

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

In the matter of an application for a
mandate in the nature of Writ of
Certiorari in terms of Article 140 of the
Constitution.

Sri Lanka Ports Authority
No.19, Church Street,
Colombo 01

C.A.(Writ) Application No.504/2007

PETITIONER

VS

1. Hon. Athauda Seneviratne
Minister of Labour and Manpower
Ministry of Labour and Manpower
Labour Secretariat
Colombo 05.
2. D.S. Edirisinghe,
Commissioner General of Labour
Department of Labour
Labour Secretariat
Colombo 05.
3. K.A.D.B. Karunaratne
No.216/8, Pamunuwa Road
Maharagama.
4. Sri Lanka Ports Authority
Technical Officers Association
No.114/14, Walls Lane
Colombo 15.

RESPONDANTS

C.A.(Writ) Application No.504/2007

BEFORE : **S. SRISKANDARAJAH, J (P/CA)**

COUNSEL : Uditha Egalahewa for the Petitioners,
Maithree Amarasinghe SC for the 1st and 2nd
Respondents.
P.L.Gunawardana for 4th Respondent

Argued on : 02.12.2010

Written Submission : 08.02.2011 (Petitioner)
25.03.2011 (4th Respondent)

Decided on : **25.06.2012**

S.Sriskandarajah.J.

The Petitioner Authority (Sri Lanka Ports Authority) was established by Act No.51 of 1979. After the establishment of this Authority, the employees of the Ports Commission, The Ports Tally Corporation and Ports Cargo Corporation were absorbed into the workforce of the said Authority. The Petitioner Company also directly recruited technical officers and other staff. The position of the 4th Respondent Union

who belongs to the middle level technical officers of the Port Commission, were offered employment as Technical Officers in the Sri Lanka Ports Authority. Consequent to that, the said officers exercised their option to join the Sri Lanka Ports Authority.

The Ministry of Public Administration issued a Circular 2/97(1), 2/94(1) to the Heads of Departments and Ministries, to take appropriate action to implement the contents of the Circular to Corporations and Boards where middle level unified technical services are in existence. After the issuance of this Circular, the 4th Respondent Union claimed that its members were entitled to the benefits of the said Circular. The Petitioner took up the position that there was no such service of the Sri Lanka Ports Authority to base on the representations by the 4th Respondent Union. The Board of Directors of the Sri Lanka Ports Authority approved the grant of the benefit of the said circular to the members of the said Union. The Board also decided that the service called Middle Level Technical Service would cease to exist in Sri Lanka Ports Authority and any decision by the government in respect of the said service would not apply to the Sri Lanka Ports Authority.

The salary anomalies in several salary structures of the Sri Lanka Ports Authority were referred to a Committee called Jayasekera Committee for a report, and the said Jayasekera Committee observed that the government circular should not be made applicable to the Sri Lanka Ports Authority and made certain recommendations, but the said Jayasekera Committee did not recommend any salary revision to the members of the 4th Respondent Union, but has permitted them to enjoy the salary increments already granted by the said decision of the Board of Directors of Sri Lanka Ports Authority. After the Jayasekera Committee, on representations made by various parties, including the 4th Respondent Union, another Committee was appointed to look into the grievances of the employees of the Sri Lanka Ports Authority, and the said Committee was called Unamboowa Committee. The Unamboowa Committee report was also released, but the 4th Respondent Union was not satisfied with the

recommendations of the said Committee, and hence, the 4th Respondent has made a complaint to the Commissioner of Labour that a dispute has arisen between the Petitioner and the 4th Respondent with regard to the implementation of the Public Administration Circulars 27 of 1994 and 27 of 1994(1). As the matter could not be settled by the Commissioner of Labour, the said dispute was referred for arbitration under Section 4(1) of the Industrial Disputes Act No.43 of 1950. The reference was as follows:-

“Whether the reduction to the previously paid salary scales as from 1/01/1995 of the middle grade technical officers in the Sri Lanka Ports Authority who had been placed on a higher salary point with effect from 1/07/1994 in terms of Public Administration Circular No.27/1994 and 27/09(1) by the said Authority is justifiable and, if not, to what relief they are entitled.”

The arbitration commenced on 31st May 2003. In the said arbitration, both parties led evidence and tendered written submissions. The 3rd Respondent, the Arbitrator, delivered the order on the 26th January 2007, and the said order was published in the Sri Lanka Government Gazette bearing No.1484/17 on the 6th of March 2007.

The Petitioner in this application is seeking a Writ of Certiorari to quash the award of the 3rd Respondent dated 26th January 2007. In the said Award, the 3rd Respondent has decided -

- (1) to place those employees who were within the salary scale 9 as at 1/01/1995 in salary scale 8 with effect from 1/01/1995.

Accordingly, the said employees should be placed in the corresponding grade, designation and promotion and back wages.

- (2) To place those employees who were within the salary scale 8 as at 1/01/1995 in salary scale 7 with effect from 1/01/1995.

Accordingly, the said employees should be placed in the corresponding grade, designation, promotion and back wages.

The Petitioner submitted that the aforesaid Order of the 3rd Respondent was made without consideration of relevant facts, and the said Order may result in serious salary anomalies in the Petitioner Authority. The Petitioner submitted that the Members of the 4th Respondent were granted the benefit of the salary increment, though not entitled due to the intervention of the former Chairman of the Petitioner Authority, and this salary adjustment was submitted to the Minister, and the Minister has given his concurrence and the Members of the 4th Respondent Union to-date enjoy the benefits of the said salary increment. The Petitioner also contended that the middle level unified technical service was a service of the Public Service, and it is not in existence or existing in the Petitioner Authority, and this position was even confirmed by the Jayasekera Salaries Committee Report and the Unamboowa Committee Report. It is the position of the Petitioner that the initial increment that was given with the consent of the Board of Directors and the Minister to the Members of the 4th Respondent Union which was based on the Public Administration Circular was much higher than the salary increment granted to the other employees and, therefore, even today, the Members of the 4th Respondent are placed in a privileged position in comparison to other employees.

The evidence led before the Arbitrator indicates that even though the Board of Directors have decided to give the benefit of the Public Administration Circular to the Members of the 4th Respondent Union, that the Petitioner Authority had not accepted the position that a middle level technical service in the said Authority is in existence, and this position was also being supported by the Reports of the Jayasekera Committee and the Unamboowa Committee and, in these circumstances, the Arbitrator has not

given adequate consideration to the non existence of the middle level unified technical service in the Petitioner Authority and, as such, that the Public Administration Circular No.27 of 1994 would not apply to the Members of the 4th Respondent Union. When considering the facts and circumstances of this case, the Arbitrator is in error in directing the Petitioner Authority to place the Members of the 4th Respondent Union in different salary scales, but the Members of the 4th Respondent Union is entitled to claim the benefits that they were given by the decision of the Board of Directors with the concurrence of the Minister, as the Minister has the power to give direction to the Ports Authority under Section 8 of the Ports Authority Act but they are not entitled to the benefits of Public Administration Circular that was issued in relation to middle level unified technical service, as evidence shows that there is no middle level unified technical service existing in Sri Lanka Ports Authority. In these circumstances I issue a Writ of Certiorari to quash the Award of the 3rd Respondent Arbitrator dated 26th January 2007. I allow this application without cost.

President of the Court of Appeal