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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 in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C A (Writ) Application

No. 12 / 2018

Puhunu Vidyapeeta Ha Upadhidhari Guru
Sangamaya,

No. 36/2,

Radawana Road,

Yakkala.

PETITIONER

-Vs-

1. Hon. Akila Viraj Kariyawasam,
Minister of Education,
Ministry of Education,
Isurupaya,
Battaramulla.

2. W M Jayantha Wickremanayake
Director of Education,
(National Schools Branch)
Ministry of Education,
Isurupaya,
Battaramulla.

3. Sunil Hettiarachchi,
Secretary to the Ministry of
Education,
Ministry of Education,
Isurupaya,
Battaramulla.

4. A Kulathunga,

Secretary,
Public Service Commission,
No. 177,
Nawala Road,
Narahenpita,
Colombo 05.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: P. Padman Surasena J (P/C A)

Arjuna Obeyesekere J

Counsel: Lakshan Dias with Chinthaka Hettiarachchi for the Petitioner.

Nayomi Kahawita SC for Respondents.

Supported on: 2018 - 05 - 31

Decided on: 2018 - 06 - 08

ORDER

P Padman Surasena J

The Petitioner who claims that it is a trade union dedicated for the welfare and defending rights of the school teachers of Sri Lanka, seeks to challenge in this application, the decision of the 3rd Respondent referred to in the prayers of this application.

When this case was supported for notices by the learned counsel for the Petitioner on 2018-05-31, learned State Counsel appearing for the Respondents informed court that she would be taking up a preliminary objection to the maintainability of this case.

It is the position of the Respondents that this application cannot be maintained in view of Article 61 A of the Constitution. The said Article is as follows,

"..... subject to the provisions of paragraph (1), (2), (3), (4) and (5) 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....."

The judgments, namely

- i. Katugampola Vs. Commissioner General of Exercise and others (2003(3) S L R 207) which was decided in 2003,
- ii. Rathnasiri and others Vs. Ellawala and others (2004 (2) S LR 180) which was decided in 2004 and
- iii. Dissanayake Vs. Salahudeen and others. C A 250/ 2013 and 251/ 2013 (decided on 2014-02-12) which was decided in 2014

show that this Court has consistently held that the provisions in Article 61 A ousts the writ jurisdiction of this Court and grants exclusive jurisdiction to

the Supreme Court to hear and determine all such matters coming under the scope and ambit of that Article.

This court in all the above cases without any hesitation has upheld the preliminary objection raised on behalf of the Respondents in those cases that the ouster clause in Article 61 A would, be a bar to entertain those writ applications. The preliminary objection taken up on behalf of the Respondents in this case is also the same.

Learned State Counsel tendered to this Court the Gazette Extraordinary of the Democratic Socialist Republic of Sri Lanka bearing No. 1941/41 dated 2015-11-20 by which the Public Service Commission has delegated its powers of transferring the teachers of Teachers' Service of Sri Lanka to the Secretary to the Ministry in charge of the subject of education or an Additional Secretary nominated by the Secretary and approved by the Public Service Commission.

Petitioner has failed to counter the preliminary objection raised by the learned State Counsel before this Court in the instant case.

We see no reason to deviate from the above line of judgments. We therefore uphold the preliminary objection raised by the learned State Counsel on behalf of the Respondents and proceed to dismiss this application in limine.

Application dismissed in limine.

PRESIDENT OF THE COURT OF APPEAL

Arjuna Obeyesekere J

I agree,

JUDGE OF THE COURT OF APPEAL