

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

In the matter of an application for the
issue of Writs of Certiorari in terms of
Article 140 of the Constitution.

CA (Writ) Application No.662/2010

H.A.D. Dharmasiri (Retired)
354/No.29/2
Galwadukumbua
Kawdukelella
Matale.

Petitioner

Vs,

1. Mrs. B.P.P.S. Abeygunaratne
Director General of Combined
Services
Ministry of Public Administration &
Home Affairs
Torrington Square
Colombo 07.
2. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

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

COUNSEL : Petitioner appears in person.

Vikum de Abrew SSC

for the 1st and 2nd Respondents.

Written Submission on : 25.01.2012 (Petitioner)

17.07.2012 Respondents

Decided on : 28.09.2012

S.Sriskandarajah, J.

The Petitioner joined the Food Control Department on 8/06/1981 and was transferred to the Government Food Stores at Ratnapura on 4/04/1990, where he functioned as Assistant Store-keeper. The Petitioner submitted that an investigation team visited the said Government Stores, Ratnapura on 3/04/1999 and 6/04/1992 and took into their custody the files and other books of accounts maintained by the Store-keeper. Physical counting and weighing of a few bags of sweepings under his charge at the time of investigation was also taken by them. Thereafter a Charge Sheet was issued to the Petitioner. Based on the said Charge Sheet an inquiry was held and thereafter, the Food Commissioner, by letter dated 1/02/1995 informed the Petitioner that the Petitioner was found guilty of all the 10 charges contained in the Charge Sheet and, the Petitioner is dismissed from service with immediate effect. The Petitioner, being dissatisfied with the said order of dismissal, appealed to the Public Service Commission and the Public Service Commission, by its letter dated 26/06/1996 has made order that the Petitioner be sent on compulsory retirement on inefficiency in lieu of dismissal.

Against the said decision of compulsory retirement on inefficiency, the Petitioner filed a writ application in the Court of Appeal bearing C.A. Application 752/1999.

Thereafter the Petitioner withdrew the said application reserving his right to canvass the back wages of the Petitioner.

On a re-consideration, the Public Service Commission, amended the earlier decision and reinstated the Petitioner subject to 5 conditions by letter dated 20/05/2002. One of the conditions laid down by the P.S.C. was that the period from the date of dismissal to the date of reinstatement would be considered as no-pay leave. The Petitioner assumed duties thereafter subject to the said conditions. The Petitioner thereafter made a request that he be promoted to Grade I on the basis that he had completed 12 years in Grade II(a). The Petitioner had retired from his service on the 8th of October 2008. The Petitioner was informed by letter dated 14th July 2010 that he cannot be promoted to Grade I as the period of no-pay leave cannot be considered for the promotion even though he was given salary increments for the said period. The Petitioner appealed against this decision to the Administration Appeal Tribunal, but thereafter he withdrew the said appeal. In this application the Petitioner has sought that he be promoted to Grade I and to stay a portion of the order communicated by letter dated 14/07/2010 marked P17.

In terms of the Public Administration Circular 21 of 2001 dated 22nd October 2001, a public officer must satisfy 3 conditions to be eligible for promotion to Grade I:-

- (a) He must get through the Efficiency Bar Examination;
- (b) He must complete 12 years continuous service in Grade II(a);
- (c) 5 years satisfactory service immediately prior to the date of appointment.

The above 3 conditions have to be satisfied by an officer to get a promotion from Grade II(a) to Grade I. The Petitioner retired on the 8th of October 2008. The period that

has to be considered is the period immediately prior to the date of appointment to the new grade. The Respondents have in their communication dated 14/07/2010 not indicated that his promotion was not considered on the basis that his service immediately prior to the date of the consideration of promotion for 5 years was not satisfactory. In fact, the Petitioner was reinstated to service on 20/05/2002, and he was given his increments, and he retired on 10th October 2008. So from 20/05/2002 he has served until his retirement, and there is no complaint on his service, and he was given his promotion. Therefore, one could presume that his service was satisfactory immediately prior to the date of retirement for five years and before his retirement the Petitioner has sought his promotion to Grade I.

The promotion to Grade II(a) from Grade I could only be granted if the officer has served a minimum period of 12 continuous years. But it need not be 12 continuous years **immediately prior to the date of appointment**. Even if the period on which he was on no-pay leave, i.e, from 1/02/1995 to 20/05/2002, is not considered for promotion as he was not on active service, his period of service from the date of joining the service could be considered for promotion. As the Petitioner joined the service on 8/06/1981 in Grade II(a) and has continuously served until 1/02/1995 for a period of more than 12 years and thereafter he was on no-pay leave from 1995 to 2002 and served in the said department until 2008. The period on which he was on no-pay leave cannot be taken into consideration for computing the minimum period of service, but in the Petitioner's case, even if the period on which he was on no-pay leave was not taken into consideration in computing the minimum period of service, he had served more than 12 years in Grade II(a). The scheme of recruitment has laid down a condition that the employee must complete 12 years continuous service in Grade II(a). Even though the Petitioner's service was terminated on 1/02/1995, he was reinstated to service on 20/05/2002, but back dating his service from 1/02/1995. Therefore, there is no break in his service. Considering this fact, his due increments were paid. In these circumstances the Petitioner has fulfilled the criteria for promotion to Grade I.

According to paragraph 6(2) of Chapter II of the Establishment Code, Volume 1: “Where an officer himself is not responsible for the delay in the decision regarding his promotion which results in such decision being taken when he is not in service or is deceased, the promotion should be given after his claims for promotion have been examined from the due date, even though the officer is already retired or deceased by the date of the decision, and this will be applicable only in case of a grade to grade promotion in service”.

As the Petitioner is seeking grade to grade promotion, i.e., Grade II(a) to Grade I and, as he has fulfilled the requirements for the said promotion while he was in service, therefore, the Petitioner is entitled to the said promotion even if he is retired from service on 8th October 2008. In these circumstances this Court quashes the decision of the Commissioner of Combined Services dated 14/07/2010 not to consider the promotion of the Petitioner and direct him to reconsider the promotion of the Petitioner in the given circumstances. The application of the Petitioner for the issue of Writ of Mandamus is allowed without costs.

President of the Court of Appeal