

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 in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application
No.550/2019**

ATHAMBAWA BAROON
659B, V.H.Road,
Sainthamaruthu-14

Petitioner

Vs

1. T.N. HETTIARACHCHI,
Director General,
Sri Lanka Institute of Advanced
Technological Education [SLIATE],
No. 320, Janawathupiyasa,
T.B. Jaya Mawatha, Colombo-10.

1a. Dr. L.K. JAYARATHNE,
Director General,
Sri Lanka Institute of Advanced
Technological Education [SLIATE],
No. 320, Janawathupiyasa,
T.B. Jaya Mawatha, Colombo-10.

2. TAMARA D PERERA,
Director General,
Department of Management Services,
Ministry of Finance,
General Treasury, Colombo-01.

2a. Ms. HIRANSA KALUTHANTRI,
Director General,
Department of Management Services,
Ministry of Finance,
General Treasury, Colombo-01.

3. D.M.A.R.B. DISSANAYAKE,
Secretary,
Ministry of Higher Education,
Technology and Innovation,
No. 18, Ward Place, Colombo-07.

3a. Prof. KAPILA C.K. PERERA,
Secretary,
Ministry of Higher Education,
Technology and Innovation,
No. 18, Ward Place, Colomb0-07.

4. Sri Lanka Institute of Advanced
Technological Education [SLIATE]
No. 320, Janawathupiyasa,
T.B. Jaya Mawatha, Colombo-10.

5. M. S. RUPASINGHE,

6. A.L.V.I. LIYANARATNE,

5th to 6th Respondents all of Members
of the Interview Panel, Sri Lanka
Institute of Advanced Technological
Education (SLIATE),
No. 320, Janawathupiyasa,
T.B. Jaya Mawatha, Colombo-10.

7. Mr. S.L. MUSTHAFA,
Director-II, ATI Section,
ATI Avenue, Sammanthurai.

8. Mr. S. JAYAPALAN,
Director- II, ATI Section,
Main Street, Kovil Kulam,
Arayampathi, Batticaloa.

9. Mr. PRATHEEPAN,
Director-II, ATI,
Kanniya Road,
Varothaya Nagar, Trincomale.

10. Ms. E.M.D.J.K. EKANAYAKE,
Director-1, ATI,
No. 42, Rodrigo Place, Colombo- 15.

11. Mr. B. KAJASINGHE,
Director-1, ATI,
Green Land Drive, Badulla.

12. Mr. N.M.K.K. NAWARATHNE,
Deputy Director General [Admin &
Finance],
Sri Lanka Institute of Advanced
Technological Education (SLIATE), No.
320, Janawathupiyasa,
T.B. Jaya Mawatha, Colombo-10.

13. Mrs. J.H. GUNARATHNE,
Deputy Director General
[Academic affairs, Planning &
Research],
Sri Lanka Institute of Advanced
Technological Education [SLIATE),
No. 320, Janawathupiyasa,
T.B. Jaya Mawatha, Colombo-10.

14. Prof. K.T.M.U. HEMAPALA
15. Mrs. P.N.K. MALALASEKARA,
16. Mr. LAL SAMARASEKARA,
17. R.M.N.R. BANDARA,

14th -17th Respondents all of
Sri Lanka Institute of Advanced
Technological Education [SLIATE), No.
320, Janawathupiyasa,
T.B. Jaya Mawatha, Colombo-10.

Respondents.

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Rushdie Habeeb with Supun Dissanayake, instructed by Azad
Musthapa for the Petitioner.

S. Wimalasena, DSG for the 1A, 3A, 4th – 6th, and 12th – 17th
Respondents.

M. Abdul Najeem for the 7th, 8th, 9th and 10th Respondents.

Argued on: 11.09.2023

Written Submissions on: 16.11.2023 (by Petitioners)

Decided on: 14.02.2024

MOHAMMED LAFFAR, J.

The Petitioner in this Application is seeking orders, *inter alia*, in the nature of a Writ of Certiorari to quash the decisions to accept certain degrees as relevant disciplines, quashing the decisions relating to the appointment of certain Respondents, and a Writ of Mandamus directing the Respondents to promote the Petitioner to the post of Director-I or Director-II.

This Application pertains to the manner in which the interview and selection of candidates for the positions of Director I and Director II were conducted by the 44th Respondent, namely, the Sri Lanka Institute of Advanced Technological Education ('SLIATE').

It is submitted that applications were sought from internal staff members to fill two vacancies in Director I and four vacancies in Director II at SLIATE. The official advertisement, marked 'P19,' was published on the SLIATE website on 10.07.2019. The Petitioner applied for both positions and received a letter dated 07.08.2019 (marked 'P25'), inviting his participation in the interview process. Following this invitation, the Petitioner attended the relevant interviews on 20.08.2019, as indicated by documents 'P20' and 'P21'.

It is further submitted by the Petitioner that fifteen (15) internal staff members holding Master's degrees in five distinct disciplines, including IT, Administration, Agriculture, Commerce, and Economics, participated in the aforementioned interviews. The selection and recruitment of such candidates were to be carried out in accordance with the Scheme of Recruitment (SOR-2008).

The said Scheme of Recruitment (SOR-2008), as evidenced in P27, is reproduced as follows. Section 7.2.1. of the Scheme of Recruitment

(SOR-2008), Qualification and Experience of internal staff members to apply for the post of Director-I of ATI are as follows:

1) Master Degree in relevant disciplines with 05 years' experience as Senior Lecturer

And

2) An excellent performance record based on the performance appraisal System.

OR

1) Master Degree in relevant disciplines with 2 years experience as Director-2

And

2) An excellent performance record based on the performance evaluation system.

Further, as per Section 7.1.1. of the Scheme of Recruitment (SOR- 2008), Qualification and Experience of internal staff members to apply for the post of Director-II of ATI are follows,

1) Master Degree in relevant disciplines with 03 years' experience as Senior Lecturer

And

2) An excellent performance record based on the performance appraisal system.

The central contention put forth by the Petitioner revolves around the alleged incorrect application of the Scheme of Recruitment (SOR). According to the Petitioner, the SOR explicitly mandates that only degrees in "relevant disciplines" should be taken into account during the recruitment process. The Petitioner asserts that individuals lacking degrees aligned with these specified "relevant disciplines" have been recruited, thus deviating from the prescribed criteria outlined in the SOR. The fact that the term "Relevant disciplines"

means the field which is relevant to the subject area of the post to be recruited has been confirmed by a letter dated 20.08.2019, marked 'P28', where the Department of Management Services of the Ministry of Finance has informed the Petitioner's colleague of such.

Fifteen internal staff members with Master degrees in five (05) different disciplines such as IT, Administration, Agriculture, Commerce and Economics took part in the aforesaid interview on 20.08.2019. However, only five (05) applicants, including the Petitioner, hold a master's degree in administration.

The Scheme of Recruitment, outlining the necessary qualifications and experience, specifies that applicants must hold a "Master Degree in relevant disciplines." However, the term 'relevant discipline' remains undefined. It is crucial to highlight that not all degrees are considered admissible; they are contingent upon meeting the qualification criteria of being within the 'relevant discipline.' In light of this, the court deems it necessary to draw attention to other provisions within the Scheme of Recruitment to facilitate the identification and interpretation of the phrase in question. The provided broad definition of the nature of functions assigned to the category reads as follows:

"Functions in the nature of policy formulation, direction, management, and decision-making in such fields that form part of the functions assigned to the Chief Executive Officer (Director General) are assigned to the holders of posts in this category"

It also provides the following as the Job Summary:

"Ensure the smooth functioning of Academic and management functions of ATI"

Furthermore, as per Section 13(2) of SLIATE Act No. 29 of 1995, every appointment of the officers and servants of the Institute shall be made by the Council in accordance with the scheme of recruitment and procedures for

appointment prescribed by regulations. In terms of the Scheme of Recruitment (SOR-2008) marked P27, the Interview panel has no authority to change the terms or elements of SOR approved by the DMS. The interview panel has to comply with the Scheme of Recruitment (SOR-2008) marked P27 whenever conducting interviews for the Posts stipulated in the same.

The outlined scope of responsibilities makes it abundantly clear that the incumbent in the mentioned position must possess qualifications specifically related to administration and management. In the absence of any explicit guidance regarding the term 'relevant discipline' within the Scheme of Recruitment, the inclination is to interpret it as synonymous with the subject area directly germane to the responsibilities inherent in the post under consideration. This interpretation aligns with the evident emphasis on qualifications pertaining to administration and management as articulated in the delineated responsibilities for the position. The apparent injustice lies in the allowance of candidates with unrelated degrees to be considered viable, while candidates possessing relevant qualifications are unfairly sidelined.

In the context of the specified recruitment process, it is clear that candidates lacking a degree from the relevant discipline will not be considered competent or eligible. This means that the Scheme of Recruitment unequivocally requires individuals to hold qualifications specifically aligned with the pertinent subject area associated with the post under consideration. The emphasis on the "relevant discipline" underscores the importance of possessing qualifications directly related to the responsibilities and requirements of the position. The intention is to ensure that candidates selected for the recruitment process have educational backgrounds that align closely with the nature of the role, promoting competence and suitability for the specified position.

In consideration of the aforementioned circumstances, I hereby grant and issue an order in the nature of Writs of Certiorari, as prayed in prayers (g), (h), (i), and (i), thereby quashing the appointment of the 10th, 11th, 8th, and 9th Respondents who do not possess the requisite degree within the relevant discipline. Additionally, I further grant and issue an order in the nature of a Writ of Mandamus, as prayed in prayer (k), instructing the Respondents to promote the Petitioner to the position of Director I or Director II, as they deem appropriate. This directive is to be executed considering all eligible candidates from relevant disciplines for the specific recruitment in question.

JUDGE OF THE COURT OF APPEAL