

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

In the matter of an Application for Mandate
in the nature of Writs of *Certiorari* and
Mandamus and under Article 140 of the
Constitution.

CA (Writ) Application No: 22/2014

1. Galhenage Ajith Udayantha,
No: 812/04, Moravita Lane,
Rajagiriya.
2. Eshakie Sagarika Dias Jayasekara,
No. 258/6, Kalapaluwawa,
Rajagiriya.
3. Nandani Sooriyaarachchi,
No. 165,
Mahena, Horana.
4. Champa Pitaduwa Gamage,
No. 137, B Raigama,
Bandaragama.
5. Benaragama Vidanalage Priyantha,
No. 27B, Weniwelketiyagama,
Dodangoda, Kalutara.
6. Kalanchige Garvin Sisira Kumara
Jayasekara,
No. 60/08, Pahala Imbulgoda,
Imbulgoda.
7. E.H.D.A. Chinthaka Ellamulla,
Horawala, Welipenna.
8. Damrnika Sooriyaarachchi,
No. 03, Renuka Road, Weedagama

9. Kahandawa Arachchige Wasantha
Malkanthi,
No. 10/3A, Dharmapala Mawatha,
Madiwela, Kotte.
10. Sudu Dewage Jagath Buddhi Dayaratna,
No. 516, Polpitimukalana,
Kandana.
11. Chalani Sudeshika Illangamage,
No. 63, Kynsey Road,
Colombo 08.
12. S.A.M.S.D. Senanayake,
No. 9B, Pahala Weediyawaththa,
Yakkala.
13. Lalantha Priyadarshani Hapuarachchi,
No. 84/1B, Bandaranayakapura Road,
Kalapaluwawa, Rajagiriya.
14. V.G. Priyangani Subadra Dias,
No. 16/60A, Wijayapura Pinhena,
Pannipitiya.
15. Kamani Ganga Majuwana Gamage,
No. 368/02, Colombo Road,
Weligampitiya.
16. G.J.K. Hasani Hemantha Jayawardana,
No. 82B, Kesbewa, Piliyandala.
17. K.A.D.L. Kumarasiri,
No. 119/A, Ihala Yagoda, Gampaha.
18. D.P. Chandana Dias Jayasuriya,
No. 132/3, Weerangula, Yakkala.
19. M.K. Ajith Priyantha Suriyaarachchi,
Niwasa Penideniya Road,
Meepawala, Poddala.
20. Liyanage Aliocious,
No. 1065/C, Dhambuwa, Ragama.

21. D.L. Teckla Kumari Premachandra,
No. 205/7B, Ambewatta Road,
Thihariya, Kalagedihena.
22. W. Pathirage Nelum Priyangani,
No. 78/A, Niwandhama, Ja-Ela.
23. H. Canuranshi Kauinada Rajapakshe,
Galle Road, Ethgama, Payagala.
24. Champa M. Gajadeera,
No. 446 F, Rajagahawatta,
Ihalagoda, Akmeemana.
25. D. Shriyani Suriyaarachchi,
Yahaladuwa Junction, Baddegama.
26. I.D. Pathma, Sriya,
No. 247/26C, Suriyawewa,
Kadawatha.
27. U.G. Palitha Samarasinghe,
No. 2Q9, Sunnyinate Watte,
Yataththawala, Imbulgasdeniya.
28. N.K.S. Wijayakumari,
No. 147, Thuruwoyana Bulugalla,
Pothuhera.
29. Chandi P. Bandara,
544/1, Wewathaenna, Gampola.
30. J. Priyadharshani Basnayake "Rasika",
Pethiyagoda, Geli Oya.
31. W.A. Gayani Wijepala,
Delhena Road, Ginigathhena.
32. J.M.W.G. Damayanthy Kumari,
No. 65, Wewa Gedara, Madugalla,
Udu Dumbara.
33. G.A. Thusitha Ranasinghe,
No. 227/1, Megoda,
Kalugamuwa, Peradeniya.

34. P.G.R.P.D.M. Udaya Kumari,
No. B 40/3, Godapola,
Imbulgasdeniya.
35. K.M.U.S. Jaliya Bandara, "Nandana",
Hettimulla, Kegalle.
36. R.M. Sriyani Deepthika Wijayarathna,
No. 685, Meepitiya, Kegalle.
37. D.S.B. Liyanage, "Rasika",
Gathara, Kamburupitiya.
38. I.K.C.W. Vithanage,
No. 58/1, Elawella Road, Matara.
39. B.A. Manel,
No. 311, 1st Phase,
Herman Watt, Dodangoda.
40. Ratnayaka Mudiyanselage Buddhadasa,
No. 18/63, Pinnalanda Gardens,
Badulla.
41. M.A. Kumuduni Chandalatha, "Isuru",
Obbegoda, Monaragala.
42. W.P.U. Weerasinghe,
No. 72/7, Wellawaya Road, Monaragala.
D.M. Nandasena, "Sarasawi",
Liyanagemulla, Gombagahawela.
43. J. Chandrakumara Udakumbura,
No. 10/06, 1st Lane, Wanatha Road,
Gangodawila, Nugegoda.

PETITIONERS

Vs.

1. Mr. Sudharma Karunaratna,
The Secretary,
Ministry of Health,
No. 385,

Rev. Baddegama Wimalawansa Mawatha,
Suwasiripaya,
Colombo 10.

- 1a. D.M.R.B. Dissanayaka,
The Secretary,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Mawatha,
Suwasiripaya,
Colombo 10.
- 1b. Anura Mahanama Jayawickrama,
The Secretary, Ministry of Health
Nutrition & Indigenous Medicine.
The Secretary,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Mawatha,
Suwasiripaya,
Colombo 10.
2. Somaratne Widanapathirana,
Add. Secretary (Administration),
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Mawatha,
Suwasiripaya,
Colombo 10.
- 2a. A.M.K.K. Arthanayake,
Add. Secretary (Administration),
Ministry of Health,

No. 385,

Rev. Baddegama Wimalawansa Mawatha,
Suwasiripaya,
Colombo 10.

3. Dr. P.G. Mahipala,
Director General of Health Services,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Mawatha,
Suwasiripaya,
Colombo 10.

- 3a. Dr. J.M.W. Jayasundara Bandara,
Acting Director General of Health
Services,
Ministry of Health,
No. 385,
Rev. Baddegama Wimalawansa Mawatha,
Suwasiripaya,
Colombo 10.

4. P.B. Abeykoon,
The Secretary,
Ministry of Public Administration and
Home Affairs,
Independence Square,
Colombo 07.

- 4a. J. Dadallage,
The Secretary,
Ministry of Public Administration and
Home Affairs,
Independence Square,
Colombo 07.

- 4b. J.J. Rathnasiri,
The Secretary,
Ministry of Public Administration and
Home Affairs,
Independence Square,
Colombo 07.
5. K.L.L. Wijeratne,
The Secretary,
National Pay Commission,
Room 2-G 10, BMICH,
Baudhdhaloka Mawatha, Colombo 07.
6. The Secretary,
Public Service Commission,
No. 177, Nawala Road, Narahenpita,
Colombo 08.
7. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : A.L. Shiran Gooneratne J.

Counsel : Upul Jayasuriya, PC for Petitioner.

Neil Unamboowe, PC, A.S.G for the Respondents.

Argued on : 31/07/2017

Written Submission on: 23/02/2018

Judgement on : 28/03/2018

A.L. Shiran Gooneratne J.

The 1st to 43rd Petitioners have been recruited to the Ministry of Health under the graduate training scheme in 1999, as Medical Record Assistant (MRA), Investigation Assistant (IA), and Planning and Programming Assistant (PPA). The said recruits have been made permanent by circular dated 25/7/2000, marked P45A, and have been placed on the Government Officers Remuneration Scheme marked P46. The Petitioners state that, consequent to a fundamental rights application filed by the graduates recruited in 1994, appointments to Medical Record Assistant and Planning Programme Assistant have been re-designated as Medical Record Officer and Planning Programme Officer and were placed on a higher salary scale than the Petitions. The Petitioners are aggrieved that in accordance with the Cabinet Memorandum which dealt with the removal of salary and service anomalies of officers who were recruited under graduate trainees scheme of 1994, marked P51(a), the Ministry of Health had failed and or neglected to give effect to address the grading system of the Petitioners. The Petitioners state that their legitimate expectation is to be placed in Grade III category mentioned in document marked P51(a) and to be promoted to Grade II category after completing the efficiency bar examination. However, the Petitioners claim that in terms of circular bearing No. 2006/06, the Petitioners have been placed in MN 4 category, with the title Medical Record Assistant and Programme Planning Assistant by passing the Cabinet Memorandum marked P51(a).

The substantive relief prayed for by the Petitioners are to the issuance of an order in the nature of a writ of Mandamus to compel the 1st to 4th Respondents to implement the recommendations given by the National Carder Commission contained in document marked P54 or in the alternative to direct the said Respondents to place the Petitioners in the category of Grade III with effect from year 2000 and to promote the Petitioners to Grade II category after the efficiency bar examination.

Paragraph 2 of document marked P54 states;

“මල අමාත්‍යාංශයේ සැපුම් හා වැඩසටහන් නිලධාරී හා වෛද්‍ය ලේඛන නිලධාරීන් සඳහා රාජ්‍ය පරිපාලන වක්‍රලේඛ 06/2006 හි විධිවාන යටතේ MN 5 - 2006 වැළැඳුණු පරිමානයේ පිහිටුවා ඇති තවත් තහනුරු කිහිපක් සඳහා මූල්‍ය බඳවාගැනීමේ / උසස්කිරීමේ පරිපාලය සඳහා මෙම කොමිෂන් සභාවේ නිරදේශ දැනටමත් ලබා දී තිබේ. එහි සඳහන් වන අන්තර්ග්‍රහණය කිරීමේ හා උසස්කිරීමේ ක්‍රියාපටිභාරී අනුගමනය කිරීම නිරදේශ කරනු ලැබේ.”

In paragraph 15 of the Petition, the Petitioners state;

“that in terms of the chapter 6.91 of the report of the National Salaries and Carder Commission clearly states all the officers in all the categories possess similar nature qualifications and since their duties are identical, all the Medical Record Assistants (MRA) and PPA should absorbed to the Grade III and should be promoted to the Grade II after completing 10 years in service.”

The Petitioners legitimate expectations are based on the said recommendation which the Petitioners state has placed them on the new category of Grade II MN 5 salary scale mentioned in document marked P51(a). The Petitioners also state that the Supreme Court Order, (P47), was based on the Salary Commission Report 2000, and the said recommendations were proposed for the Programme Planning Assistant and Medical Record Assistant categories, due to the non availability of a promotion scheme for the 1999 batch of recruits. According to chapter 6.91 of the Report of the National Salaries and Cadre Commission marked (P 46);

"The duties assigned to the Medical Records Assistants and the Medical Records Officers are the same. The duties assigned to the Planning and Programming Assistants and Planning and Programming Officers in the Ministry of Health are also of a similar nature. The entry qualification for all these four posts is a degree of a recognized University."

However, the Respondents state that the Petitioners have attempted to mislead this court by stating the contents of the said chapter in a devious manner.

The submission of the Respondents are based inter alia, on the following grounds:

- (a) P51(a) refers to graduate trainees who were recruited in 1994 in the category of Medical Record Assistant and Planning and Programme Assistant.
- (b) Graduate trainees who were recruited in 1994 under the same scheme, to the Provincial Councils have also been placed as Medical Record Officer and Planning Programme Officer.
- (c) Therefore, the said recruits to the officer category were placed on a higher salary scale than the recruits as Assistants who were placed in a lower salary category.

Accordingly, the Presidential Salaries Commission looked into removing the said salary anomalies of the officers, personal to the said intake, recruited under the graduate training scheme of 1994.

In the circumstances the Respondents submit that the relief obtained in the Supreme Court order marked P47, has been given in consideration of the recruits who belong to the 1994 intake and not in regard to the 1999 recruits which the Petitioners belong to.

Document marked P51(C), pertains to the removal of salary anomalies and promotional avenues in the scheme of recruitment of Medical Record Officer and Planning and Programme Officer intake of 1994. It further states "the Planning and Programme Officers who are in the salary group of T 3-6 will be placed in the salary group of T-3-8-2 and will be absorbed into Grade II along with Medical

Record Officers." Accordingly, it is observed that the Petitioners cannot rely on documents marked P 51(A), the Cabinet Memorandum P 51(B) letter dated 03/03/2004, of the Cabinet Secretary and P 51(C), extract of the report of the Salaries Commission 2000, since the said documents make reference only to the grievances of Grade III "officer" category recruits of 1994, and not in regard to Grade III "Assistant" category recruits of 1999. Therefore the two categories can be clearly distinguished from one another.

In paragraph 17, the Petitioners state that;

"in terms of the circular bearing No. 2006/06 the Petitioners were placed on MN 4 category which is none officer category with the title of Medical Record Assistant and the Programme Planning Assistants by passing the cabinet memorandum marked P51 (a). "

The doctrinal base and limits of legitimate expectation can be summarized as follows;

The representation underlying the expectation must be clear, unambiguous and devoid of any relevant qualification,

- I. The expectation must be reasonable,
- II. The expectation must have been induced by the decision maker,
- III. The representation must be one which it was competent and lawful for the decision maker to make without which reliance cannot be legitimate.

(De Smith, Woolf and Jowell, Judicial Review of Administrative Action 425 (5th Ed. 2001)

Accordingly, prayer (b) to the Petition is to compel the 1st to 4th Respondents to implement the recommendations given by the National Salaries and Cadres Commission contained in document marked P54. The recommendations given in the said impugned document relates to Planning and Programme Officers and Medical Record Officers. Therefore circular 06/2006, would be applicable only to the said “officer” category and would not apply to “assistant” category, the Petitioners belong to. Further as contended by the Petitioners the recommendations of the Cabinet Memorandum marked P51(a) cannot be applied to the 1999 intake since the said Cabinet Memorandum deals only with the removal of salary and service anomalies of “officer” category recruited in 1994, and there is no basis to apply the same criteria to the 1999 intake.

As pointed out earlier, if any injustice is caused to the Petitioners due to an oversight by the authorities in deciding the promotional avenues and the salary scale of the Petitioners according to circular No. 2006/06 (P59D), implementation of the Cabinet Memorandum cannot rectify the said anomaly since the said Cabinet Memorandum deals only with the Graduate trainee scheme of 1994.

The Petitioners reliance for relief on the impugned document of the National Cadres Commission dated 06/03/2012, marked P54, is not legitimate and

therefore this court has no legal basis to compel the 1st to 4th Respondents to implement the recommendations contained in the said document in favour of the Petitioners or to grant any other alternate relief as prayed for.

In the circumstances the Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL