

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.

CA/WRIT/414/2020

1. Pragathi Bank Employees Union,
No.38, D.K. Wijewardena Mawatha,
Colombo 10.
2. Alkeganayalage Janith Udayanga,
A87/1, Newland Road, Aluthnuwara,
Mawanella.
3. Ekanayake Mudiyanse Viranga
Pramudita Bandara Ekanayake,
No.27/C, Kumbure Gammedda,
Oruthota, Gomagoda.
4. Siyambalagaha Kumbure Gedara Damith
Eranga Jayathilaka,
No.72/B, Nanuoya, Bayagama Road,
Pilimathalawa.
5. Rajarama Brahamanalage Nalaka
Sampath,
No.01, Tissa Road, Wellawaya.
6. Sinhamuni Arachchilage Umith Sameera
Wijaya Bandara,
No.42, Thenagallanda Morawa,
Moneragala.
7. Rathne Thalappulige Tharanga Prasad
Kumara,
No.4/A, Wirithamulla Mawatha,
Polonnaruwa, Tangalle.

8. Sudharaka Samarawickrama,
No.16, Godaudawaththa, Thudalle Road,
Kamburugamuwa, Matara.
9. Hashan Anuruddha Ediriwickrama,
No.48, Deepankara Road,
Medalatiya, Tangalle.
10. W.M.A. Yohan Chamara Madushan,
"Soyuru", In front of the School,
Aluthgoda, Dikwella.
11. U.I. M. Fairroos,
School Road, Oddamavadi 01.
12. G.K.G.L. Wickramatinghe,
No.43/13 C, Aluthgangoda Road,
Kandy.
13. D.E. Jayarathna,
No.39, Mihindu Mawatha,
Samanpurs, Kurunegala.
14. U.A.D.S. Hansaka,
No.48/19, Wattegedara Road,
Maharagama.
15. M.M.Madura Dananjaya Mapa,
No.15/80A, Farm Estate, Madeiyawa,
Meepitiya, Kegalle.
16. R.H.N. Pushpakumara,
No. 149/4, Hadipannala,
Yatigalmaluwa.
17. T.M. Sanjcewa Kumara,
Bogahamulahena, Siyambalawehera,
Kalugamuwa.
18. U.A.D. Mahesh Ukgalla,
No.498, Kaliyawadana, Welpalla.

19. M.A.S.R. Ariyaratne,
Henegedara, Rathkarawwa,
Maspotha.
20. Don Damith Eranga Wanigasekara,
No.34, Swashakthi Mahaweli Housing
Scheme,
Digana, Rajawella.
21. Harsha Prabada Weliwaththa,
No.153/2, Weliwaththa Mawatha,
Mattegoda.

PETITIONERS

1. Peoples Bank,
No. 75,
Sir Chittampalam A. Gardinar Mawatha,
Colombo 02.
2. Mr. Sujeewa Rajapakse,
The Chairman, People's Bank,
No. 75,
Sir Chittampalam A. Gardinar Mawatha,
Colombo 02.
3. Mr. R. Kodithuwakku,
The General Manager, People's Bank,
No. 75, Sir Chittampalan A. Gardinar
Mawatha, Colombo 02.
4. Mr. Rohan Pathirage,
Deputy General Manager (Human
Resources), People's Bank,
No. 75,
Sir Chittampalam A. Gardinar Mawatha,
Colombo 02.

5. Department of Examinations, Sri Lanka,
Pelawatta,
Battaramulla.
6. B. Sanath Pujitha,
Commissioner General of Examinations,
Department of Examination Sri Lanka,
Pelawatta, Battaramulla.
7. Ceylon Bank Employees' Union, No.38,
D.R. Wijewardena Mawatha,
Colombo 10.
8. Hon. Attorney General,
Attorney General's Department,
Hulfsdorp Street, Colombo 12.

RESPONDENTS

Before: Dhammika Ganepola, J.
Damith Thotawatte, J.

Counsel:

Kuvera de Zoysa, PC with Pasindu Bandara for the Petitioners.

Sanjeewa Jayawardena, PC for the 1st to 4th Respondents.

Mihiri De Alwis, SC for the 5th, 6th and 8th Respondents.

Nalin Amarajeewa with Indula Hewage for the 7th Respondent.

Written Submissions Tendered on:

21.01.2025 by the Petitioners.

15.01.2025 by the 1st to 4th Respondents.

10.01.2025 by the 7th Respondent.

Argued on: 18.12.2024 and 19.12.2024

Delivered on: 14.02.2025

Damith Thotawatte, J.

In the Petition to this Writ Application the Petitioners have sought the substantive reliefs, *inter alia*,

- (b) Grant and Issue a Writ in the nature of a Writ of Certiorari quashing the Staff Circular bearing No. 8570/2020 marked P13.
 - (c) Grant and Issue a Writ in the nature of a Writ of Mandamus directing the 1st Respondent and/or its nominees and/or agents to pass all candidates that sat for the examination for the position of Assistant Manager (III-3) in December 2019 in consideration of the several discrepancies and anomalies in the examination paper and results given therein.
 - (d) In the alternative to prayer (c) Grant and Issue a Writ in the nature of a Writ of Mandamus directing the 1st Respondent and/or its nominees and/or agents to pass all candidates that sat for the examination for the position of Assistant Manager (III-3) in December 2019 who have obtained a combined average of forty percent (40%) from both examinations, in consideration of the several discrepancies and anomalies in the examination paper and results given therein.
 - (e) In the alternative to prayers (c) and (d) Grant and Issue a Writ in the nature of a Writ Mandamus directing the 1st Respondent and/or its nominees and/or agents to pass candidates that sat for the examination for the position of Assistant Manager (III-3) in December 2019 who have a the pass mark of forty percent (40%) in both examinations, in consideration of the several discrepancies and anomalies in the examination paper results given therein and the fact that forty (40%) has been the standard pass mark.
 - (f) Call for the Examination Papers of the examination held of the post of Assistant Manager (III-3) in December 2019 and the admission cards for such exams.
1. As per journal entries dated 25-05-2023, the Learned State Counsel appearing for the 5th, 6th and 8th Respondents and the Learned Counsel for the 7th Respondent has informed the Court that the Staff Circular bearing No. 8570/2020 marked **P13** mentioned in the relief (b) has been revoked. Although the Petitioners have accepted this position, they had resolved to continue with other reliefs. Therefore, this judgement will deal only with the substantive reliefs sought in prayer (c), (d), (e) and (f).

2. 1st Petitioner to this Application is an established trade union of the 1st Respondent Bank. 2nd to 21st Petitioners are employees of the 1st Respondent Bank and members of the 1st Petitioner, Union who had sat for the impugned examination held on 15-12-2015 for promotion to Assistant Manager (III-3), under a promotion scheme and a Syllabus established by internal staff circulars.
3. Initially, the staff circulars giving the promotion scheme applicable for promotion to the position of Assistant Manager (III-3) had been the Staff Circular No. 444/2018 dated 16-02-2018 (annexed marked as **P5**) along with Staff Circular No. 444/2018(I) dated 21-11-2019 (annexed marked as **P6**) which had superseded previous Staff Circulars No. 300/99 and 337/2002 (respectively annexed as **P2** and **P3**).
4. The promotion scheme applicable for position of Assistant Manager (III-3) in Staff Circular **P5** was amended by Staff Circular No. 8372/2019 dated 10-06-2019 (annexed to the marked as **P7**) which was issued as a unique and a not to be repeated offer to the staff, giving them an a once-and -for-all opportunity irrespective of the cadre restrictions which was in previous circular. However, **P7** circular also required a candidate to score a minimum of 50% for each of the two question papers (which constituted the written examination) in one and the same sitting, to pass the examination.
5. Staff Circular No 8372/2019 (1) dated 25-07-2019 (annexed marked as **P8**) has been issued as an extension to **P7**. However, the Staff Circular No. 316/2000 dated 05-12-2000 giving the syllabus for the promotion examination (respectively annexed marked as **P4**) had continued to remain unchanged.
6. The impugned examination for promotion to Assistant Manager (III-3), had been held on 15-12-2015 with approximately 1,599 candidates sitting and out of which, 773 had passed (according to the Petitioners). The results had been published on 04-08-2020 (paragraph 27 of the Petition). The 1st Respondent Bank had proceeded to give appointments to the candidates who had passed the examination.
7. It is the contention of the Petitioners that more than 50% of the candidates could not pass the examination as owing to, *inter alia*, irregularities and/or mistakes and/or translation

discrepancies between the Sinhala, Tamil and English papers. It is further submitted that questions were not in conformity with the syllabus (stipulated in Staff Circular marked as **P4**) and there were issues regarding the conduct of the examination which has prompted the Petitioners to seek the reliefs prayed in (c) to (f).

8. According to the Petitioners, the issues in the above paragraph had been brought to the notice of the management by the 7th Respondent Union by their letter dated 24-12-2019 (annexed marked as **P9**) and thereafter, by 1st Petitioner's letter dated 07-10-2020 (annexed marked as **P14**) but no action has been taken.
9. Subsequently 1st Respondent Bank issued a staff circular bearing No 8570/2020 (annexed to the Petition marked **P13**), *inter alia*, calling for applications for Assistant Manager (III-3), where the threshold figure to pass the written examination has reverted back to 40% and it is the contention of the 1st Petitioner that this would be unfair by those candidates who sat for the examination on the 15-08-2020.
10. Although it appears that it was the **P13** Staff Circular that prompted the filing of this Application, during the pendency of this Application the 1st Petitioner withdrew **P13**. Hence, the Petitioners concern regarding this circular or regarding an examination being held under circular **P13** is no longer valid.
11. However, it is to be noted that the Petitioners are not challenging the **P7** and **P8** circulars, or asking for their cancellation, Petitioners are only challenging the formulation of the question papers and the manner in which the 15-12-2019 examination was conducted.

In **prayer (c)**, the Petitioners request that in consideration of the **discrepancies** and **anomalies** in the impugned examination paper, all those candidates who sat for the 15-12-2019 examination be declared as having passed.

Or as an alternative to prayer to (c), in prayer (d) Petitioners request that in consideration of the **discrepancies** and **anomalies** in the impugned examination paper, all those candidates who has received **a combined average of 40% for both papers** should be passed.

Or as an alternative prayer to (c) and (d), in prayer (e), Petitioners request that in consideration of the **discrepancies** and **anomalies** in the impugned examination paper,

all those candidates who has received a threshold figure of **40% for both papers** individually should be passed based upon the fact that was the established threshold figure prior to issuing of **P7**.

12. As all three prayers are based on the alleged **discrepancies** and **anomalies** in the impugned examination paper, firstly it should be examined whether in fact there was discrepancies, anomalies and other defects mentioned by the Petitioners.
13. The impugned examination has been conducted by the 5th Respondent, Department of Examination under a contract (marked as **5R1**) signed between the 1st Respondent Bank and the 5th Respondent. The 5th, 6th, and 8th Respondents have denied the allegations of discrepancies, anomalies and other defects in their limited objections and have further stated that the examination paper and the corresponding marking scheme has been formulated by a competent examination panel based on **P4, P7, and P8**.

Disputed or Doubtful facts

14. The Petitioners in their written submission answering the allegation that all necessary parties had not been named had stated that all employees of the 1st Respondent Bank belongs to either the 1st Petitioner Union or the 7th Respondent Union and as both Unions are parties to this Application, all necessary parties are named.
15. Even if the 7th Respondents claimed that majority of the bank staff belongs to their Union is disregarded, from the Petitioners' admission itself it is evident that 1st Petitioner Union does not represent the entire workforce of the 1st Respondent Bank, nor does it represent the entirety of the candidates who sat for the 15-12-2019 examination.
16. It is apparent that 1st Petitioner Union represents only the candidates who are members of the 1st Petitioner Union. The 7th Respondent Union, on behalf of their members, has denied the claims made by the 1st Petitioner Union in paragraph 23 (ii) of the Petition, which states that irregularities and/or mistakes and/or translation discrepancies **led to 50% of the candidates being unsuccessful**. Further, the 7th Respondent Union wants the Petition to be dismissed *in limine*.

17. While the Petitioners have tried to counter the 7th Respondent's position by referencing their letter **P9**, which acknowledges certain errors and defects and requests relief from the Deputy General Manager of Human Resources, this letter does not prevent the 7th Respondent from later reaching a contrary conclusion regarding the errors and defects they initially highlighted.
18. The Petitioners, have not specifically submitted what constitute the irregularities, mistakes, translation discrepancies and the questions that were not in line with the **P4** Syllabus. It appears that for this purpose the Petitioners had relied on **P9** however, this letter is not supported by its author.
19. The 5th Respondent, who prepared the question paper, has denied the allegations made in paragraph 23, 24, 25 and 26 of the Petitions concerning irregularities and/or mistakes and/or translation discrepancies, and questions not being in line with the **P4** Syllabus. Similarly, the 1st to 4th Respondents has also denied the same. Even if **P9** had been accepted by the 7th Respondent, this Court is unable to determine the truth of the claims given the rejections by the 1st to 5th Respondents.
20. Even if, in response to prayer (f), the papers from the impugned examination were made available to the Court, it would still be impossible for the Court to determine whether there were errors, defects, or nonconformities with the syllabus without conducting an inquiry. The Court cannot issue an order compelling a public institution to perform an act based on disputed or uncertain facts.

Reliefs prayed for is untenable

21. The relief sought in prayer (c) is to pass all candidates that sat for the examination on consideration of the several discrepancies and anomalies in the examination paper and results given therein. The justification for this request appears to be on the premise that **all the candidates that were unsuccessful** was solely **unsuccessful** because of the above stated discrepancies and anomalies. However, if the 1st Respondent is to accede to this request, it needs ensure that no candidate was unsuccessful because of their incompetency, as it would be contrary to the basis submitted by the Petitioners.

Considering there is no conceivable manner to ascertain this prayer (c), can considered to be misconceived to the point of absurdity.

22. When considering the alternate prayers (d) and (e), the 1st Respondents request to pass all those who had received in excess of 40% (respectively under two different method of calculating) based on the threshold figure which prevailed before the issuing of **P7** circular. This is also baseless, as 1st Petitioner has accepted the **P7** and its new threshold figure of 50% without objections, and as such now there is no rational basis for reverting back to 40%.

Laches

23. **P7** circular had been issued in 10-06-2019 and the examination based on the said circular was held on 15-12-2019. There is no indication that the 1st Petitioner Union prior to the holding of the examination ever objected to **P7** or any part of **P7**. As the 1st Petitioner Union has not specifically challenged **P7** and **P8**, it is not material. However, even after the impugned examinations was held, there is no indication that the 1st Petitioner took any action to challenge the impugned examination till 07-10-2020 on which day a protest letter (annexed to the petition as **P14**) had been sent to the Chief Executive Officer and to the General Manager of the 1st Respondent Bank.
24. On the day of the examination or shortly thereafter, the 1st Petitioner Union should have been aware of the issues challenged by this Application. There is no satisfactory explanation for 1st Petitioner Union's inaction from 15-12-2019 to 07-10-2020. As such the Petitioners are guilty of laches.

Availability of a writ of Mandamus

25. The availability of a writ of mandamus to compel a state bank to promote employees depends on whether the duty to promote is regarded as a public (statutory) duty or is instead a matter of private discretion.
26. In *Piyasiri vs. People's Bank (1989) 2 Sri. LR 47*, the Court of Appeal held that although a state bank was subject to certain ministerial directions, it was essentially a commercial

institution and the court refused to issue a writ of mandamus to compel the bank to call an employee for an interview for promotion because:

- I. The bank's promotion circular (Circular No. 186/82) did not have statutory force, and
- II. The bank's internal process for promotion was discretionary rather than a mandatory public duty.

27. In this instant Application, the Petitioners having accepted **P7** and **P8**, are not challenging the promotion scheme. The 1st Respondent Bank based on **P7** and **P8**, owes no duty to promote the unsuccessful candidates.

28. The examination papers had been prepared and the examination conducted by the 5th Respondent on the guidelines given by the 1st Respondent, as a result of a contract between the 1st and the 5th Respondents. The Petitioners have failed to demonstrate that 5th Respondent for whatever reason, failed to perform a well-defined, non-discretionary duty where no other remedy is available. Further, Petitioners have failed to demonstrate that 1st and/or the 5th Respondent has acted arbitrarily or in bad Faith.

Based on the circumstances and reasons provided above, I am not inclined to grant any of the reliefs prayed for in the prayer to the Petition.

Application is dismissed.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J.
I agree.

JUDGE OF THE COURT OF APPEAL