

**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* ,Writ of
mandamus and Prohibition under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/612/2024

Mohamed Amjad Ali Mohamed Beshad,
No.112, Hemmathagama Road,
Mawanella.

Petitioner

Vs.

1. Hon. Parinda Ranasinghe
The Hon. Attorney General
Attorney General's Department, '
Colombo-12.
2. Mr. Sanath J. Ediriweera
Public Service Commission,
No 1200 / 9, Rajamalwatta Road,
Battaramulla.
3. Mr.Sanjay Rajaratnam
No 14/11, Auburn side,
Dehiwela.
4. Ayesha Jinasena
Solicitor General,
Attorney General's Department,
Colombo-12
5. Vijay Dayaratne
Senior Additional Solicitors General,
General's Department
Colombo-12

6. Piyumanthi Peiris,
Additional Secretary
Ministry of Justice,
No 19, Sri Sangaraja Mawatha,
Colombo 10,
Sri Lanka.

And 47 others.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: M. A. A. M. Behshad, Petitioner appearing in person.

M. Gunatilleke, P.C./A.S.G. with M. Jayasinghe, D.S.G. and
A. Sooriyakumar Jayakody, S.C. for the 1st, 2nd, 4th to 16th and
18th to 53rd Respondents.

Manohara de Silva, P.C., with H. Munasinghe for the 3rd
Respondent.

Argued on : 05/11/2024

Written Submissions on: 04/12/2024 by the 3rd Respondent
05/12/2024 by the Petitioner
10/12/2024 by the 1st, 2nd, 4th to 16th and
18th to 53rd Respondents.

Decided on : 30/01/2025

MOHAMMED LAFFAR, J.

The Petitioner is seeking mandates, *inter alia*, in the nature of:

- i. A Writ of Certiorari quashing the decisions contained in the letters marked as "P13".
- ii. A Writ of Mandamus to recruit the petitioner as to the post of State Counsel.

When this matter was before Court on 05/11/2024, the learned Additional Solicitor General, appearing for the 1st and 4th to 53rd Respondents, raised a preliminary legal objection as to the maintainability of this application. It was contended by the learned ASG that in view of Article 61(A) of the Constitution, this Court lacks jurisdiction to hear and determine this application. Thereafter, this Court directed parties to file written submissions pertaining to the aforementioned preliminary legal objection.

In dealing with the preliminary objections raised by the 1st and 4th to 53rd Respondents, upon analysis of Article 140 of the Constitution of the Socialist Democratic Republic of Sri Lanka it is clear that this Court has the absolute power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and issue writs of certiorari, prohibition, procedendo, mandamus and quo warranto accordingly.

An excerpt of Article 140 is as follows;

“Subject to the provisions of the Constitution, the Court of Appeal shall have full power and authority to inspect and examine the records of any Court of First Instance or tribunal or other institution and grant and issue, according to law, orders in the nature of writs of certiorari, prohibition, procedendo, mandamus and quo warranto against the judge of any Court of First Instance or tribunal or other institution or any other person.”

However, the key phrase in Article 140, with regards to the matter at hand, is *"subject to the provisions of the Constitution."* This means that the Court of Appeal's writ jurisdiction is not absolute but is limited and subject to other constitutional provisions.

In making an analysis of whether such ouster clauses exist as to the powers conferred to this Court under Article 140, Article 61A explicitly ousts the jurisdiction of Courts to inquire into or question decisions made by the Public Services Commission or its delegates, except as provided under Article 59 and Article 126.

Article 61A of the Constitution provides that;

61A. [Subject to the provisions of Article 59 and of Article 126], no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such

Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.

In the present case, the Petitioner seeks to quash the decisions contained in the letters marked as "P13" and to compel the Respondents to recruit the Petitioner as a State Counsel. These decisions fall within the purview of the Public Services Commission, which is responsible for appointments to the post of State Counsel.

In the case of **Dr. M.D. W. Lokuge vs. Vidyajothi Dr. Dayasiri Fernando, Chairman, of the Public Service Commission and 11 Others**¹, Justice A.H.M.D. NAWAZ, J, held,

"The exercise of writ jurisdiction in terms of Article 140 of the Constitution is subject to the provisions of the Constitution in that Article 61A of the Constitution would preclude judicial review of decisions of the PSC. When the jurisdiction of this Court to judicially review PSC decisions by certiorari is shut out at a threshold stage, a revisit of that decision in the guise of mandamus or certiorari will be beyond the pale of our jurisdiction and on that score, we are inclined to hold with the submissions of the learned Deputy Solicitor General that mandamus will not lie in the instant case before us."

Given the clear language of Article 61A, this Court is barred from inquiring into or questioning the decisions of the Public Services Commission, unless the case falls within the exceptions provided under Articles 59 or 126.

The Petitioner has not invoked Article 126, nor has it been demonstrated that the case involves Article 59. Therefore, the ouster clause in Article 61A applies, and this Court lacks jurisdiction to entertain the Petitioner's application.

While the Court is constrained by the constitutional limitations imposed by Article 61A, it is pertinent to observe the indispensable role that State Counsels play in the judicial mechanism of the State. State Counsels are the cogs and wheels that ensure the smooth functioning of the justice system. Their work is vital to the administration of justice, and any disruption in their appointments or shortages in their numbers can have far reaching consequences for the legal system.

¹ C.A. (Writ) Application No. 468/2021, Page 8

The Attorney General's Department is already facing a crisis due to a shortage of counsel. The initial call for 23 applications, subsequently expanded to 38, was a commendable step to address this shortage. Furthermore, it is my view that the number of appointments should have been expanded even further to meet the pressing needs of the Attorney General's Department. The State must prioritize the recruitment and retention of competent legal professionals to uphold the rule of law and ensure that justice is administered efficiently.

In this context, it cannot be accepted that an order should be given to quash the appointments of the newly appointed State Counsels. Such a move would exacerbate the existing crisis within the Attorney General's Department and undermine the administration of justice. The appointments of State Counsels must be safeguarded to maintain the integrity and efficiency of the judicial mechanism.

Under the above stated circumstances, I hold that the preliminary objection raised by the Respondents is to be upheld and thereby this application should be dismissed. Accordingly, notices are refused and the Writ Application is dismissed. No costs ordered.

Application dismissed. No Costs

JUDGE OF THE COURT OF APPEAL