

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

In the matter of an Appeal

1. Hewa Pedige Ranasingha
No,30/16, Kegalla Road,
Daluggala, Rambukkana.
2. Samagi Saman Widanagamage
3. Yodinge Ashoka Lakshman Eliwalatenna
4. R.K.A.D.Lalith Wasantha Ranaweera

Petitioner-Petitioners

SC Appeal 177 /2013
SC CA SPL.LA 44/2013
CA Writ Application No.505/2011

Vs

1. Secretary
Ministry of Agricultural Development and
Agri Services
Battaramulla.
2. Director General of Agriculture
Department of Agriculture
Peradeniya.
3. Commissioner of Examinations
Department of Examinations
Battaramulla.
4. Hon. Attorney General
Attorney General's Department
Colombo.

Respondent-Respondents

Before : Sisira J de Abrew J
Nalin Perera J
Prasanna Jayawardena PC J

Counsel : Jagath Abeynayaka for the Petitioner-Petitioners
Arjuna Obeysekara Senior DSG with Shaheeda Mohamad Barrie
SSC for the Respondent-Respondents

Argued on : 23.2.2018

Written Submission

Tendered on : 21.3.2018 by the Respondent-Respondents

Decided on : 18.7.2018

Sisira J de Abrew J

The Petitioner-Petitioners filed this case in the Court of Appeal seeking, inter alia, the following reliefs.

1. Issue a mandate in the nature of writ of Certiorari quashing the competitive examination held on 23rd and 24th of April 2010 for the recruitment of Agricultural Officers to the Sri Lanka Agricultural Service following the Gazette Notification contained in document marked P5.
2. Issue an interim order restraining the 1st Respondent from making appointments to the Sri Lanka Agricultural Service on the result of the above mentioned examination conducted by the 3rd Respondent held on 23rd and 24th of April 2010 until the final determination of this application.

The Court of Appeal by its judgment dated 21.1.2013 dismissed the petition of the petitioners. Being aggrieved by the said judgment of the Court of Appeal, the Petitioner-Petitioners have appealed to this court. This court by its order dated

17.12.2013 granted special leave to appeal on questions of law set out on paragraphs 16(a) and 16(b) of the Petition of Appeal dated 4.3.2013 which are set out below.

1. Can a mandate in the nature of writ of Certiorari be refused on a non-existent fact urged as a ground?
2. Can a mandate in the nature of writ of Certiorari be refused on assumption not founded by the facts urged by any of the parties?
3. In view of Article 61A of the Constitution, did the Court of Appeal have jurisdiction to hear the application of the Petitioner-Petitioners?
4. Have the Petitioner-Petitioners failed to name the necessary parties in their application to the Court of Appeal?
5. In view if the fact that the appointments have already been made, is the application of the Petitioner-Petitioners futile?

This court by the said order also granted special leave to appeal on the above mentioned 3rd and 4th questions of law raised by the learned Deputy Solicitor General.

The Petitioner-Petitioners are Agricultural Instructors. They contend that a competitive examination must be conducted by the 3rd Respondent for the purpose of recruiting people for the post of Agricultural Officers in terms of Service Minute published in the Government Gazette No.1235/21 dated 8.5.2002 which was later amended by Government Gazette No.1588/17 dated 11.2.2009 and Government Gazette No. 1619/25 dated 18.9.2009. Learned counsel for the Petitioner-

Petitioners brought to our notice paragraph 5(1) of the said Service Minute which reads as follows.

“Two separate competitive examinations will be held by the Commissioner General of Examinations for open and limited candidates for the purpose of filling vacancies in Class II grade II of the Sri Lanka Agricultural Service as at a specific date to be decided. Both open and limited candidates should sit the First (General) Question Paper indicated in the second schedule. As per Syllabus given in the second schedule, papers will be prepared separately for open and limited candidates and it will be compulsory for the candidates to sit one subject matter paper in relevance to the post applied for. Recruitment will be made by the Commission on the result of the said examination in terms of the provisions made under Section 06, 07 and 08 below.”

Learned counsel for the Petitioner-Petitioners contended that two separate question papers should be separately prepared for open and limited candidates as per the above service minute but two separate question papers were not prepared for the said examination; that the 1st, 2nd and 3rd Respondents have violated the above Service Minute; and that therefore writ of Certiorari should be issued to quash the above examination. I now advert to the above contention. Respondents admit that they conducted two separate examinations on 24th and 25th of April 2010. But there is no evidence to suggest that two separate question papers were prepared for the said examination. The learned SSC contended that according to the Service Minute referred to above the competitive examination should be conducted by the Public Service Commission and under the said Service Minute Secretary to the Ministry of Agricultural Development has the power to conduct

the said examination on behalf of the Public Service Commission and he conducted it. The learned SSC further contended that under Article 61A of the Constitution, the Court of Appeal has no jurisdiction to inquire into the said examination as it was conducted by the Secretary to the Ministry of Agricultural Development on behalf of the Public Service Commission. I now advert to this contention. When I examine the Service Minute published in the Government Gazette No.1235/21 dated 8.5.2002, the Secretary to the Ministry of Agricultural Development has the power to conduct the said examination on behalf of the Public Service Commission. It is clear from the material placed before court that the said examination was conducted by the Secretary to the Ministry of Agricultural Development on behalf of the Public Service Commission.

Article 61A of the Constitution reads as follows.

“Subject to the provisions of paragraphs (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.”

This article was later amended by 19th Amendment which reads as follows.

“Subject to the provisions of Article 59 and 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.”

When I consider Article 61A of the Constitution, I hold that the Court of Appeal has no power to inquire into the above examination conducted by the Secretary to the Ministry of Agricultural Development. Therefore the Petitioner-Petitioners could not have invoked the jurisdiction of the Court of Appeal to quash the said examination. In view of the conclusion reached above, I answer the 3rd question of law as follows. “The Court of Appeal did not have jurisdiction to hear the application of the Petitioner-Petitioners”. The 1st, 2nd, 4th and 5th question of law do not arise for consideration.

For the above reasons, I dismiss this appeal. Considering the facts of this case I do not make an order for costs.

Appeal dismissed.

Judge of the Supreme Court.

Nalin Perera J

I agree.

Judge of the Supreme Court.

Prasanna Jayawardena PC J

I agree.

Judge of the Supreme Court.

