

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 in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.*

C A (Writ) Application

No. 176 / 2014

Rupasinghe Arachchige Don
Dayasiri Rupasinghe,

No: 336,
Jaltara,

Ranale.

PETITIONER

-Vs-

1. Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

2. Dr. Kithsiri Dissanayake,
Chairman of both Sri Lanka
Standards Institution and the
Council of Sri Lanka Standards
Institution and a member of the
interview panel,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

2A. Dr. MS Aneez,
Chairman of both Sri Lanka
Standards Institution and the

Council of Sri Lanka Standards
Institution and a member of the
interview panel,

Sri Lanka Standards Institution,

No. 17,

Elvitigala Mawatha,

Victoria Place,

Colombo 08.

2AA. Mr. Pradeep Gunawardane

Chairman of both Sri Lanka
Standards Institution and the
Council of Sri Lanka Standards
Institution,

Sri Lanka Standards Institution,

No. 17,

Victoria Place,

Elvitigala Mawatha,

Colombo 08.

3. Dr. LN Senaweera,
Director General and a member of
the interview panel,
Sri Lanka Standards Institution
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

- 3A. T D G Dharmawardena,
Acting Director General and a
member of the interview panel,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

4. B N I F A Wickremasooriya,
Council Member,
Sri Lanka Standards Institution,

No. 17,
Elvitigala Mawatha,
Victoria Place,
Colombo 08.

4A. Rohan Jayathilake,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Elvitigala Mawatha,
Victoria Place,
Colombo 08.

4AA. S S Dikkumbura,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

5. N Mendis,

Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

5A. H Kaluthanthri,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

6. G L D Dhahanayake,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

6A. A K D D D Arandara,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

7. K S M Silva,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

8. S T S Arulanathan,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,

Elvitigala Mawatha,
Colombo 08.

- 8A. Ruwan Edirisinghe,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.
9. Lakshitha Jayawardhane,
Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.
- 9A. Dr. T Hewage,
Council Member
Sri Lanka Standards Institution,

No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

10. W L Sumathipala,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

10A. Prof. S Fernando,
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

11. Dr. B C Liyanage Athapattu,

Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

- 11A. Prof. C P D Mathew
Council Member,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

12. Epa Dayaratne,
Member of both Council of the Sri
Lanka Standards Institution and
the interview panel,
No. 17,
Victoria Place,
Elvitigala Mawatha,

Colombo 08.

12A. M A Allam,
Member of both Council Member of
the Sri Lanka Standards Institution

13. Renuka Ekanayake,
Additional Secretary
(Administration and Finance), of
the Ministry of Technology and
Research and the representative of
the Secretary of the Ministry of
Technology and Research in the
interview panel,
Ministry of Technology and
Research,
No: 408,
Galle Road,
Colombo 03.

14. D V Bandulasena,
Additional Director General Sri
Lanka Institute of Development

Administration and a member of
the interview panel,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

15. E G Somapala,
Former Government Analyst
and a member of the interview
panel,
No. 93/40,
Gemunupura,
Palanwatta,
Pannipitiya.

16. H L R W Madanayaka,
Former Director of Measurement
Units, Standards and Services
Department and a member of the
interview panel,

Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

17. L P L Chitrage,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

18. H G S Sooriyaarachchi,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo-08.

19. S Udagama
Sri Lanka Standards Institution,

No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

20. M I S Jayasekara,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.
21. T S Senarathne,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.
22. M B D Neelakanthi,
Sri Lanka Standards Institution,
No. 17,

- Victoria Place,
Elvitigala Mawatha,
Colombo 08.
23. (*No Respondent has been named under this No.*)
24. T Uthayakumar,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.
25. M H G Weerasingha,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.
26. M S S Fernando,
Sri Lanka Standards Institution,

No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

27. K S Abeygunawardana,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

28. B S P Perera,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

29. L H Karalliyadda,
Sri Lanka Standards Institution,
No. 17,

Victoria Place,
Elvitigala Mawatha,
Colombo 08.

30. A S Dewage,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

31. M S M Aliyar,
Sri Lanka Standards Institution,
No. 17,
Victoria Place,
Elvitigala Mawatha,
Colombo 08.

RESPONDENTS

Before: **Vijith K. Malalgoda PC J (P/CA)**

P. Padman Surasena J

Counsel : Saliya Pieris for the Petitioner

Chaya Sri Nammuni, Senior State Counsel for
Respondents

Decided on : 2016 - 10 - 17

JUDGMENT

P Padman Surasena J

The Petitioner had submitted an application for the post of Director (Technical) in the 1st Respondent institution as per the circular dated 2013-12-30, which is marked and produced as **P 13 B.**

The Petitioner had been informed of the date for interviews as 2014-02-28 and had been provided with a marking scheme along with a letter dated

2014-02-21 calling him for the interview. However, the Petitioner has received at 4.10 pm on 2014-02-27 (the day prior to the date of the interview) a different marking scheme which has been marked and produced as **P 14 A** to **P 14 C**.

Allocation of marks at the interview was as follows:

- a) Relevant additional administrative experience - 30 marks
- b) Relevant additional professional qualification - 30 marks
- c) Other achievements - 15 marks
- d) Performance at the interview - 25 marks

Although several grounds of complaints have been put forward by the Petitioner, it would be sufficient for this court to focus on his main complaint of not being awarded 20 marks for the M. Sc. / MBA degrees category in the marking scheme despite the fact that he had possessed a degree of M. Sc. in Analytical Chemistry. Furthermore the Petitioner further complained that the other candidates have been awarded the full marks of 20 for a similar degree.

According to **P 14 C** (under serial No. 2 therein) maximum of 30 marks is allocated for "relevant additional professional qualification" in following apportionments.

Post graduate diploma – 20 marks

M. Sc. / MBA – 20 marks

Ph D – 30 marks

A note to the effect that "marks should be given only for additional highest qualifications other than entry qualifications" has also been inserted in the column under the heading "criterion" in the said marking scheme.

It is not in dispute in this proceedings that the Petitioner has a Master's Degree (M. Sc.) in Analytical Chemistry and that he has not been allocated any marks for that degree at this interview. Thus, it is now time to turn to the explanation provided by the Respondents for their failure to award the said marks to the Petitioner.

It is the position of the Respondents that having a Master's degree had been considered as an "entry qualification" for the post Petitioner was first appointed to the 1st Respondent institute (i.e. at the time he first joined)

The scheme of recruitment applicable at the time the Petitioner first joined the 1st Respondent institute has been marked and produced as **R 1** and the relevant portion therein has been marked as **R 1 A.**

The Respondents in their objections has also stated that the criteria for selection was more appropriate and relevant to the institution and hence was adopted with a view to select the correct candidate who would provide a better service to the institute.¹

Further it was the position of the Respondents that the application of the Petitioner was considered in strict compliance with a relevant scheme of recruitment and marking scheme and according to his qualifications.²

It would now be appropriate to consider the criteria set out in the document marked **R 1** which is the criteria for recruitment when the Petitioner was first recruited to the 1st Respondent institution.

"Grade VI

I. B.Sc. Special degree in science

OR

II. B.Sc. General degree in science with class

¹ Para 25 (b) of the Statement of Objections

² Para 28 (d) of the Statement of Objections

OR

III. B.Sc. General degree in science and Post Graduate qualifications"

It could be seen that the Petitioner has been recruited under the category III above, as he had possessed only an ordinary pass in the Bachelor of Science degree.

"Post graduate qualification" could be a post graduate diploma also and hence this category (III above) does not necessarily require a Master's degree. All what it has insisted on, is a "post graduate qualification" in addition to a B.Sc. general degree in science. Thus, the post graduate degree of M.Sc. in Analytical Chemistry that the Petitioner possessed at the time of his first entry into the 1st Respondent institution cannot be considered as an entry requirement to that post as per R 1. Hence, it would only be arbitrary to hold that an applicant to the post of Grade VI Standards/Testing Officer was required by R 1 to possess a Master's degree in science.

Further, the note in P 14 C to the effect that "marks should be given only for additional higher qualifications other than entry qualifications" does not

shed light as to what "entry" it contemplates. Is it the entry to the advertised post or is the entry to the first post of the employee?

If the 1st Respondent institution has insisted that any applicant for the advertised post should have a Masters degree in science it would neither be necessary nor logical for the interviewers to award marks for such entry requirement.

Learned SSC has considered that the minimum requirement to apply for a post of Director is only 04 years experience as a Senior Deputy Director.

Thus the requirement of a Masters degree in science cannot be considered as an entry requirement for the post advertised. Therefore a Masters degree has to be considered as an "additional qualification". This is substantiated by the fact that all the other applicants have been awarded 20 marks for the Masters degrees they possess.

It was the position taken up by the Respondents that the M.Sc. degree obtained by the Petitioner was an entry qualification for the Petitioner to join the 1st Respondent institute³, and the phrase "additional qualifications" refers to the qualifications he has obtained after gaining employment and

³ paragraph 19 of the written submissions filed by the SSC

thus excludes those that were considered for the first entry of that officer⁴.

The rationale put forward by the learned SSC for this proposition is the desire of the 1st Respondent to ensure that its employees grow and acquire not only experience but also additional academic qualifications within their time at SLSI. Learned SSC has also stated that the fact that marks are only given in addition is an indication that efforts and skills shown academically acquired at the time of their employment are appreciated and valued.

Even a person who holds a post graduate diploma is considered as an applicant qualified to obtain 10 marks according to the marking scheme **P 14 C**. If the interpretation proposed by the learned SSC is to be accepted the resultant position would be that the petitioner who has a Master's degree would get no marks while a person who only has a diploma would get 10 marks.

If this court is to uphold the above argument it would only mean that the intention of SLSI is to discourage people acquiring higher qualifications at their earliest.

⁴ paragraph 31 of the written submissions filed by the SSC

The persons who have been placed over the Petitioner appear to be those who have acquired their M. Sc. degrees at a subsequent time according to this argument. The Petitioner has been sidelined only because he had acquired the same qualification well in advance. That, to say the least, is very unfortunate.

For example, according to this argument, even if the Petitioner possessed a Ph. D. degree at the time of his first entry, the 1st Respondent would not recognize that as a post graduate qualification when it comes to his promotions. The only wrong the Petitioner has committed is the acquisition of the highest degree he could at the earliest opportunity. It is not possible for this court to conclude that this is what the Sri Lanka Standards Institution has been interested in maintaining as the standard.

Learned SSC has also admitted that the Petitioner would not have been sponsored by the SLSI under its scheme of sponsorships which would enable the Petitioner to acquire another M. Sc. degree, since that scheme of sponsorships for higher education is structured by the SLSI only to grant opportunities for persons who have not obtained higher qualifications.⁵

⁵ paragraph 24 of the written submissions of the SSC

In view of this, the deprivation of the 20 marks which the Petitioner ought to have been given for his Masters degree, becomes an arbitrary decision on the part of the interviewers.

Learned SSC has stated that the Petitioner never applied for the post of Director (Laboratory Services) or Director (Metrology) and that therefore he cannot pursue prayers (c) and (e).

Two posts namely Director (Metrology) and Director (Laboratory) fell vacant and applications were called to fill those vacancies on 2014-10-25. However the Petitioner did not apply for these positions at that time. The Petitioner subsequently applied for the post of Director (Product Clarification) which was advertised by the circular dated 2013-12-30. The 1st Respondent conducted the interviews to fill the vacancies of all those posts together including the post of Director (Scientific Standardization) division which had fallen vacant after the applications have been submitted. It was the position of the learned SSC that according to the recruitment scheme selection of applicants to fill these vacancies must be in order of merit which the scheme had wanted to adhere to.

After the interviews were conducted, 17th - 20th Respondents had been selected to fill the vacancies of these posts and the Petitioner had not been selected.

17th - 20th Respondents had been appointed to the following Director positions with effect from 2014-03-28:

- a) 17th Respondent - Director (Laboratory Service Division)
- b) 18th Respondent - Director (Product Clarification)
- c) 19th Respondent - Director (Metrology)
- d) 20th Respondent - Director (Scientific Standardization Division)

Respondents who have been promoted have also been made parties to this application. However they appear to have opted not to participate in this proceedings.

In these circumstances and for the foregoing reasons we issue a,

- a) mandate in the nature of a writ of Certiorari quashing the decisions of the one or more or all of the 1st to 16th Respondents to select and

promote the 17th Respondent to the post of Director (Laboratory Services Division) as reflected by **P 16**;

- b) mandate in the nature of a writ of Certiorari quashing the decisions of the one or more or all of the 1st to 16th Respondents to select and promote the 18th Respondent to the post of Director (Product Clarification); as reflected by **P 16**;
- c) mandate in the nature of a writ of Certiorari quashing the decisions of the one or more or all of the 1st to 16th Respondents to select and promote the 19th Respondent to the post of Director (Metrology); as reflected by **P 16**;
- d) mandate in the nature of a writ of Certiorari quashing the decisions of the one or more or all of the 1st to 16th Respondents to select and promote the 20th Respondent to the post of Director (Scientific Standardization Division); as reflected by **P 16**;

The Petitioner has also asked for writs of Mandamus in prayers (g) and (h).

Prayer (g) is to seek a writ of Mandamus on one or more or all of the 1st to 16th Respondents directing them to promote the Petitioner to one of the three of the following posts in the 1st Respondent institution, namely Director (Laboratory Services Division); Director (Product Certification); Director (Metrology); Director (Scientific Standardization Division).

It is the submission on behalf of the Petitioner that the entire interview process is unreasonable, arbitrary, contrary to the existing minute and the selections made as a result of such process are not valid in law.

If the entire interview process has been an arbitrary one selection of any applicant including the Petitioner cannot be done from such a process.

This court cannot perform the functions of the interviewers and selectors and hence cannot decide at this stage whether or not the Petitioner should be picked up for the post he had applied for. Therefore this court is not in a position to issue a writ of Mandamus to compel the 1st Respondent to promote the Petitioner as has been prayed for in prayer (f) of the Petition.

The 1st -16th Respondents may take steps to call for applications and conduct interviews afresh, to select suitable officers to be appointed to the above posts.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J

I agree,

PRESIDENT OF THE COURT OF APPEAL