

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

In the matter of an Application for the
grant of Mandates in the nature of Writs of
Certiorari and Mandamus in terms of
Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

R.A.U. Rupasinghe
29, Negombo Road
Mirigama.

PETITIONER

C.A. Application No.640/08

Vs.

1. Ceylon Electricity Board
Sir Chittampalam A. Gardiner
Mawatha.
Colombo 02.
2. Mr. M.M.C. Fernando
Chairman
Ceylon Electricity Board
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.
3. Mr. D.R. Pulleperuma
General Manager
Ceylon Electricity Board

Sir Chittampalam A. Gardiner

Mawatha

Colombo 02.

4. K.G.R.F. Comester

DGM (Personal)

Ceylon Electricity Board

Sir Chittampalam A. Gardiner

Mawatha

Colombo 02.

5. Mr. K.S.P. Jayawardena

AGM (Generations)

Ceylon Electricity Board

New Kelaniya Bridge Road

Wellampitiya.

RESPONDENTS

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

COUNSEL : Chathura Galhena,
for the Petitioners,
Viveka de Silva SC
for the Respondents.

Argued on : 09.11.2010

Decided on : 18.06.2012

S.Sriskandarajah.J,

The Petitioner was appointed to the post of Mechanical Superintendent Grade II on the 15th of September 1980, and by letter dated 5th January 1989, the Petitioner was promoted to the post of Mechanical Superintendent Grade I with effect from 1/1/1987. The Petitioner submitted that he applied for the post of Instructor, and the Petitioner was interviewed and thereafter was appointed to the post of Instructor (Terminal Generation) by letter dated 29/12/1987 with effect from 1/1/1988 and he was assigned to the Training Institute of Ceylon Electricity Board, Colombo. When he was appointed to the post of Instructor, his salary was calculated on the basis of salary scale K5. The Petitioner submitted that he applied for the post of Chief Instructor and was selected for the said post, and he was appointed from 1/3/1990 to the post of Chief Instructor. By this appointment his salary scale was revised, and he was paid a salary equivalent to salary scale K4 with effect from 1/3/1990. The Petitioner further submitted that while he was serving on the said post he received a salary increment due to the K4 salary scale from 1991 to 1999.

The Petitioner submitted that while he was serving as Chief Instructor, applications were called for the substantive post of Mechanical Engineer Class II, Grade II, and that he applied for the said post, after an interview, he was appointed to the post of Mechanical Engineer Class II Grade II with effect from 4/09/1999. The Petitioner further submitted that he received a letter dated 29/11/1999 from the Deputy General Manager of Human Resources containing the increments and salary attached to the said post. It appears from this letter that the Petitioner's earnings since 1991 to 1999 had been withdrawn and that he has been placed in the initial salary point of scale K4 and that was based on Circular No.1998/GM/41/HRD which was revised by Circular No.99/GM/34/HRD. The Petitioner contended that the withdrawal of the said increments by letter dated 29/11/1999 is unjust and illegal, as rightful incremental wages earned by the Petitioner cannot be withdrawn. He further submitted, by the unreasonable and illegal withdrawal of his rightfully earned increments, the Petitioner's

legitimate expectation to receive the increments has been violated. Therefore, the Petitioner in this application has sought a Writ of Certiorari to quash the decision contained in letter dated 29/11/1999, to place the Petitioner in the initial salary point of K4. He has sought a Writ of mandamus directing the Respondent to restore the withdrawn incremental credits.

The Petitioner joined the Electricity Board as Mechanical Superintendent Grade II and was promoted to Engineering Assistant Mechanical Grade II Class II and thereafter as Mechanical Engineer. While the Petitioner was holding the substantial post, he was appointed temporarily as Instructor (Terminal Generations) and thereafter as Chief Instructor (Terminal Generations). These two posts were held by the Petitioner while holding his substantial post. As he was appointed temporarily to the Instructor (Terminal Generations) and Chief Instructor posts, he was placed in a higher salary point and increments to the said salary points were also given to the Petitioner. The Petitioner admitted in his Petition that his initial salary at the substantive post was Rs.10,940/- and he received a salary of Rs.18,415/- when he was holding the post of Instructor, but when the Petitioner was reverted back to the substantial post, and when he was appointed to the post of Mechanical Engineer Grade II Class II with effect from 4/01/1999, the Petitioner is entitled to the salary attached to that post. As this is an appointment the Petitioner will only be placed at the initial starting point attached to the said post, i.e. the salary scale of K4, the Petitioner cannot claim, as of right or the Petitioner cannot have a legitimate expectation to get a salary higher than that attached to the post merely because he was temporarily performing a function in the Electricity Board which had a higher salary point and he was earning a higher salary by performing that additional function in the Electricity Board. The Petitioner's substantive posts were, Engineering Assistant (Mechanical) and Mechanical Engineer Class II Grade II with the salary scale for the post of Engineering Assistant (Mechanical) is K5 and Mechanical Engineer Class II Grade II is K4, and he was placed in this salary point at the relevant time. In these circumstances the Petitioner cannot claim that the

withdrawal of the benefits that he enjoyed by holding a temporary post, viz., Instructor (Termination) and Chief Instructor is wrongful. As there is no illegality or unreasonableness in placing the Petitioner in the correct salary scale of the substantial post held by the Petitioner, this Court cannot grant any relief that is sought by the Petitioner in this application. Therefore, this Court dismisses this application without costs.

President of the Court of Appeal