

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

For an application in the nature of writ of certiorari and mandamus under S. 154(1)b of the Constitution of the Democratic Republic of Sri Lanka read with Section 7 of the Provincial High Court Special Provisions Act.

**Case No. CA (PHC) 15/2013**

HC (W) 29/2012

**Maheshika Rupasinghe,**  
No. 101, Galaha Road, Hindagala,  
Peradeniya.

**Petitioner**

**Vs.**

1. **Sarath Ekanayake,**  
Minister of Education,  
Central Province, Kandy.
  
2. **Sarath Premawanshe,**  
Secretary,  
Ministry of Education,  
Central Province, Gatambe,  
Kandy.
  
3. **E.P.T.K. Ekanayake,**  
Provincial Director of Education,  
Central Province, Kandy.

4. **G.G.L.G. Perera,**  
Zonal Director,  
Zonal Education Office,  
Kandy.
  
5. **S.B. Baddewela,**  
The Chairman,  
Public Service Commission,  
Central Province,  
Katugasthota Road, Mahayyawa,  
Kandy.
  
6. **D.V. Marimuttu,**  
Public Service Commission,  
Central Province,  
Katugasthota Road, Mahayyawa,  
Kandy.
  
7. **A.M.A. Gafoor,**  
Public Service Commission,  
Central Province,  
Katugasthota Road, Mahayyawa,  
Kandy.
  
8. **Upali Bogahapitiya,**  
Public Service Commission,  
Central Province,  
Katugasthota Road, Mahayyawa,  
Kandy.

9. **Geetangali Sumitra Disanayake,**  
Public Service Commission,  
Central Province,  
Katugasthota Road, Mahayyawa,  
Kandy.

10. **Nandani Ekanayake,**  
Secretary,  
Public Service Commission,  
Central Province,  
Katugasthota Road, Mahayyawa,  
Kandy.

11. **Provincial Council,**  
Central Province, Kandy.

12. **A.M. Kumarihamy,**  
Nugawela Girl's College,  
Nugawela, Kandy.

**Respondents**

**AND NOW BETWEEN**

In the matter of an appeal in terms of  
Article 154P of the Constitution read  
with Section 11 of the High Court of the  
Provinces (Special Provisions) Act, No.  
19 of 1990

1. **Sarath Ekanayake,**  
Minister of Education,  
Central Province, Kandy.
  
2. **Sarath Premawanshe,**  
Secretary,  
Ministry of Education,  
Central Province, Gatambe,  
Kandy.
  
3. **E.P.T.K. Ekanayake,**  
Provincial Director of Education,  
Central Province, Kandy.
  
4. **G.G.L.G. Perera,**  
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Public Service Commission,  
Central Province,

Katugasthota Road, Mahayyawa,  
Kandy.

**11.Provincial Council,**

Central Province, Kandy.

**12.A.M. Kumarihamy,**  
Nugawela Girl's College,  
Nugawela, Kandy.

**Respondent – Appellants**

**Before : W.M.M.Malinie Gunarathne, J**  
**: P.R.Walgama, J**

**Counsel : Uditha Egalahewa, P.C. with Ranga Dayananda for**  
**Appellants.**  
**: D.H.Siriwardana for Petitioner – Respondent.**

**Argued on : 23.07.2015**

**Decided on: 18.12.2015**

**CASE-NO-CA (PHC)- 15/ 2013- JUDGMENT- 18.12.2015**

**P.R.Walgama, J**

This appeal assails the order of the Learned High Court Judge dated 28.03.2013, by the Respondents- Appellants, by which order the Learned High Court Judge has granted the reliefs sought by the Petitioner – Respondent by issuing a writ of Certiorari to quash the decision dated 29<sup>th</sup> February 2012 of the 1<sup>st</sup> to 11<sup>th</sup> Respondents to appoint the 12<sup>th</sup> Respondent as the Principal of Swarnamali Girls Collage. Further to quash the decisions dated 17.02.2013 and 02.03.2012 of the 2<sup>nd</sup> Respondent by issuing a writ of Certiorari and for an issuance of a writ of Mandamus on 1<sup>st</sup> to 11<sup>th</sup> Respondents to compel to accept the appeal made by the Petitioner, and for a writ of Mandamus on the 1<sup>st</sup> to 11<sup>th</sup>

Respondents to compel them to restore the Petitioner to the post of principal of Swarnamali Girls Collage. The Learned High Court Judge by his order dated 28.03.2013, has granted the reliefs sought by the Petitioner – Respondent by the above petition.

Being aggrieved by the said order the Respondents-Appellants had appealed to this Court to have the said impugned order set aside or vacate.

The facts as tersely stated in the above petition are as follows;

That the Petitioner obtained a degree of Bachelor of Science followed by a Post Graduate Diploma with honours, and holds a degree of Master of Science in Science Education.

The Petitioner has also served as an Assistant Lecture at the University of Peradeniya.

It is averred by the Petitioner that she entered in to the Education Administrative Service in 2007 and assumed duties as a Deputy Principal of Viharamahadevi Girls Collage in 2007, and was transferred to Swarnamali Girls Collage to the same post in 2009.

It is stated further that after qualifying the examination of Education Administrative Service, she was elevated to the post of Assistant Director and to the post of Principal including the Swarnamali Girls Collage.

It is also contended by the Petitioner that above school is categorised as IAB school and even a person who is in grade 01 of Principal Service cannot hold that post.

In effect the Petitioner was appointed as the Acting Principal of the said School, from 23.11.2011.

It is further stated by the Petitioner, that the constitution of the Sri Lanka administration of education service has been established by the gazette notification issued on 01.03.2002, and the qualification and requirements for the higher grades are shown in the said gazette. According to the said gazette it is a condition precedent to have a service of at least three years as a principal in a school.

It is alleged by the Petitioner, that when she was appointed as a acting principal, she had a reasonable expectation to be the Principal of the said school.

The core issue relevant to be resolved emanates from the paragraph 14 of the above petition. It is stated by the Petitioner that the 12<sup>th</sup> Respondent is in the category of principles and she is not entitled to the post of the principal 1AB school such as Swarnamali Girls Collage.

In addition to the afore said it is stated by the Petitioner that by the letter dated 17.02.2012 that she was transferred to the zonal education office and the 12<sup>th</sup> Respondent has been appointed as the principal of the said Swarnamali Girls Collage by letter dated 29.022012, on the basis that she has obtain the highest marks at the interview.

The Petitioner further asserts that the 1<sup>st</sup> to 11<sup>th</sup> Respondents have no power to transfer her, and it is only the Secretary or additional Secretary authorized by the Public Service Commission.

In the above setting the Petitioner has appealed to the 2<sup>nd</sup> Respondent to keep her in the post of Principal as she has completed three years.



In contesting the above suit by the 1<sup>st</sup> to 12<sup>th</sup> Respondents, by way of objections had stated the following;

That as per document marked P9A, paragraph 29 of the said document, the post of Principal, Deputy Principal, and Assistant Principal of schools will normally be held by the officers of the Sri Lanka Educational Administrative Service. But it is said that the Cabinet Ministers have reserved the right to appoint any public officer to any of the posts of Principal, Deputy Principal, or Assistant Principal of Schools.

That the Petitioner was appointed as acting Principal of Swarnamali Girls College with effect from 23.03.2011, by the letter marked as R3. It is the categorical position of the Respondents that the said appointment was an acting appointment till a permanent appointment is made, and as such no legitimate expectation was given to the Petitioner that she could be appointed as the Principal of Swarnamali Girls College. The said appointment was done with the decision taken by the Cabinet Ministers of the Central Province Provincial Council.

It is averred by the Respondents that the paper advertisement dated 16.05.2011, the 2<sup>nd</sup> Respondent called for applications for the post of Principal, which was fallen vacant since 1.1.2011. Pursuant to the above advertisement, five applicants including the Petitioner has applied for the said post in Swarnamali Girls College. Thereupon after analysing the qualifications of the applicants by the interview board, the 12<sup>th</sup> Respondent was selected to the said post, as she has secured the highest marks at the interview as evident by the document marked R8.

It is also contended by the Respondents that according to Section 32(1) of the Provincial Council Act No. 42 of 1987, appointment, transfer, dismissal, and disciplinary control of the provincial public service is vested with the Governor of the Province. Nevertheless in terms of Section 32(2) of the said Act as amended by section 4 of the Act No. 28 of 1990, the Governor from time to time may delegate to the Chief Secretary or any officer of the provincial public service of that province, its power of appointment, transfer, dismissal and disciplinary control of officers of the provincial public service. It is further said that by the letter dated 20.11.1990 marked as P9, the Governor of Central Province Provincial Council has delegated his powers to the officers stated in the above letter.

In the said back drop the Respondents assert that the transfer made as per letter marked P14 is legal and state that it is not mandatory to serve as a Principal for three years for the next promotion.

In considering the impugned order of the Learned High Court Judge, it is apparent that more weight has been given to the academic and professional qualifications of the Petitioner more than the marks obtained at the interview by the 12<sup>th</sup> Respondent who was appointed to the post of principal in the Swarnamali Girls College. The selection was done according to the Respondents on the marks that was obtained by the candidates. In that it is obvious that the 12<sup>TH</sup> Respondent has obtained the highest marks in the said interview. Therefore it is intensely relevant to note that criterion for the appointment to the post of principal was not only the academic and professional qualifications but the marks obtained in the interview. The Learned High Court Judge has totally based his order on the academic and professional qualifications of the

Petitioner and the 12<sup>th</sup> Respondent. If that should be the criterion then the necessity to hold an interview is futile. In addition the Learned High Court Judge has also commented on the marks obtained for the proficiency in English Language by the Petitioner and the 12<sup>th</sup> Respondent. It is seen that the Petitioner has obtained only 4 marks where as the 12<sup>th</sup> Respondent has obtained 6 marks, and it was the opinion of the Learned High Court Judge, as the Petitioner has obtained the Masters Degree in the English medium, and to get lesser marks than the 12<sup>th</sup> Respondent is erroneous in the marking scheme.

Further it is stated in the said impugned order that the Petitioner had been working as Deputy Principal and Acting Principal of the said Swarnamali Girls College and it is stated that in the interview the Board has been bias in giving marks to the Petitioner.

Therefore in the above setting the Learned High Court Judge was of the view that grave prejudice has been caused to the Petitioner, as such the High Court Judge was of the view that, this is a fit and proper case to exercise his discretion to issue a Writ of Certiorari and was issued accordingly.

Further it was ordered that the Respondents should accept the appeal of the Petitioner, and to place the Petitioner in the above school as the Principal or to appoint her to another school of the same grade to the same post.

The Respondents – Appellants by their written submissions had further submitted the following;

That the Petitioner- Respondent served as the Deputy Principal of Viharamahadevi Girl's Collage and thereafter was transferred to

Swarnamali Girl's Collage and thereafter was appointed to cover up the duties in the post of Principal in the said school with effect from 23<sup>rd</sup> February 2011.

By the above dated letter marked as R3 it is specifically stated that the Principal at the relevant period has retired, and till a Principal is appointed through an interview had appointed the Petitioner-Respondent to cover up the duties in the said post of Principal. Therefore it is the categorical position of the Respondents-Appellants that by the afore said letter no legitimate expectation was given to the Petitioner-Respondent. It is crystal clear that the Petitioner-Respondent will be compelled to face an interview if she intends to remain as the Principal of the said school. As I have stated above the academic and professional qualification will not be the sole criterion to the appointment to the said post, but any candidate applying for the above post should face the interview and should be able to secure the highest marks in the interview. Therefore it is abundantly clear that as per document marked R8, that the 12<sup>th</sup> Respondent has obtained the highest marks, where as the Petitioner-Respondent has obtained lesser marks than the 12<sup>th</sup> Respondent. Therefore it is abundantly clear that the Petitioner-Respondent's claim is devoid of merits.

The Appellants further assert, that by the documents marked P5 and P6, which clearly indicate who can apply for the post of Principal and the instruction sheet, by which the applications were called from those who belong to Sri Lanka Education Administrative Service and Sri Lanka Principal Service. Therefore it is contended by the Respondents-Appellants that the 12<sup>th</sup> Respondent was from the Sri Lanka Principal Service and was eligible to apply for the post of Principal.

The Respondents had further alleged that the Petitioner has suppress the existence of the above documents which are not favourable to her and there by guilty of suppressing material facts before Court.

It is also alleged by the Respondents-Appellants that the Petitioner has distorted certain facts which relate to the appointment to the post of Principal. It is contended by the Appellants that any one representing the SLPS could apply for the post of Principal.

Further it is impugned by the Respondents –Appellants that the Learned High Court Judge has erred in law by re- scrutinizing the marks and not considering the marking scheme, as per exhibit marked R7.

Hence in the above setting it is alleged by the Respondents-Appellants that the Petitioner- Respondent has failed to established that her legal rights have been violated by the Respondents by not appointing her as the Principal of the Swarnamali Girls College, for her to seek the relief by way of a mandate in the nature of a Mandamus.

It is also the unequivocal position of the Respondents- Appellants that the said post of Principal can be held by any officer of SLPS, and morefully it is stated that when the Petitioner-Respondent assumed duties as the Vice Principal of the said School, the Principal of the said School was held by an officer of the SLPS.

Therefore in the above exposition of the facts and the law this Court is of the view that the Learned High Court Judge has arrived at a erroneous conclusion by allowing the Petitioner's application.

Thus, considered, I am of the opinion that the impugned order of the Learned High Court Judge should be set aside forth with and allow the appeal accordingly.

Appeal is allowed.

**JUDGE OF THE COURT OF APPEAL**

W.M.M.Malinie Gunarathne, J

I agree,

**JUDGE OF THE COURT OF APPEAL**