

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

In the matter of an appeal under an in terms of Section 11
of the High Court of the Provinces (Special Provisions) Act
No.19 of 1990.

**Case No. CA(PHC) No.182/2012
Badulla PHC (Writ) 47/2011**

01. M.H.M.Benet Bandara,
02. A.J.M.Amaranayake
03. H.M.S.Nirmala Herath
04. Ruwani Udayangani Rajapaksha,
05. K.A.D.Erangika Kodituwakku,
06. D.H.G.Nimal Kumara
07. D.M.D.Kumari Dissanayake,
08. S.Chandrakumara Weerasooriya,
09. T.Priyangika
10. J.M.Kumudu Gayani Jayaweera
11. M.D.A.Sanjeewani Managunge
12. R.D.Dayamalani
13. A.M.Hema Kumari,
14. W.M.Anulawathie,
15. R.M.Lalitha Ratnayake
16. R.M.Sumithra Kumari Ratnayake
17. B.M.K. Wasantha Dharmasena
18. G.Sirima Geethani Perera,
19. E.M.Nandani Ekanayake
20. J.S.M.Nadeeka Priyadarshani
21. H.M. Shiromani Manike
22. R.M.Ekanayake
23. A.M.Anoma Abeynayake
24. N.Douglas

25. R.M.Gnanawathie,
26. D.M.C.Nilanthie Dissanayake,
27. S.J.M.Nalani Jayalatha,
28. G.K.Chulani Nelumdeniya,
29. R.M.Indrawathie Kumarihamy,
30. M.Chitra Mallika Perera
31. U.W.Wimal Karunathuleka
32. R.M.Janaka Lanka Ratnayake,
33. J.V.D.Jayatileka
34. B.M.Hemal Deeptha Kumara,
35. W.Sarath Plyasena
36. R.M. Sujatha Ratnayake,
37. R.M.Ganga Chandani Randeniya

PETITIONERS-APPELLANTS

Vs.

1. Provincial Public Service Commission
of the Uva Province,
No.14, Pilipothagama Road,
Pin Arawa,Badulla.
2. R.M.T.B.Hathiyaldeniya,
Secretary,
Provincial Public Service Commission
Of theUva Province,
No.14, Pilipothagama Road,
Pin Arawa,Badulla.
3. Honourable Attorney General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS-RESPONDENTS

Before: K.K. Wickremasinghe J.

Janak De Silva J.

Counsel: Shantha Jayawardena with Chamara Nanayakkarawasam for Petitioners-Appellants

Susantha Balapatabendi Senior Deputy Solicitor General for Respondents-Respondents

Written Submissions filed on: Petitioners-Appellants on 28.03.2018

Argued on: 8th February 2018

Decided on: 5th April 2018

Janak De Silva J.

The Petitioners-Appellants (Appellants) were junior officers/employees attached to various departments and institutions in the provincial public service of the Uva Province. The 1st Respondent-Respondent (1st Respondent) called for applications for the limited competitive examination for promotion to Class III of the Management Assistants service in the provincial public service of the Uva Province. The examination was held on 20.11.2010 and the results were released on or about 04.04.2011 and communicated to the Appellants. Interviews were scheduled on 05.06.2011 for verification of the qualifications of the successful candidates. The Appellants however claim that when they went for the interview on 05.06.2011 they were informed that the interview has been cancelled. By letters dated 04.05.2011 marked ෧෧. 79 to ෧෧. 110 the Appellants were informed that the Uva Provincial Public Service Commission had unanimously decided to cancel the examination held on 20.11.2010 and as such the results of the said exam is also cancelled.

The Appellants moved the Provincial High Court of the Uva Province Holden in Badulla to issue a writ of certiorari to quash the order made by the Uva Provincial Public Service Commission cancelling the examination and the results and a writ of mandamus to hold the interviews as scheduled. The learned High Court judge dismissed the application and hence this appeal by the Appellants.

When this matter was taken up for argument on 08.02.2018, we invited the parties to file written submissions by 05.03.2018 on whether the application for a writ of certiorari to the Provincial High Court of the Uva Province Holden in Badulla could have been maintained as the 1st Respondent is only the Provincial Public Service Commission of the Uva Province and none of its members were made respondents to that application.

None of the parties filed any written submissions before the due date. However, the Appellants filed written submissions on 28.03.2018 and we decided to consider them although filed out of time.

There is no dispute in the pleadings that the impugned decision was taken by the Provincial Public Service Commission of the Uva Province. However, the Appellants have not made all the members of the Provincial Public Service Commission of the Uva Province respondents to the application made to the High Court. Only the Provincial Public Service Commission of the Uva Province and its Secretary has been made the 1st and 2nd Respondents.

The first rule regarding the necessary parties to an application for a writ of certiorari is that the person or authority whose decision or exercise of power is sought to be quashed should be made a respondent to the application. If it is a body of persons whose decision or exercise of power is sought to be quashed each of the persons constituting such body who took part in taking the impugned decision or the exercise of power should be made respondent. The failure to make him or them respondents to the application is fatal and provides in itself a ground for the dismissal of the application in limine.¹

Even where the exercise of power is by a legal person such as a corporate body, it is necessary that the individual members of the governing body of the legal person who actually exercised the power be made respondents. In *Ukwatte v. DFCC Bank*² an application for a writ of certiorari to quash a resolution of the bank, a legal person, passed by its Board of Directors failed as although the Bank itself was a respondent, the individual members of its Board of Directors had not been

¹ Amaratunga J. in *Wijeratne (Commissioner of Motor Traffic) v. Ven. Dr. Paragoda Wimalawansa Thero and 4 others* [(2011) 2 Sri.L.R. 258 at 267]

² (2004) 1 Sri.L.R. 164

made respondents to the application. Our courts have in a long line of cases held that the failure to make the members of the body of person who took part in the impugned exercise of power as respondents is itself a ground for the refusal of the remedy.³

The Appellants have in their written submissions submitted that no objection was raised before the High Court on the failure to add necessary parties and as such the Respondents-Respondents have waived their right to raise an objection on that ground. This submission is flawed. The Respondents have in their statement of objections dated 28.10.2011 raised the objection on necessary parties at paragraph 01(3).

Further the Appellants have in their written submissions moved to amend the caption by adding the members of the Provincial Public Service Commission of the Uva Province. They rely on Rule 5(3) of the Court of Appeal (Appellate Procedure) Rules 1990. This application is misconceived in law for several reasons. Firstly, no such application was made before the High Court although the objection on necessary parties was raised there. It is far too late to entertain such an application. Secondly, in any event, no proper application has been made although the parties were clearly put on notice by this court about the defect on 08.02.2018. No such application can be made in the written submissions. Thirdly, in terms of Rule 5(1) of the Court of Appeal (Appellate Procedure) Rules 1990, Rule 5 applies where a public officer has been made a respondent in his official capacity. In this case the Provincial Public Service Commission of the Uva Province has been named the 1st Respondent. It is not a public officer. In fact, it has no legal personality. Hence, Rule 5(3) of the Court of Appeal (Appellate Procedure) Rules 1990 is inapposite to the facts of this case.

As the Appellants have failed to make as respondents to this application all the members of the Provincial Public Service Commission of the Uva Province who took part in the decision sought to be quashed, the application must be dismissed in limine.

³*Karunaratne v. Commissioner of Cooperative Development* [(1978)79 (2) N.L.R. 193]; *British Ceylon Corporation v. Weerasekera* [(1982) 1 Sri.L.R. 180]; *Muthusamy Gnanasambathan v. Chairman, REPIA* [(2000) 1 Sri.L.R. 1]; *Dr. Gamini Goonetilleke and others v. The University of Colombo and others* [(2006) 1 Sri.L.R. 350]

There is also an additional ground why the application of the Appellants must be refused. The Appellants have sought a writ of mandamus compelling the respondents to hold the interviews as scheduled. The issue is whether it is sufficient for the Appellants to only make the Provincial Public Service Commission of the Uva Province a party to such application or whether all the members of the Provincial Public Service Commission of the Uva Province should have been made respondents.

The pleadings indicate that the interviews were to be held by the Provincial Public Service Commission of the Uva Province. The prayer to the petition seeks a writ of mandamus compelling the Respondents to hold the interview as scheduled. Where it is sought to command a body of persons to exercise any power, each member of that body must be made a respondent. The reason is if not, mandamus cannot be enforced by imposing a punishment for contempt of court in the event that such body of persons fail to carry out the command of the court.⁴ Our courts have consistently followed this rule.⁵

For the foregoing reasons, I see no reason to interfere with the judgement of the learned High Court judge of the Provincial High Court of the Uva Province Holden in Badulla dated 28.08.2012.

The appeal is dismissed with costs.

Judge of the Court of Appeal

K.K. Wickremasinghe J.

I agree.

Judge of the Court of Appeal

⁴*Haniffa v. Chairman, Urban Council Nawalapitiya* (66 N.L.R. 48); *Mahanayake v. Chairman, Petroleum Corporation* [(2005) 2 Sri.L.R. 193]

⁵ *Samarasinghe v. De Mel and Another* [(1982) 1 Sri.L.R. 123 at 128]; *Abayadeera and 162 Others v. Dr. Stanely Wijesundera, Vice Chancellor, University of Colombo and Another* [(1983) 2 Sri.L.R. 267]; *Dayaratne v. Rajitha Senaratne, Minister of Lands and Others* [(2006) 1 Sri.L.R. 7]; *Shums v. People's Bank and others* [(1985) 1 Sri.L.R. 197 at 204]