

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

In the matter of an application for the grant
of Writs of Certiorari and Mandamus under
and in terms of Article 140 of the
Constitution.

1. T. M. Premadasa
No. 98/1, Ratnfarm, Imbulgoda, Badulla.
2. C. R. Sangakkara
No. 138/1/A, Mahawela Road, Lower
Wiganawila, Kadawatha.
3. U. H. M. Manorika
No. 663/1/1, Deegala Watte, Ragama.
4. R. G. S. Udayangani
No. 484/2, Ihala Biyanwela, Kadawatha.
5. S. H. I. S. Dayawansa
No. 39, Suduwella Road, Thalgasgoda,
Ambalangoda.

Petitioners

Case No. CA (Writ) 129/2013

Vs.

1. The Ceylon Electricity Board
2. (a) Anura Wijayapala, Chairman
3. (c) B. N. I. F. A. Wickramasuriya, Vice
Chairman
4. (b) Jeewani Kariyawasam, Member
5. (b) S. S. Miyanawala, Member
6. (a) J. Dadallage, Member
7. (a) R. Samasinghe, Member
8. (b) N. K. G. Gunathilaka, Member
9. (b) M. C. Wickramasekara, General
Manager

10.(b) W. R. G. Sanath Bandara, Working
Director

The 1st to 10th Respondents of the Ceylon
Electricity Board, No. 50, Sir
Chittampalam A. Gardiner Mawatha,
Colombo 2.

11. D. M. K. T. Abeyratne

12. K. L. R. S. Kothalawala

13. M. A. D. Priyangani

14. M. C. D. Perera

15. K. T. P. Indunil

16. S. N. N. Dias

17. L. S. P. Kumara

18. K. T. Menaka

19. K. M. A. Ironi

20. A. C. T. De Alwis

21. C. P. Paranagama

22. A. G. C. K. Dissanayake

23. R. A. J. P. Ranasinghe

24. L. M. Jayasena

The 11th to 24th Respondents being the
successful candidates at the
“Competitive Examination for
Recruitment of Accounting Assistants
2011”, C/O the Ceylon Electricity Board,
No. 50, Sir Chittampalam A. Gardiner
Mawatha, Colombo 2.

Respondents

Before: Janak De Silva J.

N. Bandula Karunarathna J.

Counsel:

J.C. Weliamuna P.C. with Pulasthi Hewamanna for the Petitioners

Milinda Gunetilleke SDSG for the 1st to 10th Respondents

Argued on: 03.06.2019

Written Submissions tendered on:

Petitioner on 01.06.2018 and 29.08.2019

1st to 10th Respondents on 19.07.2018 and 19.08.2019

Decided on: 22.01.2020

Janak De Silva J.

At the time this application was filed, the Petitioners were holding the post of "Clerk" of the Clerical & Allied Services at the Ceylon Electricity Board (CEB) in the 'M' salary scale and sought to assail certain actions of the CEB to promote ineligible individuals internally to the post of Accounting Assistant contrary to the scheme of recruitment of the CEB.

They also sought, in prayer (e) to the petition, a writ of mandamus compelling any one or more of the Respondents to summon the Petitioners for interviews based on their results for the Competitive Examination for Recruitment of Accountants 2011 and duly appoint the Petitioners as Accounting Assistants with effect from 11.11.2011 with all pecuniary benefits due.

When this matter was taken up for argument on 03.06.2019, the learned counsel for the Petitioners informed that he has received instructions that only the 2nd to 4th Petitioners are seeking relief from Court which is limited to the relief in prayer (e) to the petition since the 1st and 5th Petitioners have been appointed as Accountant Assistants and are satisfied with their appointments.

There is no dispute that even the 2nd to 4th Petitioners have been appointed as Accountant Assistants subsequent to the filing of this application. But they are seeking to get their appointments back dated to 2011.

Consequent to this Court on 03.05.2018 permitting the learned SD SG to tender the letter of appointments of the 2nd to 4th Petitioners, these letters of appointments have been tendered marked A, B and C with the written submissions of the Respondents on 19.08.2019.

The learned SD SG relying on these letters of appointment submitted that the relief prayed for in the petition particularly prayer (e) is futile inasmuch the 2nd to 4th Petitioners have in their letters of appointment accepted their appointments with effect from 03.09.2016.

There is merit in this submission as these Petitioners have accepted the letters of appointment which specifically contains the effective date of appointment as 03.09.2016. The 2nd to 4th Petitioners have accepted the terms and conditions of the said letters of appointment and did so without any qualification and as such cannot maintain this application seeking a back dating of the appointment to 2011. Scrutton, L.J. in *Verschures Creameries Limited vs. Hull & Netherland Steamship Co. Ltd.* [(1921) 2 KB 608 at 612] held:

"A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn around and say it is void for the purpose of securing some other advantage. This is to approbate and reprobate the transaction."

Samarakoon C.J. in *Visuvalingam v. Liyanage* [(1983) 1 Sri L.R. 203 at 227] adopted the principle with a different formulation by stating that one "cannot blow hot and cold."

In *Ranasinghe v. Premadharma and others* [(1985) 1 Sri.L.R. 63 at 70] Sharvananda C. J. held:

"In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both. When the doctrine does apply, if the person to whom the choice belongs irrevocably and with full knowledge accepts the one, he cannot afterwards assert the other; he cannot affirm and disaffirm"

The learned counsel for the Petitioners submitted that they have invoked a constitutional remedy and that they should not be disentitled simply because they have sought to accept the later appointment. I disagree since though the jurisdiction of this Court is constitutional, writ of mandamus being a discretionary remedy there exists several grounds on which relief can be refused. One such situation is where the Petitioner seeks to approbate and reprobate as outlined above.

It is also not in dispute that these Petitioners were given this appointment consequent to them sitting for an exam subsequent to the filing of this application. This is a tacit admission on the part of these Petitioners that they were not entitled to promotion based on the competitive examination held in 2011.

In any event, a writ of mandamus will be issued only if there is a public or statutory duty. [*De Alwis v. De Silva* (71 N.L.R. 108); *Weligama Multi Purpose Cooperative Society Ltd. v. Chandradasa Daluwatta* (1984) 1 Sri.L.R. 195; *Hakmana Multi Purpose Cooperative Society Ltd. v. Ferdinando* (1985) 2 Sri.L.R. 272; *Piyasiri v. People's Bank* (1989) 2 Sri.L.R. 47; *Sannasgala v. University of Kelaniya* (1991) 2 Sri.L.R. 193 and *Samaraweera v. Minister of Public Administration* (2003) 3 Sri.L.R. 64].

There is no statutory or public duty to back date the appointment of the 2nd to 4th Petitioners to 2011 when they have accepted a letter of appointment where the effective date of appointment is specified to be 03.09.2016.

For all the foregoing reasons, this application is dismissed without costs.

Website List


Judge of the Court of Appeal

N. Bandula Karunarathna J.

I agree.
Website List


Judge of the Court of Appeal