

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

Court of Appeal Case No.

CA/WRT/0471/2019

K. G. I. N. Deshapriya

121/3, St. Jude Mawatha,
Jayasamarugama,
Kandana.

Petitioner

Vs

1. Justice N. E. Dissanayake,

Chairman
Administrative Appeals Tribunal,
35, Silva Lane,
Rajagiriya.

2. A. Gnanathan, PC

Member
Administrative Appeals Tribunal,
35, Silva Lane,
Rajagiriya.

3. G.P. Abeykeerthi,

Member
Administrative Appeals Tribunal,
35, Silva Lane,
Rajagiriya.

- 4. Dharmasena Dissanayaka,**
Chairman,
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.
- 5. Prof. Hussain Ismail,**
Member,
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.
- 6. Dr. Prathap Ramanujam,**
Member,
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.
- 7. V. Jegarasasingam,**
Member,
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.
- 8. S. Ranugge,**
Member,
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.
- 9. D. Laksiri Mendis, Member,**
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.
- 10. Sarath Jayatilaka,**
Member,
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.

11. Sudharma Karunarathna,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatte Road,
Battaramulla.

12. G.S.A. de Silva, PC
Member,
Public Service Commission
No. 1200/9, Rajamalwatté Road,
Battaramulla.

13. Nadun Guruge,
Commissioner General of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner Mawatha,
Colombo 02.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**
S. U. B. KARALLIYADDE, J.

Counsel: K. Liyanagamage for the Petitioner.
Vikum de Abrew PC, DSG with Medhaka Fernando for the 4th
to 13th Respondents.

Argued on: Disposed by way of written submissions.

Decided on: 29.01.2024

MOHAMMED LAFFAR, J.

The Petitioner is an Executive Grade II Officer of the Sri Lanka Inland Revenue Service. The Petitioner was originally appointed by the Public Service Commission to Class II Grade II of the Sri Lanka Inland Revenue

Service, with effect from 01.10.1999 subject to a probation period of 03 years, and thereafter the Public Service Commission confirmed the said appointment.

Pursuant to a formal disciplinary inquiry held against the Petitioner, a Disciplinary Order dated 14.09.2012, marked 1R1, was issued on the Petitioner. The said order imposes, *inter alia*, deferment of two salary increments as a punishment on the Petitioner.

It is the contention of the Petitioner that as per the provisions of the Minute of the Sri Lanka Inland Revenue Service published in the Gazette Extraordinary No 133/5 dated 15.10.1974, promotion to Class II Grade I of the Sri Lanka Inland Revenue Service should be made on the basis of seniority and satisfactory work reports. As the Petitioner had acquired all the qualifications stipulated by the said Minute that are required to be promoted to the Class II Grade I of the Sri Lanka Inland Revenue Service by 01.10.2009, the Petitioner made several requests from the Commissioner General of Inland Revenue to promote him to the Class II Grade I of the said Service with effect from 01.10.2009.

Thereafter, the Minute of the Sri Lanka Inland Revenue Service published in the Gazette Extraordinary No. 133/5 dated 15.10.1974, was replaced by the Minute of the Sri Lanka Inland Revenue Service published in the Gazette Extraordinary No. 1804/50 dated 05.04.2013.

Subsequently, the Petitioner was absorbed to Executive Grade III of the Sri Lanka Inland Revenue Service as per the new Minute with effect from 01.10.2012 and thereafter the Public Service Commission promoted the Petitioner to the Grade Executive I (previously Class II Grade I) of the said Service with effect from 01.10.2013.

As the said promotion has not been made with effect from 01.10.2009 the Petitioner made an appeal marked X1 to the Administrative Appeals Tribunal seeking that he may be promoted to Executive Grade II of the said Service with effect from 01.10.2009.

Thereafter, the Public Service Commission submitted its observations dated 19.04.2016, marked X2, to the Administrative Appeals Tribunal. In its observations the Public Service Commission has stated that the Petitioner could be promoted to Executive Grade II of the said Service with effect from 01.10.2011. However, the Public Service Commission contended that in computing the satisfactory service two years should be deducted for the deferment of two salary increments, and therefore the Petitioner could not be promoted to Executive Grade II of the said service with effect from 01.10.2009.

After concluding its hearing, the Administrative Appeals Tribunal by Order dated 07.05.2019, marked X7, dismissed the appeal of the Petitioner. It is against this Order marked X7 that the Petitioner has made the present Application impugning the final Order of the Administrative Appeals Tribunal.

However, Clause 09 of the Minutes of the Inland Revenue Service published in Extraordinary Gazette 133/05 dated 15.10.1974 (the Old Minutes of Service) marked 1R3 governs the promotion of the Petitioner to Class II Grade I of the Inland Revenue Service.

Clause 9 reads thus;

II වැනි පන්තියේ I වැනි ශ්‍රේණියට උසස් කිරීම: ජ්‍යෙෂ්ඨත්වය හා සතුටුදායක සේවා වාර්තා පදනම් කරගෙන II වැනි පන්තියේ II වැනි ශ්‍රේණියේ නිලධාරීන් II වැනි පන්තියේ 1 වැනි ශ්‍රේණියට උසස් කිරීම සිදු කෙරේ. එසේ වුවද මේ සඳහා නිලධාරියෙකු රු. 124,500 වැටුප් තලයට එළඹීම හෝ දෙවන කාර්යක්ෂමතා කඩ ඉම සමත්වීම යන දෙකින් පසුව සිදුවන්නේ කවරක්ද එතැන් සිට වසර 4 කට නොඅඩු සේවා කාලයක් සම්පූර්ණ කර තිබිය යුතුය.

Thereby, as per Clause 09 an individual in Class II, Grade II of the Inland Revenue Service would be promoted to Class II, Grade I of the Inland Revenue Service based on Seniority and Satisfactory Service Records. Clause 09 states that an individual in Class II, Grade II who reaches the salary scale of Rs 124,500 would be entitled to be promoted to in Class II,

Grade I if such individual has 4 years of satisfactory service records from the date of reaching the salary scale of Rs 124,500.

In the instant matter, it is undisputed that the Petitioner reached the salary scale of Rs 124,500 on 01.10.2005, as evinced by the Petitioner in the document marked X3 in paragraph (4). In ordinary circumstances, the Petitioner would rightfully merit promotion to Class II, Grade I of the Inland Revenue Service on 01.10.2009. However, the Respondents have appended a Disciplinary Order, marked as 1R1. Through this Disciplinary Order, the Petitioner was adjudged culpable on all charges outlined in a Charge Sheet, with the exception of the 2nd Charge. One of the punishments meted to the Petitioner was the deferment of two salary increments. The deferment of the two salary increments was done with respect to the years 2007 and 2008, as per document X at page 92. Accordingly, the Public Service Commission had to determine whether the Petitioner had 4 years of satisfactory service from 01.10.2005, in order to be promoted to Class II, Grade I of the Inland Revenue Service with effect from 01.10.2009. Therefore, the Public Service Commission had recourse to its Procedural Rules to determine whether the Petitioner had 4 years of satisfactory service from 01.10. 2005.

Rule 186 of the Public Service Commission Rules (1R4) reads as follows:

A Public Officer must earn his promotion by a satisfactory service and fulfilment of all the required qualifications prescribed in the Service Minute or the Scheme of Recruitment.

(1) Satisfactory service means a period of service, during which period an officer had earned all annual salary increments fell due by efficient and diligent discharge of duties by passing over efficiency bars fell due, by qualifying for confirmation in service fell due and during which period he has not committed a punishable offence.

(ii) Where an officer has not been granted his due annual salary increments for legitimate reason the period during which the increment had stand suspended, reduced, stopped or deferred and where an officer has committed a punishable offence falling under Schedule 1 of

offences, a period of three years from the date of commitment of the offences and where an officer had committed a punishable offence falling under the Schedule I of offences a period of one year from the date of commitment of the offence, shall be excluded in computing his period of satisfactory service.

Rule 186 of the Public Service Commission Procedural Rules expressly requires the Public Service Commission to exclude '*the period during which the increments stand deferred*' when computing the satisfactory period of service of a public officer. Accordingly, the Public Service Commission excluded the years 2007 and 2008 when computing the Petitioner's satisfactory service from 01.10.2005. Thus, the Petitioner has no entitlement under the Old Service Minute read with the Public Service Commission Procedural Rules to obtain a promotion to Class II, Grade I of the Inland Revenue Service with effect from 01.10.2009.

Accordingly, there is no basis for the Petitioner to overturn and/or quash the Administrative Appeals Tribunal's decision in X7.

Application dismissed. No Cost.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL