

**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 of the Democratic Socialist Republic of Sri Lanka.

**C.A. (Writ) Application**

**No: 0678/2024**

Sashika Madawa Nawarathna,  
265/A/5, Walpola,  
Ragama.

**PETITIONER**

**Vs.**

1. P.R. Dewabandu,  
Director,  
Department of Education,  
Western Province,  
89, Ranmagapaya, Kaduwela Road,  
Battaramulla.
2. Roshan Gunathilake,  
Governor,  
Governors Office,  
204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
- 2A. Hanif Yusoof,  
Governor,  
Governors Office,  
204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

3. S.L.K. Dammika K. Wijesinghe,  
Chief Secretary,  
Office of the Chief Secretary,  
204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
  
4. A.D.S. Sadeeka,  
Secretary.  
Ministry of Education, Cultural and arts, Sports  
and Youth Affairs and Information Technology-  
Western Province.  
2<sup>nd</sup> Floor, New Provincial Office Complex,  
204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
  
- 4A. K.A.D.R. Nishanthi Jayasinghe,  
Secretary,  
Ministry of Education, Cultural and arts, Sports  
and Youth Affairs and Information Technology-  
Western Province.  
2<sup>nd</sup> Floor, New Provincial Office Complex,  
204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
  
5. Thilak Senarath,  
Secretary,  
Provincial Public Service Commission,  
Western Province,  
No. 628, 10<sup>th</sup> Floor, Jana Jaya City Building,  
Nawala Road,  
Rajagiriya.

6. U.R. De Silva,
7. Kanthi Wijethunga,
8. Chathurika Wijesinghe,
9. Ruwani Yasooja Hapuarachchi,
10. Naganathan Sivahumaran,
11. Samsudeen Liyawadeen,
12. Nelun Shamen Madurasinghe,  
7<sup>th</sup> to 13<sup>th</sup> Respondents all members of the  
Provincial Public Service Commission,  
Western Province,  
No. 628, 10<sup>th</sup> Floor, Jana Jaya City Building,  
Nawala Road, Rajagiriya.
13. Hon. Attorney General,  
Attorney General's Department,  
Hulftdorp,  
Colombo 12.

**RESPONDENTS**

- Before** : Dhammika Ganepola, J.  
Adithya Patabendige, J.
- Counsel** : Ershan Ariyarathnam with Udeni Gallage for the Petitioner.  
Pulina Jayasuriya, SC for the Respondents.
- Argued on** : 30.03.2026
- Written Submission**
- Tendered on** : 07.04.2026 by the Petitioner.
- Decided on** : 06.05.2026

**Adithya Patabendige, J.**

**Introduction and Factual Background**

The Petitioner joined the Provincial Education Department of the Western Province as a Data Entry Operator with effect from 01<sup>st</sup> October 1999. The letter of appointment dated 27<sup>th</sup> September 1999 is marked as **X1**.

While serving as a probationary employee, the Petitioner was interdicted by the Provincial Director of Education of the Western Province by letter dated 12<sup>th</sup> January 2002 marked **X3**. The Petitioner states that he was thereafter taken into custody by the Criminal Investigation Department and remanded for a period of approximately four months.

Subsequently, the Petitioner was indicted before the High Court of Colombo on charges including cheating under the Public Properties Act and forgery under the Penal Code. The indictment dated 06<sup>th</sup> May 2005 is marked as **X5**.

According to the proceedings dated 03<sup>rd</sup> February 2023, marked **X6**, the Petitioner was discharged from all charges by the learned High Court Judge of Colombo.

Following the said discharge, the Petitioner sought administrative relief from the relevant authorities, including the Director of Education of Western Province and the Provincial Public Service Commission, seeking reinstatement of service. The material before this Court indicates that a series of correspondence had taken place between the Department of Education, the Provincial Public Service Commission, and the Criminal Investigation Department regarding the regularisation of the Petitioner's service.

However, it is to be noted that, notwithstanding the lapse of time since the interdiction, no formal disciplinary inquiry appears to have been conducted in terms of the provisions of the Establishments Code.

The Provincial Public Service Commission informed the Petitioner by letter dated 03<sup>rd</sup> December 2023, marked **X20**, that he was not entitled to reinstatement, *inter alia*, on the basis that he had been a probationer at the time of interdiction, and that he had remained under suspension for an extended period, and that the allegations against him were of a serious nature.

Thereafter, the Provincial Director of Education, by letter dated 03<sup>rd</sup> September 2024, marked **X30**, informed the Petitioner that his application for reinstatement was rejected by the Provincial Public Service Commission and decided to terminate his probationary service in terms of Section 6.2 of Chapter V of the Establishments Code and Chapter XII of the Western Province Public Service Procedural Rules.

Aggrieved by the said decision, the Petitioner sought relief from several forums, including the Human Rights Commission, the Administrative Appeal Tribunal, and, thereafter, invoked the jurisdiction of this Court by way of the present application filed in the year 2024.

### **The Issue to be Determined**

In the above circumstances, the central issue for determination by this Court is as follows:

Whether the impugned decisions of the Respondents, as reflected in documents marked **X20** and **X30**, are unlawful by reason of misdirection in law and failure to adhere to the applicable procedural framework governing disciplinary control of a public officer.

### **Analysis**

At the outset, it is to be observed that the Respondents have neither filed a Statement of Objections nor tendered written submissions. Accordingly, the factual assertions of the Petitioner remain uncontradicted to the extent that they are not inconsistent with the material placed before this court. It is the duty of this Court to independently evaluate the legality of the impugned decisions.

The principal grievance of the Petitioner is the refusal to reinstate following the conclusion of the criminal proceedings and the subsequent decision to terminate his probationary service. In this context, it is necessary to examine the legal basis for these decisions.

By a later dated 03<sup>rd</sup> December 2023 marked **X20**, the Provincial Public Service Commission has referred to several factual matters, including allegations of fraud, the arrest and remand of the Petitioner and the prolonged period of interdiction. The said communication further makes reference to Section 33 of Chapter V of the Provincial Public Service Procedural Rules. However, it should be noted that Section 33 relates to disqualification arising from bankruptcy and does not concern allegations of criminal misconduct or disciplinary liability. Accordingly, the reliance placed on Section 33 in **X20** is clearly misplaced and has no application to the facts of the present case.

Furthermore, the provisions relating to disqualification on account of criminal proceedings as contained in the said Chapter are premised upon a conviction by a Court of Law. On the material placed before this Court, the Petitioner has not been convicted of any offence but has been discharged from the criminal proceedings, as evidenced by document **X6**. In such circumstances, the reliance on provisions applicable to a convicted person cannot, in law, justify the impugned decision.

Turning to the subsequent communication dated 03<sup>rd</sup> September 2024 marked **X30**, it is evident that the Provincial Director of Education has informed the Petitioner that the Provincial Public Service Commission had approved the termination of his probationary service in terms of Chapter XII of the Procedural Rules read with Section 6.2 of the Establishments Code. Whilst Section 6.2 confers power on the appointing authority to terminate the services of a probationary employee without assigning reasons, the reliance placed on Chapter XII is, in the view of this Court, misconceived. A plain reading of Chapter XII demonstrates that the said provisions relate to the release of an officer from the Provincial Public Service to another post or institution and do not govern the termination of service. Accordingly, the impugned decision appears to have been taken on the basis of provisions which are inapplicable to the subject matter in issue.

It is, however, necessary to consider whether the Respondents could nevertheless rely on Section 6.2 of Chapter V of the Establishments Code to justify the termination of the Petitioner's service. It cannot be disputed that the Petitioner, being a probationary employee at the time of interdiction, did not enjoy the security of tenure afforded to a confirmed officer. Nevertheless, the exercise of such power must be considered in the context in which it is involved. The material placed before this Court discloses that the Petitioner was interdicted in 2002 in connection with allegations of misconduct that formed the basis of criminal proceedings, and that he remained under interdiction for approximately 21 years.

In such circumstances, where the action against the Petitioner is based on allegations of misconduct, the authority must act in accordance with the applicable disciplinary framework. The framework governing interdiction and disciplinary control of public officers is set out in Chapter XLVIII of the Establishments Code, particularly Section 27 and the provisions connected thereto. In terms of Section 27.10, interdiction is a temporary measure pending further action and does not constitute a final determination of the rights of the officer. The said provision, read together with Sections 27.1 and 27.3, contemplates that, where

allegations of misconduct arise, the authorities are required to initiate appropriate steps, including a preliminary investigation and, where necessary, the institution of a formal disciplinary inquiry, and thereafter arrive at a determination in accordance with law.

However, the material placed before this Court does not disclose that any disciplinary inquiry has been initiated or concluded in accordance with the said provisions. In the absence of such inquiry, the allegations against the Petitioner remain untested in a disciplinary forum.

In this regard, the subsequent communication dated 09<sup>th</sup> September 2024 marked **X31** assumes particular significance. By the said letter, the Chief Secretary has observed that a preliminary inquiry should be conducted and a determination arrived at thereafter with regard to the question of the Petitioner's reinstatement. This communication indicates that, even at the administrative level, it was considered necessary to subject the matter to inquiry before reaching a final decision. However, there is no material before this Court to indicate that such an inquiry has been conducted or concluded.

In these circumstances, this Court is of the view that the impugned decisions have been taken on the basis of provisions which are inapplicable to the facts of the case, and in the absence of adherence to the procedural framework governing disciplinary control. The decision-making process is therefore vitiated by illegality and procedural impropriety.

### **Conclusion and Order**

Without a disciplinary inquiry being initiated or concluded, the prolonged inaction and the manifestly lethargic approach of the Respondents are inconsistent with the scheme and intent of the Establishments Code, particularly its provisions in Chapter XLVIII. This approach cannot be accepted in law.

For the reason set out above, this Court holds that the impugned decisions reflected in the documents marked **X20** and **X30** cannot be sustained in law.

Accordingly, this Court issues a *Writ of Certiorari* quashing the decisions reflected in documents marked **X20** and **X30**.

This Court further directs the Respondents to take appropriate steps in accordance with the provisions of Chapter XLVIII, including Section 27 and the provisions connected thereto of the Establishments Code and the relevant Procedural Rules, consider the Petitioner's case and

arrive at a determination in respect of his service upon conducting such inquiry as may be required in law immediately.

It is, however, made clear that this Court has not made any determination on the merits of the allegations against the Petitioner or his entitlement to reinstatement and that such matter shall be determined by Respondents in accordance with the law.

I make no order as to costs.

**JUDGE OF THE COURT OF APPEAL**

**Dhammika Ganepola, J**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**