

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

In the matter of an Application for the grant of Writs of Certiorari and Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No:
541/2019**

Dadallage Nihal De Silva
‘Mahagedara opposite the school’
Thalalla North,
Kekanadura.

PETITIONER

Vs

1. Central Environmental Authority
2. Isura Devapriya,
Chairman
- 2A. Siripala Amarasinghe,
Chairman
3. P.B. Hemantha Jayasinghe,
Director General

All of:
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

4. S.M. Chandrasena, M.P.
Minister of Environment and
Wildlife Resources.

4A. Mahinda Amaraweera, M.P.
Minister of Environment

4B. Naseer Ahamed, M.P.
Minister of Environment

5. Jayantha Samaraweera, M.P.
State Minister of Environment

6. J.M.C. Jayanthi Wijethunga,
Secretary

6A. Dr. Anil Jayasinghe,
Secretary,

All of:
Ministry of Environment,
“Sobadam Piyasa”, No. 416/C/1,
Robert Gunawardana Mawatha,
Battaramulla.

7. S.S. Ariyaratne,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

8. S. Kottage,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

9. W.S. Jayatissa,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
10. B.D.A. Amarasinghe,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
11. A.P. Priyantha,
Central Environmental Authority,
Kalutara District Office,
No.7A, Asiri Mawatha,
Nagoda,
Kalutara.
12. S.D.U. Gnanakeerthi,
Central Environmental Authority,
Gampaha District Office
No. 184/1, Kandy Road,
Yakkala.
13. S.M.S.B. Samarakoon,
Central Environmental Authority,
Gampaha District Office
No. 184/1, Kandy Road,
Yakkala.
14. S. Udayarajan,
Central Environmental Authority,
Ampara District Office,
1st Lane,
Ampara.

15. I.G.U.L. Ariyadasa,
Central Environmental Authority,
Eastern Provincial Office,
No. 05, Priyantha Road,
Kanthale.
16. W.V. Wickremasinghe,
Central Environmental Authority,
Sabaragamuwa Provincial Office,
No. 582/2,
New Town,
Rathnapura.
17. K.A. Perera,
Central Environmental Authority,
Monaragala District Office,
No. 1/49, Viharamulla Road,
Monaragala.
18. R.A.S.N. Bandara,
Central Environmental Authority,
Nuwara Eliya District Office,
District Secretariat Complex,
Nuwara Eliya.
19. P.S. Mahagoda,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
20. G.D.P.N. Chathurika,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

21. A.R.M.W.W.K. Ranasinghe,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
22. Buddhika Weheragoda DDG,
Human Resources Development,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
23. Asela Thismalpola,
Director,
Human Resources Development,
Central Environmental Authority,
No.104,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
24. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Senany Dayarathne with N.S. Fernando, N. Wickremasinghe and T.
Amirthalingam for the Petitioner.

Manohara Jayasinghe, D.S.G. for the Respondents.

Written submissions tendered on:

02.11.2022 by the 1st, 2nd, 2A, 3rd 7th – 23rd and 24th Respondents

23.11.2022 by the Petitioner

Argued by way of written submissions.

Decided on: 26.02.2024

S.U.B. Karalliyadde, J.

The Petitioner is a Bachelor of Arts degree holder from the University of Ruhuna and an employee of the 1st Respondent, the Central Environmental Authority (the CEA) was recruited as a Divisional Environmental Officer with effect from 10.02.2000 and subsequently promoted to the post of Senior Environmental Officer on 11.08.2008 (P4(i), P4(ii)). While functioning as the Senior Environmental Officer, he has covered the duties of Assistant Director of Hambantota District from 15.01.2014 to 12.04.2014 (P5).

On 29.12.2016, the CEA called applications to fill the vacancies for the posts of Assistant Director (Environment) (P6). The job vacancy notice marked as P6 distinguished the qualifications required to be possessed by the applicants who are either internal or external. Accordingly, external applicants were required to possess a bachelor's degree in the field of Environmental Science/ Agriculture or any other relevant field which is recognized by the University Grants Commission **and** a minimum of five years post-qualifying experience as an Executive Level in the field of environment after obtaining the first degree. The internal applicants were required to possess qualifications required by the external candidates **or** five years of satisfactory service as a Senior Environmental Officer/ Senior Environmental Education Officer.

The selection process was based on the results of a written competitive examination and/or a structured interview conducted by a panel appointed by the appointing authority as determined by the Board of Directors. The applicants were required to submit the applications on or before 15.01.2017. In the internal memo dated 26.03.2018 marked as P7(i) it has been stated, *inter alia*, that the written exam would be held on 09.04.2018, the Management had decided to fill only 39 vacancies which existed as of 15.01.2017 i.e. to the date of closing the applications, a waiting list would not be maintained to fill the vacancies arising after the cut-off date and to fill the vacancies arising after 15.01.2017, the applications would be freshly called (P7(i)).

By the office memo dated 16.03.2018 marked as P7(ii) it has been notified the candidates that the written examination would comprise of two question papers on 'Subject Knowledge' and 'General Management'. The written examination was held on 09.04.2018. The list of candidates selected for the structured interview was released on 28.05.2018 of which the Petitioner's index number SLF/CEA/AD/14 was also shortlisted for the interview (P8). The structured interviews were conducted on 06.06.2018 (P9). On 22.06.2018, the final marks of the written examination and the structured interview were released (P13). The Petitioner was ranked 48th in the list as he received 63 marks for the Subject Knowledge paper, 61 marks for the Management Paper and 25 marks for the interview which added to total marks of 47.8.

On 02.07.2018, the CEA appointed 32 candidates as Assistant Directors who were awarded the highest marks as per the mark sheet marked as P13. On 17.04.2019 an internal memo marked as P17 was issued by the 23rd Respondent to appoint 7th -21st Respondents also as Assistant Directors to fill 15 vacancies which were vacant after the

appointments made on 02.07.2018. The Petitioner was not selected for any of the above-mentioned appointments.

By this Writ Application, the Petitioner challenges the mark sheet marked as P13 based on the facts *inter alia*, that the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents acted in violation of the applicable Scheme of Recruitment (the SoR), existing laws and regulations and they were failed to properly ascertain, evaluate and/or examine the qualifications and the experience of the 18th, 19th, 20th and 21st Respondents in appointing them as Assistant Directors which renders such conduct of the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents unjust, arbitrary, improper, unlawful, illegal, wrongful, *ultra vires* and a nullity.

The substantive reliefs sought by the Petitioner in the Petition are, *inter alia*,

- c) Grant and issue a Writ of Certiorari quashing the mark sheet marked as P13.
- d) Grant and issue a Writ of Mandamus directing the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents to re-evaluate the basic qualifications and/or experience of all the candidates for the posts of Assistant Director (Environment) of the CEA as per the applicable Scheme of Recruitment, existing laws and regulations.
- e) Grant and issue a Writ of Mandamus directing the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents to reconduct the written competitive examination and/or a structured interview for the appointment and /or promotion to the posts of Assistant Director (Environment).
- f) Grant and issue a Writ of Prohibition prohibiting the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents from making any further appointments and/or promotions to the post of Assistant Director (Environment).

- g) Grant and issue a Writ of Certiorari quashing the decision of the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents to promote the 18th, 19th, 20th and 21st Respondents to the posts of Assistant Director (Environment).
- h) Grant and issue a Writ of Mandamus directing the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents to promote the Petitioner to the post of Assistant Director (Environment).

The main contention of the learned DSG appearing for the Respondents is that this Court is denuded of any power to grant any relief to the Petitioner because the Supreme Court had refused to grant leave to proceed in a Fundamental Rights Application bearing number SC/FR/170/2019 filed by three applicants who were not promoted to the posts of Assistant Directors challenging the appointments of the 18th, 19th, 20th, and 21st Respondents on the same grounds of this Application. Thus, he contended that contradicting the Supreme Court's ruling, this Court has no power to provide reliefs sought by the Petitioner, who was the 23rd Respondent in the aforementioned Fundamental Rights Application. The learned Counsel appearing for the Petitioner argued that this Writ Application is distinguishable from the Fundamental Rights Application because the wrongful, illegal and irregular manner of the promotion process was neither raised nor addressed by the Supreme Court in its Order marked as P22(b).

Under the above-stated circumstances, it is pertinent to consider whether the order refusing leave in the Fundamental Rights Application becomes *res judicata* enabling the Petitioner to maintain this Writ Application. In *Nandawathie and Others Vs. Tikiri Banda Mudalali*¹, Dissanayake, J. held that the principle of *res judicata* would apply if

¹ [2003] 2 SLR 347

the second action consists of the same parties, of the same subject matter and the same cause of action. In *Herath Vs. The Attorney General*², Basnayake CJ. held that,

“The whole of our law of res judicata is to be found in sections 34, 207 and 406 of the Civil Procedure Code. The decrees spoken of in section 207 are decrees drawn up by the court under section 188 after judgement has been pronounced in the manner contemplated by sections 184,185,186 and 187 of the Civil Procedure Code. Section 207 will therefore apply only to decrees pronounced after there has been adjudication on the merits of a suit...”

In the instant action, it is to be decided whether the dismissal of the Fundamental Rights Application at the leave to proceed stage amounts to *res judicata*. In the Indian Judgement of *Kunhayammed & ORS. Vs. State of Kerala & ANR.*³ delivered on 19.07.2000, the Indian Supreme Court referred *Workmen of Cochin Port Trust Vs. Board of Trustees of the Cochin Port Trust and Another*⁴, where a Three-Judges Bench of the Indian Supreme Court held that,

“dismissal of special leave petition by the Supreme Court by a non-speaking order of dismissal where no reasons were given does not constitute res judicata. All that can be said to have been decided by the Court is that it was not a fit case where special leave should be granted. That may be due to various reasons.”

In the same case, the Court referred to *Indian Oil Corporation Ltd. Vs. State of Bihar and Ors.*⁵ in which a labour dispute was adjudicated upon by an award made by the

² [1958] 60 NLR 193

³ [2000] 6 SCC 359

⁴ [1978] 3 SCC 119

⁵ AIR [1986] SC 1780

Labour Court. The employer moved to the Supreme Court by filing a special leave petition against the award which was dismissed by a non-speaking order. Thereafter the employer approached the High Court by preferring a petition under Article 226 of the Constitution seeking to quash the award of the Labour Court. On behalf of the employee, the principal contention raised was that in view of the order of the Supreme Court dismissing the special leave petition preferred against the award of the Labour Court, it is not legally open to the employer to approach the High Court under Article 226 of the Constitution challenging the very same award. The High Court decided that the doctrine of election is applicable, and the employer having chosen the remedy of approaching a superior court and having failed therein could not thereafter resort to the alternative remedy of approaching the High Court. This decision of the High Court was put in issue before the Supreme Court. The Supreme Court held that the view taken by the High Court was not correct and that the High Court should have gone into the merits of the Writ petition.

Referring to two earlier decisions, it was further held,

*“...When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in the special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be re-opened in a subsequent writ proceeding before the High Court. **But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court***

*dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to find it on mere guesswork. It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136 of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in limine by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court to grant special leave in cases where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions afore-cited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Article 226 of the Constitution. **In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and***

refuse him relief under Article 226 of the Constitution on the sole ground of dismissal of the special leave petition.” [emphasis added]

It is observed by this Court, that the Order in the Fundamental Rights Application bearing No. SC/FR/170/2019 does not provide any acute reasoning as to why the leave to appeal is refused. Hence considering all the above-stated facts and the Court decisions, I hold that the order of the Supreme Court in the Fundamental Rights Application does not operate as *res judicata* and not an impediment for the Petitioner to maintain the instant Application seeking to exercise its Writ jurisdiction and examine whether the impugned decision of the CEA violates the applicable SoR, existing laws and regulations, unjust, arbitrary, improper, unlawful, illegal, wrongful or *ultra vires*.

The Petitioner alleges that the CEA has violated the provisions of the SoR when appointing the Assistant Directors. As per Item No. 5.4.1. of the SoR marked as P11(a), the written competitive examination comprises two subjects namely, Language Proficiency and Aptitude Test. The internal memo dated 16.03.2018 marked as P7(ii) stipulates that the candidates should sit for a Subject Knowledge paper and a General Management Knowledge paper. Nevertheless, at the written competitive examination the applicants had to sit for a Management Paper instead of a Language Proficiency Paper. On 02.07.2018, 32 were appointed as Assistant Directors by the CEA and another 3 were appointed, consequent to the Fundamental Rights Application filed on 10.08.2018 by the 12th, 16th and 17th Respondents of the instant Application. Even though the Petitioner alleges that the CEA has violated the provisions of the SoR, it is evident from the internal memo dated 16.03.2018 marked as P7(ii), that the change of papers has been informed to the applicants prior to conducting the written examination on 09.04.2018. It clearly manifests that the Petitioner has accepted the changes and sat

for the written examination and alleges the said violations of the SoR only after the 7th – 21st Respondents were appointed to the post of Assistant Directors pursuant to the internal memo marked P17 which was issued on 17.04.2019. Instant Application was filed on 16.12.2019 and it is therefore the view of this Court that the Petitioner has neither questioned the alleged violations of the SoR without a delay in a proper forum nor has explained the delay.

It was held in the case of *K. A. Gunasekera Vs. T. B. Weerakoon (Assistant Government Agent, Kurunegala)*⁶, that,

“The award was made on 17.4.69, and it was more than 7 months later that the application was made. We consider this period far too long, and there has been no explanation for the delay.”

In *Biso Menike Vs. Cyril de Alwis*⁷ Sharvananda, J. (as then he was) held that,

“a writ of certiorari is issued at the discretion of the Court. It cannot be held to be a writ of right or one issued as a matter of course. But exercise of this discretion by Court is governed by well-accepted principles. The court is bound to issue a writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver The proposition that the application for writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights

⁶ 73 NLR 262

⁷ 1982 (1) SLR 368 at page 377 to 378

without any reasonable excuse the chances of his success in a writ application dwindle and the Court may reject a writ application on the ground of unexplained delay.....An application for a writ of certiorari should be filed within a reasonable time from the Order which the applicant seeks to have quashed.”

In the case of *Seneviratne Vs. Tissa Bandaranayake and another*⁸, Amerasinghe, J. adverting to the question of long delay, commented that.

“if a person were negligent for a long and unreasonable time, the law refuses afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, nam leges vigilantibus, non dormientibus, subveniunt, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.”

In *Sarath Hulangamuwa Sriwardena Vs. The Principal Vishaka Vidyalaya*⁹, it was held that,

“the Writs are extraordinary remedies granted to obtain speedy relief under exceptional circumstances and time is of the essence of the application The laches of the petitioner must necessarily be a determining factor in deciding the application for writ as the Court will not lend itself to making a stultifying order which cannot be carried out.”

When considering the above-stated facts and authorities, since the Petitioner has delayed in filing this Application for nearly 8 months and has not given any reason for

⁸ 1999(2) SLR 341 at page 351

⁹ (1986-1 SLR-275)

the same, this Court is of the view that the Petitioner is not entitled to the Writs prayed for in the prayers C to F of the Petition to this Application. Nevertheless, this Court direct the CEA to strictly adhere to the provisions of the SoR and its subsequent amendments in appointing and promoting Officers in the future.

The Petitioner challenges the appointment of 18th, 19th, 20th and 21st Respondents on the basis that the said Respondents do not possess a minimum of 5 years of experience in the Executive Grade as a Senior Environmental Officers to be promoted to the post of Assistant Directors. According to the SoR, external candidates were required to possess a bachelor's degree in the field of Environmental Science/ Agriculture or any other relevant field which is recognized by the University Grants Commission **and** a minimum of five-year post-qualifying experience at the Executive Level in the field of environment after obtaining the first degree. The internal candidates were required to possess qualifications required by the external candidates **or** five years of satisfactory service as a Senior Environmental Officer/ Senior Environmental Education Officer. In terms of Section 1.9 of Chapter II Volume I of the Establishment Code, the effective date of an appointment or promotion is the date specified in the letter of appointment or the date on which the officer first assumes the duties of his new post, whichever is later. The learned Counsel appearing for the Petitioner argues that the 18th to 21st Respondents did not possess a minimum of 5 years experience as Senior Environmental Officers/ Senior Environmental Education Officers to the date of closing the Applications, which was on 15.01.2017. However, when taking into consideration the dates of the letter of appointment and the dates of assumption of duties it is clear that they have assumed duties as Senior Environmental Officers/ Senior Environmental Education Officers a few dates later than the date of appointment. Therefore, the experience of the 18th to 21st Respondents in the post of Senior Environmental Officers/

Senior Environmental Education Officer should count from the date of assumption of duties and accordingly, their experience is shorter than 5, 12, 8 and 5 days respectively. Since it is not a considerable period which is short to 5 years, this Court cannot declare that the said Respondents are not eligible to be promoted as Assistant Directors on the fact that they have not completed the required 5-year period. Therefore, this Court cannot issue a Writ of Certiorari quashing the decision of the 1st, 2nd, 3rd, 22nd and/or 23rd Respondents to promote those Respondents to the posts of Assistant Director (Environment) and the relief prayed for in prayer G to the Petition in this Application should fail.

The CEA has appointed 32 Assistant Directors who were selected from the merit list marked as P13 at the first instance. In terms of the internal memo marked as P7(i), a reserve list will not be maintained based on the exam that was held on 09.04.2018 to select candidates for the post of Assistant Director for vacancies that would be available after 15.01.2017 and new applications would be called to fill those vacancies. Nevertheless, the CEA appointed 7th to 21st Respondents on 17.04.2019 as Assistant Directors based on the competitive examination and the results of the interview in the second instance. Accordingly, those Respondents (7th to 21st Respondents) have been selected from the merit list marked as P13. Therefore, including the 12th, 16th and 17th Respondents who were appointed pursuant to the settlement entered in the Fundamental rights application, altogether 50 Assistant Directors have been appointed from the merit list marked as P13. The Petitioner in the instant Application was ranked 48th in the said merit list. Therefore, it is the view of this Court that it is reasonable to appoint the Petitioner also as an Assistant Director. Under the above-stated circumstances, Court direct the CEA to appoint the Petitioner to the post of Assistant Director with effect from the date of this Judgment.

Considering all the facts and circumstances, this Court decide not to grant reliefs prayed for in prayers C to G of the Petition to this Application and to issue a Writ of Mandamus as prayed for in prayer H to the Petition. No costs ordered.

Application partially allowed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL