

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

In the matter of an Appeal in terms of
Article 154 P (6) of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Wellakke Liyanage Rasika Niroshana
Liyanage,
No. 1 ¼ Post,
Ampara Road,
Siyambalanduwa.

C.A. Appeal No: CA(PHC) 54/2021

Provincial H.C. Monaragala 01/2021(Special) Vs.

Petitioner

1. J.J. Rathnaşiri,
Secretary,
Ministry of State Services, Provincial
Councils and Local Authorities,
Independent Square,
Colombo 07.
2. C. Anuradha Herath,
Director,
National Secretariat for Persons with
Disabilities,
1st Floor, Sethsiripaya (Stage II),
Battaramulla.
3. Attorney General,
Attorney General's Department,
Colombo 12

Respondents

AND BETWEEN

Wellakke Liyanage Rasika Niroshana
Liyanage,
No. 1 ¼ Post,
Ampara Road,
Siyambalanduwa.

Petitioner-Appellant

Vs.

1. J.J. Rathnaşiri,
Secretary,
Ministry of State Services, Provincial
Councils and Local Authorities,
Independent Square,
Colombo 07.
- 1A. Mr. K.D.N. Ranjith Asoka,
Secretary,
Ministry of Public Administration,
Home Affairs, Provincial Councils and
Local Government,
Independent Square,
Colombo 07.
2. C. Anuradha Herath,
Director,
National Secretariat for Persons with
Disabilities,
1st Floor, Sethsiripaya (Stage II),
Battaramulla.
- 2A. Mrs. Jayamali C Wickramaarachchi,
Director,
National Secretariat for Persons with
Disabilities,
1st Floor, Sethsiripaya (Stage II),
Battaramulla.
3. Attorney General,
Attorney General's Department,
Colombo 12

Respondents- Respondents

Before: **Damith Thotawatte, J.**
Sarath Dissanayaka J

Counsel: Thanuka Nandasiri with M. Pandithage for the Petitioner-
Appellant.

Pulina Jayasuriya SC, for the Respondents-Respondents.

Argued 26-06-2025

Written submissions
tendered on: 28-01-2025 By the 1st, 2nd and 3rd Respondents-Respondents.

Judgment Delivered
on: 27-08-2025

D.Thotawatte, J.

This appeal arises from the order of the High Court of the Province of Uva holden at Monaragala dated 6th August 2021, whereby the Appellant's application under Section 24 of the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996, as amended by Act No. 33 of 2003.

The Petitioner-Appellant Wellakke Liyanage Rasika Niroshana Liyanage (Hereinafter referred to as "Appellant") claims he had suffered from a disability since about 1993 due to an accident; however, he also claims he had done his BA and MA between 2003 and 2011 and had been employed at the Social Services Department from 2006 to 2020.

In 2004/2005, under Minute on the Sri Lanka Administrative Service published in Extraordinary Gazette No. 1419/3 dated 14th November 2005, the Appellant had sat for a competitive examination in order to obtain an appointment to the Sri Lanka Administrative Service and had obtained 135 marks.

Although the Appellant has annexed the result sheet to the petition submitted to the High Court (averment 10 of the petition) in order to establish that he had passed the examination, that fact is not borne out by the result sheet. However, nothing regarding this matter has been mentioned in the petition of appeal filed in this Court, and the Counsel appearing for the Appellant in his oral submissions informed the court that the 135 marks received by the Appellant are below the cut-off marks for the said examination. It appears that the Petitioner had attempted to mislead the High Court.

The instant appeal is completely based on a public Administration circular issued to all Secretaries of Ministries, Heads of Departments and Chairmen of Corporations in 1988 bearing No. 27/88 ordering that in recruiting persons to government service or to

cooperations, 3% should be recruited from disabled persons who are qualified and whose work will not be affected by the disability.

I have reproduced the circular No. 27/88 (English Version) below for easy reference.

“Providing Employment for the Disabled

When vacancies in the Public Service and the Public Corporations are being filled.

- (1) Three per cent (3%) of such vacancies should be filled by disabled persons possessing the requisite qualifications and whose disability would not be a hindrance to the performance of their duties.

and

- (2) Their recruitment too, should be in accordance with the approved Schemes of recruitment/ Service Minutes.”

It is the contention of the counsel for the Appellant that, according to this circular, the initial recruitment should have been done after reserving the 3% for the disabled, and after the normal recruitment is done, disabled persons (only) should be considered for the reserved or remaining 3%.

However, it appears that this argument conveniently ignores the part of the said circular that states “possessing the requisite qualifications”. It is clear that one of the threshold requirements is that the disabled person should be qualified, or simply that the candidate should be competent. Accordingly, in order to be considered under this circular, the relevant candidate should have received over the minimum qualifying threshold marks. Having received marks over the minimum qualifying threshold, a disabled person would have an advantage in the recruitment process over a normal candidate due to the 3% quota.

To give circular No. 27/88 the meaning proposed by the Counsel for the Appellant would be to contemplate an absurd situation where a person who would be otherwise unqualified to do a particular job will be entrusted with it simply because he is disabled.

On the above ground alone, the argument of the Appellant and consequently this Appeal should fail. However, for the sake of completeness, I proceed to consider the flaws in this appeal.

It is sixteen years after the examination in question that the Appellant had challenged the result by way of a special application under Section 24 of the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996, as amended by Act No. 33 of 2003. As to why it took such an extraordinarily long time has not been satisfactorily explained to the Court. The Appellant has not alleged any continuing prejudice or a persistent condition justifying the extraordinary belated invocation for relief. I hold that in the absence of any justification, the Petitioner is disentitled to equitable relief.

For a person to seek relief under Section 24 of the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996, as amended, he should be able to prove that there has been a contravention of the provisions of Section 23.

Section 23 of the Act reads thus;

- 1) No person with a disability shall be discriminated against on the grounds of such disability in recruitment for any employment or office or admission to any educational institution,
- 2) No person with a disability shall, on the ground of such disability, be subject to any liability, restriction or condition with regard to access to, or use of, any building or place which any other member of the public has access to or is entitled to use, whether on the payment of any fee or not.

No evidence had been advanced by the Appellant suggesting improper bias, discriminatory intent or any other conditions specified in Section 23 with regard to the selection authorities at the time he faced the competitive examination. Given that the Petitioner failed to meet the qualification criterion, his failure to secure recruitment cannot be attributable to the disability, as it was due to merit-based constraints. The Appellant cannot allege discriminatory non-recruitment on account of a physical disability, as he was unsuccessful due to failure to meet the qualifying threshold.

No evidence was advanced suggesting improper bias or discriminatory intent on the part of the selection authorities.

As to who is considered a person with a disability is defined in Section 37 of the act.

"Person with disability" means any person who, as a result of any deficiency in his physical or mental capabilities, whether congenital or not, is unable by himself to ensure for himself, wholly or partly, the

necessities of life.

Section 37 defines a “person with disability” as one who is unable, due to a deficiency in physical or mental capabilities, to ensure the necessities of life. The threshold is substantial impairment affecting daily living.

The medical reports before the High Court do not demonstrate such incapacity. They merely note a minor spinal protrusion not affecting mobility or self-care. The Counsel appearing for the Appellant admitted that insufficient evidence has been submitted to establish that the Appellant falls into the category of a “person with disability” as envisaged by the Act.

In Sri Lankan law, the principle “*he who asserts must prove*” is firmly recognised and applied, both in civil and criminal proceedings. This principle reflects the burden of proof and is rooted in the Evidence Ordinance of Sri Lanka¹.

I therefore concur with the High Court’s finding that the Petitioner does not satisfy the statutory definition of a “person with disability”.

On the above grounds, I hold that the High Court did not err in dismissing the application in limine for lack of merit and due to laches. Accordingly, the appeal must fail.

The Application is dismissed without costs.

Judge of the Court of Appeal

Sarath Dissanayaka, J.

I agree

Judge of the Court of Appeal

¹*N.M. Gunathilake and others v. Hon. Gayantha Karunathilake, Minister of Lands and Parliamentary Reforms and others* CA (Writ) Application No. 387/2017 Decided on: 21st September 2020, *Francis Samarawickremav. Dona Enatto Hilda Jayasinghe and another* SC Appeal No. 7/2004, Decided on: 7th May 2009