

MOTION IN THE COURT OF APPEAL OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an application for writ of certiorari and /or Mandamus under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Mohamed Ali Hassen
Assistant Director of Information Dept. of Information
No.635. D. Maiwatta.
Maiwana

Case No - CA Writ - 66 /2016

Petitioner

Vs.

1. Mr .Vajira Narampanawa
Ministry of Mass Media ,
163, Kirullapone Avenue.
Colombo 5
- 1(a) Mr.Nimal Bopage Secretary,,
Ministry of Mass Media 163,
Kirullapone Avenue Colombo 5
- 1 (b) D r. R. H.S. Somarathunga
Secretary, Ministry of Finance and Mass
Media 163, Kirullapone Avenue
Colombo 5
2. Mr. Ranga Kalansooriya
- 2(a) Mr. Nalaka Kaluwewa Director General of
Information Govt. Information Dept. 163,
Kirullapone Avenue,
Colombo 5.
3. K.L.L.Wijeratne
Chairman
National Salaries and Cade Commission.
4. Mr. Ashoka Jayasekara,
Secretary,
National Salaries and Cadre Commission.
5. Namal Bandara

6. Dayananda Vidanagamachchi
7. J. Charitha Rathwaththe
8. Prof. Kithsiri Madapatha Liyanage
9. Leslie Shelton Devendra
10. Suresh Shah
11. Sanath Jayantha Ediriweera
12. V. Regunathan
13. Kamal Mustapha
14. Prof. Gunapala Nanayakkara
15. Sujatha Cooray
16. Gerry Jayawardena
17. Thillai Nadarajah
18. Dr. Anura Ekanayake
19. Sembakuttige Swarnajothi
20. P. K. U. Nilantha Piyaratna
21. N.H. Pathirana
22. H.T Dayananda
23. T.B. Maduwegedara
24. Dr. Wimal Karandagoda
25. Suranga Naullage
26. Weligodage Kumarawansa de Silva
All of National Salaries and Cadre Commission
BMICH, Colombo 7

27. Dharmasena Dissanayake,
Chairman Public Service Commission.
No 177, Nawala Road, Narahenpita
28. H. N. G. Senevirathne,
Secretary, Public Service Commission.
No 177, Nawala Road, Narahenpita
29. Hussaian Ismail ,
Member Public Service Commission.
No 177, Nawala Road, Narahenpita
30. D. Shirantha Wijethilaka,
Member Public Service Commission.
No 177, Nawala Road, Narahenpita
31. Prathap Ramanujam,
Member Public Service Commission.
No 177, Nawala Road, Narahenpita
32. V. Jegarasasinjan,
Member Public Service Commission.
No 177, Nawala Road, Narahenpita
33. Santi Nihal Senewirathna,
Member Public Service Commission.
No 177, Nawala Road, Narahenpita
34. S. Ranugge,
Member Public Service Commission.
No 177, Nawala Road,
Narahenpita
35. D. L. Mendis,
Member Public Service Commission.
No 177, Nawala Road,
Narahenpita
36. Sarath Jayathilake,
Member Public Service Commission.
No 177, Nawala Road,
Narahenpita

37. Mrs. H. G. Sumanasinghe,
Director General Management Services Dept.
Ministry of Finance & Planning,
Colombo 1.

38. Director General of Establishment Ministry of
Public Administration Torrington Square
Colombo 7.

39. The Hon. Attorney General
Attorney General Department
Hulftsdorp
Colombo 12.

Respondents

Before: Janak De Silva J.

&

N. Bandula Karunarathna J.

Counsel: Nuwan Bopage with C. Weththasinghe for the Petitioner
M. Gunathilaka SDSG for the Respondent.

Written Submissions: By the Respondents on 28.07.2020
By the Petitioner on 20.05.2020.

Argued on: 16/09/2019

Judgment on: 18/11/2020

N. Bandula Karunarathna J.

The Petitioner has instituted this action inter alia seeking

- i. A Writ of Certiorari quashing the purported decision marked as P16,
- ii. A mandate in the nature of a writ of mandamus directing the Respondents to absorb the Petitioner to the SL-1-2006 salary scale, and
- iii. A Writ of Mandamus to promote the Petitioner to the next grade namely Deputy Director.

The Petitioner says that he has joined the Department of Information as a Publicity Assistant and gradually went up of the ladder due to his dedicated service. In the year 2001 the Petitioner was promoted to Assistant Director (Non SLAS) post as per document marked P2. The said promotion was approved by the cabinet and the said cabinet decision has been submitted by the Respondents marked as 2R3a.

The internal promotion scheme of the Department of Government Information is recognized as a closed service and there is a separate criteria followed by the said department. In terms of the document marked as P3, the new salary scales were introduced to the public service and the Ministry of Finance and Planning has re-structured the Departmental Services of Government Information Department in the Year 2010.

The Petitioner states that as per P4, the Petitioner's designation is placed under item number 7 namely Assistant Director (Departmental). Thereafter when salary scales were determined the National Salaries and Cadre Commission has recommended SL-1-2006 salary scale to the said Assistant Director Position. (Vide Documents marked as P5)

The Petitioner states however that the Director General of Government Information Department, due to political discrimination had not taken steps to place the Petitioner in the aforesaid salary scale whereas the Petitioner who held the post of Assistant Director was remained in the salary scale of MN-7-2006 which was appropriate to a lower rank. In other word the Petitioner who has been holding an executive position since year 2001 has been given a salary of non-executive officers namely Photographers and technical officers.

The Petitioner states that according to the document marked as P7 the Ministry of Finance has clearly approved SL-1-2006 salary scale to the Petitioner's position namely Assistant Director. The Petitioner states however that the Respondents did not take any steps to pay the salary which the Petitioner is entitled for without any valid reason whatsoever.

The Petitioner states that the Petitioner was not placed in the above salary scale and the Petitioner was compelled to make a complaint to the Public Service Commission (vide document marked as P9). In the meantime the Petitioner was appointed as the acting Deputy Director in terms of letter marked P8 according to which the Petitioner's salary scale must be SL-1-11. At the same time the Director General of the Department wrote to the Secretary to the Ministry and Public Service Commission to place the Petitioner to the appropriate salary scale namely SL -1-2006.

The Petitioner states that the Secretary to the Ministry of Mass Media also directed the National Salary and Cadre Commission to rectify the salary anomaly of the Petitioner (vide P14). However the Respondents acting very unreasonable and illegal manner did not take steps to rectify the said error despite the fact that the Petitioner has been covering all the duties of the posts of Assistant Director as well as Deputy Director. The Petitioner states that in the meantime almost after five years of deafening silence the National Pay commission has sent the letter marked as P16 which contained the following positions.

- i. A promotion to the post of Assistant Director could only be granted to a person attached to SL 1- 2006 salary scheme.
- ii. Even though the Petitioner was assigned duties of Assistant Director he was attached to MN 7- 2006 salary scheme.

- iii. Therefore he couldn't be placed in the SL 1-2006 salary scale although the Petitioner is holding the post of Assistant Director(vide P16)

The Petitioner states that he was promoted to the higher position and obtaining his service as Assistant Director, he has legitimate expectation to receive the appropriate salary for his position and get entitled promotions. The Petitioner therefore states that the Petitioner who was duly promoted to the rank of Assistant Director has been granted a low salary scale which is a prima facie unreasonable and discriminatory conduct of the Respondents.

The Petitioner further states that all the relevant authorities and persons namely Director General of the relevant Department, Secretary to the Ministry of Mass Media, Ministry of Finance and Planning, National Salaries and Cadre Commission have recognized and recommended to place the Petitioner in the eligible salary scale. On the other hand it was argued that the Purported position taken up in the impugned letter marked as P16 has no basis or rational and it has been issued with mala fide.

The Petitioner stated that, for an instance the said letter says that the Petitioner's promotion is not a general but a personalized promotion whereas the Respondent's own document marked as 2R3, 2R3a clearly shows, the Petitioner was promoted to full fill a vacancy considering his qualification.

The Petitioner argued that the Petitioner was placed MN-7-2006 a salary scale at the time of said promotion, however the document marked as P7 by the Petitioner and the document marked as 2R13 by Respondents clearly shows in the year 2012, the salary scales of the Department have been restructured according to which the Petitioner's salary scale should be SL-1-2006. Therefore it is the position of the Petitioner that the Respondents have no sustainable and rational defence and thus they couldn't even meet the arguments of this case.

In the aforesaid Circumstances, the Petitioner preferred this writ application seeking to quash the said purported decision contained in document marked as P16.

The Respondents filed their objection stating that even though the cabinet has given approval to appoint the Petitioner as Assistant Director in terms of the Cabinet Decision marked as 2R3a, Petitioner's salary scale had not been specifically mentioned. Therefore the 2nd Respondent's position is that without specific reference to salary scale in the cabinet decision they cannot place the Petitioner in SL-1-2006 salary scale.

Furthermore the Respondents took up another purported position that the said promotion of the Petitioner was not a general promotion. It is a personalized promotion thus he is not entitled for general benefits. The Respondents further submitted to Court that the Petitioner's appointment was merely a political appointment hence he cannot be absorbed to the SL-1-2006 salary scale.

Subsequent to a thorough analysis of the facts of the case, it is my observation that the Petitioner has failed to produce his letter of appointment of the perused of Court (paragraph 6 of the statement of Objections)

It is also pertinent to note that as per the post of Assistant information Officer, by a Cabinet Paper dated 28.02.2001; (paragraph 7a) ,the said Cabinet Decision did not specify the Salary of the said post although it was personal to the Petitioner. [Paragraph 7(a) + 7(b)]

I further note that according to the Scheme of Recruitment the Salary Scale of the Assistant Director is TB-3-8-2 and payment has been made accordingly and the Petitioner has accepted payment. [Paragraphs 8(d)(e)+ (f)].

Further, by letter marked 4R3 the Department of Management Services has placed the Petitioner in the Scale T-3-10-1 with effect from 10.06.2004. [Paragraph 8(g)] . New Salary Scales were introduced by Circular 6/2006; and by document marked 4R4(b) the National Salaries and Cadre Commission the Salary Scale MN7-2006 had been allocated to the previous salary scale of TB 3-10-1 where the Petitioner had been placed. (Paragraph 10C)

It is also pertinent to note that In terms of Public Administration Circular No. 6 of 2006 for those who were in Public Service on 01.01.2006 were paid according to their Salary Scales as at 31.12.2005. [Paragraph 10(e)]

It is also my observation that for Salary Scale TB-3-10-1 the equivalent Salary Scale was MN7 step 3 of the PA Circular No: 6/2006. Accordingly the Petitioner had been given the Salary Scale of MN7-2006- Step3 (para. 10(h)).

Further, the Scheme of Recruitment which included the relevant Salary Scale for these posts have been approved by the Public Services Commission. (Vide paragraph 13(d) of the Statement of Objections of the 3-26th Respondents). Therefore, in the circumstances in view of Article 61A of the Constitution, no Writ of Certiorari as prayed for by the Petitioner will lie.

There is also no statutory duty to absorb the Petitioner to the SL-1-2006 Salary Scale and accordingly no Writ of Mandamus will lie as prayed for by the Petitioner. It is important to note that the principle is well established in law by the Judgment is Weligama Multipurpose Co-operative Society Vs. Chandradasa Daluwatte 1984 1SLR 195.

In the aforesaid circumstances Petitioner's application is dismissed, with cost.

Judge of the Court of Appeal

Janak De Silva, J

I agree.

Judge of the Court of Appeal