

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

*In the matter of an Application for Orders in the nature of Writs of Certiorari, Prohibition and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.*

Sri Lanka Bureau of Foreign Employment,  
No. 234, Denzil Kobbekaduwa  
Mawatha,  
Koswatta,  
Battaramulla.

**CA (Writ) App. No. 008/2024**

**PETITIONER**

**Vs.**

1. Sarath Chandrasiri Withana,  
Arbitrator,  
No. 13/1127,  
Dammodaya Mawatha, Mihidupura,  
Battaramulla.
2. Hon. Manusha Nanayakkara,  
Minister of Labour and Foreign Employment,  
Ministry of Labour and Foreign Employment,  
6<sup>th</sup> Floor, Mehewara Piyasa,  
Narahenpita, Colombo 05.

*2A. Hon. Vijitha Herath,  
Minister of Foreign Affairs,  
Foreign Employment and Tourism,  
Ministry of Foreign Affairs,  
Republic Building,  
Sir Baron Jayathilake Mawatha,  
Colombo 01.*

3. B.K. Prabath Chandrakeerthi,  
Commissioner General of Labour,  
6<sup>th</sup> Floor, Mehewara Piyasa,  
Narahenpita, Colombo 05.
4. W.K.A. Indumathi,  
No. 421/C/17,  
Pragathi Mawatha New Road,  
Kahathuduwa.
5. N.A.S. Nakandala,  
Buwelikada,  
Dunukewala, Hiriwadunna.
6. W. Pushpakanthi,  
“Sandeepa”, Punchi Maragashena,  
Polommaruwa, Thangalla.
7. M.C. Weeratne,  
No. 92/7/B,  
Ambuldeniya Mawatha,  
Hokandara South.
8. M.S. Marasinghe,  
No. 223, 3 Ela,  
Hadungamuwa, Mathale.
9. G.K.C. Dilrukshi,  
No. 198/1/B, Sri Wickrama Road,  
Ihala Bomiriya, Kaduwela.
10. K.R. Siriwardena,  
C, Nandana,  
Denipitiya.

11. M.S.N. Samantha,  
No. 46/6, Walawwattha,  
Bandaragama Road,  
Kuda Wasgamuwa,  
Wasgamuwa.
12. K.M.G.G.D.K. Konara,  
No. 993/3, Trincomalee Road,  
Aluwihare, Mathale.
13. S.A. Abeyratne,  
No. 255/B/3, Asiri Mawatha,  
Siyabalagoda,  
Polgasowita.
14. W.G. Somawathi,  
“Sithumina”, Marakade Asala,  
Pallthara, Modarawana.
15. K.M.K. Manike,  
No. 2F/FO/U 15,  
Lake Crescent Residencies,  
Mandawila Road, Angoda.
16. D.A.S.R.C. Nawaratne,  
No. 1/14, Gama Mada Road,  
Saarikkamulla,  
Keselwaththa, Panadura.
17. H.D.D. Bandaranayaka,  
No. 172/16/05, 2<sup>nd</sup> Post,  
Pasyala Road, Ellakkala.
18. P.M.R. Pathirana,  
No. 509/A, Ruwanpura Place,  
Aggona Junction,  
Angoda.
19. K.D. Anura,  
No. 310, 1<sup>st</sup> Lane,  
Pasal Mawatha,  
Uda Karawita,

Rathnapura.

20. M.L.S.D. Maddegoda,  
No. 123A, Karawita,  
Rathnapura.

21. P.A. Samarasundara,  
No. 216/6/10,  
Sudarshana Mawatha,  
Malabe.

22. R.D.K. Rupasingha,  
No. 217, Pubudugama,  
Mulleriyawa.

**RESPONDENTS**

**Before:** Dr. D. F. H. Gunawardhana, J.

**Counsel:**

Charaka Hayarathne with Nethmi Silva instructed by Tharushika Fernando for the Petitioner.

Dilantha Sampath, S.C. for the Respondents.

**Argued on:** 13.10.2025

**Delivered on:** 22.12.2025

**Dr. D. F. H. Gunawardhana, J.**

**Judgement**

**Introduction**

The Petitioner is a body corporate incorporated by the Sri Lanka Bureau of Foreign Employment Act, No. 21 of 1985, a Special Act of Parliament. By virtue of the provision thereof, it is capable of suing and being sued in its corporate name.

The 1<sup>st</sup> Respondent is the Arbitrator who had made an award marked as X10, after an arbitration inquiry. The 2<sup>nd</sup> Respondent is the Minister who is empowered to refer the dispute between the Petitioner and the 4<sup>th</sup> to 22<sup>nd</sup> Respondents to arbitration. The 3<sup>rd</sup> Respondent is the Commissioner General of Labour. The 4<sup>th</sup> to 22<sup>nd</sup> Respondents are employees of and under the Petitioner who claim that they had not been given due promotions in due course; therefore, an industrial dispute had arisen between the parties. As such, the 2<sup>nd</sup> Respondent had referred the dispute to arbitration in terms of Section 4 of the Industrial Disputes Act, No. 43 of 1950 (as amended), under which he is empowered to do so.

The Arbitrator has granted an arbitral award in favour of the 4<sup>th</sup> to 22<sup>nd</sup> Respondents as reflected in X10; thus, being aggrieved by the said arbitral award, which is also published in the Gazette as required by the law and reflect in X12, the Petitioner seeks to invoke the writ jurisdiction of this Court to *inter alia* quash the said arbitral award X10 and X12 by this Application.

Formal notice was issued by this Court, and after filing Objections, this was fixed for Arguments. This was argued before me on 13.10.2025, and the following arguments were advanced. Hence, this judgement.

## **Arguments**

The contention advanced by the Counsel for and on behalf of the Petitioner is that the Arbitrator has not considered and followed the recruitment scheme adhered to by the Petitioner in recruiting the officers for Class M-VI. Therefore, the arbitral award awarded by the 1<sup>st</sup> Respondent is against the weight of the evidence adduced before him.

The next argument is that the 4<sup>th</sup> to 22<sup>nd</sup> Respondents had not passed the test or interview with the required marks of fifty percent; therefore, they are ineligible to be recruited as Class M-VI Officers; despite that fact, it is the view of the 1<sup>st</sup> Respondent to redress their grievances for not being recruited as Class M-VI Officers with effect from 05.04.2012 which could not have been done as there were no vacancies in the cadre to absorb them.

The next contention is that the Grievance Committee, having looked into the matter, made certain suggestions, and on their suggestions and proposals, certain officers were absorbed into Class M-VI. However, those who had not scored the required marks at the interview were not recruited.

Furthermore, it is also argued for and on behalf of the Petitioner, that some of the officers who are party to the arbitration, had already retired from the service; therefore, their grievances cannot be redressed as arbitral award itself to that extent is not legally binding.

However, the learned State Counsel for the 1<sup>st</sup> to 3<sup>rd</sup> Respondents, Mr. Sampath informed the Court that they will abide by any order of the Court for that purpose, except mere defending of the arbitral award.

Now I will consider the relevant facts that are not in dispute to avoid the repetition of facts in considering the arguments advanced by the Petitioner.

## **Factual matrix**

The Petitioner is a body corporate, incorporated under a special Act of Parliament. The 4<sup>th</sup> to 22<sup>nd</sup> Respondents were recruited between the period of 1995 to 2000, as Office Assistants of the Petitioner's employment cadre, and placed them as Class S-IV Officers. However, in due course, they were promoted to the position of Class S-I Officers with effect from 22<sup>nd</sup> September 2004.

According to the record, by the Chairman's Circular dated 12<sup>th</sup> March 2012, the applications were invited to fill up the vacancies in the Administrative Officers Class M-VI; it was to be filled only with internal officers of the cadre. Accordingly, a hundred and fourteen employees were shortlisted for the interview, and out of them, only fifty-three employees who had scored more than the fifty three percent cutoff mark, were recruited. Subsequently, certain employees had filed Fundamental Rights applications, but unsuccessful. Thereafter, some of them who had scored marks between 50 and 53 percent were also absorbed.

On further appeal, by the 2<sup>nd</sup> to 4<sup>th</sup> Respondents, an Employment Grievance Committee was set up to further redress; thereafter, on recommendation of the said Committee, more employees were absorbed into the cadre of Class M-VI, depending on the availability of vacancies.

However, the 4<sup>th</sup> to 22<sup>nd</sup> Respondents were not absorbed into the Class M-VI cadre with effect from 05.04.2012. Therefore, a dispute had arisen, and the matter was referred to Arbitration by the 2<sup>nd</sup> Respondent in terms of Section 4 of the Industrial Dispute Act, No. 43 of 1950 (as amended). After an inquiry, the 1<sup>st</sup> Respondent (the Arbitrator), had delivered the arbitral award in favour of the 4<sup>th</sup> to 22<sup>nd</sup> Respondents, marked as X10 annexed to the Petition, and the same was published by the Gazette marked as X12. Therefore, the Petitioner is seeking to invoke the writ jurisdiction of this Court, challenging X10 and X12, to quash the same.

The facts mentioned above are not disputed; therefore, now I will consider the relevant evidence that had transpired in the course of the arbitral proceedings, to deal with the real issue of this Application.

### **Relevant evidence before the Arbitrator**

Before the arbitrator, the 4<sup>th</sup> Respondent only has given evidence for and on behalf of the Claimants as the 1<sup>st</sup> Party, and she has marked the documents as A1 to A22, and she was subject to cross-examination. It was her position that she and the other Respondents (4<sup>th</sup> to 22<sup>nd</sup> Respondents) were all recruited as Office Assistants from 1995 to 2004. Later, they were promoted, and after ten years of service, they were eligible to apply for administrative posts. In 2011, the Petitioner (Employment Bureau) had advertised calling for applications; accordingly, the 4<sup>th</sup> to 22<sup>nd</sup> Respondents along with other employees had submitted their applications, and through an interview, fifty-three candidates were selected; the 4<sup>th</sup> to 22<sup>nd</sup> Respondents were not selected. Therefore, they had filed Fundamental Rights applications which were unsuccessful.

Thereafter, they had made an appeal, and on the appeal, this matter was referred to a Special Grievance Committee, who made a recommendation after an inquiry to redress their grievances. Thereafter, the Minister referred the matter to the Arbitrator.

The 4<sup>th</sup> to 22<sup>nd</sup> Respondents' grievance is that although some of them were later absorbed into the administrative Class M-VI cadre with effect from 04.10.2018, their appointment should have been made with effect from 2012 along with the other employees who had been absorbed through the same interview held in 2011. Therefore, they were discriminated.

However, she (the 4<sup>th</sup> Respondent) admitted that the vacancies were advertised according to the circular issued by the Chairman of the Foreign Employment Bureau (hereinafter referred to as "the

Bureau”), who has to follow the public circulars as well as the Establishment Code. Accordingly, to be absorbed into the cadre of administrative service as internal officers, such an officer needs to have at least ten years of experience according to the rules. The 4<sup>th</sup> to 22<sup>nd</sup> Respondents were eligible on that basis; but when they were called for the interview, and some of them were selected as well. Thus, their grievance was that although they were absorbed, their letters of appointment were not with effect from the original date 05/04/2012.

In cross-examination she admitted that when they had complained to the Supreme Court by way of Fundamental Rights applications, which were dismissed on the basis that they had not made out a *prima facie* case. She further admitted that, although they had appealed to the Grievance Committee, the Committee also had only recommended to give them certain relief or redress their grievance if it is suitable. Thereafter, only was the matter referred to arbitration.

Further, she admitted that although it is an internal appointment, the officers can be absorbed into the cadre depending only on the availability of vacancies; no more vacancies can be created by the Chairman or Employment Bureau unless it is permitted by the Salary and Cadre Commission.

For further clarity, I will reproduce the relevant part of her evidence (in cross-examination) reflected in X4(b) annexed to the Petition;

“R (3) පෙන්වා සිටී.

ඇ: R (3) ලේඛනයේ අවසන් ජේදය කුමක් ද සඳහන් වන්නේ?

ඊ: එය කියවා සිටී.

ඇ: ඔබ පිළිගන්නවාද මෙම අවස්ථාවේදී තනතුර පධානය කිරීම හෝ තනතුර උසස් කිරීමේදී නීතිමය රාමුවකට බැඳීලා කටයුතු කරන්න ඕන කියලා පිළිගන්නවාද?

ඊ: ඔවා.

ඇ: ඔබ අවසන් වනාවට දක් ගැනීවිලි කම්ටුවට ඉදිරිපත් කළා කියලා කිවේ මෙම R (3) අනුව ද?

ඊ: ඔවා.

ප්‍ර: මෙම ලේඛනයේ වැඩිරටත් අවධානය යොමුකර තිබෙනවා කිසියම පත්වීමක් හෝ ගැටළු විසඳීමේ තත්ත්වයකට නීතිමය නත්ත්වයක් අවශ්‍ය නම් ඒ අනුව කටයුතු කරන්න ඕන කියලා පිළිගන්නවා දේ?

ස්: ඔව්.

ප්‍ර: ඔබ සඳහන් කර සිටියා පෙරදානම් කිරීමක් ඉල්ලා සිටින්නේ නැහැ කියලා?

ස්: පෙරදා නම් කිරීමක් ඉල්ලා තිබෙනවා.

ප්‍ර: එය තවදිරටත් ඉල්ලා සිටිනවාද?

ස්: ඔව්.

ප්‍ර: ඒ කුමන කාලයට ද?

ස්: 2012.04.05 දක්වා

ප්‍ර: ඇයි එසේ 2012.04.05 වෙනකම් පෙරදා නම් කරන්න කියලා ඉල්ලා සිටින්නේ?

ස්: වනුලේඛනය අනුව කියා තිබෙන්නේ බදවා ගැනීම සහ උසස් කිරීම් ලබාදීමේදී අසාධාරණයක් වූණා නම් ඒ සම්බන්ධයෙන් කමිටුවක් පත්කළේ අපි ඒ වෙමෙළ ඉල්ලීමක් කළා 2012.04.05 ට පෙරදා නම් කරලා දෙන්න කියලා. අපි දිගින් දිගටම එසේ ඉල්ලා සිටියා.

R (4) ලෙස සලකුණු කර ඇති ලේඛනය නැවතන් R (4) ලෙස සලකුණු කර ඉදිරිපත් කර සිටිනවා.

ප්‍ර: R (4) ලේඛනයේ 6 වන වගන්තිය කියවා සිටින්නේ?

ස්: එය කියවා සිටී.

ප්‍ර: කවුද එහි අන්සන් කර තිබෙන්නේ?

ස්: නියෝජ්‍ය සාමාන්‍ය අධිකාරී පරිපාලන.

ප්‍ර: කවදද නිකුත් කර තිබෙන්නේ?

ස්: 2013.03.13

ප්‍ර: මෙම ලේඛනයේ කුමක් ද සඳහන් කර තිබෙන්නේ?

ස්: පෙරදා නම් කිරීමක් ලෙස සඳහන් කර තිබෙනවා.

ප්‍ර: ඔබ පරිපාලන ආයත්‍ය වසර 10 ක් සේවය කළා ක්වීවා නොදා?

ස්: ඔව්.

ප්‍ර: ආයතන සංග්‍රහයේ පෙරදා නම් කිරීම සම්බන්ධයෙන් ඔබට අවබෝධයක් තිබෙනවාද?

ස්: ඔව්.

පු: ඔබට ආයතන සංග්‍රහය අනුව එසේ සදහන් කරන්න මෙම අවස්ථාවේදී මතකයක් තිබෙනවාද?

ආයතන සංග්‍රහය පෙන්වා සිටී.

සු: එය කියවා සිටී. ආයතන සංග්‍රහයේ 2 පරිවශේෂයේ 1:10: 2 කියවා සිටී.

පු: ආයතන සංග්‍රහයේ 1:10:3 කියවා සිටින්න ?

සු: එයන් කියවා සිටී.

පු: එහි සදහන් වෙනවා නොදු පෙරදා නම කරන දිනය වන විට සියලු පූදුසුකම් සපුරා තිබිය යුතුයි කියලා නොදු?

සු: ඔවුන්.

පු: ඒ වෙද්දී ඉල්ලා සිටි සියලුම ඉල්ලුම මෙරුවන් පූදුසුකම් සම්පූර්ණ කර තිබුනාද?

සු: ඔවුන්.

පු: මම ඔබට යෝජනා කරනවා අදාළ පූදුසුකම් ඒ වෙන විට සපුරා තිබුන් නැහැ කියලා?

සු: පිළිගන්නේ නැහැ

පු: 2012 වෙන විට අදාළ තනතුරේ පුර්ජාවූ තිබුන් නැහැ කියලා යෝජනා කරනවා?

සු: 2012 ඒ තිබුණ පුර්ජාවූ වලට ලබා දුන්නා.

පු: ආයතන සංග්‍රහයේ 2 පරිවශේෂයේ 1: 11 හි පෙරදා නම් තොකල යුතු අවස්ථා සදහන් වෙනවා නොදු?

සු: කියවා සිටී.

පු: කවර අවස්ථාවලදී ද යන්න සදහන් කර ඇති කොටස කියවා සිටින්න?

සු: එය කියවා සිටී.

පු: ඔබට යෝජනා කරනවා දැනට තනතුර 2018 වෙනකම් ලැබේලා තිබෙනවා නවත් වසර 6 ක් පෙරදා නම් කලොත් තවත් නිලධාරීන් පිරිසකට පෙශේයින්වය භානි වෙනවා කියලා?

සු: 2012 පැවත්නි සම්මුඛ පරීක්ෂණයේ ජීවිතම නිලධාරීන් නමයි මේ ඉන්නේ. අපට වඩා පහල කාර්යාල කාර්ය සහයක සිටි අයට උසස්වීමේ ලබා දුන්නා. Training Instruction අයට ලබා දුන්නා, එන්ඩ් පොස්ටමන්ට් ඇසිස්ටන් කියන අයට ලබා දුන්නා. ඒ අය අපිට වඩා ජුනියර් අය. මෙතන ඉන්න පිරිස නමයි සිනියර් අය.

පු: 2012 වසරේ සම්මුඛ පරීක්ෂණයෙන් ඉහළම ලෙසුනු ලබලා එම තනතුර ලබලා 2012 වසරේ සිට සේවය සපයමින් සිටින අය සිටියදී ඔබ 2012 වසරට පෙරදා නම් කරලා දුන්නාන් එම නිලධාරීන්ට අසාධාරණයක් වෙනවා කියලා යෝජනා කර සිටිනවා?

සු: නැහැ

A (1) ලේඛනය පෙන්වා සිටී.

පු: මෙම ලේඛනය නිකුත් කර තිබෙන්නේ කවදාද?

ස්: 2019.01.21

පු: කවද මෙය අත්සන් කර තිබෙන්නේ?

ස්: සහාපති.

පු: සහාපතින්මාගේ නම කුමක් ද සඳහන් වන්නේ?

ස්: එ. එ. එම්. ඩිල්මි

පු: මෙම බෝරුම්කරණයේ ඉල්ලා සිටිනෙන් මෙම ලිපිය බලාත්මක කරන්න කියලද?

ස්: ඔවුන්

පු: මෙම ලිපියේ කිසියම් දෝෂයක් දකිනවාද?

ස්: නැහු

පු: A (1) ලේඛනයේ අන්තිම ජේදයේ කුමක්ද සඳහන් වන්නේ?

ස්: එය කියවා සිටී.

පු: එහි සඳහන් වෙනවා නොදු විධිමත් උසස් කිරීමේ ලිපියක් පසුව නිකුත්කෙරේ කියලා?

ස්: ඔවුන්

පු: මෙම ලිපිය ස්ථිර ලිපියක් කියලා කිව හැකිද?

ස්: තනතුරට පන්කරලා ස්ථිර ලිපියක් විදියට නමයේ දීලා තිබෙන්නේ.”

She also admitted that she and the other nineteen Respondents did not have the necessary marks at the time that they were selected; however, later, some of them were selected.

After she had given her evidence, an administrative officer, Dhanuka Samarakkodi, from the Foreign Employment Bureau had also given evidence. According to him, by 09.12.2011, there had been 53 vacancies in the cadre of the Administrative Officers of the Bureau; thus, in 2011, it was advertised calling for applications to fill the said vacancies internally, and one hundred and fourteen (114) officers had applied, and they were all called for the interview. However, out of

them, initially only 53 officers were absorbed into the cadre as administrative officers, depending on their merits.

Thereafter, some of the officers who were not selected had filed Fundamental Rights applications; nevertheless, their applications were dismissed by the Supreme Court. Later, though their matter was referred to the Grievance Committee, it had also not given any redress except for properly to give some suitable relief according to the law. Accordingly, certain Respondents who are now before the Arbitrator were also given appointments in due course, depending on the available vacancies, with effect from 04.10.2018.

However, their grievance is that their appointments should be backdated with effect from 05.04.2012. It is his position that their appointment letter cannot be backdated due to two reasons. Firstly, by the time this matter was referred to arbitration, several officers had already retired; therefore, they cannot be absorbed. Second reason is that there were no vacancies for all as at 05/04/2012.

Accordingly, it is his position that no discrimination was created or meted out to any of the Respondents who had made applications to the Supreme Court or the Grievance Committee or was a party before the Arbitrator.

Nevertheless, the Arbitrator having considered all the evidence, has given the arbitral award in favour of the Respondents, directing the Petitioner (the Bureau) to backdate their letters of appointment after absorbing them to the Administrative Officers cadre with effect from 05.04.2012. Thereafter, the Petitioner sought to quash that order as previously mentioned, on the grounds that were mentioned in the Arguments.

### **No vacancies in the cadre**

It is very clear from the evidence of the Petitioner's officer, who had given evidence on behalf of the Petitioner as well as the original applicant (4<sup>th</sup> Respondent), that the Petitioner can only fill a certain number of vacancies; not even the Chairman nor Minister can give or create vacancies which is not within the cadre. According to the cadre, at the time that the applications were called for, there were only 53 vacancies; thus, from and out of the 114 applicants who had applied to be absorbed and be promoted as Administrative Officers, the first 53 applicants who had scored the highest marks were eligible to be absorbed, and thus, absorbed.

#### **Arbitral award is *ultra vires***

However, some more officers were absorbed in due course depending on the vacancies that had fallen, including some of the Respondents who had also pursued the matter before the Arbitrator. Therefore, the Arbitrator has failed to consider all that, particularly about the promotions that had to be filled depending on the availability of vacancies. He has also failed to consider the fact that if the said letters of appointment are backdated with effect from 05.04.2012, it will exceed the maximum limit in the number of the cadre; and therefore, such a decision is *ultra vires*.

Therefore, the Arbitrator's direction and arbitral award directing the Petitioner (the Bureau) to backdate the letter of the said officers, cannot be done as it amounts to exceeding the number of vacancies in the cadre existing at that time. Therefore, the arbitral award to that extent is *ultra vires*, and cannot be maintained. As such, it has to be quashed.

However, their grievance was somewhat redressed in due course, including the 4<sup>th</sup> Respondent, who had already given evidence. Nevertheless, all the applicants cannot be redressed for the simple reason that some of them had already retired. By the time they had retired, there were no vacancies existing within the cadre; thus, the Employment Bureau could not have accommodated or absorbed

them into the cadre before their retirement. Therefore, if such an arbitral award is implemented, it amounts to scuttling of the whole structure of the cadre in the Bureau; thus, the arbitral award cannot be sustained. Accordingly, I am compelled to issue a *Writ of Certiorari*, quashing the same.

### **Conclusion**

For the reasons adumbrated above, *Writs of Certiorari* are issued as prayed for in prayers (c) and (d) in the Petition. In addition to that, the *Writ of Prohibition* as prayed for in prayer (e) in the Petition is also issued. Since X12 cannot be implemented, no cost is ordered.

**JUDGE OF THE COURT OF APPEAL**