

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

In the matter of an Application for Special Leave
to Appeal in terms of Article 128(2) of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Dr. Liyana Arachchilage Tharanga
Madubhashini Liyanarachchi,

5/2, Temple road, Kaluthara North.

S.C. Appeal No. 28/2023

PETITIONER

S.C. SPL LA No. 173/2022

Vs.

**C.A. WRIT Application No.
296/2021**

1. Dr. Asela Gunawardena,
Director General of Health Services,
Ministry of Health, "Suwasiripaya",
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
2. Dr. H.S. Munasinghe,
Secretary,
Ministry of Health, "Suwasiripaya",
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
3. Dr. Lal Panapitiya,
Director General of (Medical Services 1),
Ministry of Health, "Suwasiripaya",
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
4. Dr. Ayanthi Karunaratne,
Acting Director (Tertiary Care Services),
Ministry of Health, "Suwasiripaya",
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.

5. Dr. Rasika Gunapala,
Consultant Pediatrician,
Lady Ridgeway Hospital,
Colombo 8.
(Member of the Transfer Board)
6. Dr. Darshana Sirisena,
Consultant Neurologist,
National Hospital of Sri Lanka,
Colombo 7.
(Member of the Transfer Board)
7. Dr. Sunil De Alwis,
Additional Secretary (Medical Services),
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
8. Mr. I.A. Kalukapurachchi,
Secretary,
Health Services Committee,
Public Service Commission,
1200/9, Rajmalwatte Road, Battaramulla.
9. Dr. S.M. Senanayake,
Consultant Gastroenterologist,
District General Hospital, Kaluthara.
10. Dr. K.R.P. Perera,
Consultant Gastroenterologist,
District General Hospital, Mathara.
11. Dr. S.K. Kodisinghe,
Consultant Gastroenterologist,
Provincial General Hospital, Badulla.
12. Dr. T.A.C.L. Piyaratne,
Consultant Gastroenterologist,
Teaching Hospital, Anuradhapura.

13. Hon. Pavithra Wanniarachchi,
Minister of Health,
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
14. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

RESPONDENT

AND NOW BETWEEN

1. Dr. Asela Gunawardena,

Director General of Health Services,
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
2. Dr. H.S. Munasinghe,
Secretary,
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
3. Dr. Lal Panaipitiya,
Director General of (Medical Services 1),
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
4. Dr. Ayanthi Karunarathne,
Acting Director (Tertiary Care Services),
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.

5. Dr. Sunil De Alwis,
Additional Secretary (Medical Services),
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.
6. Mr. I.A. Kalukapurachchi,
Secretary,
Health Services Committee,
Public Service Commission,
1200/9, Rajmalwatte Road, Battaramulla.
7. Hon. Minister of Health,
Ministry of Health, “Suwasiripaya”,
No. 385, Baddegama Wimalawansa Mawatha,
Colombo 10.

RESPONDENT – PETITIONERS

Vs.

1. Dr. Liyana Arachchilage Tharanga
Madubhashini Liyanarachchi,

5/2, Temple road, Kaluthara North.

PETITIONER – RESPONDENT

2. Dr. Rasika Gunapala,
Consultant paediatrician,
Lady Ridgeway Hospital,
Colombo 8.
(Member of the Transfer Board)
3. Dr. Darshana Sirisena,
Consultant Neurologist,
National Hospital of Sri Lanka,
Colombo 7.
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4. Dr. S.M. Senanayake,
Consultant Gastroenterologist,
District General Hospital, Kaluthara.
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District General Hospital, Mathara.
6. Dr. S.K. Kodisinghe,
Consultant Gastroenterologist,
Provincial General Hospital, Badulla.
7. Dr. T.A.C.L. Piyaratne,
Consultant Gastroenterologist,
Teaching Hospital, Anuradhapura.

RESPONDENT – RESPONDENTS

Before: **P. Padman Surasena, C.J.,**
A.L. Shiran Gooneratne, J.
Janak De Silva, J.

Counsel: Chaya Sri Nammuni, DSG for Appellant.

Neville Abeyratne, PC, with Kaushalya Abeyratne Dias
for the Petitioner–Respondent.

Written submissions: Petitioner – Respondent on 09.08.2023

1st to 7th Respondents – Petitioners on 01.09.2023

Argued on: 21.10.2024

Decided on: 11.09.2025

Janak De Silva, J.

The Petitioner-Respondent (Respondent) passed her MBBS examination in 2008. Thereafter, she held various posts in the Department of Health.

She was admitted to the degree of MD Medicine on 01.10.2015. After successful completion of the required local training, she commenced her foreign training in the United Kingdom on 25.07.2018, which ended on 16.07.2020.

Her grievance arises from the failure to obtain a place in the list of Annual Transfers of Specialist Medical Officers – 2021. The contention of the Respondent-Petitioners (Petitioners) is that the Respondent was not qualified to obtain a placement as she was not Board Certified by the Post Graduate Institute of Medicine (PGIM) by 31.12.2020. According to the Petitioners, the Respondent was Board Certified only on 29.01.2021. The Respondent denies this position and contends that her Board Certification, although dated 29.01.2021, is effective from 30.09.2018.

Upon denial of a placement in the list of Annual Transfers of Specialist Medical Officers – 2021, the Respondent invoked the jurisdiction of the Court of Appeal seeking a Writ of Certiorari to quash the decision not to include the Respondent's name in the list of Annual Transfers of Specialist Medical Officers – 2021 in the category of the speciality of Gastroenterology. She also sought a Writ of Mandamus directing the 1st to 8th Petitioners to allocate the Respondent a placement in Annual Transfers of Specialist Medical Officers – 2021 in the category of the speciality of Gastroenterology.

The Court of Appeal granted the Respondent Writs of Certiorari and Mandamus as prayed for in her petition. It was held that the Respondent was Board Certified by 31.12.2020 and that there was no requirement for the Respondent to physically possess a Board Certification by 31.12.2020 as claimed by the Petitioners.

Aggrieved, the Petitioners sought Special Leave to Appeal, which was granted on the following questions of law:

- (1) Did the Court of Appeal err in law in holding that the Board Certification given on 11.02.2021 can be constituted to mean and be interpreted as being given on 30.09.2018 by virtue of the effective date of that certification for the purposes of Clause 5E of circular letter dated 05.04.2021?
- (2) Did the Court of Appeal err in law in misconstruing the provisions of Clause 5E of the circular letter 05.04.2021 and not giving due weightage to the date 31.12.2020 as being the date by which the formal approval and Board Certification by the Post Graduate Institute of Medicine (PGIM) had to be obtained by the 1st Respondent?
- (3) Did the Court of Appeal err in law by considering the effective date of the Board Certification, which is not relevant for the issue of the Annual Transfer in this instant case and ignoring the date of the actual certification by the PGIM?

Board Certification

Let me at the outset, examine the procedure by which a doctor is Board Certified. Board Certification is done by the PGIM and not the Ministry of Health. In order to apply for Board Certification, a doctor must pass Part II of the MD examination. Thereafter, they have to complete one year of local training and then at least one or two years foreign training. Upon their return to Sri Lanka, they will have to hold for a period of three weeks in the Ministry of Health before applying for Board Certification.

The Board of Studies of the PGIM will have to meet, call the applicants for a viva and then, based on their performance and other criterion, approve the Board Certification. The PGIM then issues the certificate backdating the certificate to take effect from the date on which the Part II MD examination was passed plus two years of completion of local and foreign training, if the applicant has submitted within one month of completion of local and foreign training.

Thereafter, the PGIM writes to the Ministry of Health officially that the approval of the PGIM has been given for the relevant doctor to be Board Certified. The formality of appointment becomes complete only when the Secretary, Ministry of Health or Public Service Commission issues a letter of appointment appointing the doctor as a Specialist Consultant.

Factual Matrix

Annual Transfers of Specialist Medical Officers are done annually. It is common knowledge that all annual transfer lists are completed by December of each year and take effect on 1st January the next year.

However, the procedure to effect the annual transfers for 2021 was delayed by about 5 to 6 months due to the pandemic.

Applications for the Annual Transfer of Specialist Medical Officers – 2021 were called by letter/circular dated 29.03.2021 (P4) and posted on the website of the Ministry of Health on 30/03/2021.

Clause 5E in P4 read as follows:

“Medical Officers who are Board Certified as Specialists by the PGIM by the closing date of application and pending grade promotion to Specialist Grade by the by Health Service Committee/Public Service Commission may also apply for this transfer. But this category of officers will be considered for allocation of placement only if they are formally grade promoted to Specialist Grade by, HSC/PSC at the time of approval of placement based on the decided transfer by HSC of PSC approval of the transfer list. These applicants are requested to attach the Board Certification letter certified by PGIM along with the application.” (emphasis added)

The closing date of applications was fixed for 15.04.2021 which was later extended to 18.04.2021 and then finally to 21.04.2021.

However, before the closing date, the Ministry of Health published another circular dated 05.04.2021 (P7) signed by the 2nd Petitioner amending P4. At the time of publication of P7, P4 was taken off from the Ministry of Health website.

Clause 5E of P7 read as follows:

“Medical Officers who are Board Certified as Specialists by the PGIM by 31.12.2020 and Medical Officers pending grade promotion to Specialist Grade by Health Service Committee/Public Service Commission may also apply for this transfer. But this category of officers will be considered for allocation of placement only if they are formally grade promoted to Specialist Grade by, HSC/PSC, by the time of approval of the annual transfer list by the HSC/PSC. These applicants are requested to attach the board certification letter certified by PGIM along with the application.” (emphasis added)

The Respondent submitted her application thereafter on 10.04.2021.

There was a significant change in the requirements between P4 and P7. In terms of P7, an applicant had to be Board Certified by 31.12.2020 whereas in terms of P4, Board Certification was required by the closing date of applications. Significantly, both P4 and P7 required the applicants to attach the Board Certification letter certified by PGIM along with the application.

The Draft Marks List of the Annual Transfers of Specialist Medical Officers – 2021; Draft Marks – 05.05.2021 was published on the official website of the Ministry of Health on 06.05.2021. The Respondent’s name was included in this list under the category of the speciality of “Gastroenterology”.

Subsequently, on 24.05.2021, an Amended Draft List was posted on the official website of the Ministry of Health in which the name of the Respondent was removed.

The Petitioner contacted the 4th Petitioner in order to ascertain the reasons for the removal of her name. She was then informed that her Board Certification letter was issued after 31.12.2020.

The Final Marks List was also subsequently posted on the website of the Ministry of Health. It also did not contain the name of the Respondent. It is at this point the Respondent invoked the jurisdiction of the Court of Appeal.

Court of Appeal Judgment

The Court concluded that when the Respondent received her Board Certification on 11.02.2021 with effect from 30.09.2018, the Board Certification will have retrospective effect. Accordingly, it was held that the Respondent had received her Board Certification as at 31.12.2020. Therefore, the Court of Appeal concluded that the Respondent was Board Certified on the closing date of applications, i.e. 21.04.2021 and that the need to physically possess a board certification as claimed by the Petitioners is not clearly reflected in P4 or P7. The Court of Appeal placed much reliance on the decision in ***Dr. Preethi Weerasekera v. Dr. Reggie Perera, Director-General of Health Services and Others*** [(1999) 2 Sri LR 241].

Analysis of the Facts and Law

In ***Dr. Preethi Weerasekera (supra)***, the issue was the appointment for the post of Consultant Rheumatologist, Colombo South Hospital, Kalubowila. The closing date for applications was 10.06.1997. Board Certification as a specialist by the PGIM was a condition of eligibility for appointment. The petitioner applied for the post. On 05.09.1997 the Consultants' Transfer Board appointed the 7th Respondent instead of the petitioner who had the highest points at the selection. The petitioner was overlooked on the ground that as she had not been Board certified as a specialist on 10.06.1997, the closing date for applications.

Pending the selection of a candidate for the post in dispute, on 03.06.1997 the Director PGIM informed the Director-General of Health Services that the petitioner had completed her training and that the Board of Studies would consider her for Board Certification as a specialist with effect from 13.12.1995. On 30.06.1997 the Director of Health Services was informed that on 27.06.1997 the Board of Studies had recommended to the Board of Management PGIM that the petitioner be certified as a specialist with effect from 17.12.1995 and on 02.09.1997 the Director of Health Services was informed that the Board of Management had approved that the petitioner be certified as a specialist in Rheumatology and Rehabilitation with effect from 17.12.1995.

The Court concluded that when the Consultants' Transfer Board met on the 05.09.1997, it had before it, or should have had, the petitioner's explanation for not submitting a document evidencing Board Certification. It also had, or should have had, the letters of the Director of the Post-Graduate Institute of Colombo dated the 09.05.1997 and the letter of the Acting Director of the Post-Graduate Institute of Medicine indicating that the petitioner had completed all facets of training and that certification was due to take place, and that when it did take place, it would be retrospective.

Court further held that, the Transfer Board also had or ought to have had, the letter from the Director of the Post-Graduate Institute of Medicine dated the 02.09.1997, stating that the petitioner had been Board Certified with effect from 17.12.1995. Court concluded that at the date of the meeting of the Transfer Board, therefore, the petitioner was Board Certified. She was also Board Certified on the closing date for applications, namely the 10.06.1997. What she lacked on the 10th of June was documentary proof of Board Certification.

In the circumstances, it was held that, the Consultants' Transfer Board misled itself in supposing that the petitioner was not eligible for appointment and failed to afford her equal treatment in terms of the Minute on Health (as amended) and read with the Circular Letter of the 09.05.1997.

However, there is an important factual difference in the matter before us. Clause 5E in both P4 and P7 specifically requested the applicants to attach the Board Certification letter certified by PGIM along with the application. This is a clear indication that as at the closing date of applications, it is a requirement that documentary proof of Board Certification should be available.

Hence the Court of Appeal erred in applying the ratio of the decision in ***Dr. Preethi Weerasekera (supra)*** to this application.

Moreover, the Petitioner did not seek to impugn either P4 or P7. According to the 'presumption of validity', administrative action is presumed to be valid unless or until it is set aside by a Court [***F. Hoffmann-La Roche & Co. A.G. and Others v. Secretary of State for Trade and Industry (1975) A.C. 295***; Lord Hoffmann in ***Regina v. Wicks (1998) A.C. 92 at 115***; Lords Irvine LC and Steyn in ***Boddington v. British Transport Police (1999) 2 A.C. 143 at 156 and 161, and 173-4***].

Hence, the Court of Appeal erred in holding that the requirement of possessing a Board Certificate physically by 31.12.2020 is not clearly reflected in P4 or P7.

Furthermore, it is erroneous to consider the requirement of possessing Board Certification as at 31.12.2020 from the point of time when the applications are considered. Admittedly, the transfers for 2021 were to take effect from 01.01.2021. Obtaining Board Certification after that date although backdated to 2018 is irrelevant. In my view, the requirement in Clause 5E must be considered as at 31.12.2020.

This approach is supported by the other requirements in both P4 and P7. According to Clause 01, all posts where Specialist Medical Officers have completed 04 years from the effective date of transfer order by 31.12.2020 are considered as listed vacant posts. These are the posts for which the annual transfers were to be made. Clause 04 states that the annual transfers will take effect from 01.01.2021 although both P4 and P7 were issued in March and April, 2021.

When examined from that perspective, the Respondent was not Board Certified as at that date notwithstanding the backdating of her Board Certification to 2018.

This is consistent with the position set out in Clause 6.3.11 of the Medical Service Minute dated 22.03.2001 which states that those who are eligible to apply for special posts are only those who have got Board Certification and not those who are eligible to get Board Certification. The position is the same in the Clause 11.2.1 of the Amended Medical Service Minute.

Admittedly, the name of the Respondent was contained in the Draft Marks List. According to the Petitioners, the Draft Marks List is based on the information and marks given by the applicants themselves and are not verified and checked.

Subsequently, on 24.05.2021, an Amended Draft List was posted on the official website of the Ministry of Health in which the name of the Respondent was removed. The Amended Draft List is prepared after verification by the Petitioners against the personal files of the applicants.

In these circumstances, there is nothing wrong in the authorities removing the name of the Respondent from the Final Marks List, on the basis that she was not qualified, as the Draft Marks List was an unperfected decision. In ***L.J.K. Hettiarachchi and Another v. Pearl Weerasinghe, Commissioner General of Labour and Others*** [S.C. Appeal No. 37/2018,

S.C.M. 18.07.2025], I held, for reasons more fully expounded therein, that an administrative body can revisit an unperfected decision.

Moreover, there are approximately 73 doctors who obtained Board Certification after 31.12.2020 and were therefore ineligible to apply for transfers in 2021. Hence there was no discrimination of the Respondent.

For all the foregoing reasons, and in the circumstances of this application, I answer all three questions of law in the affirmative.

I set aside the judgment of the Court of Appeal dated 05.05.2022 and dismiss the application made by the Respondent to the Court of Appeal.

The appeal is allowed.

Parties shall bear their costs.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, C.J.

I agree.

CHIEF JUSTICE

A.L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT