

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

M. M. Damayanthi Menike  
Badullawa, Narammala.

**PLAINTIFF**

C.A 634/1998 (F)  
D.C. Colombo 4790/Spl.

Vs.

1. P. D. Piyadasa  
Secretary,  
Public Service Commission  
Colombo 1.
2. A. S. Premaratne  
Acting Secretary,  
Educational Committee in Public  
Service Commission  
Isurupaya, Battaramulla.
3. M. D. Peiris  
Secretary,  
Educational and Higher Educational  
Commission,  
Isurupaya, Battaramulla.

**DEFENDNATS**

M. M. Damayanthi Menike  
Badullawa, Narammala.

**PLAINTIFF**

1. P. D. Piyadasa  
Secretary,  
Public Service Commission  
Colombo 1.
2. A. S. Premaratne  
Acting Secretary,  
Educational Committee in Public  
Service Commission  
Isurupaya, Battaramulla.
3. M. D. Peiris  
Secretary,  
Educational and Higher Educational  
Commission,  
Isurupaya, Battaramulla.

**DEFENDANT-RESPONDENTS**

**BEFORE:** Anil Gooneratne J.

**COUNSEL:** Chula Bandara for the Plaintiff-Appellant  
Anusha Fernando S.S.C for Defendant-Respondents

**ARGUED ON:** 17.7.2012

**DECIDED ON:** 01.11.2012

**GOONERATNE J.**

In this case Plaintiff-Appellant by her plaint, claim to be qualified to be selected as an Assistant English Teacher based on a

competitive examination held on ... 6.1994. As such a declaration was sought that:

- (a) Decision of 11.6.1994 that the Plaintiff is not qualified to be employed as an Assistant English Teacher is illegal.
- (b) Plaintiff be employed as an Assistant English Teacher based on the results of a competitive Examination held on 11.6.1994.

In the alternative for damages in a sum of Rs. 500,000/- as prayed for in her plaint.

5 admissions were recorded at the trial and parties raised 19 issues. Issue Nos. 1 & 2 were raised as preliminary issues and counsel on either side had moved to file written submissions in the original court on the preliminary issues 1 & 2. It is recorded that written submissions be permitted to be filed on issue No. (1) (proceedings of 4....9.1997). Paragraphs 2, 3, 7 & 16 of the plaint admitted. As such admission need to be understood at the very outs set and as such the following admissions arise from the pleadings.

(i) that the 1<sup>st</sup> Defendant is the Secretary of the Public Service Commission constituted in terms of the Constitution deals with appointment, transfers, promotions and disciplinary control of Public Servants. Powers of the PSC could be delegated to a head of a Government Department.

- (ii) Appointment of Teachers, transfers and disciplinary control of teacher in the island had been given to the Educational Service Committee of the PSC. 2<sup>nd</sup> Defendant is the Acting Secretary of the said Educational Services Committee.
- (iii) Document P3 sent to Plaintiff with V4. P3 is on the training course and V4 letter to Commissioner of Examination to inquire since Plaintiff's knowledge of English is poor. Marks obtained at this examination 63.
- (iv) Section 461 notice to Attorney General admitted and letter resisting action if filed P8.

The order in this case was delivered by the District Court on 26.6.1998 which was not in favour of Plaintiff on two preliminary objections, i.e

- (1) whether Plaintiff had a right or could obtain the relief sought.
- (2) Whether the District court has jurisdiction to hear and determine the action.

Trial judge answered both issues as (i) Plaintiff has no right to relief (ii) court has no jurisdiction.

Plaintiff-Appellant in his submission contest the 2<sup>nd</sup> matter very strongly i.e court has no jurisdiction under article 55 of the Constitution. It is the contention of the Plaintiff-Appellant that as submitted to this court:

- a. the subject of education including appointment of teachers to the schools in the respective Province is devolved on the Provincial Councils in terms of the 13<sup>th</sup> Amendment to the Constitution of Sri Lanka. However the examination to select English Teachers was held by the Department of Examination of the Central Government as per the relevant Gazette notification published by the Respondents and which was marked as V3.
- b. Accordingly any action taken by the Central Government with regard to appointment of teachers to the North Central Province is ultra vires and not valid in law.
- c. The learned District Judge has also misconceived the fact that only the Supreme Court holds the jurisdiction to hear the Petitioners case in terms of section 126 of the Constitution. It is submitted that the section 126 of the Constitution has no bearing what so ever as the purported interviews were carried out by the Respondents were beyond their authority.

It is apparent from the available material that the reason for not to appoint the Plaintiff-Appellant for the post applied for is stated in document V4 and the subsequent exchange of letters based on document V4. Letter V4 indicates that Plaintiff's knowledge of English was not up to standard or very poor.

Therefore under any normal circumstances person who does not possess the required standard or knowledge especially in case of teaching a language, authorities concerned need to be extra careful in the selection procedure, notwithstanding any error in the process as the outcome of such selection may be disastrous to the very education system. As such there is

always an area of discretion left to a court of law. Court is empowered to refuse a remedy.

The prerogative orders, declarations and injunctions and all discretionary remedies. This means that even if the applicant has standing had made the application in good time, and can establish that the Respondent has acted illegally, he or she may be denied relief if the court thinks, for some reason, that relief should not be granted. The fact that a decision is void or that some action or inaction is illegal does not impose on the court any obligation to award a remedy to the applicant. - An introduction to Administrative Law – 2<sup>nd</sup> Ed. Peter Cane pg. 69.

The above letter V4 would be further clarified by letter V1, which gives correct details of marks obtained by the Plaintiff candidate. On the other hand the mistake that occurred either bona fide or mala fide is also apparent. Though illegality is stressed by the Plaintiff-Appellant, there is no allegation of mala fides on the Defendant-Respondents. No doubt it took sometime which could be described as a delay to convey the mistake on the part of the authorities and the correct marks of the Plaintiff-Appellants. Such a delay would result in giving the Applicant hope and an expectation to adjust her own plans, although the Respondent's position was that her standard of English was very poor. The lapse on the part of the authorities

resulted in a lost opportunity to the Plaintiff, in my view should be compensated, in the absence of material to justify the lapse. However with the correct position being made known it cannot operate to the benefit of the Plaintiff to secure employment. As no court of law could rule on a right of a person in his favour, when such person is unqualified and not entitled to be selected. Therefore whatever the views of the trial judge, the conclusion arrived at by the trial judge, this court is of the view that issue no. 1 has been correctly answered.

‘Education’ in terms of the 13<sup>th</sup> Amendment to the Constitution is a devolved subject. There is no doubt and the Plaintiff-Appellant referring to same as a devolved subject cannot be faulted. However what is surprising is that the question as to why the pleadings fail to refer to same? No issue raised, as urged by Plaintiff-Appellant about any reference to the ‘Education’ being a devolved subject. If the pleadings were based on the above lines and Plaintiff raised an issue, it would have been possible for the Defendant-Respondent to join in issue? One has to be very specific when issues are settled in court. I also wish to observe that the gazette notification ‘V3’ refer to recruitment of English teachers under the district service scheme. There is no indication of recruitment of teachers to the Provincial

Council. Is it a recruitment of English teachers to national schools in the respective district? Nor has the plaintiff-Appellant challenged gazette V3.

I would also refer to the trial judge's assertion having considered Plaintiff's position... මොහ යම් අවස්ථාවකදී හෝ පළාත් රාජ්‍ය සේවා කොමසම විසින් මෙම බඳවා ගැනීම සම්බන්ධයෙන් කටයුතු කරන බවට හෝ කටයුතු කල බවට පෙන්වීමට පැමිණිලිකරු අපොහොසත් වී ඇත. In these circumstances I cannot fault the Defendant party urging Article 55(5) of the Constitution. Further the Plaintiff-Appellant had in the alternative as a prayer sought damages as prayed for in the plaint. In the absence of leading evidence no court could be in a position to arrive at any findings pertaining to damages. Both parties agreed to try issue 1 & 2 as preliminary issues (more advantageous to Defendants). Damages have to be proved, quantified. Mere assertions would not suffice, although some injustice had been caused to Plaintiff due to reckless or negligent acts of the examination department in mishandling the examination results of the Plaintiff-Appellant. However before I conclude I wish to add the following extract from text book Administrative Law – Peter Leyland & Terry Woods pg. 135 which also need to be kept in mind before I dismiss this appeal. Although this is an appeal from the District Court, the more appropriate remedy would have



been to challenge the gazette notification V3, by way of an writ application, if proper grounds exists.

In public law, perhaps more than in any other area of law, the judiciary have immense discretion as to whether to intervene or not. The grounds of review have been created entirely by the courts under the common law, with no significant intervention from Parliament. They are very broadly conceived, overlap considerably and are constantly developing. In addition, all the remedies are discretionary which means that, although the decision might appear to be ultra vires or an abuse of power, a remedy can, in the discretion of the court, be refused. Equally, it must be borne in mind that in administrative law cases the judiciary are involved unavoidably, in 'political' decisions, either between individuals and the state, or occasionally, between two branches of the state (e.g., local and central government). The inevitable result is tension between the executive and judiciary, but what has to be remembered is that, in theory at least, the sole role of the courts is to apply and interpret the law emanating from Parliament, using the basic principles of statutory interpretation which are applied in all areas of law.

I affirm the judgment of the District Court. Appeal dismissed without costs.

Appeal dismissed.

A handwritten signature in black ink, appearing to read "Anil Kumar", written in a cursive style.

JUDGE OF THE COURT OF APPEAL