

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

In the matter of an application for a Mandate
in the nature of writ of Certiorari and writ of
Mandamus in terms of Article 140 of the
Constitution of Democratic Socialist Republic
Sri Lanka.

CA-WRIT Application No:

Writ 044/23

Chandra Swarnalatha Weerasooriya

No.448

No. Ehalagahahena

Pethiyagoda, Gampaha

Applicant- Petitioner

Vs.

1. Airport and Aviation Services (Sri Lanka)
Limited
Bandaranayake International Airport
Colombo
Katunayake

Respondent- Respondent

2. K.K. Kumari Dhanapala
2nd Floor
Secretariat of Labour
Colombo 5
And
No. 149/102

Madra Garden
Mathtegoda

(Arbitrator)

3. Commissioner of Labour
Department of Labour
Colombo 05

4. Hon. Attorney General
Attorney General's Department
Colombo 12

Respondents

Before : N. Bandula Karunarathna P/CA, J.
B. Sasi Mahendran, J.

Counsel: Aruna Ranasinghe for the Petitioner
Navodi De Soysa, SC for the Respondents

Argued on: 22.03.2024

Written

Submissions: 29.04.2024 (by the Plaintiff-Appellant)

On:

Decided On: 27.06.2024

B. Sasi Mahendran, J

The Petitioner instituted this action seeking for a Writ of Certiorari quashing the decision made by the Arbitrator on 22.09.2022, regarding of not promoting the Petitioner for the Supra Grade (v) as a Secretary in the 1st Respondent Company.

The facts of this matter briefly are as follows,

The Petitioner joined the 1st Respondent Company in the year of 1993 as a secretary (Grade III) and got promoted to grade II in the year of 1998 and to grade I in the year 1999.

Thereafter on 01.08.2011 a new scheme of Recruitment and Promotion (SORP) for the secretaries has been introduced by the management of the 1st Respondent named “ Supra Grade (v)”. The Petitioner states that, by that time, the Petitioner had completed her service of 12 Years in the 1st Respondent Company as a Secretary.

Accordingly, the 1st Respondent Company called for applications for the relevant promotion and the selection for such promotion comprised of two tests namely the Trade Test consisting the Competitive Test and Oral Test. Since the Petitioner was eligible for the promotion, she sent her application and sat for both English written test and the computer test. The Petitioner states that, she was remained with the oral test and by that time she had taken leave to go abroad and she had expected an email or a phone call regarding the oral test.

Furthermore, the Petitioner states that she was not informed about the marks she obtained at the English written test and computer test, where the 1st Respondent Company has failed to disclose her marks.

On the other hand, the 1st Respondent states in its statement of objections that only those who were successful in the competitive tests were called for the oral examination/ interview. According to the Company Circular No. AP/177 and Notice issued on 01.09.2011 the 1st Respondent had informed the candidates that they should obtain a minimum pass mark of 60% for the English and Computer tests and the candidates who were successful in the aforementioned tests were only informed about the Oral tests. Furthermore, the 1st Respondent states that as a policy they does not disclose any results to any candidate at any examination. However, the Respondent has sent a letter to the Petitioner on 08.03.2012 informing that she has not been successful at the tests which she sat in 2011. According to the Respondent, the Petitioner has participated for the

said promotion exams held on 14th and 23rd November and as per the results the Petitioner has obtained 65 marks for the computer test and 49 marks for the English Test. As a result, she couldn't participate in the oral exam. The Respondent further states that they have not unjustifiably or unreasonably prevented the Petitioner from participating the oral exam. These facts were considered by the Arbitrator.

Several years later, after retirement, the Petitioner had made a complaint to the Labour Office- Negamboand subsequently the dispute was referred for an Arbitration. The Learned Arbitrator by her order dated 22.09.2022 had come to a conclusion that the Petitioner had not obtained sufficient marks to the eligibility to participate in the oral exam. Furthermore she held that the 1st Respondent had not acted maliciously or arbitrarily towards the promotion of the Petitioner.

The relevant excerpt from the said order of the Arbitrator dated 22.09.2022 is reproduced for ease of reference.

“2011 වර්ෂයේදී අයදුම් කර ඇති අතර ඒ සඳහා පවත්වන ලද ලිඛිත පරීක්ෂණයට, පරිගණක පරීක්ෂණයට ඉල්ලුම්කාරිය මුහුණ දී ඇති අතර, මෙම පරීක්ෂණ දෙකෙන්ම ඉල්ලුම්කාරිය අසමත්වීම මත වාචික පරීක්ෂණය සඳහා කැඳවා නොමැත.

තවද ඉල්ලුම්කාරිය පරිගණක පරීක්ෂණයෙන් හා ලිඛිත පරීක්ෂණයෙන් අසමත් වී ඇත ඉල්ලුම්කාරියට වාචික පරීක්ෂණය සඳහා ආයතනය විසින් කැඳවීමක් කර නොමැති බව ආයතනයේ මානව සම්පත් නිලධාරිතුමා විසින් දෙනු ලැබූ වාචික සාක්ෂි මගින් හා මානව සම්පත් නිලධාරිතුමා විසින් ඉදිරිපත් කර ඇති ආයතනයේ බඳවාගැනීම් හා උසස් වීම් පටිපාටිය අනුව හා R20 දරන AP 177 කෙටුපත සාක්ෂි මගින්ද ඔප්පුවේ.

තවද ඉන් පසුව 2016/08/09 වන දින ඉල්ලුම්කාරිය විශ්‍රාම යන අවස්තාව දක්වා අවස්ථා කිහිපයකදී මෙම උසස්වීම සඳහා ඉල්ලුම් කිරීමට අවස්ථාව තිබියදී එය මගහැර ඇති බව වග උත්තරකාර ආයතනය වෙනුවෙන් සාක්ෂි ලබා දුන් වග උත්තරකාර ආයතනයේ මානව සම්පත් නිලධාරි කීරති වික්‍රම ජයසේකර මහතාගේ සාක්ෂි මගින් තවදුරටත් තහවුරු වේ.

ලේකම් අධ්‍යේෂි V සඳහා පවත්වන ලද තරග විභාග වලින් උසස්වීම් ලබා ගැනීමට අවශ්‍ය සමත් ලකුණු ලබා ගැනීමට නොහැකි වීම මත එම උසස්වීම් ලබා ගැනීමට ඉල්ලුම්කාරිය අසමත් වී ඇත. ඒ අනුව මෙම ආරවුලට අදාළව ඉල්ලුම්කාරිය ඉල්ලා සිටින සහනයන් සඳහා කිසිදු ප්‍රධානයක් ලබා දීමට බේරුම්කාර විනිශ්චය සභාව ඉදිරියේ ඉදිරිපත් වී ඇති වාචිකමය හා ලේඛනමය සාක්ෂි මගින් තහවුරු නොවන බැවින් ඉල්ලුම්කාරිය ඉල්ලා සිටින සහනයන් සඳහා කිසිදු ප්‍රදානයක් ලබා දීමට කටයුතු නොකරමි. ඒ අනුව මෙය යුක්ති සහගත හා සාධාරණ ප්‍රදානයක් බවට තීරණය කරමි.”

We hold that the Arbitrator has clearly identified the issues with her judicial mind and has applied the rules of natural justice and has analyzed the evidence placed before her correctly. There is no reason for us to disregard her decision.

According to the above said reasons we dismiss this application without costs.

JUDGE OF THE COURT OF APPEAL

N. Bandula Karunarathna (P/CA), J.

I AGREE

PRESIDENT OF THE COURT OF APPEAL