the Public Service Commission through the proper channel, but it was rejected by the document marked as **P22** dated 08.10.1998.

Although the Petitioner's application was rejected by the Public Service Commission, another candidate who had received similar marks, one J.D. Premadasa, filed a fundamental rights case before the Supreme Court and obtained his relief; according to **P23**, he has been given the appointment with effect from 01.01.1997. Thereafter, the Petitioner appealed to the Chairman of the Human Rights Commission, where no decision was given. He also applied to the Administrative Appeal Tribunal; and the Tribunal, having considered everything, by **P2**, rejected the Petitioner's appeal.

Therefore, it is very clear that the Petitioner's complaint is that if the examiners who conducted the interview under **P14** had followed the Gazette **P21**, the Petitioner should have received more marks on merit. Nevertheless, the Petitioner obtained only 44 marks. In addition to that, his second complaint concerns the manner in which the appointment to one of the four remaining vacancies

was denied to him. It is also clear that there were three people who scored similar marks, one of whom received relief after filing a fundamental rights application before the Supreme Court.

Therefore, though the Petitioner did not file a fundamental rights application before the Supreme Court, he made all attempts through other avenues and channels available to him to make his case before various authorities to obtain relief. However, none of those authorities granted any relief to the Petitioner except for the mere rejection of his appeals. Finally, he came before this Court, and it is very clear, as held by the AAT in **P2**, that the Petitioner's right to obtain relief in terms of the result sheet **P15**, subject to the Gazette notification marked as **P13**, should have been properly considered.

In addition, the Petitioner, who obtained 44 marks, also should have been given an opportunity to serve under Class I upon being promoted, which was denied by the authorities without filling all 28 vacancies (only 24 were filled). Later, on the direction of the Supreme Court in the fundamental rights case, another person with similar marks that of the Petitioner was given the post. Therefore, it is a clear case of denial of the Petitioner's legal right to be appointed to the post with effect from 01.01.1997.

The Petitioner made all attempts and pursued every available avenue but failed. The AAT rejected his appeal on the basis that they could not give any relief, as the Tribunal was established in 2002, long after the injustice was caused to the Petitioner. Therefore, it is clear that any relief to the Petitioner was denied by the said order.

Here, the question is not whether the Petitioner's right exists, but that unfortunately, he has gone through many avenues by making various appeals to the Human Rights Commission, Public Service Commission, the Administrative Appeal Tribunal, and various other departments since

1997. Therefore, as the learned State Counsel argued, the ultimate question to be answered is whether the delay in making this application defeats the Petitioner's Application for relief.

It is quite clear that a person who was in the Petitioner's category had obtained his relief from the Supreme Court in the document marked as **P23** within the time stipulated. However, the Petitioner without making such an application has made appeal to the PSC, and thereafter to the AAT. By this time, when the Petitioner had made the first appeal to the PSC, there was no AAT, as reflected in the AAT's decision in **P2**. Therefore, the Petitioner is not entitled to obtain any relief from the AAT.

The decision of the AAT is justified

The Petitioner in this Application in effect is trying to challenge the decision of the PSC taken by **P22**; therefore, he could have still invoked the jurisdiction of this Court at that time, which he has failed. However, instead of that, he has recourse to other avenues. In addition to that, finally he has gone before the AAT, once it was set up in 2002. By the decision of the AAT, it has refused to grant any relief on the basis that the AAT was set up long after the incident had taken place; that is justifiable.

To further elucidate this point, I will rely on the recent judgement of His Lordship Justice Arjuna Obeyesekere in *R.M.M.P. Rajapakse v. The Public Service Commission and Others* [2021][1];

> *"To hold otherwise will definitely encourage litigants to abuse the legal process, as is apparent from the facts of this case, where public servants can continuously make representations to the PSC and thereby have several bites at the legal cherry. There must be finality in the decision making process. I agree with the AAT that its jurisdiction is*

[1] [CA (Writ) Application No. 220/2020] CA Minutes 25.02.2021

limited to orders and decisions of the PSC made after the establishment of the AAT in 2002 and that, as the decision of the PSC with regard to the promotion of the Petitioner has been made in 1995, the AAT does not have the jurisdiction to hear and determine the appeal of the Petitioner. I therefore do not see any illegality in the decision of the AAT."

Delay

However, the Petitioner without initially coming to this Court or going to the Supreme Court by way of fundamental rights, from the decision of PSC marked as **P22** has appealed to various other places. Therefore, it is too late for the Petitioner to come and obtain such relief from this Court now. In addition to that, since the AAT had not been set up by the time the so-called grievance of the Petitioner had occurred, the decision of the AAT in **P2** is justified.

Accordingly, it is my view that the Petitioner's Application is amiss due to the delay and since the Petitioner has gone through other avenues to obtain relief without seeking relief from the correct forum. Therefore, the Petitioner's Application is liable to be dismissed.

Conclusion

Accordingly, I dismiss this Application, without costs.

JUDGE OF THE COURT OF APPEAL