

**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, Mandamus and Prohibition in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Abeysinghe Pathiranage Ranjith Kulasiri  
No. 505, Susilarama Mawatha, Malabe.

**Petitioner**

**Case No. CA (Writ) 409/2017**

**Vs.**

1. Road Development Authority  
"Maganaguma Mahamedura",  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
2. D. K. Rohitha Swarna  
Director General,  
Road Development Authority,  
"Maganaguma Mahamedura",  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
3. S. H. U. De Silva  
Director – Administration,  
Road Development Authority,  
"Maganaguma Mahamedura",  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

4. Nihal Ranjan Suriyaarachchi  
Chairman,  
Road Development Authority,  
“Maganaguma Mahamedura”,  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.
5. J. T. S. P. Kariyawasam
6. Sajeewa Gunarathna
7. J. R. U. De Silva
8. D. Shanmugasundaram
9. M. D. S. U. Perera
10. Gemunu Abeysundara
11. L. B. S. B. Dayarathne
12. K. H. Muthukudaarachchi
13. S. S. P. Rathnayaka
14. R. M. A. Rathnayake
15. J. G. L. Sulakshana
16. D. D. Matharaarachchi

5<sup>th</sup> to 16<sup>th</sup> Respondents all Members of the  
Director Board, Road Development Authority,  
“Maganaguma Mahamedura”, No. 216, Denzil  
Kobbekaduwa Mawatha, Koswatta,  
Battaramulla.

17. (Mrs.) P. Paranagamage  
Deputy Director (PM&R),  
Road Development Authority,  
“Maganaguma Mahamedura”,  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

18. G. B. K. Perera  
Director (PM&R),  
(Chairman of the Interview Panel),  
Road Development Authority,  
“Maganaguma Mahamedura”,  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

19. H. Kannangara  
Director (Finance),  
(Member of the Interview Panel),  
Road Development Authority,  
“Maganaguma Mahamedura”,  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

20. W. E. S. K. Fernando  
Director (Training),  
(Member of the Interview Panel),  
Road Development Authority,  
“Maganaguma Mahamedura”,  
No. 216, Denzil Kobbekaduwa Mawatha,  
Koswatta, Battaramulla.

**Respondents**

**Before:** Janak De Silva J.

K. Priyantha Fernando J.

**Counsel:**

Dr. U.L. Ali Zakky for the Petitioner

Maithree Amerasinghe SSC for the 1<sup>st</sup> to 4<sup>th</sup> Respondents

Saliya Pieris P.C. with Heshan De Silva and Anuradha Weerakkody for the 17<sup>th</sup> Respondent

**Argued On:** 03.04.2019

**Written Submissions filed on:**

Petitioner on 07.12.2018 and 11.07.2019

1<sup>st</sup> to 4<sup>th</sup> Respondents on 01.03.2019

17<sup>th</sup> Respondent on 24.01.2019

**Decided on:** 29.06.2020

**Janak De Silva J.**

The Petitioner was at all times material to this application an Accountant Grade I at the Road Development Authority (RDA). In this application he is seeking to impugn the interview process and the appointment of the 17<sup>th</sup> Respondent to the post of Deputy Director (PM&R) for which applications were called by Administrative Circular Letter No. 2016/CL/93 dated 02.12.2016 (P22).

The Petitioner is challenging the application process and appointment on the following grounds:

- (a) Failure to include the marking scheme with P22 calling for applications
- (b) Failure to follow the Scheme of Recruitment (SOR) at P27
- (c) Failure to give effect to the recommendation of the Political Victimization Committee

I will examine each of the above grounds.

***Failure to include the marking scheme with P22 calling for applications***

There is no dispute that the marking scheme was not made public with the circular P22 but the Respondents contend that there is no such requirement. The Petitioner relies on Sections 72 and 73 in Chapter VII of Extra Ordinary Gazette Number 1589/30 dated 20.02.2009 (P23) published by the Public Service Commission which requires the marking scheme to be included in the advertisement calling applications for the vacancies.

The employees of the RDA are not public officers coming within the purview of the Public Service Commission and hence P22 has no application to them in the absence of any decision taken by the 1st Respondent to adopt P23. No such decision has been produced by the Petitioner.

I must hasten to add that this does not mean it is unnecessary to make the marking scheme public when statutory bodies and authorities such as the RDA call for applications to fill vacancies. It is in the interest of transparency and good governance to do so and will negate any arbitrariness in the application process. However, the failure to do so does not per se invalidate the process and whether such omission is fatal depends on the facts and circumstances of each case. As Fernando J. held in *Abeyasinghe and Three Others v. Central Engineering Consultancy Bureau and Six Others* [(1996) 2 Sri.L.R. 36 at 45]:

"While it is desirable that criteria for selection and the active weightage be disclosed in advance, particularly where the scheme of promotion is complex, in the present case the nondisclosure of the marking scheme in advance to all the candidates was not per se discriminatory or a fatal irregularity."

In that case, it was further held that although there was an unsatisfactory feature of the interview process, the concealment of the job description and the marking scheme leaving room for doubt and suspicion, the petitioners there had not shown that this affected their performance at the interview and there is nothing to suggest that the petitioners would have performed any better had this information been disclosed and that all candidates were equally disadvantaged in this respect.

The Petitioner in this case has not shown that the failure to disclose the marking scheme affected his performance at the interview.

***Failure to follow the Scheme of Recruitment (SOR) at P27***

The SOR (P27) has been approved by the Board of the RDA. Under General Conditions clause 25 states that the criteria for interview will be based on 50% for seniority, 20% for Additional Qualifications and 30% for Performance at the interview.

The marking scheme adopted for the post of Deputy Director (PM&R) was Seniority (Grade 01 initially 10 marks and 1 mark for each year in the same grade - maximum 20), Experience in the Managerial Field (1 mark for each year), Additional Qualifications 20 and Interview Performance 30.

It is seen that there is no difference in the marks allocated for Additional Qualifications and Interview Performance between SOR (P27) and the scheme adopted for the post of Deputy Director (PM&R).

The Petitioner submits that in terms of SOR (P27), 50% must be given to Seniority whereas the scheme adopted for the post of Deputy Director (PM&R) gave only 20% for Seniority. The 1<sup>st</sup> to 4<sup>th</sup> Respondents submit that the marking scheme is based on SOR (P27) and in essence no different from any of the marking schemes adopted previously and has not been deviated from. They further state that the marking scheme has been adopted variably while maintaining the same selection criteria.

The Petitioner's contention is that the marking schemes adopted for the post of Deputy Director (Finance) in 2015 and the post of Deputy Director (PM&R) in 2016 are different. The Respondents submit that the duties and nature of the two posts for which the same SOR (P27) has been adopted are different, which in turn requires the provisions of the SOR (P27) to be adopted variably while maintaining the same selection criteria. It is further contended that the variation effected to the marking scheme in the year 2015 is within the broader criteria or a division of the broader criteria and not a deviation.

The SOR (P27) sets out General Conditions which are applicable to all posts of the RDA. Clause 5 therein states that an application for authority to deviate should state specifically the deviation proposed and the reasons therefore with reference to the approved Scheme of Recruitment. Clause 6 states that if it became necessary to alter an approved scheme of recruitment an application should be made to the Board of Directors by the General Manager and Chairman with a schedule of amendment and draft of the amended scheme.

Therefore, prior permission must be obtained only where there is either a *deviation* or *alteration* of the SOR. In the instant case, in my view what has happened is that the 50% that must be given to Seniority according to the SOR (P27) has been divided between Seniority and Experience in the Managerial Field. According to the SOR P27, experience means experience gained by way of employment in the particular field and drawing a salary. Thus what has been done is not arbitrary or ultra vires. The marking scheme has been adopted to suit the post for which the applications were called as it involves managerial functions. There has been no deviation or alteration from SOR (P27).

***Failure to give effect to the recommendation of the Political Victimization Committee***

At the interview the Petitioner obtained 57 marks whereas the 17<sup>th</sup> Respondent obtained 59 marks.

The Petitioner states that by P36 the predecessor of the 2<sup>nd</sup> Respondent was informed that the Cabinet had on 21.06.2016 decided to promote the Petitioner to the post of Accountant Grade I with effect from 02.10.2006 which was not done. It is claimed that if it was given effect to the Petitioner would have got an additional 4 marks and come first at the interview.

However, the 1<sup>st</sup> to 4<sup>th</sup> Respondents have pointed out that there were no cadre vacancies in Accountant Grade I at the RDA as at 02.10.2006 and that such vacancy arose on 23.11.2009 when the Petitioner and three others were promoted as Accountant Grade I. This was informed as far back as 22.03.2017 (R2). Therefore, the submission of the Petitioner on this point is without merit.

For all the foregoing reasons, this application is dismissed without costs.

Judge of the Court of Appeal

**K. Priyantha Fernando J.**

I agree.

Judge of the Court of Appeal