

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

In the matter of an Appeal under and in term of Article 138 and 154 (P) (6) of the Constitution read with the High Court of the Provinces (Special Provisions) Act No. 19 of 1990.

Geegange Pradeep Samantha,

No 36, DangahaKoratuwa,
Wijayasiripura,
Walasmulla.

**Court of Appeal Case No.
CA(PHC)0124/14**

**Provincial High Court of
the Southern Province
Holden at Galle Writ
Application No: 10/2012**

Vs.

Petitioner

1. H.W. Wijerathne,

Chairman of the Provincial Public Service
Commission of the Southern Province.

2. K.K.G.J.K Siriwardena,

Member of the Provincial Public Service
Commission of the Southern Province.

3. D.W. Witharana,

Member of the Provincial Public Service
Commission of the Southern Province.

4. Munidasa Halpandeniya,

Member of the Provincial Public Service
Commission of the Southern Province.

5. Srma Wijesekara,

Member of the Provincial Public Service-
-Commission of the Southern Province.

*1st to 5th all of Provincial Public Service
Commission of the Southern Province,
District Secretariat, 6th Floor, Kaluwella,
Galle.*

6. Hon. Kumari Balasooriya,

Governor of the Southern Province,
Governor's Office,
Lower Dikson's Road, Galle.

7. W.M. Gamage,

No. 11, Dr. Richard Pathirana Mawatha,
Kalegana
Galle.

8. W.R. Indrapala,

Assistance Secretary,

9. A.A. Gunaseeli,

Assistance Secretary,

10. K.W.K. Dayawansa,

Deputy Secretary (Finance)

11. R.M. Werahera,

Assistance Director of Education,

12. D.L. Sumith,

Assistance Director of Education,

13. K.K.Kumudinee,

Assistance Director of Education,

14. K.G. Premadasa,

Assistance Director of Education,

15. W.G. Deepali,

Development Assistance,

8th to 15th all of Ministry of Education (Southern Province), 2nd Floor, Talbert Town, Shopping Complex, Dickson Junction, Galle.

16. The Secretary,

Ministry of Education of the Southern-
-Province, Talbert Town,
Shopping Complex, Dickson Junction, Galle.

17.The Secretary to the Provincial Public

-Service Commission, District Secretariat,
6th Floor, Kaluwella, Galle.

Respondents

AND NOW BETWEEN

Geegange Pradeep Samantha

No.36, DangahaKoratuwa, Wijayasiripura,
Walasmulla.

Petitioner-Appellant

Vs.

1. H.W. Wijerathne,

Chairman of the Provincial Public Service
Commission of the Southern Province.

1A. Mr. Gunasena Hewawitharana,

Chairman of the Provincial Public Service
Commission of the Southern Province,

1B. Mr. R. H. Kamal Ranasingha,

Chairman of the Provincial Public Service
Commission of the Southern Province,

2. K.K.G.J.K Siriwardena,

Member of the Provincial Public Service
Commission of the Southern Province.

2A. Mr. M. Y. H. Deshapriya,

Member of the Provincial Public Service
Commission of the Southern Province,

3. D.W. Witharana,

Member of the Provincial Public Service
Commission of the Southern Province.

3A. Mrs. Tharanga Wickramarathna

Member of the Provincial Public Service
Commission of the Southern Province,

4. Munidasa Halpandeniya,

Member of the Provincial Public Service
Commission of the Southern Province.

4A. D.K.S. Amarasiri

Member of the Provincial Public Service
Commission of the Southern Province,

4B. K.L. Somarathne

Member of the Provincial Public Service
Commission of the Southern Province,

4C. Samarapala Withanage

Member of the Provincial Public Service
Commission of the Southern Province.

4D. L.K. Ariyaratne,

Member of the Provincial Public Service
Commission of the Southern Province.

4E. Mr. G. Wickramasingha,

Member of the Provincial Public Service
Commission of the Southern Province.

5. Srma Wijesekara,

Member of the Provincial Public Service-
-Commission of the Southern Province.

*1st to 5th all of Provincial Public Service
Commission of the Southern Province,
District Secretariat, 6th Floor, Kaluwella,
Galle.*

5A. Mr. Dammika Hemapala,

Member of the Provincial Public Service
Commission of the Southern Province.

6. Hon. Kumari Balasooriya,

Governor of the Southern Province,
Governor's Office,
Lower Dikson's Road, Galle.

6A. Marshal Perera

Governor of the Southern Province
Governor's office,
Lower Dikson's Road, Galle.

6B. Willie Gamage

Governor of the Southern Province

Governor's office,
Lower Dikson's Road, Galle.

6C. Bandula Harischandra,

Governor of the Southern Province
Governor's office,
Lower Dikson's Road, Galle.

6D. Hon. Chamapa Janaki Rajarathna,

Governor (acting) of the Southern
Province, Governor's office,
Lower Dikson's Road, Galle.

7. W.M. Gamage,

No. 11, Dr. Richard Pathirana Mawatha,
Kalegana
Galle.

8. W.R. Indrapala,

Assistance Secretary,

8A. Sudath Samarawickrama

Assistant Deputy Director,

8B. W. V. C. Jeewani Dilrukshi

Assistant Deputy Director,

8C. Mrs. Medhavi Abeysekara

Assistant Secretary,

9. A.A. Gunaseeli,
Assistance Secretary,

9A. P.J. Kumuduni Gamage
Assistance Secretary,

9B. K. A. N. Pramodani,
Assistance Secretary,

9C. Mrs. K. G. N. Sandhamali,
Senior Assistance Secretary,

10. K.W.K. Dayawansa,
Deputy Secretary (Finance)

10A. Sunil Poddiwala
Deputy Secretary (Finance)

10B. Mr. G. Wickramasingha,
Deputy Secretary.

11. R.M. Werahera,
Assistance Director of Education,

11A. Mr. G. A. M. I. S. R. B. Aberathna,
Deputy Director of Education,

12. D.L. Sumith,
Assistance Director of Education,

12A. Medavi Abeysekara,

Assistance Director of Education,

13. K.K.Kumudinee,

Assistance Director of Education,

14. K.G. Premadasa,

Assistance Director of Education,

14A. W. T. Kithsiri,

Assistance Director of Education,

14B. B. G. A. Padmasila,

Assistance Director of Education,

15. W.G. Deepali,

Development Assistance,

15A. Shashikala Wijethunga

Development Assistance,

*8th to 15th all of Ministry of Education (Southern
Province), 1st Floor, Dakshinapaya,
Labuduwa, Akmimana.*

16. The Secretary,

Ministry of Education of the Southern-
Province,
Talbert Town,
Shopping Complex,

Dickson Junction,
Galle.

17.The Secretary to the Provincial Public

-Service Commission,
District Secretariat,
6th Floor, Kaluwella,
Galle.

Respondents-Respondents

Before : **D. THOTAWATTA, J.**
K. M. S. DISSANAYAKE, J.

Counsel :
Asthika Devendra with Wasantha Sandaruwan instructed by Ms. Thushari Jayawardana for the Petitioner-Appellant.

Maheshika Silva for 1st to 6th, 16th and 17th
Respondents-Respondents.

7th to 15th Respondents-Respondents are
absent and unrepresented.

Written Submissions
of the Petitioner-Appellant
tendered on

: 21.11.2019

Written Submissions
of the 1st to 6th and 16th and 17th
Respondents-Respondents

tendered on : 02.09.2020

Written Submissions

of the 7th to 15th

Respondents-Respondents

tendered on : Not tendered.

Decided on : 31.07.2026

K. M. S. DISSANAYAKE, J.

The instant appeal arises from a judgement of the learned High Court Judge of the Southern Province holden at Galle dated 17.07.2014 (hereinafter called and referred to as ‘the HC judgement’) made in case bearing No. Writ 10/2012 in the exercise of the writ jurisdiction vested in it by Article 154P(4) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter called and referred to as ‘the Constitution’) whereby, the learned High Court Judge of the Southern Province holden at Galle (hereinafter called and referred to as ‘the High Court Judge of the Province’) had while refusing to issue an array of orders in the nature of a writ of *certiorari* as prayed for in prayers ‘C’, ‘D’, ‘E’ ‘F’, ‘G’, ‘H’ and ‘I’ in the amended petition dated 26.09.2012, filed thereat by the Petitioner and also refusing to issue an order in the nature of a writ of *mandamus* sought in prayer ‘J’ thereof, against the 5th to 17th Respondents named therein, who are now, the 5th to 17th Respondents-Respondents to the instant appeal (hereinafter called and referred to as ‘the 5th to 17th Respondents’), dismissed the action of the Appellant. It is this judgement the Petitioner now, seeks to canvas before this Court in the instant appeal on the grounds of appeal as morefully, urged in paragraph 6 (a) to 6(r) of the petition of appeal among any other grounds of appeal that may be urged by Counsel at the hearing of the instant appeal, and they may be re-produced *verbatim* the same as follows;

“a) The Learned judge of the Provincial High Court had not considered and/or only has minimally considered arguments raised by the Appellant at the argument;

b) The Learned High Court Judge erred in law by failing to follow/appreciate the judicial dictum held in Nandadasa Vs. Jayasinghe, Secretary Ministry of Justice and Constitutional Affairs and others [2001 (1)SLR 14] where it was held that not disclosing findings and reasons of a disciplinary inquiry seriously impairs the right of appeal and thus the impugned decisions in the present case cannot stand in law,

c) The Learned High Court Judge erred in law by failing to consider that the protection of right of appeal vested with public officers should not be arbitrary or unreasonably denied by not informing him the findings against him;

d) The Learned High Court Judge erred in law by failing to consider that the Appellant was not given reasons for the impugned decisions which violated the principles of natural justice;

e) The Learned High Court Judge erred in law by failing to consider that failing to give reasons for an administrative decision will itself amounts to invalidate the said decision;

f) The Learned High Court Judge erred in law in holding that the principles of natural justice have been followed although the appeals preferred to the Provincial Public Service Commission and the to the Governor were determined only in consultation with the Respondent without giving a hearing to the appellant;

g) The Learned High Court Judge erred in law by failing to consider that the findings of the disciplinary inquiry was contrary to the evidence led before it;

- h) The Learned High Court Judge erred in law in holding that writ of certiorari will be granted only in instances where the impugned decision has been taken outside the powers or without powers;
- i) The Learned High Court Judge erred in law by failing to consider that Appellant's rights and privileges should have also been considered by the Respondent wherein it was held that the 6th Respondent should exercise his powers in their decision making process considering the rights of the public;
- j) The Learned High Court Judge erred in law by failing to consider that the decision to find the Appellant guilty was meritless according to the facts revealed and thus cannot stand in law;
- k) The Learned High Court Judge erred in law in holding that the Appellant is not entitle for a writ of mandamus although the Respondents are vested with powers to reinstate the Appellant;
- l)The Learned High Court Judge erred in law by not evaluating the entire evidence led before the disciplinary inquiry;
- m) The learned high Court Judge err when he held that the Appellant was given all opportunities to represent his case in the disciplinary inquiry and in the appeals;
- n) The learned High Court Judge err in holding that although the Appellant urged to consider facts the same could not be done in a judicial review and/or that facts could be considered only if the findings were entirely contrary to the evidence;
- o) The learned High court err in law when he held that the 6th Respondent should exercise his powers by considering public wellbeing and trust of the public;

p) The learned High Court err when it was held that the Appellant was charged for sexually abusing a child and reinstating the Appellant is harmful for the public wellbeing which demonstrates that the Appellant was liable to be terminated even if he was exonerated as he was accused of child abuse;

q) The learned High Court Judge err in holding that In dismissing the Appellant's appeal the 6th Respondent has acted within the given powers and legally;

r) The learned High Court judge erred when he held that the Appellant has no entitlement for a legal right”

When this matter came on before us for argument, Counsel on both side informed Court that the instant appeal can be disposed of by way of written submissions as both parties had already, filed written submissions and hence, the judgement on the strength of the written submissions.

The facts material and relevant to the instant appeal as can be deducible from the petition of appeal, may be briefly, set out as follows;

During the Appellant’s tenure of office as a teacher in the H/Deniya Pingama Junior School, the Appellant had taught English language from Grade 2 to Grade 11 and information technology for Grade 6 to 11; and that on or about 16.06.2008 whilst the Appellant had been engaged in his normal work at his school, he had been informed by the Principal of his school that several parents had complained that their children had seen pornographic videos whilst they were studying at the school computer room and had found several purported pornographic CDs from the computer room; and that after the said parents had lodged a complaint in the Hungama Police against the Appellant, investigations had been commenced in respect of the same; and that after a comprehensive investigation it had been revealed that there had been no pornographic videos in any of the computers or such CDs in the computer room; and that from the four

CDs which was alleged to have been found by the students from the school computer room, three CDs could not be played (corrupted) and after several attempts the single CD which had been played was a Sri Lankan "adults only" film which had been screened in the Sri Lankan film theaters; and that on 17.06.2008 a student called "Charuka" had made a complaint against the Appellant alleging that he had been sexually abused by the Appellant at the school computer room; and that the said allegation had been made only after it had been revealed that there had been no evidence against the allegations made in respect of pornographic materials; and that the Appellant had verily, believed that he had been targeted by a few villagers who had an animosity with him; and that several criminal prosecutions had been instituted against the Appellant in respect of the said false allegations; and that apart from the said criminal prosecution, a preliminary investigation had been conducted by an Investigation Committee and upon their recommendation, the Appellant had been interdicted from his services; and that thereafter, he had been served with a charge sheet and a disciplinary inquiry had been conducted by the 7th Respondent on the charges so levelled against him; and that after the said disciplinary inquiry, it was informed by the 16th Respondent by the disciplinary order dated 24.09.2010, that the Appellant had been found guilty for all the three charges, and in consequence, the Appellant's services had been terminated but, however, the Appellant had not been served with the findings of the disciplinary inquiry nor the reasons therefor; and that the Appellant had thereafter, made an appeal against the said disciplinary order to the Southern Province Provincial Public Service Commission and he had been informed by the 17th Respondent by the letter dated 20.12.2011, that the said appeal preferred thereto, had been dismissed but however, he had not been given reasons therefor; and that thereafter, in terms of the section 33(8) of the Provincial Council Act No 42 of 1987, the Appellant had preferred an appeal from the decision of the Provincial public Service Commission to the Hon. Governor of the Southern Province which too, had been dismissed without adducing reasons therefor; and that despite the

repeated requests made by the Appellant, the Respondents had refused to give the Petitioner the report and/or the findings of the domestic inquiry contrary to the law which had prevented the Appellant from effectively, exercising his right of Appeal; and that the Appellant after having withdrawn the writ application bearing No. CA/WR 164/2012 preferred by the Appellant to this Court therefrom, had afterwards, preferred the above styled writ application in the High Court of the Southern Province holden at Galle (hereinafter called and referred to as 'the High Court of the Province') praying for orders in the nature of writ of *certiorari* a) quashing the decision to conduct a disciplinary inquiry and the decision to terminate the service of the Appellant; b) quashing the decision to interdict the Appellant's service and to withhold the salary of the Appellant; c) quashing the decision not to pay the half salary to the Appellant, d) quashing the decision to find guilty the Appellant for the said chargers and to dismiss his appeals; e) quashing the decision not to issue a certified copy of the domestic inquiry report to the Appellant; and a writ of *mandamus* compelling reinstatement of the Appellant with back wages; and that the learned High Court Judge of the Province had in the HC judgement, dismissed the action of the Petitioner thereby, refusing to grant any of the reliefs sought therein, by the Appellant against the Respondents *inter-alia*, on the premise that the Appellant had been given all opportunities to represent his case in the disciplinary inquiry and also in the appeals so preferred therefrom to the Provincial Public Service Commission of the Southern Province and the Hon. Governor of the Southern Province and therefore, Court was not satisfied that the Principles of Natural Justice had been violated by the Respondents; and that although, the Appellant had urged Court to consider facts, facts cannot be considered in a judicial review process, however the facts could only, be considered if the findings were entirely contrary to the evidence; and that the Appellant had been charged for sexually abusing a child studying at the said school and the reinstatement of the Appellant would be harmful for the public wellbeing for; public wellbeing and the trust of the public being the essential considerations before such a decision for

reinstatement of the Appellant being made and therefore, the 6th Respondent had acted *intra-vires*, of his powers in dismissing the appeal of the Appellant.

As is discernible from a careful scrutiny of the petition filed by the Appellant in the High Court of the Province in the aforesaid action seeking an array of orders in the nature of writ of *certiorari* and also an order in the nature of a writ of *mandamus* as aforesaid, the written submissions filed thereat, by him in support of his application for writs of kind as aforesaid, the Appellant had mainly, sought to quash the decision of the 16th Respondent (disciplinary order) to terminate his services, based on findings and the recommendations contained in the inquiry report submitted to him by the 7th Respondent pursuant to the disciplinary inquiry held by him on the three charges levelled against the Appellant on sexually abusing a student of the said school and the decisions made by the 17th Respondent and the 6th Respondents in appeal respectively, preferred thereto, by the Appellant from the decision of the 16th Respondent to terminate him from his services on the premise that neither the inquiry report nor the reasons for the decision of the 16th Respondent nor the reasons for the decision of the 17th and 6th Respondents respectively, made in appeal therefrom, had been communicated to him by them thereby, depriving him of the effective exercise of his statutory right of appeal thus, constituting a gross violation of the principles of natural justice.

On the other hand, a careful scrutiny of the statement of objections and the written submissions of the Respondents filed in the High Court of the Province resisting the application of the Appellant filed thereat, clearly, shows that the Respondent had never sought to deny the allegation levelled against them by the Appellant that neither the inquiry report nor the reasons for the decision of the 16th Respondent nor the reasons for the decision of the 17th and 6th Respondents respectively, made in appeal therefrom, had been communicated to him by them.

Hence, it is common ground that neither the inquiry report nor the reasons for the decision of the 16th Respondent nor the reasons for the decision of the 17th

and 6th Respondents respectively, made in appeal therefrom, had been communicated to the Appellant by the 16th, 17th and 6th Respondents.

In the circumstances, the pivotal issue and/or question that arose for decision by the learned High Court Judge of the Province was whether the inquiry report or the reasons for the decision of the 16th Respondent or the reasons for the decision of the 17th and 6th Respondents respectively, made in appeal therefrom, had been communicated to the Appellant by them; and if not so, whether it had deprived the Appellant of the effective exercise of his statutory right of appeal thus, constituting a gross violation of the principles of natural justice.

Hence, the Appellant had applied to the High Court of the Province for a writ of *certiorari* to quash an array of orders as enumerated above, on the ground that the failure to give reasons by the 16th Respondent in his disciplinary order terminating the services of the Appellant and, the failure to give reasons by the 17th and 6th Respondents in their respective orders made in appeal, was a gross violation of the principles of natural justice.

However, it is very much regretful to observe that the learned High Court Judge of the Province in the HC judgement, had not in any manner, made even a miniscule attempt to direct his judicial mind to the pivotal question so arose for his decision in the instant application for a writ and in the result, he had totally, failed to consider and determine the pivotal issue thus, arose for his decision in his judgment which culminated in the finding on this pivotal issue not being reached in any manner, in his judgement by him.

Hence, there has been no findings whatsoever, reached by the learned High Court Judge of the Province on this vital and pivotal issue that arose for his decision in the instant application for writs for this Court to review in appeal, its legal propriety and/or soundness in the absence of a finding as such reached by him thereon.

I would therefore, hold that the learned High Court Judge of the Province had not in any manner, considered the principal issue so arose by the Appellant before him and determination not reached thereon as argued by the Appellant in the ground of appeal 6(a) of the petition of appeal.

Hence, I would hold that the HC judgement is subject to a serious legal infirmity and therefore, should not be permitted to stand on this ground alone.

In the result, I would set aside the HC judgement.

In the circumstances, I would direct the learned High Court Judge of the province to hear and determine the instant application for a writ made before him by the Appellant afresh and anew and conclude it as expeditiously, as possible, on the strength of the material available on record only.

In the circumstances, I would make no order for costs.

Registrar of this Court is directed to remit the original case record to the High Court of the Province in due course.

JUDGE OF THE COURT OF APPEAL

D. THOTAWATTA, J.

I agree.

JUDGE OF THE COURT OF APPEAL