

**SC.FR. Application No.82/2014**

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

In the matter of an application under the  
Article 126 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.

Wijialudchumi Ramesh  
No.84, Chetty Street,  
Nallur,  
Jaffna.

**Petitioner**

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Vs.

1. Justice C.V. Wigneswaran  
Chief Minister  
Northern Provincial Council,  
No.125, Temple Road,  
Jaffna.

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2. Mr. Lalith Weeratunga  
Secretary to the President,  
Presidential Secretariat,  
Colombo 1.
  
3. G.A.Chandrasiri  
Governor,  
Northern Province,  
Old Park,  
Kandy Road,  
Chundikuli,  
Jaffna.
  
4. Vidyajyothi Dr. Dayasiri Fernando  
Chairman,  
Public Service Commission,  
No.177,  
Nawala Road,  
Narahenpita,  
Colombo 05.
  
5. Mr. Palitha M. Kumarasinghe P.C.

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6. Mrs. Sirimavo A. Wijeratne

7. Mr. S.C.Manapperuma

8. Mr. Ananda Seneviratne

9. Mr. N.H.Pathirana

10. Mr. S.Thilandarajah

11. Mr. M.D.W.Ariyawansa

12. Mr. A. Mohamed Nahiya

All of who are Members of Public Service

Commission,

No.177,

Nawala Road,

Narahenpita,

Colombo 05.

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13. Secretary  
Ministry of Public Administration  
and Home Affairs,  
Colombo 7.

14. Hon. Attorney General  
Attorney General's Department,  
Hulftsdorp,  
Colombo 12.

**Respondents**

**BEFORE** : **MOHAN PIERIS, PC, CJ.**  
**ROHINI MARASINGHE, J. &**  
**B.P.ALUWIHARE, PC, J.**

**COUNSEL** : Gomin Dayasiri with Manoli Jinadasa and  
R.Abeygunawardane for the Petitioner.  
K.Kanag-Iswaran PC with Lakshmanan  
Jeyakumar for the 1<sup>st</sup> Respondent instructed by  
M/s.Neelakandan & Neelakandan.  
J.P.Gamage for the 3<sup>rd</sup> Respondent.  
Nerin Pulle DSG for the 2<sup>nd</sup> and 4<sup>th</sup> -14<sup>th</sup>  
Respondents.

**WRITTEN SUBMISSIONS OF THE PETITIONER**

**AND 1<sup>st</sup> RESPONDENT**

**TENDERED ON** : 04.07.2014.

**WRITTEN SUBMISSIONS OF THE 3<sup>RD</sup> RESPONDENT**

**TENDERED ON** : 11.07.2014

**ARGUED ON** : 14.07.2014, 28.07.2014

**DECIDED ON** : 04.08.2014

**MOHAN PIERIS, PC, CJ.**

We have heard learned counsel for the petitioner as well as counsel for the 1<sup>st</sup> Respondent and Deputy Solicitor General for the 2<sup>nd</sup>, 4<sup>th</sup> to 14<sup>th</sup> Respondents.

When the Petition of the Petitioner was supported on 24<sup>th</sup> March 2014, this Court granted leave to proceed in respect of the alleged infringements by the 1<sup>st</sup> Respondent of Articles 12 (1) and 14 (1) (g) of the Constitution upon the view that the impugned document P10 (the Circular) entitled the Administrative Standing Instructions No 1/2014 issued by the 1<sup>st</sup> Respondent is on the face of it ultra vires the powers of the 1<sup>st</sup> Respondent. Accordingly this Court issued an interim order suspending the operation of P10 until the final hearing and determination of this application subject to the following terms-

- 1) the petitioner being an officer appointed by his Excellency the President in terms of Section 31 of the Provincial Council Act No 42 of 1987 continues to be under His Excellency the President and his directions on all matters including her transfer, approval of leave, disciplinary control etc.
- 2) the appointment, transfer and disciplinary control of officers belonging to the National Public Service is subject to the direction and control of the

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National Public Service Commission and the rules, regulations framed by the said the Commission.

- 3) The appointment, transfer, dismissal and disciplinary control of provincial public officers belonging to the Provincial Public Service Commission in this case of the Northern Province is governed by the provisions contained in part 4 of the Provincial Council Act No 42 of 1987 is amended and the rules and regulations framed thereunder.

Thereafter the 1<sup>st</sup> Respondent filed his affidavit in Court and in paragraph 55 thereof he informs this Court that the impugned circular P10 which gives rise to these proceedings has been withdrawn. Though the 1<sup>st</sup> Respondent qualifies such withdrawal on the basis of deference to this Court, he is unequivocal in his assertion that his action to withdraw the circular is consequent to the interim order made by this Court on 24 March 2014. It is therefore clear that it was the interim order that induced/or persuaded the 1<sup>st</sup> Respondent to appreciate the correct legal position as to the vires of P10. In the teeth of this withdrawal, the statement dated 28<sup>th</sup> of July 2014 that has been filed in contradistinction by the Attorney at Law on record setting out certain concomitant responses from the petitioner that would, according to this Statement, eventuate in a formal withdrawal of the impugned circular P10, is at variance with the affidavit filed by the Respondent.

The Court has already adverted in this Order to the view it takes of his precatory assertion that withdrawal was also effected out of deference to this Court. In the Statement of Objections dated 21<sup>st</sup> of June 2014 and the adjunctive affidavit referred to above, the Court observes that apart from good governance that has allegedly generated the issuance of the

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Circular P10, nowhere has the 1<sup>st</sup> Respondent sought to qualify his act of withdrawal of P10. Neither do the Statement of Objections and affidavit of the 1<sup>st</sup> Respondent lay down any conditions upon which the withdrawal of the Circular P10 has been effected. In the circumstances this Court concludes that when the 1<sup>st</sup> Respondent withdrew the impugned circular, it was a conscious, deliberate and unconditional withdrawal of his former act of having brought forth P10. No further act is needed on the part of the 1<sup>st</sup> Respondent as the Court is of the view that all requirements necessary for a formal withdrawal of the Circular have unequivocally been satisfied. Thus the Statement dated 28 July 2014 filed by the Attorney-at-Law on record which has found its ingress into the proceedings goes against the grain of the unconditional withdrawal reflected in the Statement of Objections and Affidavit of the 1<sup>st</sup> Respondent and the Statement filed by the Attorney-at-Law cannot be acted upon.

It has to be noted that the unconditional withdrawal effected by the 1<sup>st</sup> Respondent of the Circular P10 brings about far reaching consequences. This would amount to a representation to this Court that the 1<sup>st</sup> Respondent was mistaken as to the erroneous effect of the Circular and such representation would have the effect of creating an estoppel that neither the 1<sup>st</sup> Respondent nor his agents/attorneys would deny the truth of this representation at a later point of time as this Court would act upon the supposition that the 1<sup>st</sup> Respondent stepped outside the four corners of his powers in issuing P10 as he did-See Sharvananda CJ in **Abeywicrema v Pathirana** (1986) 1 Sri.LR 120.

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Thus this Court is of the view that any investigation into the vires of P10 has been rendered superfluous and since the gravamen of the Petition under Article 126 of the Constitution calls in question the issuance of the Circular and the consequent infringement or imminent infringement allegedly arising therefrom, the Petitioner can have recourse to the fact that the withdrawal of P10 removes her fear of any imminent infringement of her fundamental rights.

In the circumstances since we are of the view that the withdrawal of P10 is dispositive of the issues raised by the Petition, the Court need not go into the collateral and peripheral question of the appointment and the continued holding of the Petitioner of the office of the Chief Secretary. However we reiterate the position that the tenure of office of the Petitioner and other public officers is governed by the parameters as set out in paragraphs (1), (2) and (3) of the interim order of this Court adumbrated above.

Be that as it may, May this Court observe that the Petitioner must also, in furtherance of constitutional comity, endeavor to conduct the affairs of the Northern Public Service with an overriding objective to render the affairs of the Council effectual in a beneficial manner in keeping with the parameters enjoined by law.

Mr Gomin Dayasiri, the Counsel for the Petitioner was pleased to tender to this Court on 29<sup>th</sup> July 2014 a bundle of documents some of which emanate from the Chief Secretariate of the Northern Provincial Council and these documents demonstrate without a scintilla that the Chief Minister has been duly informed of the Petitioner's movements outside the Northern Province in connection with a particular duty on specific



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dates which could not have caused any misgivings or suspicions of any clandestine movements which might be repugnant to/ or had the potential of undermining the good governance having regard to the fact that the Petitioner had been discharging her duties without any blemish even at a time when the Northern Provincial Council had not been in existence.

The Court would finally remind all stake holders in Provincial Council administration that they should rise from mutually misplaced suspicions in a spirit of comity and reconciliation when the people of this Nation are on an onward march towards nation building, in an objective to ensure that every citizen of this Country lives in peace and dignity in one unitary state to enjoy all that is granted to him or her as decreed by the Constitution.

As we hold the view based on the facts, circumstances and supervening factors in the case that any further proceedings would be infructuous, proceedings in this application filed by the Petitioner are hereby terminated.

**CHIEF JUSTICE**

**ROHINI MARASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**B.P.ALUWIHARE, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**