

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

In the matter of an Application for a mandate in the nature of a Writ of *Mandamus* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA Writ application No: 409/2020**

1. Shalitha Wijaya Wikrama Singhebahu,  
269, Dewalawatta Road,  
Bollatta,  
Ganemulla.
2. Rasith Salinda Edirisooriya Archchi,  
223/5, Rathnehera,  
Kanaththagoda,  
Mathara.
3. Pussewela Kankanamge Thilina Lakmal,  
A/D/8-24 Ranpokunagama,  
Nittambuwa.
4. Walisinghe Sameera Madusanka Silva,  
33, Mahawatta,  
Kotugoda.
5. Mathara Arachchige Ranil Sampath,  
3/1, Rerukana Road,  
Galanigama,  
Bandaragama.
6. Mohamed Fouz Ahamed Azam,  
256 E, Main Street,  
Sainthamarudhu – 09.
7. Weliwitiya Kankanamge Hasanka  
Chathuranga,  
328, Mahawala Road, Arukgoda,  
Panadura.

8. Pradeep Madusanka Jagoda Arachi,  
261/11, Nawa Mawatha,  
Galmaththa,  
Walagedara.

**PETITIONERS**

**-Vs-**

1. Mabapola Training Institute,  
Mahapola Ports and Maritime Academy,  
507, De-La Salle Street,  
Colombo 15.

2. Mr. K. G. S. Dayananda,  
Chief Training Manager  
Sri Lanka Ports Authority,  
Mahapola Ports and Maritime Academy,  
507, De-La Salle Street,  
Colombo 15.

- 2A. Ganaka Hemachandra,  
Deputy Chief Training Manager,  
Sri Lanka Ports Authority,  
Mahapola Ports and Maritime  
Academy,  
507, De-La Salle Street,  
Colombo 15.

- 2AA. Mrs. S. H. S. Padmini,  
Chief Training Manager,  
Sri Lanka Ports Authority,  
Mahapola Ports and Maritime  
Academy,  
507, De-La Salle Street,  
Colombo 15.

- 2B. Ganaka Hemachandra,  
Deputy Chief Training Manager,  
Sri Lanka Ports Authority  
Mahapola Ports and Maritime  
Academy  
507, De-La Salle Street,  
Colombo 15.

- 2C. S. H. Thilakapala,  
Chief Training Manager,  
Sri Lanka Ports Authority,  
Mahapola Ports and Maritime  
Academy,  
507, De-La Salle Street,  
Colombo 15.
3. Sri Lanka Ports Authority,  
19, Chaithya Road,  
Colombo 01.
4. General (Retd) R. M. Daya Ratnayake,  
WWV, RWP, RSP, USP, NDU, PSC  
Chairman,  
Sri Lanka Ports Authority.
- 4A. Captain Nihal Keppetipola  
Chairman,  
Sri Lanka Ports Authority.
- 4AA. Dr. Prasantha Jayamanna,  
Chairman,  
Sri Lanka Ports Authority.
- 4AB. Dr. Sarath Obesekara,  
Chairman,  
Sri Lanka Ports Authority.
- 4AC. Keith D. Bernard,  
Chairman,  
Sri Lanka Ports Authority.
- 4B. Mr. G.U.K. Algewattage,  
Vice Chairman,  
Sri Lanka Ports Authority.
5. Dr. Prasantha Jayamanna,  
Vice Chairman,  
Sri Lanka Ports Authority.

- 5A. G. U. K. Algewattage,  
Vice Chairman,  
Sri Lanka Ports Authority.
6. Mr. W.S. Weeraman,  
Managing Director,  
Sri Lanka Ports Authority.
- 6A. Mr. Upul Jayatissa,  
Managing Director,  
Sri Lanka Ports Authority.
- 6B. Susantha Abeysiriwardena,  
Managing Director,  
Sri Lanka Ports Authority.
7. Ms. J. C. Weligamage,  
Director,  
Sri Lanka Ports Authority.
- 7A. Mr. P. B. S. C. Nonis,  
Director,  
Sri Lanka Ports Authority.
8. Mrs. N.A.A.P.S. Nissanka,  
Director,  
Sri Lanka Ports Authority.
9. Mr. Lakmal Ratnayake,  
Director,  
Sri Lanka Ports Authority.
- 9A. Dr. M. L. Christo Fernando,  
Director,  
Sri Lanka Ports Authority.
- 9B. Mr. P. A. S. Athula Kumara,  
Director,  
Sri Lanka Ports Authority.

10. Mr. J.R.U. De Silva,  
Director,  
Sri Lanka Ports Authority.
11. Mr. K. A. Vimalenthirarajah,  
Director,  
Sri Lanka Ports Authority.
- 11A. Mr. H. Isuru Balapatabendi,  
Director,  
Sri Lanka Ports Authority.
- 11B. Dr. Ajith Mendis,  
Director,  
Sri Lanka Ports Authority.
- 11C. N.M.P.P. Nawatne  
Director,  
Sri Lanka Ports Authority.
12. Mr. Upul Jayatissa,  
Addi-Managing Director,  
Sri Lanka Ports Authority.  
(Appointed as the Managing  
Director of Sri Lanka Ports  
Authority)
13. Mr. Sunantha Abeysiriwardena,  
Addi. Managing Director,  
Sri Lanka Ports Authority.  
(Appointed as the Managing  
Director of Sri Lanka Ports Authority  
and substituted as 68 above)
14. Ms. Shirani Wanniarachchi,  
Director – Finance,  
Sri Lanka Ports Authority.

15. Ms. S. H. S. Padmini,  
Chief Manager-Human Resource,  
Human Resource Division,  
Sri Lanka Ports Authority.  
(Appointed as the Chief Training  
Manager of Mahapola Ports and  
Maritime Academy)

15A. Mr. Nalin Aponso,  
Director-Human Resources,  
Human Resource Division.  
Sri Lanka Ports Authority

15B. Mr. H. J. K. U. Kumara,  
Chief Manager-Human  
Resources,  
Human Resource Division,  
Sri Lanka Ports Authority.

16. Captain K. M. Nirmal P. Silva,  
Harbour Master,  
Sri Lanka Ports Authority.

4<sup>th</sup> to 16<sup>th</sup> Respondents all of  
19 Chaithya Road, Colombo 01.

17. Mr. Rohitha Abeygunawardena,  
Minister of Ports and Shipping,  
19, Chaithya Road  
Colombo 01.

17A. Mr. Namal Siripala De Silva,  
Minister of Ports and Shipping,  
19, Chaithya Road,  
Colombo 01.

18. Mr. U. D. C. Jayalal,  
Secretary to the Ministry,  
Ministry of Ports and Shipping,  
Minister of Ports and Shipping,  
19. Chaithya Road,  
Colombo 01.

- 18A. Mr. K. D. S. Ruwanchandra,  
Secretary to the Ministry,  
Ministry of Ports and Shipping,  
Minister of Ports and Shipping,  
19, Chaithya Road,  
Colombo 01.
19. Ceylon Shipping Corporation Limited,  
27, MICH Building,  
PO Box 1718,  
Sir Razik Fareed Mawatha (Bristol  
Street),  
Colombo 01.
20. D.H.S. Pullaperuma,  
Treasury Representative,  
Ceylon Shipping Corporation Limited.
21. Dr. I.D.M. Rathnayake,  
Director,  
Ceylon Shipping Corporation Limited.
- 21A. Ms. Shehara Jayawadane,  
Director,  
Ceylon Shipping Carponsion Limited.
22. Dr. G. A. J. Sanjeewa Bandara,  
Director,  
Ceylon Shipping Corporation Limited.
- 22A. Mr. Bathiya Udumalagala,  
Director,  
Ceylon Shipping Corporation Limited.
23. J.M. Jayathilaka,  
Director,  
Ceylon Shipping Corporation Limited.
- 23A. Mr. P. Ranga Sujeewa Goonawardane,  
Director,  
Ceylon Shipping Corporation Limited.

24. P.N.G. Darshana Silva,  
Director,  
Ceylon Shipping Corporation Limited.

24A. Mr. Mevan Peiris,  
Director,  
Ceylon Shipping Corporation Limited.

20<sup>th</sup> to 24<sup>th</sup> Respondents all of 27,  
MICH Building, P.O. Box 1718, Sir  
Razik Fareed Mawatha (Bristol Street)  
Colombo 01.

25. Maj Gen. G.V. Rvipriya (Rtd)  
Director,  
Sri Lanka Ports Authority.  
(Added party as a member of the  
Board of Directors of Sri Lanka Ports  
Authority)

27. Mr. W. S. Weeraman,  
Chairman,  
Ceylon Shipping Corporation Limited.  
(Added party as a member of the  
Board of Directors of Ceylon  
Shipping Corporation Limited)

27. Mr. Dimuthu Jagodaarachchi,  
Executive Director,  
Ceylon Shipping Corporation Limited.  
(Added party as a member of the  
Board of Directors of Ceylon  
Shipping Corporation Limited)

## **RESPONDENTS**



**Before: M. T. Mohammed Laffar, J.**

**S. U. B. Karalliyadde, J.**

**Counsel:** Upali Kumarapperuma with R. Kuruwitabandara instructed by Dinesh

Vidanapathirana for the Petitioners.

Ms. N. Kahawita, SSC for the Respondent.

**Written submissions tendered on:**

28.08.2023 by the Petitioners

**Argued on:** argument concluded by way of written submissions.

**Decided on:** 11.01.2024

**S. U. B. Karalliyadde, J.**

The Petitioners joined the Mahapola Training Institution (presently known as Mahapola Port Marine Academy), the 1<sup>st</sup> Respondent (the MPMA) which is under the Sri Lanka Ports Authority, the 3<sup>rd</sup> Respondent (the SLPA) in two consecutive years (2009 and 2010) to follow a 3 years course of Training of Cadets-Diploma in Engineering Watch Keeping Officers according to the paper advertisements published by the SLPA (P-1(a), P-1(b) and P-2). The course consisted of two components namely, the academic phase and on-board training. The academic phase is for two years while on-board training is for one year. The entire course contained four semesters. After completion of the academic phase, for the on-board training, the Petitioners are expected to be placed in a sailing vessel to expose them to the practical aspects of the subject. According to the

Petitioners, to make placements for the on-board training there was an agreement between the Ceylon Shipping Corporation, the 19<sup>th</sup> Respondent and the SLPA. Nevertheless, the 19<sup>th</sup> Respondent denies that position of the Petitioners. The Petitioners allege that the MPMA could not offer them the on-board training for the reason that the MPMA has lost its ISO standards. The MPMA denies that fact and has taken up the position that for the reason that the Petitioners could not complete the 1<sup>st</sup> phase, they were not eligible to follow the on-board training. Further, that the others who had completed the 1<sup>st</sup> phase were given on-board training. Anyhow, upon a Board Memorandum dated 05.02.2014, the SLPA has decided to absorb the Petitioners to the SLPA as Trainee Supervisors in the salary scale of ST-3 on the basis that they would be appointed as Supervisors in the salary scale of T-3 upon completion of the 3-year training period at the Marine Engineering, Mechanical Engineering and Navigation Divisions of the SLPA (P-8 (a), P-8 (b) and P-8 (c)). Thereafter despite the Board decision, without appointing the Petitioners as Trainee Supervisors upon the approval of the Chairman of the SLPA (P-11(a)), by the letters of appointment marked as P-10 (b)(i) to P-10 (b)(vii) they had been appointed as Multi-Skilled Technicians (බහු විධ නිපුණතා ශිල්පී) with effect from 18.11.2014 in the salary scale of SS-3. In the Petition to this Application, the Petitioners have averred that the salary scale of the Multi-Skilled Technicians is equivalent to the salary scale of the Supervisors in T – grade. By the letter dated 24.01.2018, the Petitioners were confirmed as Multi-Skilled Technicians with effect from 18.11.2014 (P-16 (a)(i) to P-16(a)(vi)). Nevertheless, as a result of

continuous requests of the Petitioners to the Authorities of the SLPA to place them in a suitable position considering their professional/vocational qualifications, a Report dated 10.10.2018 marked as P-17(a) has been compiled by the Director- Technical of the SLPA and forwarded it to the Managing Committee of the SLPA. By that Report, it has been recommended that if the certificate issued by the MPMA to the Petitioners upon completion of the 1<sup>st</sup> phase could be considered as NVQ 4 level, they be placed under the Supervisory level as per the approval of the Board of Directors by P-8(b). It has been further recommended that since the Petitioners are presently placed in the SS-3 salary scale, they be appointed to the Supervisory grade as per the Scheme of Recruitment (SoR) of the SLPA following one of the below-mentioned steps.

- a) To place them under the supervisory level in the salary scale of ST-3 as Trainees as per the Board Decision marked as P-8(b) and thereafter once they get through the tests/interviews as per the SoR, they to be qualified to be appointed as Supervisors in the salary scale of T-3.
- b) To allow them to sit for the tests in selecting to the Supervisory category in the Marine Engineering Division or Engineering Officer category in the Navigation/Civil Engineering Divisions when the internal advertisements are published. Further, if they get through the tests/interviews, to appoint
  - a. Four Petitioners to the Civil Engineering Division to be attached to the dredgers “Hassakawa” and “Diyakowulla”

- b. Four Petitioners to the Navigation Division to be attached to the tugs

In pursuance to the Report marked as P-17(a), the Management Committee directed the Director (HRD) and the Director (Technical) of the SLPA to study and revisit the matter and to submit a joint paper to the Management Committee (P-17(b)). Accordingly, a joint paper dated 13.11.2018 marked as P-17(c) has been forwarded to the Management Committee recommending to place the 1<sup>st</sup> – 8<sup>th</sup> Petitioners who are Multi-Skilled Technicians at ST2 grade and attach them to the Navigation Division and Civil Engineering Division, four of them to each Division, as Junior Engineering Officers under Multi-Skilled Technician capacity. The recommendation in the said joint paper was approved by the Management Committee on 21.11.2018 (P-17(d)) and directed the Chief Human Resource Manager to implement the recommendations subject to existing cadre provisions. The Petitioners allege that without implementing the directions of the Management Committee, by letter dated 14.01.2019 marked as P-18 (a)(i) to (iv) they had been just transferred to the Navigation Division and still not implemented the decision of the Management Committee marked as P-17(d). Therefore, they allege that they have been deprived of applying for the new openings that they would otherwise be eligible for, within the SLPA itself since the qualifications for vacancies are specified on the existing salary scales (P-20).

Under the above-stated circumstances, the Petitioners argue that the failure of the SLPA to provide with them on-board training to complete the course or implement the Board

Memorandum marked as P-8(b) and/or the approval of the Management Committee marked as P-17(d) is a violation of the legitimate expectation of the Petitioners and further, that the decision to place them in a lower salary scale is prejudicial to them and the recruitment procedure followed in respect of them is unfair and therefore is illegal, arbitrary, and unreasonable.

The position of the Respondents is that as per the recruitment procedure for the posts of Engineering Officer the qualifications should be equivalent to NVQ-5 level and the Petitioners do not have that qualification for them to be appointed as Engineering Officer. The Respondents have admitted in sub-paragraph (d) of the averment No. 13 of the Statement of Objections that the Petitioners had been appointed to the posts of Junior Engineering Officer at the Multi-Skilled Technician level as per the recommendation of the joint paper of the Directors Human Resources and Technical (marked as P-17(c)) and transferred them to the Navigation Division with effect from 17.01.2019 by the letter dated 14.01.2019 marked as 3R18 (the same letter has been marked and tendered to Court by the Petitioners as P-18(a)(i) – (iv)). By 3R18/ P-18(a)(i) the Petitioners have not been informed that they had been appointed as Junior Engineering Officers. The learned SSC appearing for the Respondents argues that the placement of the Petitioners in the posts of Junior Engineering Officers is not a promotion with a change of salary scale and therefore the fact that they have been placed as Junior Engineering Officers has not been mentioned in 3R18/ P-18(a)(i). Before appointing as Junior Engineering Officers, the Petitioners had been designated

as Multi-Skilled Technicians in the salary scale of SS-3. By the Management Committee decision marked as P-17(d), the recommendation mentioned in P-17(c) had been approved. The recommendation mentioned in P-17(c) had been to place the Petitioners at ST-2 grade. The salary scales applicable to the employees of the SLPA have been marked and tendered to Court as P-8(c). Accordingly, the basic salary in the SS-3 and ST-2 salary scales are Rs. 11900.00 and Rs. 13090.00 respectively. Therefore, the learned SSC argues that the position of Petitioners that they have not been promoted cannot be accepted.

Even though the Board decision marked P-8(b) has been taken on 05.02.2014 to appoint the Petitioners as Trainee Supervisors in the salary scale of ST-3 and thereafter place them as Supervisors in the salary scale of T-3 after completion of 3 years training at the Marine Engineering, Mechanical Engineering and Navigation Divisions of the SLPA, that decision has been violated by the SLPA by failing to act upon that decision. Instead, on the consent of the Chairman of the SLPA the Petitioners have been appointed arbitrarily as Multi-Skilled Technicians in the salary scale of ST-2. After completing the probation period of 3 years, the Petitioners have been confirmed in the same position. In the joint paper submitted to the Management Committee of the SLPA by the Directors of Human Resources and Technical, it had been recommended to place the Petitioners who are Multi-Skilled Technicians in ST-2 grade and attach them to the Navigation Division and Civil Engineering Division, four Petitioners to each Division as Junior Engineering Officer under Multi-Skilled Technician capacity (P-17(d)).

Nevertheless, the SLPA has not taken steps to implement the said decision either. Therefore, it is clear that the SLPA has not implemented the Decisions and/or the Orders of the Chairman and the Management Committee.

In Administrative Law by H.W.R Wade and C.F. Forsyth (11<sup>th</sup> edn) on page 520, states thus,

*“The prerogative remedy of a mandatory order has long provided the normal means of enforcing the performance of public duties by public authorities of all kinds. Like the other prerogative remedies, it is normally granted on the application of a private litigant, though it may equally well be used by one public authority against another. The commonest employment of a mandatory order is as a weapon in the hands of the ordinary citizen when a public authority fails to do its duty by him. The quashing order and a prohibiting order deal with wrongful action, a mandatory order deals with wrongful inaction.”*

The scope of the Writ of Mandamus was discussed in the case of *Dr. Jayalath Jayawardena Vs Chandra Fernando, Inspector General of Police*<sup>1</sup> where it was held that,

*“Within the field of public law, the scope of mandamus is still wide and the court may use it freely to prevent breach of duty and injustice. Instead of being astute to discover reasons for not applying this great constitutional remedy for error and*

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<sup>1</sup> CA Writ Application No. 1507/2005; CA Minutes of 10.06.2008.

*misgovernment, we think it our duty to be vigilant to apply it in every case to which by any reasonable construction, it can be made applicable. (R V Hanley Revising Barrister [1912] 3 KB 518).”*

*In Ranjanee Pathirana Vs Secretary, Ministry of Environment and Natural Resources and Others<sup>2</sup> it was held that “In the field of public law the writ of mandamus is a powerful weapon the Courts use freely to prevent breach of duty and injustice.”*

It was held in the case of *David Raja v. Minister of Fisheries and Aquatic Resources Development and Others<sup>3</sup>* that, if a recommendation of a public body protects the rights of an individual, the superior courts, in the exercise of writ jurisdiction, have the power to compel the enforcement of such a recommendation by issuing a writ of mandamus, if the Court is satisfied that the recommendation is made on compelling grounds.

Considering all the above-stated facts and circumstances, I hold that this is a fit case to exercise the Writ jurisdiction of this Court to compel the SLPA to implement the Decisions of the Chairman and/or Management Committee. Therefore, I issue a Writ of Mandamus to take action to create sufficient cadre and place the Petitioners in terms of the Management Committee Decision (marked as P-17(d)) taken on the joint paper submitted to the Management Committee (marked as P-17(c)) to place the Petitioners who are Multi-Skilled Technicians in ST-2 grade and attach them to the Navigation

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<sup>2</sup> SC Appeal No. 78/2006; SC Minutes of 05.03.2010.

<sup>3</sup> [2020] 1 Sri LR 310 at page 314.



Division and Civil Engineering Division, four Petitioners to each Division as Junior Engineering Officers within 6 months from the date of this Judgment.

No costs ordered.

*Application allowed.*

**JUDGE OF THE COURT OF APPEAL**

**M. T. Mohammed Laffar, J.**

**I agree.**

**JUDGE OF THE COURT OF APPEAL**