

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

In the matter of an application for mandates in the nature of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution.

Dissanayake Mudiyanseelage Gunasekara
Bandara
No. 379/5/A, National Youth Council
Road,
Makola South,
Makola.

PETITIONER

CA (Writ) Application No. 91/2024

Vs.

1. Justice Anil Gooneratne
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
- 1A. Justice K.T. Chithrasiri
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
2. Aiyathurai Gnanathan PC
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
- 2A. J.J. Rathnasiri
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
3. G.P. Abeykeerthi
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.

- 3A. S. Nandasekaran
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
4. The Secretary
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
5. The Secretary
Ministry of Public Administration and Home
Affairs,
Independence Square,
Colombo 07.
6. The Secretary
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
7. Hon. Attorney General
The Attorney General's Department
Colombo 12.

RESPONDENTS

Before: Mayadunne Corea, J.
Mahen Gopallawa, J.

Counsel: Shavindra Fernando, PC with R. Fernando instructed by Mirthula Skandarajah
for the Petitioner.

Ms. Nayomi Kahawita, Senior State Counsel for the Respondents.

Argued on: 24.11.2025

Written Submissions: Petitioner on 02.02.2026
Respondents on 22.04.2026

Decided on: 12.06.2026

Mahen Gopallawa, J.

Introduction

In the instant application, the Petitioner, who is a retired public officer, has impugned the decision of the Administrative Appeals Tribunal consisting of the 1st to 3rd Respondents dated 28.11.2023 (P18) dismissing his appeal from a decision of the Public Service Commission notified to him by the letter dated 22.11.2011(P12).

The Petitioner has sought the following substantive reliefs in the prayer to the petition;

- c) *Grant and issue a mandate in the nature of a Writ of Certiorari quashing the order of the 1st to 3rd Respondents, with respect to the dismissal of the appeal on the jurisdictional objection raised by the 6th Respondent;*
- d) *Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to 3rd Respondents and/or the Administrative Appeals Tribunal and/or any Respondents who may be added during the pendency of the instant Application, to revise, vary or rescind the decision of the Public Service Commission reflected in document marked P12, impugned in the Petitioner's Appeal bearing number AAT/50/2011(PSC);*
- e) *Grant and issue a mandate in the nature of a Writ of Mandamus directing the 1st to 3rd Respondents and/or the Administrative Appeals Tribunal and/or any Respondents who may be added during the pendency of the instant Application, to direct the Public Service Commission to grant marks to the Petitioner for seniority (as per Circular No. 3/2005 annexure **P8**) from 01.07.1989 to 31.12.2001 and thereby appoint, promote or absorb the Petitioner to Class III (the present equivalent of the former Class II, Grade II) of the Sri Lanka Administrative Service (SLAS) with effect from 31.12.2001, or from the effective date of appointment of those who were appointed to the SLAS (then Class II, Grade II) consequent to Circular No. 3/2005 (annexure **P8**), and accordingly grant the Petitioner all retirement benefits that he is entitled to;*
- f) *Without prejudice to and consequential upon the preceding prayers (c), (d) and (e), grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision(s) of the PSC reflected in document marked **P12**, impugned in the Petitioner's Appeal bearing number AAT/50/2011(PSC);*
- g) *Grant and issue a mandate in the nature of a Writ of Mandamus directing the 6th Respondent (Public Service Commission) to grant marks to the Petitioner for seniority (as per Circular No. 3/2005 - annexure **P8**) from 01.07.1989 to 31.12.2001 and thereby appoint, promote or absorb the Petitioner to Class III (the present equivalent of the former Class II Grade II) of the Sri Lanka Administrative Service (SLAS) with effect from 31.12.2001, or from the effective date of appointment of those who were appointed to the SLAS (then Class II, Grade II) consequent to Circular No. 3/2005 (annexure **P8**), and accordingly grant the Petitioner all retirement benefits that he is entitled to;*

However, when the instant application was taken up for support, the learned President's Counsel informed Court that the Petitioner will confine his case to the reliefs sought in paragraph (c) of the prayer to the petition.

The 6th Respondent has filed a statement of objections on behalf of the Respondents dated 27.05.2025 objecting to the grant of the aforesaid relief, and, accordingly, the application was taken up for argument. The parties have also tendered post-hearing written submissions.

Factual Background

Based on the pleadings filed by the parties, the factual background to the instant application may be presented as follows.

The Petitioner had joined the public service as an officer in Grade II B of the General Clerical Service on 18.07.1979 (P1). He had sat for the limited competitive examination in 1989 for appointment to the Supra Grade of the General Clerical Service (P2), and, although he had passed the examination, he had not obtained adequate marks to secure appointment to the 50 vacancies in the Government as at 01.07.1989 that were filled on the results of the said examination.

However, based on the results of the aforementioned examination, the Petitioner had accepted an offer to join the Supra Grade of the General Clerical Service of the Uva Provincial Council and had been appointed with effect from 01.06.1992 (P4). He had sought to have such date of appointment "amended" to 01.07.1989, being the effective date of appointment to the Supra Grade of the General Clerical Service, and, accordingly, his date of appointment had been "antedated" (පෙරදානම්) to 01.07.1989 by the Provincial Public Service Commission of the Uva Province by letter dated 12.12.1995 (P5). Instead, he has sought the "regularization" (සමාවක්) of such date of appointment, and, a letter "regularizing" his appointment to 01.07.1989 had been eventually issued by the Provincial Public Service Commission of the Uva Province on 30.01.2012 (P7).

The genesis of the current dispute could be traced to the publication of the Combined Services Circular No. 3/2005 (P8), whereby applications were called for appointment to Class II-Grade II of the Sri Lanka Administrative Service (SLAS). The Petitioner, who possessed the requisite qualifications, had applied and sat for written examination. As reflected in the results sheet issued by the Department of Examinations (P9), the Petitioner had obtained 114/200 marks at the examination and a further 47.50 marks for seniority for an aggregate of 161.50/300 marks. It is common ground that the cut-off mark for selection was 169/300 marks.

The Petitioner had disputed the marks awarded for seniority, claiming that since the effective date of appointment had been "regularized" to 01.07.1989, he should have been awarded marks for seniority from such date and not from 01.06.1992. According to the evaluation done by him, he claims that 61.25 marks should have been awarded for seniority, which would have increased his aggregate to 175.25/300 marks (P10). He had preferred an appeal to the Public Service Commission on such matter but such appeal had been dismissed and the decision of the PSC had been notified to him by the letter dated 22.11.2011(P12).

Thereafter, the Petitioner had preferred an appeal against the aforementioned decision of the PSC to the Administrative Appeals Tribunal (AAT) on 15.12.2011 (P13) bearing No. AAT/50/2011 (PSC). By order dated 26.06.2012, the AAT had held that the decision of the PSC was correct and had proceeded to dismiss the Petitioner's appeal (P15).

Being aggrieved by such decision of the AAT (P15), the Petitioner had invoked the writ jurisdiction of this Court in CA (Writ) Application No. 227/2012. In the said writ application, the Petitioner had impugned the order of the AAT on two main grounds; firstly, that the AAT was not properly constituted at the time the order was made, and, as such, the order was a nullity; and secondly, the order was irrational and unreasonable in that the AAT had failed to consider the question that was presented to it. This Court, by its judgment dated 07.09.2020 held as follows (per Obeyesekere, J.);

Taking into consideration all of the above factors and circumstances, this Court is of the view that the AAT was not properly constituted at the time 'P21' was delivered, and for that reason, 'P21' is not a decision of the Administrative Appeals Tribunal, and therefore 'P21' is a nullity.

The necessity for this Court to consider the second ground does not arise in view of the decision on the first ground.

This Court therefore issues of Writ of Certiorari quashing 'P21'. The appeal of the Petitioner is remitted to the Administrative Appeals Tribunal for a re-adjudication on its merits. This Court directs the Administrative Appeals Tribunal to give priority to the appeal of the Petitioner, and hear and determine the said matter expeditiously. This Court makes no order with regard to costs.¹

The Petitioner has pleaded that, when the appeal was thereafter taken up for hearing before the AAT on 12.01.2023, the Assistant Secretary appearing on behalf of the PSC had raised a preliminary objection that the AAT lacked jurisdiction to entertain the Petitioner's appeal. The Petitioner has further pleaded that such preliminary objection had not been raised previously either during the initial hearing or during the re-adjudication. The AAT had directed the parties to limited written submissions on such preliminary objection. The AAT, by order dated 28.11.2023 (P18), has upheld such preliminary objection and dismissed the Petitioner's appeal (P18). In such order, the AAT has, *inter alia*, observed as follows;

In this case the governing law, Act No. 4 of 2002 no doubt clearly set the limit covering only a Public Servant. But it need to be understood that as discussed in this order, the judgment delivered by Justice Dr. Amaratunga [sic], by the 13th Amendment to the Constitution open the gate to three categories of Provincial Public Servants to appeal to the PSC.

We are faced with a situation where the subject matter of the case in hand refer to three categories of officers inclusive of Provincial Public Servants who sat the examination in question. This order and the submissions of the appellant demonstrated

¹ vide page 16 of the judgment

as to how the equality provisions in the Constitution could be violated if the rights of appeal to PSC is deprived to Provincial Public Servants.

In any event considering the jurisdictional issue, we are reluctantly compelled to dismiss this appeal.²

The Petitioner has filed the instant application impugning such order of the AAT (P18).

It has also been disclosed in the petition that the Petitioner had challenged the decision of the PSC before the Human Rights Commission of Sri Lanka (HRCSL) and that the Commission had made a recommendation on 28.07.2011 in his favour (P11). The Public Petitions Committee of Parliament had also made a recommendation in the Petitioner's favour on 28.05.2014 (P14). Meanwhile, it transpires from the objections of the Respondents that the Petitioner had filed another appeal to the AAT bearing No. AAT/151/2016 on his non-selection to Class II-Grade II of the SLAS and that the said appeal too had been dismissed by the AAT by order dated 05.11.2018 (6R18). Upon perusal of the AAT order (6R18), it appears that such appeal had been preferred on the ground of political victimization.

Grounds of Review and Analysis

The grievance presented by the Petitioner to this Court in respect of the order dated 28.11.2023 (P18) is that, whilst the AAT has held with the Petitioner on the merits, it has nevertheless dismissed the appeal based on an objection to jurisdiction raised by the PSC. I propose to examine the AAT order in relation to the aforementioned jurisdictional objection and its findings on the merits.

A. Jurisdictional Objection

The Petitioner contends that the dismissal of his appeal by the AAT on the jurisdictional objection raised by the PSC is irrational, unfair and in direct contravention of the judgment of this Court in CA (Writ) Application No. 227/2012.³ He also contends that his right to equality and equal protection of the law under Article 12(1) of the Constitution has been violated by the deprivation of an effective and appropriate remedy.⁴ The Petitioner has also taken up the position that the dismissal of his based on the jurisdictional objection has created a "preposterous situation" where an officer serving in the national public service is entitled to invoke the jurisdiction of the AAT, whilst an officer serving in the provincial public service is precluded from doing so in respect of the selection process for a post in the national public service.⁵

As recorded in the order (P18), the jurisdictional objection raised by the PSC was that the Petitioner was a Provincial Public Servant and not a Public Servant, and as such, as per the law, the AAT did not have jurisdiction to hear the appeal.⁶ It is observed that such preliminary

² vide page 15 of the order

³ vide paragraph 42 of the petition

⁴ Ibid

⁵ vide paragraph 43 of the petition.

⁶ vide page 2 of the order (P18)

objection had been raised by the PSC in its observations dated 28.04.2021 (6R9) and it would be useful to consider the precise manner in which such objection had been formulated therein;

02. *Mr. D.M. Gunasekara Bandara had been appointed to the Supra Grade of the Provincial Clerical Service of Uva Province with effect from 01.06.1992 by Provincial Public Service Commission of Uva Province (Annexure 1).*

03. *Accordingly, it is observed that the appellant is an officer of the provincial public service who is not entitled to appeal to the Administrative Appeal Tribunal in accordance with section 4.1 of Administrative Appeal Tribunal Act no 04/2002. As has been held by the Administrative Appeal Tribunal in the Appeal No. AAT/109/2018 (PSC) of Mr. B. P. Buddakorala.*

04. *Accordingly Public Service Commission has directed me to seek the dismissal of this appeal in limine.*

05. *Without prejudice to the above objection, Commission reaffirms its observation dated 02.02.2012 in regards of this application (Annexure 2).*

It is pertinent to note that the AAT in several instances in its order (P18) has commented on the belatedness on the part of the PSC in raising such objection after over 10 years since the filing of the appeal. Notwithstanding such belatedness, the AAT has proceeded to set out its findings on the jurisdictional objection in the order (P18) in the following manner;

In this case the governing law, Act No. 4 of 2002 no doubt clearly set the limit covering only a Public Servant. But it need to be understood that as discussed in this order, the judgment delivered by Justice Dr. Amaratunga [sic], by the 13th Amendment to the Constitution open the gate to three categories of Provincial Public Servants to appeal to the PSC.

We are faced with a situation where the subject matter of the case in hand refer to three categories of officers inclusive of Provincial Public Servants who sat the examination in question. This order and the submissions of the appellant demonstrated as to how the equality provisions in the Constitution could be violated if the rights of appeal to PSC is deprived to Provincial Public Servants.

In any event considering the jurisdictional issue, we are reluctantly compelled to dismiss this appeal.

Appeal is dismissed.

At this juncture, it would be necessary to examine the constitutional and statutory mandate of the AAT. The AAT has been established under Article 59 contained in Chapter IX (The Executive) of the Constitution, which provides as follows;

59. (1) There shall be an Administrative Appeals Tribunal appointed by the Judicial Service Commission.

(2) The Administrative Appeals Tribunal shall have the power to alter, vary or rescind any order or decision made by the Commission.

(3) The constitution, powers and procedure of such Tribunal, including the time limits for the preferring of appeals, shall be provided for by law.

The “Commission” referred to in Article 59(2) above is the “Public Service Commission,” which is vested with the powers of appointment, promotion, transfer, disciplinary control and dismissal of public officers under Article 55(3) of the Constitution;

55. (3) Subject to the provisions of the Constitution, the appointment, promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the Public Service Commission.

The Administrative Appeals Tribunal Act No. 4 of 2002 (“the AAT Act”) has been enacted consequently to provide for the constitution of the AAT, to specify the powers of the Tribunal and the procedure to be adhered in respect of appeals and to provide for matters connected therewith or incidental thereto.⁷

The powers of the AAT are set out in section 3 of the said Act in the following manner;

3. The Tribunal shall have the power to hear and determine any appeal preferred to it from any order or decision made by—

(a) the Public Service Commission in the exercise of its powers under Chapter IX of the Constitution;

(b) the National Police Commission in the exercise of its powers under Chapter XVIII A of the Constitution.

The procedure for preferring an appeal to the AAT is set out in section 4 of the AAT Act as follows;

4. (1) Any public officer or police officer as the case may be, aggrieved by an order or decision made by the Public Service Commission or the National Police Commission, as the case may be, may prefer an appeal in writing to the Tribunal within four weeks from the date of receipt of such order or decision.

(2) An appeal preferred to the Tribunal under subsection (1), shall set out concisely and precisely the grounds on which the aggrieved public officer or police officer, as the case

⁷ Long Title of the Act.

may be, seeks to have the order or decision against which such appeal is being preferred altered, varied or rescinded and shall be signed by such officer.

The term “public officer” has been defined in Article 170 of the Constitution, and its text, as it exists at present, reads as follows;

“public officer” means a person who holds any paid office under the Republic, other than a judicial officer but does not include –

- (a) the President;*
- (b) the Prime Minister;*
- (c) the Speaker;*
- (d) a Minister appointed under Article 44 or 45;*
- (e) a Deputy Minister appointed under Article 46;*
- (f) a Member of Parliament;*
- (g) a member of the Constitutional Council;*
- (h) a member of the Judicial Service Commission;*
- (i) the Chairman or a member of any Commission referred to in Article 41B;*
- (j) the Secretary-General of Parliament;*
- (k) a member of the staff of the Secretary- General of Parliament;*
- (l) a member of the University Grants Commission;*
- (m) a member of the Official Languages Commission;*
- (n) the Auditor -General; and*
- (o) The Governor of the Central Bank of Sri Lanka.*

Apart from the aforementioned definition in Article 170, there is a clarification made in respect of the use of the term “public officer” in relation to Chapter IX in Article 61F of the Constitution to the following effect;

61F. For the purposes of this Chapter, “public officer” does not include a member of the Army, Navy or Air Force, an officer of the Election Commission appointed by such Commission, a police officer appointed by the National Police Commission, a scheduled public officer appointed by the Judicial Service Commission or a member of the Sri Lanka State Audit Service appointed by the Audit Service Commission.

I will proceed to examine the positions taken up by the parties on the issue of jurisdiction with recourse to the aforementioned constitutional and statutory provisions. From formulation of the jurisdictional objection by the PSC (6R9), it is apparent that such objection is based on the premise that officers in the provincial public service are not public officers and that only public officers in the national service can be considered as “public officers” for purposes of section 4(1) of the AAT Act.

The Petitioner has contested such interpretation advanced by the Respondent and has responded by pointing out that the term “public officer” for purposes of section 4(1) of the AAT Act should be interpreted in line with the definition of such term in the Constitution. Accordingly, he has submitted that the definition of a Public Officer, as provided for under Article 170 of the Constitution, which denotes a “a person who holds any paid office under

the Republic other than a judicial officer” but excluding the persons expressly mentioned therein in paragraphs (a) to (o), pointing out that no reference has been made to an officer in the provincial public service in the said list of excluded officers. Thus, the Petitioner concludes that an officer serving in the provincial public service falls within the definition of the term “public officer” for purposes of the AAT Act and that they are entitled to invoke the jurisdiction of the AAT when they are aggrieved by the decision of the PSC.

It appears that the position taken up by the PSC and relied upon by the AAT in its order is principally, if not wholly, based on the following three-fold categorization made by the Supreme Court in ***Weerasinghe v. Dissanayake and others (Weerasinghe’s Case)*** (per Dr. Amerasinghe, J.);⁸

1. those who belong to a National Service but serving a Provincial Council on secondment;
2. those who belong to the provincial public service; and
3. those who belong to a National Service, but whose services have been made available to Provincial Councils to support and assist them but not upon the basis of secondment.

It is observed that such categorization was made in a factual backdrop where the petitioner in the said case challenged a transfer order made by the Education Service Committee of the PSC and the issue before the Court was as to which authority, namely, the PSC or provincial authorities, exercised the right of transfer over the petitioner. The Court concluded that the petitioner fell into the third category above, he continued to be subject to the powers of transfer.

However, I am not convinced of the relevance and applicability of the aforementioned decision to the Petitioner’s case presented before the AAT and this Court, in the manner submitted by the Respondents. In the first instance, it is observed that, whilst the question in ***Weerasinghe’s Case (supra)*** whether the PSC or provincial authorities were competent to transfer the petitioner, it is not in doubt in the instant case that it is the PSC which is the appointing authority in respect of the Sri Lanka Administrative Service and against whose decision the Petitioner has sought to appeal to the AAT. Secondly, whilst the dispute in the instant case relates to a situation where an officer in one service has applied to join another, there was no such consideration in ***Weerasinghe’s Case (supra)***, which dealt with a transfer order which affected the petitioner’s rights in the service in which he was service. Thirdly, it is evident that the three-fold categorization in ***Weerasinghe’s Case (supra)*** has been made in specific reference to powers of “transfer and disciplinary control of all educational personnel” set out in item 3 of Appendix III (Education) to be read with item 3 (Education and Educational Services) of List 1 (Provincial Council List) in the Ninth Schedule to the Constitution. Thus, considering the differences in the factual background and the specific context in which it was made, I am of the view that it would not be appropriate to apply such three-fold classification indiscriminately to all situations, and, in any event, to the instant case. Thus, I hold that the AAT has erred in relying on the decision in ***Weerasinghe’s Case (supra)*** to uphold the jurisdictional objection raised by the PSC.

⁸ [1997] 1 Sri L.R 406

In the process, the AAT appears to have lost sight of the aforementioned primary constitutional and statutory provisions by which jurisdiction and powers have been conferred upon it. In terms of Article 59 (2) of the Constitution, the AAT has been empowered to alter, vary or rescind “*any order or decision*” made by the PSC. It is conspicuous that no qualifications or limitations are set out therein with regard to the nature of “*orders*” or “*decisions*” that may be challenged. As submitted by learned President’s Counsel for the Petitioner, such powers are complimented by section 3 (a) of the AAT Act, which provides that the Tribunal shall have the power to hear and determine “*any appeal*” preferred to it from “*any order or decision*” made by the PSC “*in the exercise of its powers under Chapter IX of the Constitution.*”

It is observed that reference to “*exercise of powers under Chapter IX of the Constitution*” encompasses the jurisdiction and powers vested in the PSC under Articles 54 to 61F contained in the said Chapter IX. Significantly, the Chapter IX, *inter alia*, includes Article 55(3), which, subject to the provisions of the Constitution, vests the powers of “*appointment, promotion, transfer, disciplinary control and dismissal of public officers*” in the PSC.

In the light of the aforementioned constitutional and statutory provisions, I am also in agreement with the submission made by the learned President’s Counsel for the Petitioner that the question as to whether or not the Petitioner was a “public officer” for the purpose of determining his entitlement to invoke the jurisdiction of the AAT should have been decided with recourse to the definition of such term in Article 170 of the Constitution. In addition to Article 170, the clarification made in Article 61F, which has been specifically made in relation to Chapter IX itself, too must be considered. In such context, as submitted by the learned President’s Counsel, it is evident that the list of exclusions set out in Article 170 makes no reference officers serving in the provincial public service. Neither are officers serving in the provincial public service listed among the list of exclusions specified in Article 61F. Thus, it would be reasonable to conclude that the intention of the legislature is to include such category of officers within the definition of “public officer,” including for purposes of Chapter IX of the Constitution.

Such an interpretation would also be consistent with the established rule in the interpretation of statutes and written instruments *expressio unius est exclusio alterius* to the effect that “the express mention of one thing implies the exclusion of another,⁹ which has been considered and given effect to by our Superior Courts.¹⁰

In such circumstances, I hold that the Petitioner was a “public officer” in terms of Articles 61F and 170 of the Constitution, and, by virtue of such fact, had *locus standi* to prefer an appeal to the AAT in terms of section 4(1) of the AAT Act. It is also evident that such constitutional provisions have not been considered by the AAT in arriving at the decision to uphold the jurisdictional objection raised in respect of the Petitioner’s appeal.

⁹ For a discussion of this rule, see R.H. Kersley (ed), *Broom’s Legal Maxims* (10th ed, Sweet & Maxwell, 1939) 443, P. St. J. Langan, *Maxwell on The Interpretation of Statutes* (12th ed, Sweet & Maxwell, 1969) 293, John Bell & George Engle, *Cross: Statutory Interpretation* (3rd ed, Oxford University Press, 1995) 140-141, and N. S. Bindra, *Interpretation of Statutes* (13th ed, LexisNexis, 2023) 408-411

¹⁰ For a discussion on Sri Lankan case law, see Nanda Senanayake, *Legal Maxims & Phrases* (2023) pp 340-349

In this context, I also wish to observe that the order of the AAT in the Appeal No. AAT/109/2018 (PSC) referred to in the observations of the PSC (6R9) has not been submitted to this Court, and, as such, no opinion is expressed thereon. In any event, an order of the AAT will not be binding upon this Court.

In order to fully determine the jurisdictional objection raised by the PSC and upheld by the AAT, it would also be necessary to examine the precise nature of the decision that was impugned by the Petitioner before the AAT. As set out in the factual narrative above, applications were called by the Combined Services Circular No. 3/2005 (P8) to fill vacancies in Class II-Grade II of the SLAS. The Petitioner, who had applied but had not been selected, had challenged his non-selection on the ground that the marks awarded for seniority were incorrect and had preferred an appeal to the PSC, which was the appointing authority in respect of the SLAS. Hence, the decision made by the PSC can be characterized as one made in the exercise of its powers of appointment in terms of Article 55(3) of the Constitution. I am of the view that such type of decisions made by the PSC are clearly amenable to appeal and correspondingly the AAT is empowered to alter, vary or rescind such decisions, as required, in terms of Article 59(2) of the Constitution.

Upon consideration of the aforementioned matters, I am inclined to conclude that the AAT erred in upholding the jurisdictional objection raised by the PSC, and, thereby, the AAT has abdicated its constitutional and statutory functions and fettered its discretionary powers. On this issue, the following comments have been made in the celebrated text *De Smith's Judicial Review*,¹¹

A decision-making body exercising public functions which is entrusted with discretion must not disable itself from exercising its discretion in individual cases. It may not "fetter" its discretion. A public authority that does fetter its discretion in that way may offend against either or both of two grounds of judicial review; the ground of legality and the ground of procedural propriety. The public authority offends against legality by failing to use its powers in the way they were intended, namely, to employ and to utilise the discretion conferred upon it. It offends against procedural propriety by failing to permit affected persons to influence the use of that discretion. By failing to "keep its mind ajar", by "shutting its ears" to an application, the body in question effectively forecloses participation in the decision-making process.

The Petitioner has also taken up two further arguments relating to the jurisdictional objection. One such objection is that, his right to equality and equal protection of the law under Article 12(1) of the Constitution have been violated by the deprivation of an effective and appropriate remedy and that he has been subjected to unequal treatment vis-à-vis officers serving in the national public service. The other objection is that the dismissal of his appeal by the AAT on the jurisdiction objection is in direct contravention of the judgment of this Court in CA (Writ) Application No. 227/2012 (P16), wherein a specific direction was made to re-adjudicate the Petitioner's appeal on its merits. Although it would not be necessary to consider such arguments in view of my findings above, for the sake of completeness, I wish to make the following observations.

¹¹ Harry Woolf *et al* (eds) *De Smith's Judicial Review* (7th ed, Sweet & Maxwell, 2013) pp 513-514

On the issue of the alleged violation of Article 12(1) of the Constitution, it is observed that the sole and exclusive jurisdiction to determine violations of fundamental rights is vested with the Supreme Court in terms of Article 17 read with Article 126 read with Article 17 of the Constitution. The status of the law where violations of fundamental rights are alleged in writ applications has been clarified by the Supreme Court in ***Shanthi Chandrasekaram v. D. B. Wijethunga and others***,¹² in which three *habeas corpus* applications were referred to the Supreme Court by the Court of Appeal under Article 126(3) of the Constitution, in the following manner (per Mark Fernando J);

*Article 126(1) confers sole and exclusive jurisdiction in respect of infringements of fundamental rights, and Article 126(2) prescribes how that jurisdiction may be invoked. Article 126(3) is not an extension of or exception to those provisions; if a person who alleges that his fundamental rights have been violated fails to comply with them, he cannot smuggle that question into a writ application in which relief is claimed on different facts and grounds, and thereby seek a decision from this Court. On the other hand, there could be transactions or situations in which, on virtually the same facts and grounds, a person appears entitled to claim relief from the Court of Appeal through a writ application under Article 140 or 141, and from this Court by a fundamental rights application under Article 126. Since those provisions do not permit the joinder of such claims, the aggrieved party would have to institute two different proceedings, in two different courts, in respect of virtually identical "causes of action" arising from the same transaction, unless there is express provision permitting joinder. The prevention, in such circumstances, of a multiplicity of suits (with their known concomitants) is the object of Article 126(3).*¹³ (emphasis added)

Such decision has also been cited with approval by this Court in ***Viyanralalage Seaman Nishantha Udaya Kumara and others v. Secretary, Ministry of Education and Local Government, Uva Provincial Council, and others***¹⁴ and ***Nigamuni Piyuji Rasanja Mendis v. University of Kelaniya and others***.¹⁵ I am inclined to be guided by such authorities and to take the view that this Court does not have jurisdiction to inquire into the argument presented by the Petitioner on the alleged violation of Article 12(1) of the Constitution.

On the issue of non-compliance with the judgment of this Court in CA (Writ) Application No. 227/2012 (P16), if the Petitioner wishes to take action, the appropriate course of action would be to agitate such matters in the said case, including the institution of proceedings for contempt of court. However, I am of the view that such non-compliance cannot be taken as an independent ground of review in the instant application, however well found it may be.

B. Findings of the AAT on the Merits of the Petitioner's Appeal

The learned President's Counsel for the Petitioner submitted that, although the appeal had been dismissed based on the jurisdictional objection, the AAT had nevertheless held with the Petitioner on the merits in its order dated 28.11.2023 (P18). I propose to examine such issue

¹² [1992] 2 Sri L. R 293

¹³ Ibid, p 297

¹⁴ CA (Writ) Application No. 974/2007, decided on 26/05.2020

¹⁵ CA (Writ) Application No. 90/2021 with CA Writ Application No. 101/2021, decided on 02.08.2023

with reference to the positions take up by the parties and the material available before this Court.

As submitted by the learned President's Counsel for the Petitioner, a perusal of the order (P18) reveals that clear and unequivocal findings have been made in favour of the Petitioner on the merits, as reflected in the following observations of the AAT;

The entirety of the submissions made on behalf of the appellant both oral and written by the Learned President's Counsel as well as his Junior Counsel are no doubt very convincing and this Tribunal has no hesitation in accepting and endorsing the said argument on the question of appointment of the appellant based on all material concerning regularization of the appointment and accordingly the marks given at the examination needs to be adjusted in favour of the appellant.¹⁶

.....

The words antedating/backdating and regularization of appointments are not the same, but gives a different meaning. Antedating would not be considered to calculate marks on seniority by Combined Service Circular No 03/2005 of 01.09.2005, but not regularization of appointment. On that footing the marks given to the appellant on seniority need to be either added or adjusted on the item of seniority. (As decided by the Provincial Public Service and not the PSC). This Tribunal would agree and would not dispute the contention, and argument of the appellant on the date of regularization of the appellant's appointment.¹⁷

.....

This appeal, is a case of this Tribunal, having examined the merits, is of the view that the appellant's contention as such above cannot be faulted, and the marks for seniority should be allocated as argued and suggested above on behalf of the appellant, by Learned President's Counsel and his Junior Counsel.¹⁸

.....

In any event considering the jurisdictional issue, we are reluctantly compelled to dismiss this appeal.¹⁹

The documents filed by the parties with their pleadings indicate that both the Petitioner and the PSC had made detailed presentations of their respective arguments before the AAT, and, as such, it can be reasonably concluded that the AAT had considered same in arriving at its aforementioned findings on the merits. Although the Petitioner had specifically drawn attention to findings on the merits being made in his favour in paragraph 41 of the petition, it is observed that the 6th Respondent had not addressed such issue in her response to such paragraph in her statement of objections.

Notwithstanding such fact, both in her oral submissions and the written submissions filed, the learned Senior State Counsel for the Respondents sought to justify the marks awarded to the Petitioner during the selection process (161.50/300 marks). As noted above, it is evident that

¹⁶ vide p 7

¹⁷ vide p 12

¹⁸ vide p 13

¹⁹ vide p 15

such position has been presented at the hearing of the appeal and the AAT had not accepted same. However, in view of the fact that this Court is sitting in judicial review and not in appeal in these proceedings and as the Petitioner has not sought to impugn the findings of the AAT on the merits, I am not inclined to reconsider such findings made by the AAT on the merits at this stage.

In this context, it is also necessary for this Court to consider the specific relief sought by the Petitioner from this Court. It is re-iterated that, when the instant application was taken up for support, the learned President's Counsel informed Court that the Petitioner will confine his case to the reliefs sought in paragraph (c) of the prayer to the petition. Such paragraph (c) prays for a writ of *Certiorari* "quashing the order of the 1st to 3rd Respondents, with respect to the dismissal of the appeal on the jurisdictional objection raised by the 6th Respondent."

I wish to make the following observations on this issue. Based on my findings on the jurisdictional objection above, this Court can issue a writ of *Certiorari* quashing the AAT order (P18) *in toto* and to direct the AAT consider the appeal on its merits. However, in view of the fact that the Petitioner had invoked the jurisdiction of the AAT on 15.12.2011 (P13) and a period of 14 ½ years have already elapsed without a determination on its merits, I am inclined to ascertain if a more efficacious and expeditious course of action is available to grant relief to the Petitioner.

In this regard, it is observed that, as set out above, the findings of the AAT on the merits are clear and unequivocal and are distinct and independent of its findings on the jurisdictional objection. Whilst the jurisdictional objection has been determined with recourse to constitutional and statutory provisions, though the AAT has failed apply same properly, the merits have been decided principally with recourse to rules applicable in the public service to antedating and regularization of appointments, calculation of marks for seniority and determination of cut-off marks for selection. Thus, it is observed that the jurisdictional objection and the merits have been determined based on different and quite distinct legal provisions.

The manner in which partial invalidity of administrative acts is considered by Courts has been addressed in another celebrated text on administrative law, *Wade & Forsyth's Administrative Law*,²⁰ in the following manner;

An administrative act may be partially good and partially bad. It often happens that a tribunal or authority makes a proper order but adds some direction or condition which is beyond its powers. If the bad can be cleanly severed from the good, the court will quash the bad part only and leave the good standing.

.....

Where an order is not divisible into component parts but is a single whole, the court may decline to sever the bad from the good...

²⁰ C.F. Forsyth & I.J. Ghosh, *Wade & Forsyth's Administrative Law* (12th ed, Oxford University Press, 2023) 223

This Court has applied the doctrine of severability in *Sangapala v. Urban Council of Gampaha and others*,²¹ *Ranatunge v. Commissioner General of Agrarian Development and another*²² and *ACE Distriparks (Pvt) Ltd v. Director General of Customs and Others*²³ and held that, if a valid part in a decision can be severed from the invalid part, a partial quashing a decision in part is possible.

Thus, since the findings of the AAT on the jurisdictional objection can be “cleanly severed” from its findings on the merits as aforesaid, I am of the view that the doctrine of severability can be successfully applied to the AAT order (P18) in the instant case. As this Court is exercising a prerogative jurisdiction, I am of the view that it would be fair and reasonable to only quash and set aside the findings of the AAT on the jurisdictional objection raised by the PSC and to allow the findings made on the merits of the Petitioner’s appeal to stand in the order dated 28.11.2023 (P18).

Conclusion and Orders of Court

For the aforementioned reasons, I hold that the Petitioner has been able to establish that the AAT erred in law in upholding the jurisdictional objection raised by the PSC and dismissing his appeal. Accordingly, I issue a writ of *Certiorari* quashing that part of the order dated 28.11.2023 (P18) wherein the AAT has upheld the jurisdictional objection raised by the PSC and proceeded to dismiss the Petitioner’s appeal. I further direct the 5th and 6th Respondents to take necessary action to give full effect to the rest of the said order containing the findings made by the AAT on the merits of the Petitioner’s appeal. The parties will bear their own costs.

Application partially allowed.

Judge of the Court of Appeal

Mayadunne Corea J.

I agree.

Judge of the Court of Appeal

²¹ [1990] 1 Sri L.R 286

²² CA (Writ) Application No. 180/2017, decided on 17.07.2019

²³ [2020] 2 Sri L.R 380 per J. De Silva, J.