

**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/0477/2019

Subramaniam Suntharalingam,
No.84/2, Power House Road,
Trincomalee.

Petitioner

Vs.

1. **Justice Anil Gunaratne,**
Chairman,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
2. **A. Gnanathan,**
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
3. **G. P. Abeyakeerthie,**
Member,
Administrative Appeals Tribunal,
No. 35, Silva Lane,
Rajagiriya.
4. **Administrative Appeals Tribunal,**
No. 35, Silva Lane,
Rajagiriya.
5. **P. B. Dissanayake,**
Secretary,
Administrative Appeals Tribunal,
No. 35, Silva Lane, Rajagiriya.

6. **Attorney General,**
Attorney General's Department.
Colombo 12.

Respondents

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

Counsel: G. Jayakumar with Rudane Zahir for the Petitioner.
Ms. Yuresha Fernando, D.S.G. for the Respondents.

Argued on: 11.01.2024

Written Submissions on: 15.05.2023 by the Petitioner
Not Submitted by the Respondents

Decided on: 04.06.2024

MOHAMMED LAFFAR, J.

In the Instant Writ Application the Petitioner, seeks *inter alia*;

1. A Writ of *Certiorari* to set aside the decision of the Administrative Appeals Tribunal (Hereinafter referred to as “AAT”) marked ‘**P30**’, and
2. A Writ of *Mandamus* directing the Respondents in terms of prayer (d) of the Petition.

The *factual matrix* of the instant Application is as follows,

The Petitioner, born on 11.04.1956 (as per the birth certificate marked ‘**P1**’) is a retired public servant who entered retirement on 11.04.2016. He was absorbed into Sri Lanka Planning Service on 01.09.1999 and subsequently according to ‘**P2**’ appointed as Assistant Director Class II Grade II (Now Class III) by the Public Service Commission of the Central Government consequent to Cabinet decision No. 99/1418/28/025 dated 22.09.1999. The Petitioner was given an antedated appointment with effect from 01.09.1999.

The Petitioner states that, according to paragraph 13 of ‘**P2**’ the salary steps for the 01st Efficiency Bar Examination is Rs. 102,900/- while the salary steps for 02nd Efficiency Bar Examination is Rs. 119,000/-. The Petitioner claims, according to Section 8:2:3 of the minutes of Sri Lanka Planning Services published in Gazette extraordinary bearing No.1134/5 dated 30.05.2000 that, he is entitled to be exempted from the requirement of passing the prescribed Efficiency Bar Examination for promotion over the Efficiency Bar on completing the age of 45 Years, which the Petitioner fulfilled on 11.04.2001.

The Petitioner further states that, the Secretary of the Sri Lanka Planning Service Board by a letter bearing No. PSB/1/7/2/891 dated 27.09.2002 marked '**P4**' exempted him from the 01st Efficiency Bar Examination.

However, the Petitioner was informed by the letter dated 26.09.2004 marked '**P5**' that his probationary period had been extended until 30.09.2004 in terms of Public Administration Circular 20/2001 and in terms of Section 11:9 Chapter II Vol 1 of the Establishment Code.

According to the Petitioner he was also informed that as per the second paragraph in '**P5**', he should complete the Efficiency Bar Examination within the extended probationary period. That is despite '**P4**' stating that he is exempted from the Efficiency Bar Examination. It is the Petitioner's contention that '**P5**' did not cancel the contents of '**P4**'.

Furthermore, the Director General of Establishment by letter bearing No. EST/6/2/1/851 dated 17.10.2018 marked '**P16**' addressed to the petitioner was issued in response to a letter marked '**P15**' sent by the Petitioner addressed to the Chief Secretary of Eastern Province, informing that the Petitioner could be exempted from passing the first efficiency bar examination, if they have fulfilled both requirements of completing 45 years of age and reaching the efficiency bar salary step prior to 01.10.2001, the date on which the Public Administration Circular 20/2001 dated 12.09.2001 was brought into operation.

The Petitioner states that, the AAT erred in delivering the Order marked '**P30**' in the following manner;

- a. Failing to consider that the Petitioner was in receipt of the salary of Rs. 105,600/- per annum at the time of absorption into Sri Lanka Planning Services Class II grade 2 as stated in '**P31**' and '**P31a**'.
- b. Failure to observe paragraph 2 of the Public Administration Circular 20/2001 dated 12.09.2001 granting exemption from passing the Efficiency Bar Examination on completing 45 years age, provided they complete 45 years age prior to the date of implementation of the circular 01.10.2001, even though the Petitioner was 45 year old on 11.04.2001, prior to the date of implementation of the circular namely 01.10.2001, despite the fact that the aforesaid circular which was annexed as '**A36**' to the appeal tendered to the AAT.
- c. The AAT in delivering the order in '**P30**' erred by following the incorrect opinion tendered by acting Director of establishment annexed as '**P19**' to paragraph 29 of the Petition, even though by '**P16**' annexed to paragraph 26 of the Petition, the Director General of Establishment stated that the Petitioner could be granted exemption from passing the efficiency bar examination for reasons stated in '**P16**'. '**P16**' was annexed as annexure '**A17**' to the appeal tendered by the Petitioner to the AAT. '**P19**' was annexed as annexure '**A23**' to the appeal tendered by the Petitioner to the AAT. Failure of the AAT to consider the combined effect of the minutes of Sri Lankan Planning Service annexed as '**P3**' to paragraph 9 of the Petition and Public Administration Circular No.20/2001 dated 12.09.2001 annexed as '**P20**' to paragraph 30 of the Petition.'

- d. Failure of the AAT to consider the combined effect of the minutes of Sri Lanka Planning Service annexed as 'P3' to paragraph 9 of the Petition and Public Administration Circular No.20/2001 dated 12.09.2001 annexed as 'P20' to paragraph 30 of the Petition.

There are two main considerations for this Court in the immediate matter.

Firstly, upon an objective analysis of the facts of this case whether the Petitioner is entitled to the exemption from the Efficiency Bar Examination and thus is entitled to claim a legitimate expectation for the same. Secondly, whether the AAT has made an error on the face of the record.

Addressing my mind to the first question on eligibility for an exemption from the aforesaid Efficiency Bar Examination, there are two prerequisites for eligibility as provided for by N. Iddawala J in **B. Sivapiragasam vs Chairman, Administrative Appeal Tribunal**¹ citing Shirani Bandaranayake, CJ in **SCFR No. 432/2003** dated 04/05/2006 states,

“Her Ladyship Justice Shirani Bandaranayake in the said judgement further reiterated that in order, for the Petitioner to be entitled to concessions granted, it is necessary to fulfill two specific requirements. Which were;

1. Completion of 45 Years of age; and
2. Reaching the required salary step at the time he applied for the concessions prior to the implementation of PAC 20/2001].”

Completion of 45 Years of age

As per section 8:3:2 of the Service Minutes of the Sri Lanka Planning Services published in Gazette extraordinary bearing No.1134/5 dated 30.05.2000 it indicates that,

“An Officer in Class I Grade II will be exempted from the requirement of passing the prescribed Efficiency Bar Examination for promotion over the Efficiency Bar on completing the age of 45 years.”.

According to 'P1' i.e. the birth certificate, it is evidenced that the Petitioner was born on 11.04.1956 and on 11.04.2001 he completed his 45th birthday prior to 01.10.2001, thus fulfilling the age requirement necessary for the exemption prior to the date of implementation of the Administrative Circular, PAC 20/2001. Whereby the first requirement has been satisfied by the Petitioner.

Salary Step Requirement.

Secondly, for the Petitioner to be exempted from the said exemption it is necessary to prove that the Petitioner reached the required Efficiency Bar Salary Step prior to 01.10.2001.

The attached documents affirm that the petitioner had joined the Public Service as a graduate trainee on 01.03.1990 and later upon the cabinet decision numbered

¹ CA/WRT 254/2018 Decided 10.05.2023

No.99/1418/28/025 the Petitioner was absorbed into SLPS II/II with effect from 22.09.1999.

The required Efficiency Bar Salary Step for the position in question is Rs. 102,600/- . According to 'P31' and 'P31a' it is evidenced that the Petitioner received a salary of Rs. 105,600/- per annum at the time of absorption into Sri Lanka Planning Services Class II grade II. Thereby it is manifestly clear that the Petitioner has reached the required salary step prior to the 01.10.2001 having been absorbed to SLPS II/II with effect from 22.09.1999 with a salary of Rs. 105,600/- per annum.

According to, **Kaluarachchi and others v Ceylon Petroleum Corporation and others [2019] SC Appeal 16/2018**² wherein the Supreme Court reiterated that, where a public authority gives a specific, unambiguous and unqualified assurance that it will act in a certain manner it gives rise to a legitimate expectation.

Since the Petitioner has been given the assurance by letter marked 'P4' that he is exempted from the 01st Efficiency Bar Examination and upon perusing the contents of 'P5' it is evidenced that it does not state that 'P4' is cancelled. Furthermore, the said expectation is reinforced through the contents of the letter marked 'P16'.

Therefore, I am of the view that the legitimate expectation created by 'P4' would remain unimpeded. Thus, according to the established law upon the Petitioner completing both of the aforesaid requirements he is entitled in law to claim the advantage.

Secondly, addressing my mind to the question of whether the AAT has made an error on the face of the record. It is manifestly clear that despite the Petitioner meeting the prerequisites for the exemption he was not granted it. Thus, the impugned Order of the AAT marked 'P30' can be quashed if there is an error of the record *ex facie*.

The impugned Order of the AAT can be considered erroneous *ex facie* as it states,

"In order to get an exemption from the EB I Examination in terms of PA Circular No 20/2001 the appellant should have completed 45 years of age before 01.10.2001 and have reached the relevant salary step. However, since the appellant had been appointed to Class II/II the SLPS On 01.09.1999 he was expected to reach the fourth salary step before 01.09.2003. That date is coming after 26.02.2001 and therefore the appellant is not eligible for an exemption from EB I in terms of PA Circular No. 20/2001."

Furthermore, the Petitioner states that the Respondents to this application constituting the AAT did not consider his appeal and annexure A1 to A36 in delivering the order in 'P30'.

In this regard, according to Iddawala, J in **B. Sivapiragasam's Case (Supra)**³ citing **R (Cart) v Upper Tribunal**⁴ stated,

"a failure to consider relevant evidence when making an Order can constitute an error ex facie. In the aforementioned case the Supreme Court held that the

² [2020] 1 SLR 1.

³ CA/WRT 254/2018 Decided 10.05.2023

⁴ [2011] UKSC 28.

Upper Tribunal had made an error on the face of the record by failing to consider relevant evidence, and therefore its decision was quashed.”

It is clearly demonstrated from the previous abstract from ‘**P30**’ that the impugned order was made without any consideration to the facts mentioned or documents tendered in the Appeal to the AAT. Thus, it is clear that the said order is not merely erroneous but an error that is manifest on the face of the record.

Accordingly, having carefully considered the facts and arguments led before this Court, this Court holds that the Petitioner does possess in law a legitimate expectation to be exempted from the Efficiency Bar Examination for promotion over the Efficiency Bar and has fulfilled the said conditions prior to the date of implementation of the Administrative Circular, PAC 20/2001. The Court further holds that, the impugned order of the AAT is erroneous *ex facie* and that the Petitioner is entitled to be promoted to Class II of the SLPS effective from 01.09.2009, having completed 10 years and receiving due concessions. Thus, a Writ of *Certiorari* is issued to quash the AAT’s order dated 03.12.2018. Furthermore, the Petitioner is entitled to receive any and all other benefits that come with the promotion to a higher grade with effect from 01.09.2009.

In those circumstances, I hold that the Petitioner is entitled to the relief as prayed for in the prayers to the petition. Thus, the petition is allowed without costs.

Application Allowed, No Costs.

JUDGE OF THE COURT OF APPEAL