

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

CA (PHC) No: 133/2013
(CA (PHC) APN 129/13)

Provincial High Court Galle Case No:
SP/GA/HC/WRIT/06/2013

In the matter of an Appeal in terms of Article 138 read with Article 154P(6) of the Constitution against the order dated 08/08/2013 in the Provincial High Court of the Southern Province (Held in Galle) in Case No. SP/GA/HC/WRIT/06/2013.

Benthota Multi-Purpose Co-operative Society Limited, Elpitiya Road,
Bentota.

Petitioner – Appellant

Vs.

1. Co-operative Employees Commission of the Southern Province, of Planning Secretariat Building (1st Floor),
S.H. Dahanayake Mawatha, Galle.
2. Norman Rajapakshe, Chairman,
Co-operative Employees Commission of the Southern Province, of Planning Secretariat Building (1st Floor),
S.H. Dahanayake Mawatha, Galle.
- 2A. W.A. Nimal Ranjith, Chairman,
Co-operative Employees Commission of the Southern Province, of Planning Secretariat Building (1st Floor),
S.H. Dahanayake Mawatha, Galle.

3. Bennett Abeysooriya, Vice Chairman,
Co-operative Employees Commission of the
Southern Province, of Planning Secretariat
Building (1st Floor),
S.H. Dahanayake Mawatha, Galle.
4. Charles Ulluvishewa, Member,
Co-operative Employees Commission of the
Southern Province, of Planning Secretariat
Building (1st Floor),
S.H. Dahanayake Mawatha, Galle.
- 4A. K.K. Daya Keerthi, Member,
Co-operative Employees Commission of the
Southern Province, of Planning Secretariat
Building (1st Floor),
S.H. Dahanayake Mawatha, Galle.
5. Secretary, Co-operative Employees
Commission of the Southern Province, of
Planning Secretariat Building (1st Floor),
S.H. Dahanayake Mawatha, Galle.
6. Sirisoma Rubasinghe, “Sigiri”, Dawulu Kanda,
Kithulampitiya, Uluwitike.
7. Mithrasena Mahakumara, “Preethi”,
Dedduwa, Haburugala.

Respondents- Respondents

Before: Damith Thotawatte, J.
K.M.S. Dissanayake, J.

Counsels: Chandana Wijesooriya with Wathsala Dulanjani for the Petitioner – Appellant.
Nayomi Kahawita, SSC instructed by Nimalika Wickramasinghe, SSA for the 01st to 5th Respondents.
Pubudu Alwis with K.A.D. Karasinghe for the 7th Respondent – Respondent-Respondent.

Argued: 03.06.2026

Written submissions 21.01.2026 by 7th Respondent.
tendered on: 26.02.2020 by Petitioner – Appellant.

Judgment Delivered: 30.09.2026

Thotawatte, J.

Introduction

The Petitioner-Appellant (hereinafter sometimes referred to as the “Appellant”) in CA (PHC) 133/2013 and the Petitioner- Petitioner in CA (PHC) Revision 129/2013 are the same co-operative society. Both proceedings challenge the order of the learned High Court Judge of the Southern Province holden at Galle, dated 08 August 2013 in Writ Application No. 06/2013. On 03.06.2026, the parties agreed to abide by and be bound by the judgment in this appeal.

The Appellant applied to the High Court of Galle for writs of certiorari to quash a decision of the Co-operative Employees Commission (hereinafter sometimes referred to as the “Commission”) directing the reinstatement of the seventh Respondent with back wages, and to quash the subsequent correspondence relating to that decision. The learned High Court Judge heard counsel for the parties at the stage of support and held that the material disclosed insufficient grounds for the issuance of a writ, and dismissed the application *in limine* with costs.

Factual Matrix

It is necessary to note, before setting out the factual chronology, that some dates stated in the written submissions conflict with the documents annexed to the petition of appeal. Certain dates are also inconsistent with the sequence of events described by the parties. The chronology that follows is therefore based on the dates appearing in the contemporaneous documents, insofar as those dates can be ascertained.

The seventh Respondent had been employed by the Society since 03.03.1992. Following a preliminary investigation concerning advance payments made for the construction of a building, he was placed on compulsory leave on 10.04.2008 and interdicted with effect from 06.11.2008. The seventh Respondent states that he was served with a charge sheet dated 30.12.2008 containing 16 charges but that the Appellant did not proceed with those charges. Appellant thereafter issued a further charge sheet dated 17.03.2009 containing three charges and following an inquiry, the seventh Respondent was exonerated of all charges. However, the Appellant maintains that the seventh Respondent was exonerated because material documents relevant to the charges were unavailable, having been taken into the custody of the Commission to Investigate Allegations of Bribery or Corruption. The seventh Respondent contests both the explanation and the propriety of the subsequent disciplinary steps.

A third charge sheet containing two charges was served on the seventh Respondent on 03.03.2010. Consequent to an inquiry held, the inquiring officer found the employee guilty of both charges. The Appellant resolved to terminate the seventh Respondent's services with effect from 06.11.2008 and informed him of that decision by letter dated 24.01.2011. Aggrieved by that decision, the seventh Respondent appealed to the Commission.

Having obtained a report from the sixth Respondent and having heard the parties, the Commission, by its decision dated 08.09.2012, set aside the termination of the seventh Respondent's services and directed his reinstatement with back wages.

The Appellant thereafter sought reconsideration of that decision. The Secretary to the Commission requested a certified copy of the relevant decision of the Appellant's Board of Directors and the names of the directors who had participated in it. The Appellant did not furnish the material sought. Instead, it questioned the legal existence of the Commission. By letter dated 07.03.2013, the Secretary informed the Appellant that its request could not be considered without the requested particulars. The Appellant then invoked the writ

jurisdiction of the High Court, challenging the Commission's decision and the subsequent correspondence. Having heard the submissions of counsel, the learned High Court Judge dismissed the Appellant's writ application by order dated 08.08.2013, and the Society, being aggrieved by that order, had preferred the instant appeal.

The Commission's Authority

Before the High Court, the Appellant disputed the Commission's legal existence on the ground that the Southern Province Co-operative Employees Commission Statute No. 1 of 1998 had been published in the Gazette under the hand of the Secretary of the Provincial Council rather than that of the Minister. It consequently questioned the Commission's authority to entertain the employee's appeal and to appoint an inquiring officer. Although the contention was repeated in the petition of appeal, the Appellant expressly stated in paragraph 34 of its written submissions that, in view of the judgment in CA (PHC) 71/2013, it no longer pursues that ground. It is therefore unnecessary to consider it further.

In **Southern Provincial Co-Operative Employee's Service Commission v. Bentota Multi-Purpose Co-operative Society Ltd and Others**¹, this Court rejected substantially the same contention advanced by the Society in proceedings concerning another employee. The Court held that the Statute came into force upon the Governor's assent on 17.12.1998, in terms of Article 154H of the Constitution. It further held that, even if section 1 of the Statute were construed as requiring publication as an additional step, publication in Gazette No. 1,066 of 5 February 1999 under the hand of the Council Secretary satisfied that requirement. Publication was an administrative act that an authorised officer could perform on behalf of the Minister.

The Court also held that, even if the Commission had lacked legal authority, writ relief ought not to have been granted in the exercise of the Court's discretionary jurisdiction, having regard to the consequences that would follow from treating the Commission as having acted without legal authority. In those circumstances, and in view of the Appellant's express abandonment of the contention, no further determination of the Commission's legal existence is necessary in this appeal.

¹ CA (PHC) 71/2013, decided 9 August 2018.

The Remaining Grounds

The remaining grounds upon which the Appellant seeks to impugn the judgment of the learned High Court Judge, as disclosed by the petition of appeal and written submissions filed by the parties, may be summarised as follows:

1. Contrary to law and facts: The High Court's dismissal was said to be inconsistent with the material before it.
2. Wrong assessment of the writ application: The High Court allegedly erred in finding insufficient grounds to grant relief.
3. Premature dismissal: The application was dismissed *in limine* although, according to the Society, there was sufficient material to issue notice and proceed to a hearing.
4. Reliance on the Respondents' submissions: The High Court allegedly accepted submissions made on behalf of the Respondent which, according to the Appellant, were factually incorrect and legally untenable.
5. Denial of a fair hearing: The High Court allegedly breached natural justice by restricting the counsel for the Society to five minutes in reply.

Analysis

The High Court's Dismissal Inconsistent with the Material Available

The Appellant contends that the dismissal of the writ application by the High Court was contrary to the material placed before it. The charge sheets and inquiry reports on which the Appellant relies show that successive disciplinary proceedings were held. However, they do not, without more, show that the Commission misapprehended the sequence of those proceedings, or that it acted on charges of which the seventh Respondent had been exonerated.

In particular, the Appellant did not produce before the High Court the report of the inquiry which resulted in the seventh Respondent's exoneration. That report was material both to the Appellant's assertion as to the effect of the exoneration and to the question whether the charges considered in the respective disciplinary proceedings were the same or materially different. Without it, the dispute as to the nature and timing of the charges cannot be resolved by preferring one party's account over the other. Accordingly, no error in the decision of the Commission can be inferred solely from the Appellant's account of those contested matters.

Nor does the report of the sixth Respondent establish that the Commission disregarded his findings. Although the sixth Respondent concurred in the finding of guilt in respect of one charge, he also recommended reinstatement, albeit on different terms. The Appellant has therefore failed to show that the material before the High Court was inconsistent with its decision to dismiss the writ application. This ground accordingly fails.

Allegation of Bias

The Appellant has also invoked the principle that the person who hears a matter should decide it, allege bias and challenges the Secretary's demand for the board resolution. These objections are not established.

The sixth Respondent's report followed an inquiry into the employee's appeal. However, it was for the Commission to make the final decision. The Appellant admits in its petition of appeal that, in addition to the inquiry conducted by the sixth Respondent the second, third and fourth Respondents, conducted further inquiry and at this inquiry conducted by the second, third and fourth Respondents, both parties filed written submissions and thereafter had made oral submissions (paragraph 01(xix) and 01 (xx) of the petition of appeal).

The fact that the Commission did not adopt every finding in the report of the sixth Respondent does not, in those circumstances, show that the decision was made by persons who had not heard the parties. I therefore find no basis in these matters for setting aside the Commission's decision or the High Court's order.

Refusal to Submit a Copy of the Board's Decision

The Secretary requested a certified copy of the board's decision and the names of the directors who participated in it to verify the Society's authority to seek reconsideration of the reinstatement order. The Appellant has identified no legal impediment to that request. The letter of 07.03.2013 merely stated that reconsideration could not proceed until the particulars were supplied; it did not determine the request on its merits. The Society's refusal to provide those particulars, founded on its challenge to the Commission's legal existence, does not render the Secretary's letters of 14.11.2012 and 07.03.2013 unlawful.

The allegations of political influence, bias and denial of natural justice in the Commission proceedings are expressed in general terms. No particular conduct established by the filed

material supports a finding of actual or apparent bias. The differences between the parties' accounts of the disciplinary history would require a proper evidentiary foundation. Judicial review is concerned with the legality and fairness of the decision-making process; it is not a fresh disciplinary appeal in which this Court may choose between competing assessments of the employee's guilt.

The Order of the High Court

The Society further complains that its counsel was limited to five minutes in reply at the hearing on 08.08.2013. Upon perusal of the High Court record it is evident that the submissions in the matter proceeded over several days from 20.06.2013 to 08.08.2013 during which both parties have received ample opportunity to make submissions. The parties agree that the Appellant addressed the High Court, that the Respondents made submissions and that the Appellants was permitted to reply. The Appellant's complaint is that insufficient time was given for his submissions in reply. Mere complaint against the length of the time given without identification of a material point which counsel was thereby unable to answer and which could have affected the result, does not establish prejudice sufficient to set aside the order.

The High Court should ordinarily state with greater precision why an application seeking judicial review fails at the stage of support. Its compressed order does not identify which grounds it rejected. Nevertheless, the parties had notice and were heard. This Court has had the benefit of their pleadings and submissions on appeal. The decisive challenge to the Commission's legal authority is foreclosed by CA (PHC) 71/2013; the remaining allegations do not establish a sufficient basis on the material produced for the writ relief sought. In those circumstances, especially considering, that the preliminary investigation regards to this issue commenced in 2005, the brevity of the order does not justify remitting the same application merely for a fuller statement of reasons.

The seventh Respondent's later submissions seek back wages, promotions, increments and retirement benefits. Those matters are not the relief sought by the Society in this appeal, and no independent proceeding for their calculation and grant is before this Court. I make no determination of their amounts or of any enforcement question. The Commission's decision is not set aside by these proceedings.

Conclusion

For the foregoing reasons, CA (PHC) Appeal No. 133/2013 is dismissed subject to cost fixed at Rs. 25,000/- to be payable to the State by the Appellant. The order of the learned High Court Judge dated 8 August 2013 is affirmed. In view of the parties' agreement that CA (PHC) Revision Application No. 129/2013 shall abide by the judgment in the appeal, that application is also dismissed without costs. Any interim order made in either proceeding stands discharged.

Judge of the Court of Appeal

K.M.S. Dissanayake, J.

I agree

Judge of the Court of Appeal