

**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.*

**Iresha Akhila Mendis**

19A, Bovitiya Place, Sirimal Uyana,  
Rathmalana.

**CA/WRT/951/2025**

**PETITIONER**

-VS-

- 1. Vice Admiral BAKSP Banagoda,**  
RSP, USP, NDC, PSC, NRX 0568  
Commander of the Navy  
Sri Lanka Navy Headquarters,  
PO Box 593, Colombo 01.
  
- 2. Rear Admiral RR Kalubovila, USP**  
Director General Logistics  
Sri Lanka Navy Headquarters,  
PO Box 593, Colombo 01.
  
- 3. Rear Admiral BWDMMPK Dissanayake,**  
**USP (Retired)**

Director General Budget & Finance (Then)  
No. 7/21,p Hapuwala Road,  
Gunnepana.

**4. Captain(s) WWRPB Wijekoon, USP NRS  
1457**

Former Secretary to the Commander of the  
Navy Secretary Promotion board  
Sri Lanka Navy Headquarters,  
PO Box 593, Colombo 01.

**5. Air Vice Marshal Sampath Thuyacontha  
(Retired)**

Secretary to the Ministry of Defence  
Defence Headquarters Complex,  
Sri Jayawardenepura Kotte.

**6. T/Cmde RSL Karunaratne NRS 1211**

Sri Lanka Navy Headquarters,  
PO Box 593, Colombo 01.

**7. Hon. Attorney General**

Attorney General's Department  
Colombo 12.

**RESPONDENTS**

Before : **Hon. Rohantha Abeyesuriya PC, J.(P/CA)**  
: **Hon. K. Priyantha Fernando, J.(CA)**

Counsel : Nuwan Bopage with Hansaka Chandrasinghe  
and Charith De Silva instructed by Lalith N.  
Gunaratne for the Petitioner.

Sehan Soysa, SSC for the Respondents.

Written Submissions on : 11.12.2025 & 16.12.2025 for the Respondents.  
29.12.2025 for the Petitioner.

Decided on : 09.03.2026

**K. Priyantha Fernando, J.(CA)**

1. The Petitioner, by way of Petition dated 24<sup>th</sup> September 2025, invoked the jurisdiction of this Court under and in terms of Article 140 of the Constitution seeking a Writ of *Certiorari* quashing the promotion of the 6<sup>th</sup> Respondent to the rank of Temporary Commodore by the decision contained in the Navy signal marked P16 and a Writ of *Mandamus* directing the 1<sup>st</sup> Respondent to promote the Petitioner to the said rank instead.

POSITION OF THE PETITIONER:

2. The Petitioner submitted that he has maintained an unblemished career as an officer of the Sri Lanka Navy since late 1996. He is a recipient of many awards of honour which he received both during training and his time of service. Moreover, he has been promoted to higher ranks throughout the course of his career and whilst doing so has even earned extra educational and extra qualifications.

3. The Petitioner stated that he believes that it was due to his many career achievements that he was promoted to the post of Temporary Commander on 1<sup>st</sup> July 2014, and further mentioned that subsequent to his own promotion, the **6<sup>th</sup> Respondent was promoted to the same rank about 6 months later on the 1<sup>st</sup> of January 2015.**
4. In 2021, when a vacancy arose for the rank of Temporary Captain (Supply), the Petitioner, 6<sup>th</sup> Respondent and three other officers were directed to appear before a Viva Voce Promotion Board. It was later decided on the **19<sup>th</sup> May 2021** that the 6<sup>th</sup> Respondent would be granted the promotion, and the Petitioner believes that this decision was contrary to the criteria set out in the Sri Lanka Navy Order 0642 published on 1<sup>st</sup> October 2022 which requires an objective evaluation out of 100 marks (50 in relation to merit and 50 for seniority) and correct procedure as the Petitioner believes himself to be the most qualified person.
5. The Petitioner has been then promoted to Temporary Captain on **1<sup>st</sup> October 2021**. The Petitioner submitted that instead of rectifying the issue of seniority the promotions continued and the 6<sup>th</sup> Respondent was promoted to the rank of Captain on **1<sup>st</sup> April 2022**, following which the Petitioner was promoted to the same rank on **1<sup>st</sup> October 2022**.
6. The Petitioner then stated that having addressed several Redresses of Grievances prior to His Excellency the President, he addressed a further Redress of Grievance to the Minister of Defence and was granted an audience, and following which an independent inquiry board was appointed to consider the redress. The Inquiry Board's decision was that in

rectification of the issue of seniority, the Petitioner's promotion to Temporary Captain (Supply) should have effect from 1<sup>st</sup> April 2021 as the failure to promote the Petitioner by such date was unreasonable and unjust (Inquiry report marked P12). Accordingly, his promotion to rank of Temporary Captain and subsequently promotion to rank of captain were both backdated to 1<sup>st</sup> April 2021 and 1<sup>st</sup> April 2022 respectively.

7. The Petitioner submits that the issue at present was that a vacancy arose for the rank of Temporary Commodore (Supply) and a Navy Signal dated 23<sup>rd</sup> November 2024 was issued informing both the Petitioner and 6<sup>th</sup> Respondent to appear before the promotion board, however promotions were not granted. Later, on 12<sup>th</sup> July 2025 interviews were called to be held on the 14<sup>th</sup> of July 2025 for the same rank and the Petitioner states that he had a legitimate expectation that he would be the recipient of the promotion on a meritorious basis. However, the 6<sup>th</sup> Respondent was granted the promotion immediately after the interview had been held on the 14<sup>th</sup> July 2025, possibly a decision made based on the previous interview held in November. One month later on 15<sup>th</sup> August 2025 he himself was promoted to the same rank by the interview held in July.
8. The Petitioner is of the view that the conduct of the 1<sup>st</sup> to 5<sup>th</sup> Respondents in acting in this manner is a violation of the due procedure of promotions and has been done with bias and mala fide intentions, as he believes he would objectively have scored higher marks in accordance with the Navy Order 0642 in merit and in seniority.
9. The Petitioner states that he requested an audience with the Commander of the Navy by letter dated 16<sup>th</sup> August 2025, but has not received a reply as at the date of the filing of this Petition.

POSITION OF THE RESPONDENT:

10. The Respondent raises a preliminary objection that the application of the Petitioner cannot be maintained as the decision to promote the 6<sup>th</sup> Respondent is one which was approved by His Excellency the President of the Democratic Socialist Republic of Sri Lanka. The Respondent contends that this category of decision does not fall under the Writ Jurisdiction as per Article 35 (1) of the Constitution.

11. The decision made by the Promotion Board as per the final recommendation report of 10<sup>th</sup> December 2024, recommending to first promote the 6<sup>th</sup> Respondent and then the Petitioner to the rank of Commodore was sent to the Ministry of Defence by way of a letter dated 17<sup>th</sup> December 2024 seeking approval from His Excellency the President. An additional promotion vacancy arose pending the approval by His Excellency, the President. That promotion was granted to the 6<sup>th</sup> Respondent as he had scored higher (80.18 – 6<sup>th</sup> Respondent 80.12 - Petitioner) at the initial interview conducted and was promoted to the rank of temporary Commodore as there was only one available vacancy for the Captain to Temporary Commodore at the time.

SUBMISSION OF THE PETITIONER:

12. The inquiry board had held that the marks given in the ‘General Suitability’ category and ‘Achievements’ category were given unfairly and unreasonably in favour of the 6<sup>th</sup>

Respondent. The Petitioner alleges that although such a finding was made, the decision made to backdate the promotion of the Petitioner alone had resulted in the previous seniority gap which existed between the 6<sup>th</sup> Respondent and the Petitioner of 6 months being nullified and tallied as both parties' promotion dates to captain were the same, namely 1<sup>st</sup> April 2024. Due to this technical irregularity, the Petitioner alleges that the 6<sup>th</sup> Respondent was able to gain an undue advantageous benefit of being given equal marks in the seniority category as himself.

13. Furthermore, the Petitioner alleges that the decision to promote the 6<sup>th</sup> Respondent to the rank of temporary Commodore has been retained and left unannounced for 8 months until interviews were called once again for the same rank in order to prevent the Petitioner from challenging the said decision to promote.

14. The Petitioner cites and relies on the following judgments where courts have granted mandate of Writs to rectify such situations of bias and unreasonableness; CA/WRT/41/2021 decided on 10.06.2021, Associated Provincial Picture Houses Limited v Wednesbury Corporation ([1948] 1 K.B. 223), Secretary of State for Education and Science v Tameside Metropolitan Borough Council ([1977] AC 1014), Neidra Fernando v Ceylon Tourists Board and Others [2002] 2 SLR 169.

15. Furthermore, the Petitioner relies on the following authorities where the grave prejudice that might be caused if interim relief is not granted was considered; Subramaniam v Sahabdeen [1984] 1 SLR 48 and Felix Dias Bandaranayake v The State Film Corporation and another [1981] 2 SLR 287.

ANALYSIS:

16. **Section 8(1)** of the Navy Act provides that “*The President shall appoint a fit and proper person to command the Navy*”.

**Section 9(1)** of the Navy Act provides that, “All officers other than warrant officers and subordinate officers shall be appointed by commissions under the hand of the President...”

**Section 10** of the Navy Act provides, “Every commissioned officer shall hold his appointment during the President’s pleasure”.

Thus, it is seen that the President is the source of legal authority for the commission and for the conferment of a higher rank.

17. The “Regulations for Officers, 1950” published in Gazette No. 10,187 of 9.12.1950 and reproduced in the Sri Lanka Navy Regulations 2002, specify in Regulation 1(a) that, “*Appointment of Commanding Officers, Independent Command, Promotion to the rank of Lieutenant Commander and Above, transfers from the Navy to the Sri Lanka Air Force or the Sri Lanka Army, transfers from the Regular Naval Force to the Regular Naval Reserve, and resignations shall require the approval of His/Her Excellency the President and shall be published in the Gazette*”.

18. **Regulation 1(c)** provides that, “*All recommendations for appointments, promotions, transfers, and resignations which require the approval of His/Her Excellency the President shall be transmitted through the Commander of the Navy to the Secretary, Defence, for the approval of His/Her Excellency the President*”.

**Regulation 8** states:

*“The promotion to the rank of Commander or to a rank higher than that of a Commander shall be by selection. Such promotion shall, having regard to the special circumstances of the case, be given to such officer as may be qualified by virtue of his seniority and record of service...”*

**Regulation 10** further provides that,

*“Notwithstanding the preceding provision.....temporary or acting appointments in any rank not below that of Lieutenant Commander may be made, if in the opinion of His/Her Excellency the President, such appointments are considered necessary or expedient”.*

19. Two consequences are deducible from the above provisions:

1. Any promotion “to the rank of Lieutenant Commander and above” and a fortiori to temporary Commander must receive Presidential approval. Until such approval is given, no promotion to that level has legal effect.
2. Promotions to temporary Lieutenant Commander and above (including temporary Commander) are explicitly tied to the President’s opinion and approval. No officer can claim such promotion as of right merely by reference to seniority or marks.

20. The above Regulations confirm that the legally operative act with regard to the 6<sup>th</sup> Respondent's promotion is the President's approval. Although the Commander of the Navy and the promotion board are part of the recommendation machinery, the conclusive decision is made by the President.

21. It was contended by the Respondents that there is no enforceable right to promotion at the level/rank of Commander and above. The Regulations make a clear structural distinction. Promotions to Lieutenant Commander and above are by selection and necessarily require Presidential approval. This final decision remains one of selection by, and approval of, His Excellency the President. This is reinforced by the "pleasure of the President" clause in Section 10 of the Navy Act, and the President's power to make temporary or acting appointments "*if in his opinion .....necessary or expedient*".

22. Therefore, the Petitioner's claim to a writ of Mandamus compelling his promotion to Temporary Commander, which a post that falls squarely within the selection/Presidential approval regime seeks to convert a non-existing legal expectation into an enforceable legal right contrary to the statutory and regulatory framework.

**Article 35(1)** of the Constitution provides that,

*"While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity..."*

23. The Sri Lanka Navy Regulations make it explicit that,

- i. Promotions to Lieutenant Commander and above “shall require the approval of His/Her Excellency the President” (reg. 1(a))
- ii. Recommendations are transmitted “for approval” of the president (Reg. 1(c))
- iii. Temporary and acting appointments above Lieutenant Commander can be made “if in the opinion of His/Her Excellency the President” they are necessary or expedient (Reg. 10)

24. It is seen that the impugned promotion is a promotion to Temporary Commander made after:

- (a) A properly constituted promotion board recommended the 6<sup>th</sup> Respondent first in order of merit;
- (b) The Commander of the Navy forwarded that recommendation to the Ministry of Defence through the Secretary of defence;
- (c) His Excellency the President approved the 6<sup>th</sup> Respondent’s promotion (R12)
- (d) The Navy General Signal (R13) gave effect to that presidential approval.

25. In these circumstances, the relief sought to quash the promotion, or to grant relief that has the practical effect of demoting the 6<sup>th</sup> Respondent and promoting the Petitioner into that vacancy, necessarily impugns “*anything done....by [the President] in his official capacity*”. Article 35(1) prohibits such act, and there is no express exception in Article 35(3) for writ applications under Article 140.

26. In *Pushpakumara v. Lieutenant Commander Wijesuriya and others* (2010) 2 Sri LR 393, the Court of Appeal held that where the President confirmed the dismissal of naval rating, the “*Court cannot question the decision of the President in view of the immunity of the President from suit as provided by Article 35*”. The Court further held that the recommendation of a subordinate authority was merely a step leading to the Presidential decision and was not apt for Certiorari.

27. In *Air Vice Marshal Elmo Perera v. Liyanage and others* (2003) 1 Sri LR 331, the Court stressed that under the Air Force Act and regulations, commissions and tenure of senior officers were held at the pleasure of the President, and that courts could not compel the President to act in a particular way in relation to such appointments.

28. In *Flying Officer Ratnayake v. Commander of the Air Force and others* (2008) 2 Sri LR, the Court quashed a recommendation but refused mandamus compelling a particular course of action because the ultimate decision rested with the President, and it would be futile to direct a subordinate authority in a manner that conflicts with a Presidential act.

29. In *CA (Writ) 439/2011* (Air Force case) decided on 24.01.2013, the Petitioner was a Temporary Acting Air Commodore whose promotion to the substantive rank of Air Commodore had been recommended by the Annual promotion Board (APB) and approved/signed by the then Commander of the Air Force, and was due to be forwarded to the President. The new Commander later decided not to forward the papers to the President

citing “merit, age and seniority of other officers” and “best interests of the Air Force”. The Court of Appeal held:

*“The 1<sup>st</sup> Respondent’s decision not to forward the already-recommended promotion to the President was unreasonable, arbitrary, irrational and against natural justice. It issued Certiorari to quash (a) the refusal to recommend/forward the promotion, and (b) the decision to forward retirement papers instead.”*

30. However, in CA/WRT/439/2011 decided on 24.10.2013, the President had not yet approved the promotion. The Court confined itself to quashing the Commander’s decision at the pre-presidential stage.

31. The Sri Lanka Navy Regulations, especially Reg. 1(a), 1(c), 8 and 10 emphasizes that the President’s role is even more significant as Promotions above Lieutenant Commander require Presidential approval. The President has an express power to make temporary appointments above that level as he considers necessary or expedient; Promotions to Commander and above are by selection. Therefore, the argument of the Learned Senior State Counsel that the ratio in Pushpakumara and Air Vice Marshal Elmo Perera applies with full force once the Regulations are read alongside the Navy Act and the Constitution is conceded.

32. The Regulations for Officers explicitly limit the Commander of the Navy’s promotion powers:

- (a) Reg. 1(b): “All promotions up to and including the rank of Lieutenant shall be made by the Commander of the Navy”.
- (b) Promotions “to the rank of Lieutenant Commander and Above” require Presidential approval (Reg. 1(a))
- (c) Promotions to Commander and above are by selection and operate through the President’s approval. (Reg. 8)
- (d) Temporary or acting appointments above Lieutenant Commander can be made only “if in the opinion of His/Her Excellency the President, such appointments are considered necessary or expedient” (Reg. 10)

33. It follows that the Commander of the Navy has no independent legal authority under the Regulations to promote an officer to Temporary Commodore in the absence of Presidential approval or promote one officer to that rank in place of another where the President has already approved the latter.

34. It is trite law that a writ of *mandamus* cannot lie to compel a public authority to do what it is not empowered by law to do. Any order directing the 1<sup>st</sup> Respondent to promote the Petitioner to the vacancy as at 06.10.2024 would require him to act without legal power under the Regulations, and place him in direct constitutional conflict with the President’s prior approval of the 6<sup>th</sup> Respondent’s promotion.

35. The combination of:

\*Section 10 of the Navy Act (appointments held during the President’s pleasure)

\*Reg. 1(a), 1(c), 8 and 10 of the regulations for Officers (President’s approval and selection for higher ranks) ; and

\*Article 35(1) (Presidential immunity from suit) has made it constitutionally and statutorily impermissible to grant mandamus in the way it sought.

36. It can be contended, based on the decision *Liyanaige v De Silva* (Major General promotion) 2000 1 SLR 21, that promotion decisions in the armed forces are subject to review even where Regulations use “selection” and “best interest of the service” language. However, said case has been instituted under the fundamental rights jurisdiction of the Supreme Court (Article 126), which is expressly preserved as an exception to Article 35(1) (first proviso). It involved relief against the Attorney General and other officials, not relief under Article 140. In contrast, the present application is a writ petition which is not among the exceptions listed in Article 35(3).

37. In the instant case, the 6<sup>th</sup> Respondent’s promotion to Temporary Commander, has been recommended by the promotion board in accordance with the Navy Promotion Scheme (SLNO 0642); it has been transmitted “for approval” of His Excellency the President through the Secretary of Defence (Reg. 1(c)) and it has been approved by His Excellency the President (R12) and implemented via the Navy General Signal (R13).

38. Regulation 10 further provides that, *“Notwithstanding the preceding provisions....temporary or acting appointments in any rank not below that of Lieutenant Commander may be made, if in the opinion of His/Her Excellency the President, such appointments are considered necessary or expedient”* (the emphasis was added).

39. Therefore, it is apparent that the promotions to temporary Lieutenant Commander and above (including temporary Commodore) are explicitly tied to the President's opinion and approval. No officer can claim such promotions as of right merely by reference to seniority or marks. Therefore, Article 35(1) of the Constitution bars the relief sought by the Petitioner. A writ cannot be used to indirectly achieve what the Constitution prohibits directly.

40. For all the above reasons, this Court lacks the jurisdiction to grant the reliefs prayed for by the Petitioner and accordingly, the application is dismissed without costs.

**Judge of the Court of Appeal**

**Hon. Rohantha Abeyesuriya PC, J.(P/CA)**

I agree.

**President of the Court of Appeal**