

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

In the matter of an application for Special Leave to Appeal under and in terms of Article 128 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. Podujana-Progressive Employees Union,
No. 1316, Nelum Mawatha,
Jayanthipura, Battaramulla.
2. S.A.R. Rasanga,
The Secretary (NARA Branch),
Podujana-Progressive Employees Union,
Mattakkuliya, Colombo 15.

S.C. SPL. L.A. Application No. 204/2024

C.A. (Writ) Application No. 271/2023

PETITIONERS

Vs.

1. National Aquatic Resources Research and Development Agency,
Crow Island, Colombo 15.
2. Prof. M.J.S. Wijeyaratne,
Chairman,
National Aquatic Resources Research and Development Agency,
Crow Island, Colombo 15.
3. Dr. Kamal Tennakoon,
Director General,
National Aquatic Resources Research and Development Agency,
Crow Island, Colombo 15.
4. Mrs. Indu Rathnayake,
The Secretary,
Ministry of Fisheries,
New Secretariat, Maligawatta,
Colombo 10.

5. Mr. Selvendran Salivan de Marian,
No. 17/2, Uyarappulam,
Anaikoddai, Jaffna.
6. Mr. Gizal Chinthana de Silva,
No. 3/9, Railway Station Road,
Colombo 04.
7. Mr. N.M.P. Chaminda Fernando,
No. 90, Pallansena Road,
Kochchikade.
8. Prof. Upali S. Amarasinghe,
No. 55/D/3, Ranmuthugala Gardens,
Kirillawala, Kadawatha.
9. Dr. (Mrs.) J.M. Asoka,
No. 59/9, Temple Road,
Colombo 10.
10. Mr. A.P. Kurumbalapitiya,
Additional Director General (Acting),
Department of Management Audit,
Ministry of Finance,
The Secretariat, Colombo 01.
11. Rear Admiral K.A.P.S.K. Kariyapperuma,
Commander (South Eastern Naval Area),
Chief Hydrographer, Navy Headquarters,
Colombo 01.
12. Mr. S.J. Kahawatta,
Additional Director General (Acting),
Department of Fisheries and Aquatic
Resources, New Secretariat,
Maligawatta, Colombo 10.

13. Mr. A. Dissanayake,
Survey General,
Department of Survey,
No. 150, Kirula Road,
Narahenpita.
14. Mr. T.A.C.N. Thalangama,
Additional Secretary,
New Secretariat, Maligawatta,
Colombo 10.
15. Ms. K.N. Kumari Somaratne,
Additional Secretary,
Ministry of Port and Shipping,
No. 19, Chaithya Road,
Colombo 01.
16. Mrs. M.M.G.K. Meegahakotuwa,
Director General (Planning),
State Ministry of Development Vocational
Educational Research & Innovation,
3rd Floor, Sethsiripaya,
Battaramulla.
17. Mrs. B.A. Damayanthi,
Senior Assistant Secretary,
Ministry of Fisheries,
New Secretariat, Maligawatta,
Colombo 10.
18. Mrs. Champika Hewage,
19. Mr. Samantha Wijesinghe,
20. Mrs. K.D.K.N. Kumari,
- 18th to 20th Respondents of
Ministry of Fisheries,
New Secretariat, Maligawatta,
Colombo 10.

21. Mr. N.S. Hewagama,
22. Mr. R.D.P.P. Ranasinghe,

21st to 22nd Respondents of
National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.

RESPONDENTS

AND NOW BETWEEN

1. Podujana-Progressive Employees Union,
No. 1316, Nelum Mawatha,
Jayanthipura, Battaramulla.
2. S.A.R. Rasanga,
The Secretary (NARA Branch),
Podujana-Progressive Employees Union,
Mattakkuliya, Colombo 15.

PETITIONER-APPELLANTS

Vs.

1. National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.
2. Prof. M.J.S. Wijeyaratne,
Chairman,
National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.
- 2A. Prof. Sanath Hettiarachchi,
National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.

3. Dr. Kamal Tennakoon,
Director General,
National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.

- 3A. Dr. K. Arulanathan,
Director General,
National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.

4. Mrs. Indu Rathnayake,
The Secretary,
Ministry of Fisheries,
New Secretariat, Maligawatta,
Colombo 10.

- 4A. Mr. Sampath Manthrinayake,
The Secretary,
Ministry of Fisheries, Aquatic and Ocean
Resources,
New Secretariat, Maligawatta,
Colombo 10.

5. Mr. Selvendran Salivan de Marian,
No. 17/2, Uyarappulam,
Anaikoddai, Jaffna.

- 5A. Dr. Keerthi Sri Senarathna Atapaththu,
No 25, Victory Garden,
Wewa Ihalagoda Road,
Tal pawila,
Kekanadura.

6. Mr. Gizal Chinthana de Silva,
No. 3/9, Railway Station Road,
Colombo 04.

- 6A. Prof. M.P.K.S.K. De Silva,
Department of Zoology,
University of Ruhuna,
Matara.
7. Mr. N.M.P. Chaminda Fernando,
No. 90, Pallansena Road,
Kochchikade.
- 7A. Dr. Cdr. S.U. Lanka Prasada,
66/7, Dehiwala Road,
Maharagama.
8. Prof. Upali S. Amarasinghe,
No. 55/D/3, Ranmuthugala Gardens,
Kirillawala, Kadawatha.
- 8A. Mr. Kapila R.A. Tissera,
22/8/A, Pegiriwaththa Mawatha,
Mirihana, Nugegoda.
9. Dr. (Mrs.) J.M. Asoka,
No. 59/9, Temple Road,
Colombo 10.
- 9A. Mr. Perera Shanaka Paththinigama,
No.31, Wekotuwa Waththa, Mirigama.
10. Mr. A.P. Kurumbalapitiya,
Additional Director General (Acting),
Department of Management Audit,
Ministry of Finance,
The Secretariat, Colombo 01.
- 10A. Mr. Kithsiri Dharmapriya,
Chairman,
National Aquaculture Development
Authority, No 41/1, New Parliament Road,
Battaramulla, Pelawatta.

11. Rear Admiral K.A.P.S.K. Kariyapperuma,
Commander (South Eastern Naval Area),
Chief Hydrographer, Navy Headquarters,
Colombo 01.
- 11A. Mr. Udayakantha Wickramasinghe,
No. 264, Galagedara, Munagama, Horana.
12. Mr. S.J. Kahawatta,
Additional Director General (Acting),
Department of Fisheries and Aquatic
Resources, New Secretariat,
Maligawatta, Colombo 10.
13. Mr. A. Dissanayake,
Survey General,
Department of Survey,
No. 150, Kirula Road, Narahenpita.
- 13A. Mr. R.A.T.A. Ranaweera,
Director (FD II), Department of Treasury
Operations,
Ministry of Finance, The Secretariat,
Colombo 01.
14. Mr. T.A.C.N. Thalangama,
Additional Secretary,
New Secretariat, Maligawatta,
Colombo 10.
- 14A. Commodore P.K. Warnakulasooriya,
Chief Hydrographer,
Sri Lanka Navy, Colombo 01.
15. Ms. K.N. Kumari Somaratne,
Additional Secretary,
Ministry of Port and Shipping,
No. 19, Chaithya Road,
Colombo 01.

- 15A. Mr. E.M.S.B. Jayasundara,
Additional Secretary,
Ministry of Port and Shipping,
No. 19, Chaithya Road,
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16. Mrs. M.M.G.K. Meegahakotuwa,
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20. Mrs. K.D.K.N. Kumari,
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21. Mr. N.S. Hewagama,
22. Mr. R.D.P.P. Ranasinghe,
- 21st to 22nd Respondents of
National Aquatic Resources Research and
Development Agency,
Crow Island, Colombo 15.

RESPONDENT-RESPONDENTS

Before: Hon. Yasantha Kodagoda, P.C., J.

Hon. Janak De Silva, J.

Hon. K. Priyantha Fernando, J.

Counsel:

Gamini Hettiarachchi for the Petitioner-Appellants

Dr. Sunil Cooray with Neminda Kariyawasam for the 1st, 21st and 22nd Respondent-Respondents

Zuhri Zain, DSG with Sajith Bandara, SC for the 4th, 17th and 18th Respondent-Respondents

Written Submissions:

Petitioner-Appellants on 05.02.2026

1st, 21st and 22nd Respondent-Respondents on 03.02.2026

4th, 17th and 18th Respondents-Respondents on 11.02.2026

Argued on: 13.01.2026

Decided on: 29.04.2026

Janak De Silva, J.

The 1st and 2nd Petitioner-Appellants (Appellants) are respectively a registered Trade Union and its Secretary representing employees of the 1st Respondent-Respondent (1st Respondent), National Aquatic Resources Research and Development Agency, a statutory body established under the National Aquatic Resources Research and Development Agency (NARA) Act No. 54 of 1981 (Act).

They instituted this application seeking *inter alia* a writ of certiorari to quash the decision of the 1st Respondent to extend the probationary period of the 21st and 22nd Respondent-Respondents (21st and 22nd Respondents), a writ of prohibition preventing the 1st Respondent from proceeding further on the aforementioned decision, and a writ of mandamus to take necessary steps for the appointment of two qualified persons for positions held by the 21st and 22nd Respondents in the 1st Respondent institution.

The Appellants contend that both the 21st and 22nd Respondents had been appointed without the basic qualifications specified in the approved Scheme of Recruitment of the 1st Respondent (SOR).

The Court of Appeal held that the Appellants have failed to establish that the 1st Respondent has a duty to act judicially when deciding to extend the period of probation of the 21st and 22nd Respondents. It was further held that extending the period of probation is a decision in relation to the terms of the contract of employment between the 1st Respondent and the 21st and 22nd Respondents and that the Petitioners failed to establish that the said decision has any statutory underpinning making it amenable to judicial review. The application was dismissed with costs without issuing notice.

Special leave to appeal was granted on the following question of law:

Would the circumstances impugned in the Court of Appeal in this matter give rise to a situation which warranted the Court of Appeal to exercise the jurisdiction vested in it under and in terms of Article 140 of the Constitution and judicially review the impugned decisions pertaining to the 21st and the 22nd Respondents before the Court of Appeal?

Acting in terms of the proviso to Rule 16 of the Supreme Court Rules 1990 and with the consent of all parties, we proceeded to hear this application. A further opportunity was granted to the parties to file written submissions.

By an advertisement published in the daily newspapers on 09.01.2017, the 1st Respondent invited applications for the appointment of a suitable candidate to the post of Director (Finance). The 21st Respondent was appointed to this post with effect from 15.03.2017.

By an advertisement published in the daily newspapers on 22.03.2018, the 1st Respondent called for applications to appoint a suitable candidate to the post of Director (Administration and Human Resources). The 22nd Respondent was appointed to this post with effect from 15.08.2018.

Did the 21st and 22nd Respondents have the basic qualifications?

The advertisement calling for applications for the post of Director (Finance) set out the educational qualifications required by external applications. A degree in accounting/business administration/commerce from a university recognized by the University Grants Commission AND an M.Sc./MA degree in the relevant field OR corporate membership in ICA or CIMA was one of the basic requirements combined with a minimum of fifteen (15) years' experience in a managerial post in a Government

Institution/Government Corporation/Statutory Board after the acquisition of the first degree.

According to the Scheme of Recruitment of the 1st Respondent, the basic educational qualifications required for recruitment to the post of Director (Administration and Human Resources) is a degree recognized by the University Grants Commission (UGC) in Public Management/Business Management/Management/Science and a first degree in the relevant field with a M.Sc./MA degree OR corporate membership of the Sri Lanka Institute of Personal Management. In addition to one of the above qualifications, practical experience of 15 years in a designated post was also required.

The 1st Respondent appointed the 21st Respondent as Director (Finance) with effect from 15.03.2017 subject to a three (3) year probationary period. The 22nd Respondent was appointed as Director (Administration and Human Resources) with effect from 15.08.2018 subject to a three (3) year probationary period.

Both the letters of appointment had a common Clause 36 which required the 21st and 22nd Respondents to submit the necessary birth and educational certificates for examination before accepting the appointment. It went on to specify that should these certificates fail to satisfy all the requirements required to hold the respective posts, the appointment can be terminated at any time without any notice or compensation.

Subsequent to these appointments the lack of the required basic qualifications of both the 21st and 22nd Respondents were raised by the Department of Management Services as well as the Auditor General.

On or about 13.11.2019, the services of the 22nd Respondent was terminated ostensibly in terms of Clause 3 of the letter of appointment which allowed for termination during the period of probation. However, by letter dated 23.12.2019, the then Secretary to the Ministry of Fisheries & Aquatic Resources directed the 1st Respondent to reinstate the 22nd Respondent since his termination was done during the period of an election. The 1st Respondent was informed to take a decision after the appointment of the Governing Board of the 1st Respondent (GB) and due inquiry should there be any charges against the 22nd Respondent. The 22nd Respondent was reinstated on 23.12.2019 subject to the new GB taking a decision after due inquiry.

On 18.01.2021, the Secretary to the State Ministry of Ornamental Fish, Inland Fish & Prawn Farming, Fishery Harbour Development, Multiday Fishing Activities and Fish Exports forwarded a report of an investigation conducted by the 17th Respondent-Respondent (17th Respondent) and directed the 3rd Respondent-Respondent (3rd Respondent) to table it before the GB and to report on the outcome. This report revealed *inter alia* that:

- (a) Both the 21st and 22nd Respondents had been appointed to their respective positions without the required qualifications specified in the Scheme of Recruitment,
- (b) The 21st Respondent did not possess the required first degree in the relevant field with a M.Sc./MA degree or corporate membership in ICA or CIMA,
- (c) The 22nd Respondent did not possess the required first degree or corporate membership of the Sri Lanka Institute of Personal Management,
- (d) The authorities had failed to verify their qualifications either at the interview or thereafter,
- (e) The letter of appointment issued to the 21st and 22nd Respondents required the submission of their academic qualifications before assuming duties in the respective posts,
- (f) Since they failed to do so, the employer has the right to discontinue their services without the payment of any compensation.

This matter was taken up by the GB on 02.02.2021. However, the GB decided that immediate action could not be taken against them as they have been working for the 1st Respondent for two to three years and they would certainly take legal action against the 1st Respondent if action is taken to terminate their services without sufficient reasons. A decision was taken to prepare files for both the 21st and 22nd Respondents containing all documents related to their educational qualifications, experience, performance and progress made after the appointments to their positions and to be submitted at the next meeting.

The two files were tabled on 05.03.2021 but no decision was made. On 22.07.2021 a decision had been made to refer the facts to the UGC and the Chartered Institute.

On 17.11.2021, the GB discussed these matters at length and decided to dismiss the 21st Respondent from post of Director of Finance. The Director General was directed to issue the letter of dismissal after the confirmation of the minutes. With regard to the 22nd Respondent, it was decided to seek the views of the Department of Management Services again allegedly on the basis that they had provided different opinions on the issue at different times.

However, on 28.12.2021 a decision had been made by the GB to appoint an independent board of five (5) persons consisting of a retired judge and retired officers of the Sri Lanka Administrative Service to conduct an inquiry.

On 28.02.2022 the GB gave approval to appoint an independent committee through the line ministry to conduct investigations to find out whether (a) the basic qualifications of the 21st and 22nd Respondents are in line with the SOR and (b) their performance as they are still on probation.

On 25.03.2022 the GB was informed that the State Ministry has nominated a committee to examine whether the basic qualifications of the 21st and 22nd Respondents are in line with the SOR and to evaluate their performance.

By 27.04.2022 letters of appointment have been sent to the members of the committee nominated by the State Ministry.

It appears that the investigation report submitted by the committee was made available to the GB on 30.03.2023. However, a majority of the members of the BOG, namely Rear Admiral K.A.P.S.K. Kariyapperuma (11th Respondent-Respondent), Ms. M.M.G.K. Meegahakotuwa (16th Respondent-Respondent) and Mr. A.P. Kurumbalapitiya (10th Respondent-Respondent), was of the view that the investigation has not been conducted following proper guidelines.

The majority decided that there were no issues with the basic educational qualifications and experience of the 22nd Respondent in relation to the SOR but that there is an issue regarding his performance. Therefore, the majority wanted to monitor his performance for six (6) months and to confirm him only if the performance during the extended period of probation is satisfactory. If not, his services were to be terminated.

The majority also did not agree with the recommendation made by the investigation committee on the appointment of the 21st Respondent. They noted that he has now registered for a postgraduate degree at the University of Kelaniya and has sat for the final examination and has to repeat the examination for one subject. The majority decided to extend his probationary period by one more year. His services were to be terminated should he fail to complete the postgraduate degree.

The minority of the members of the GB, namely Mr. Namal Thalangama (14th Respondent-Respondent) and Mr. Susantha Kahawatta (10th Respondent-Respondent) did not agree with the majority decision. The GB had taken a decision earlier to terminate them and the minority wanted the GB to implement that decision.

Notwithstanding the position of the majority, upon examining all the material placed before the Court of Appeal, I have no hesitation in holding that both the 21st and 22nd Respondents did not have the basic qualifications to be appointed to the respective posts. In fact, the 2nd Respondent clearly accepts that the 21st Respondent did not have the necessary educational qualifications at the time of his appointment. Paragraph 12 (xii) of his affidavit reads as follows:

*“In the meantime, the 21st Respondent enrolled himself as a student with University of Kelaniya for Master of Arts in Economics and by October, 2022 the 21st Respondent had successfully passed in five subjects out of the six subjects of the said Master degree course at the examination. The 21st Respondent had to repeat the subject mathematics and statistics and by now he has passed the said subject and now he possesses a Master degree from the Kelaniya University. **Accordingly, the 21st Respondent has by now fulfilled all the required qualifications as per scheme of recruitment of the 1st Respondent, namely the basic degree and an MA in the relevant field.**”*

This statement of the Chairman of the 1st Respondent and its insinuations reflects an abject lack of understanding of the purpose of a scheme of recruitment of a state agency.

State agencies, including public corporations, statutory boards, and other governmental bodies, are established for the purpose of discharging public functions and responsibilities vested in them by law. These agencies have a bounden duty to ensure the provision of efficient, timely, and high-quality service to the public, consistent with the principles of good governance and the rule of law.

The power conferred upon such agencies to recruit and appoint personnel for the exercise and performance of their statutory powers is an important constituent of such statutory power which must be exercised strictly in the public interest, and not for any collateral, private, or political purpose. Such powers are in the nature of a public trust, reposed in these entities for the benefit of the people and are therefore required to be exercised in a manner that promotes transparency, accountability, and merit-based selection.

These objectives can be effectively realised only where the functions of the public service are entrusted to and performed by persons who possess the requisite educational qualifications, professional experience, and proven competence. The formulation and due implementation of an approved scheme of recruitment, grounded in the principle of merit and applied in an objective and consistent manner, is essential to ensure that appointments are made on merit and are free from discrimination, favouritism, and subjective or arbitrary considerations. Any instance of favouritism or arbitrary selection would be a manifest and egregious subversion of the principle of merit, and would thereby vitiate the integrity of the public service.

Once such schemes of recruitment are developed, they must strictly and consistently be applied in the recruitment of employees.

As Sripavan, C.J., held in ***Dissanayake and Others v. Secretary, Ministry of Public Administration and Home Affairs*** [S.C. (F/R) Application No. 611/2012, S.C.M. 10.09.2015, page 7]:

“A scheme of recruitment once formulated is not good for ever; it is perfectly within the competence of the appropriate authority to change it, rechange it, adjust it and re-adjust it according to the compulsions of changing circumstances. The Court cannot give directions as to how the Public Service Commission should function except to state the obligation not to act arbitrarily and to treat

*employees who are similarly situated equally. Once the Public Service Commission lays down a scheme, it has to follow it uniformly. **Having laid down a definite scheme of promotion, the Public Service Commission cannot follow the irrational method of pick and choose.***" (emphasis added)

Appointments to the public service cannot lawfully be made in favour of persons who do not possess the qualifications prescribed by the applicable scheme of recruitment, on the premise that such persons may, subsequent to appointment, acquire the requisite qualifications while continuing to draw salaries from public funds. Such a course of action is manifestly inconsistent with the governing legal framework and the principles of accountability in the use of public resources.

Conversely, where it is established that an appointment has been made in contravention of an approved scheme of recruitment, there arises a corresponding legal obligation on the part of the appointing authority to forthwith rectify such illegality. An error or irregularity on the part of the appointing authority cannot serve to validate or cure an otherwise invalid appointment. As has been consistently recognised, Article 12(1) of the Constitution guarantees equality before the law and the equal protection of the law, and does not extend to the equal perpetuation or repetition of an illegality.

In ***Dona Diana Pearly v. Premaratne, Acting Secretary Educational Service Board and Another*** [(1997) 3 Sri.L.R. 77 at 82] Fernando, J. held as follows:

"[...] the wide powers vested in those responsible for recruitment have to be exercised in the public interest and for the public benefit. It is true that only the qualified must be appointed, and the unqualified kept out; but the unqualified must not be allowed, needlessly, to entertain the belief that they are qualified. While the executive should not be penalised for mistakes, yet mistakes must be promptly corrected. Here according to the 1st respondent, at an early stage - at the interview -it was suspected that the marks were incorrect. That was all the more reason why prompt action should have been taken to rectify the position. Not merely should the 34 who were unqualified have been immediately discontinued, but it was no less important, in the public interest, that the next 34 in order of merit should have been admitted to the course - and that did not

happen because of the failure to act promptly. The power of appointment entrusted to the appointing authority had not only to be exercised correctly and fairly, but - when it came to the correction of an error - expeditiously as well."

(emphasis added)

The instant application reveals an unnecessarily protracted and avoidable process in addressing the error identified. Specifically, it appears that the authorities responsible either disregarded or failed to give due effect to Clause 36 contained in the letters of appointment issued to the 21st and 22nd Respondents, thereby overlooking its proper application. Rather than rectifying the irregularity in accordance with the established SOR, the authorities ultimately resolved to extend the period of probation of both Respondents. It reflects a failure to act promptly and decisively in accordance with the governing rules.

Can probationary period be extended to permit employees to obtain required qualification?

In this context, I must restate that the purpose of probation is a period of trial, providing the employer an opportunity to judge the performance of the probationer. It certainly cannot be used to provide employment to an employee, who lacked the basic qualifications at the time of his recruitment, in any public institution whilst being paid by public funds. That will perpetuate an illegality.

Availability of Judicial Review

There is no universal test to determine when a decision is amendable to judicial review. However, in ***R (Ames) v. Lord Chancellor [(2018) EWHC 2250 (Admin) [2018] ACD at § 55]*** Holroyde L.J., and Green J., provided helpful guidance on determining when judicial review is available:

1. There is no universal test of when a decision will have a sufficient public law element to make it amenable to judicial review. It is a question of degree.
2. In deciding whether a particular impugned decision is amendable to judicial review, the court must have regard not only to the nature, context and consequences of the decision, but also to the grounds on which the decision is challenged.

3. The fact that the decision is made by a public body exercising statutory power will not in itself be a conclusive indication that there is a sufficient public law element.
4. Conversely, the fact that the challenged decision relates to payments to be made by a public authority pursuant to a contract will not in itself be a conclusive indication that there is no sufficient public law element.
5. It will be necessary to consider whether the challenged decision is one which is necessarily involved in the performance of a public function, or is merely incidental or supplementary to a public function.
6. If the decision does not have a sufficient public law element to make it amenable to judicial review, the fact that the aggrieved party has no other avenue of appeal is not a reason for treating the decision as if it were public law decision.

The Court of Appeal concluded that extending the period of probation is a decision in relation to the terms of the contract of employment between the 1st Respondent and the 21st and 22nd Respondents and the Petitioners failed to establish that the said decision has any statutory underpinning making it amenable to judicial review. Hence it is important that we examine the interface between the exercise of contractual powers by a statutory body and amenability to judicial review.

It is well established that even a body statutory in origin, like a private individual, may exercise powers to contract or deal with property, and *the enforcement of rights arising purely from such transactions* may raise no issue of public law amenable to judicial review [See *R v. East Berkshire Health Authority Ex p. Walsh* (1985) Q.B. 152; *Tollbench v. Plymouth City Council* (1988) 56 P. & C.R. 194; *McLaren v. Home Office* (1990) I.C.R. 824; *R v. Lord Chancellor's Department Ex p. Nangle* (1991) I.C.R. 743; *R (Molinaro) v. Royal London Borough Council of Kensington and Chelsea* (2002) L.G.R. 336].

In *Weligama Multi-Purpose Co-operative Society Ltd v. Chandradasa Daluwatta* [(1984) 1 Sri L.R. 195 at 199], a five bench of the Supreme Court held that,

“The Writ will not issue for private purpose, that is to say for the enforcement of a mere private duty stemming from a contract or otherwise. Contractual duties are enforceable by ordinary contractual remedies such as damages, specific performance or injunction. They are not enforceable by Mandamus which is

confined to public duties and is not granted where there are other adequate remedies.” (emphasis added)

In ***Jayaweera v. Wijerathne*** [(1985) 2 Sri L.R. 413 at 413], G.P.S. De Silva, J. (as he was then) also observed that,

“Where the relationship between the parties is purely, contractual one of commercial nature, neither Certiorari nor Mandamus will lie to remedy grievances arising from an alleged breach of contract or failure to observe the principles of Natural Justice even if one of the parties is a Public Authority.” (emphasis added)

Furthermore, as explained by Sripavan, J. (as he was then) in ***Gawaramanna v. The Tea Research Board*** [(2003) 3 Sri L.R. 120 at 124]:

“The powers derived from contract are matters of private law. The fact that one of the parties to the contract is a public authority is not relevant since the decision sought to be quashed by way of certiorari is itself was not made in the exercise of any statutory power.” (emphasis added)

The principle that purely contractual matters are generally not amenable to judicial review, has been consistently reaffirmed in a series of judgments delivered by our superior courts [See ***Chandradasa v. Wijeratne***, (1982) 1 Sri L.R. 412; ***Ratnayake v. C. D. Perera*** (1982) 2 Sri L.R. 451; ***Mendis v. Seema Sahitha Panadura Janatha Santhaka Pravahana Sevaya*** (1995) 2 Sri L.R. 284; ***Wickramasinghe v. Ceylon Electricity Board And Another*** (1997) 2 Sri L.R. 377; ***Jayawardena v. People’s Bank*** (2002) 3 Sri L.R. 17; ***Galle Flour Milling (Pvt) Limited v. Board of Investment of Sri Lanka*** (2002) BLR 10; ***Mahanayake v. Chairman Ceylon Petroleum Corporation and Others*** (2005) 2 Sri L.R. 193; ***Meragala v. People’s Bank and others*** (2006) 2 Sri L.R. 101].

According to Lewis [*Judicial Remedies in Public Law*, (5th edition, Sweet & Maxwell 2017), page 9] judicial review is only available against a body exercising public functions in a public law matter. Therefore, it requires the body under challenge to be a public body or a body performing public functions, and the subject matter of the challenge to be a claim based on public law principles, not the enforcement of private law rights.

Was the impugned decision dated 30.03.2023 purely contractual in nature?

Section 5 of the Act reads as follows:

“The Agency shall have the power

(a) to acquire in my manner whatsoever and hold any movable or immovable property and to sell or otherwise dispose of any such property;

(b) to establish and maintain such facilities as office buildings, installations, laboratories, plant, equipment, vehicles, vessels and other crafts as the Agency may deem necessary to achieve its objects; .

(c) to undertake such activities and operations, including extension services, as the Agency may deem necessary for the commercial utilization and development of aquatic resources and the application and utilization of its expertise;

(d) to enter into any contract or agreement with Government departments, local authorities, public corporations, and other persons for the purpose of carrying out its functions; ...” (emphasis added)

Furthermore, Section 7 of the Act outlines that,

“(1) Subject to the other provisions of this Act, the Board may

(a) formulate the policies of the Agency for the achievement of its objects;

(b) perform any of the functions of the Agency;

(c) establish with the approval of the Minister such departments and divisions of the Agency as may be necessary for the proper exercise, performance and discharge of its powers, duties and functions;

(d) appoint, dismiss, exercise disciplinary control over and fix the wages and emoluments of the staff of the Agency;

(e) determine the terms and conditions of service of such staff ; ...”

(emphasis added)

Clearly, the statutory power vested in the 1st Respondent to appoint employees has a statutory basis. But that alone will not make the decision of the 1st Respondent amenable to judicial review. The subject matter of the challenge has to be a claim based on public law principles, not the enforcement of private law rights.

The Court of Appeal mischaracterized the subject matter of the impugned act by focusing on the contractual relationship between the 1st, 21st and 22nd Respondents. The complaint of the Appellants is that the probationary period of these Respondents was extended notwithstanding the fact that they lacked basic requirements to be appointed to the respective posts in terms of the SOR and contrary to the earlier decision of the GB. This is a claim which attracts public law principles. The GB acted ultra vires in deciding by majority to extend the period of probation of the 21st and 22nd Respondents instead of taking prompt action to correct the error made in appointing them.

For all the foregoing reasons, I answer the question of law in the affirmative and set aside the order of the Court of Appeal dated 26.06.2024.

I have given anxious consideration as to whether justice will be served by remitting the case back to the Court of Appeal as the application was dismissed without issuing notice. However, I observe that the 1st, 21st and 22nd Respondents have filed extensive limited objections and placed their case fully before court in justifying the impugned decision. Sending the case back for a fresh hearing will only prolong an illegal decision at public expense as the 21st and 22nd Respondents will continue to draw their employment perks until the hearing is concluded and judgment delivered.

Accordingly, I issue a writ of certiorari quashing the decision made by the GB of the 1st Respondent by majority on 30.03.2023 to extend the probationary period of the 21st and 22nd Respondents. In view of this order, the services of the 21st and 22nd Respondent shall stand terminated with effect from 30.03.2023 without prejudice to any official acts they have done up to the date of this judgment.

The 21st and 22nd Respondents shall within one year from the date of this judgment reimburse to the 1st Respondent all monetary payments received by them for the period 31.03.2023 to the date of this judgment.

Furthermore, I issue a writ of mandamus directing the GB of the 1st Respondent to forthwith advertise the posts of Director (Finance) and Director (Administration and Human Resources) and to take steps to appoint a qualified applicant in accordance with the SOR.

In view of the circumstances of this application, I direct the Registrar of this court to prepare a complete copy of the court record and forthwith transmit it to the Commission for the Investigation of Allegations of Bribery or Corruption for it to consider whether the facts establish any offence within its mandate and to take further steps according to law.

The 10th, 11th, 16th, 21st and 22nd Respondent-Respondents shall each pay 20,000/= each as costs to the 1st Appellant totaling a sum of Rs. 1,00,000/=.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT