

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

In the matter of an Application for
Mandates in the nature of Writs of Certiorari,
Prohibition and Mandamus, under Article
140 of the Constitution of the Democratic
Socialist Republic of Sri Lanka

K.G.C. Priyadarshini
6A, Athula Mawatha,
Ratmalana.

PETITIONER

C.A.Writ Application No.540/2011

Vs.

1. The Commissioner General of
Inland Revenue
No.81, Sri Chiththampalam A.
Gardinar Mawatha
Department of Inland Revenue
Colombo 2.
2. The Secretary
Ministry of Finance and Planning
The Secretariat Building,
Colombo 1.
3. W.U.P. Premachandra
Director - Administration
No.81, Sri Chiththampalam A.
Gardinar Mawatha

Department of Inland Revenue
Colombo 2

4. W. Anulawathi
Commissioner - Human
Resource,
No.81, Sri Chiththampalam A.
Gardinar Mawatha,
Department of Inland Revenue,
Colombo 2.
5. Vidyajothi Dr. Dayasiri Fernando
Chairman, Public Service Commission
No.177, Nawala Road
Narahenpita
6. N. Ariyadasa Cooray
Acting Secretary
Public Service Commission
Narahenpita.
7. Palitha Kumarasinghe P.C.
Member
Public Service Commission
No.177, Nawala Road
Narahenpita.
8. Sirimavo A. Wijeratne
Member
Public Service Commission
177, Nawala Road
Narahenpita.
9. S.C. Mannapperuma
Member

Public Service Commission

No.177, Nawala Road

Narahenpita.

10. Ananda Seneviratne
Member
Public Service Commission
No.177, Nawala Road
Narahenpita.
11. N.H. Pathirana
Member
Public Service Commission
No.177, Nawala Road
Narahenpita
12. S. Thillanadarajah
Member
Public Service Commission
No.177, Nawala Road
Narahenpita.
13. M.D.W. Ariyawansa
Member,
Public Service Commission
No.177, Nawala Road
Narahenpita
14. A. Mohammed Nahiya
Member
Public Service Commission
No.177, Nawala Road
Narahenpita.
15. R.K.C. Chitralatha

No.127/3, Kuruppumulla
Panadura

16. T.M.J.N. Bandara,
No.12, Victory Range,
Kureepotta, Pothuhara
17. H.W.N. Thalaramba,
No.120K, Piliyandala Road
Palanwatta, Pannipitiya.
18. The Auditor General
Auditor General's Department of
Sri Lanka
Independence Square,
Colombo 7.

RESPONDENTS

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

COUNSEL : Sanjeewa Jayawardena
for the Petitioner,
Parinda Ranasinghe DSG
for the 1st ,3rd and 4th Respondents.
Jagath Abeynayake,
for the 15th Respondent.

Argued on : 13.06.2012

Decided on : 29.06.2012

S.Sriskandarajah.J,

The Petitioner is employed as Deputy Commissioner of Inland Revenue (Class I) of the Sri Lanka Inland Revenue Service, in the Department of Inland Revenue. The 15th to the 17th Respondents are also holding the same position in the Department of Inland Revenue. The 15th to the 17th Respondents have been granted promotions to the post of Deputy Commissioner (Class I) of the Sri Lanka Inland Revenue Service from 27/03/2009, 13/04/2009 and 25/05/2009 respectively, and the Petitioner was promoted from 8/06/2009. The Petitioner submitted that the Petitioner and the 15th to the 17th Respondents were placed in equal seniority when the said promotions were considered and the Petitioner further submitted that the decision of the 1st and 2nd Respondents to promote the Petitioner to the post of Deputy Commissioner (Class I) of the Sri Lanka Inland Revenue Service only from 8/06/2009, whereas the 15th to 17th Respondents who were of the same seniority were respectively promoted to the same post from 27/05/2009, 13/04/2009 and 25/04/2009, and this decision of the 1st to 2nd Respondents is arbitrary, unreasonable and irrational and, therefore, the Petitioner in this application is seeking a Writ of Mandamus directing the 1st to 14th Respondents and/or anyone or more of them to effect the promotion of the Petitioner to the post of Deputy Commissioner (Class I) of the Sri Lanka Inland Revenue Service, and the promotions of the 15th to 17th Respondents to an equally, single date, not later than 8/06/2009, and the Petitioner has also prayed for a mandamus directing the 1st to 14th Respondents to formulate an employment formula and specific scheme which would be applicable in all instances where officers of equal or similar seniority are to be promoted based purely or primarily on seniority.

The Petitioner was recruited to Class II Grade II of the Sri Lanka Inland Revenue Service with effect from 2/09/1985 and she was confirmed in service on 18/04/1985 after completing the probationary period. In 1991 the Petitioner applied for promotion to Class I Grade II (Assessor) Sri Lanka Inland Revenue Service, and the Petitioner faced an open competitive examination for the selection to the said post and had obtained 186

marks and was placed in the rank of 19 in order of merit along with 4 other candidates, viz., 15th, 16th and 17 Respondents, and one candidate did not join the service, and the Petitioner and 15th to the 17th Respondents were promoted to Class II Grade II of the Sri Lanka Inland Revenue Service by letter dated 26/11/1992 with effect from 1/01/1993 by the letter of Public Service Commission dated 26/11/1992.

The seniority list of the Department of Inland Revenue was updated as at 13/12/2009 and was issued on 19/01/2010 and according to the seniority list, the Petitioner and 5th to the 17th Respondents were placed on equal seniority. The 1st Respondent called for interviews for promotion to the post of Deputy Commissioner Class I of Sri Lanka Inland Revenue Service by letter dated 9/11/2009 and, after an interview, the Interview Board had recommended the promotion of the Petitioner to the post of Deputy Commissioner Class I of Sri Lanka Inland Revenue Service, and the Petitioner was promoted to the said post with effect from 10/11/2009. The Petitioner has forwarded an appeal on 19/01/2010 requesting the said promotion to be antedated 27/03/2009, the date on which the Deputy Commissioner post became vacant. The Petitioner contended, although the Petitioner and 15th to the 17th Respondents were placed in equal seniority, the promotions of the Petitioner and the 15th to the 17th Respondents were antedated to 4 different and distinct dates. The said dates are as follows:-

R.K.C. Chitralatha, 15th Respondent - 27/03/2009.

T.M.J.N. Bandara, 16th Respondent - 13/04/2009.

H.W.N. Thalambara, 17th Respondent - 25/05/2009.

K.G.C. Priyadharshani, the Petitioner - 8/06/2009.

The Petitioner further contended that even though the Petitioner and 15th to the 17th Respondents were placed on the same seniority, and when they were promoted to the post of Deputy Commissioner Class I of the Sri Lanka Inland Revenue Service, their

promotions were given effect to on different dates and the Petitioner's promotion was considered last and was given effect to after the promotions of the 15th, 16th and 17th Respondents were given.

It is an admitted fact that the Petitioner and 15th to 17th Respondents are of the same seniority and, in all respects, they were treated equally and, therefore, when a promotion is considered purely on seniority, the Petitioner and 15th to the 17th Respondents have to be considered equally; but a problem will be considered when a cadre vacancy occurred in the post above. The authorities will have to fill the vacancy by promoting one of them out of the four candidates who were holding the same seniority. In this instance, the authorities have given promotions whenever there is cadre vacancy according to the order in which their names appear in the list and, as such, the 15th Respondent's promotion was given with effect from 27/03/2009 when the 1st cadre vacancy occurred, and when the 2nd cadre vacancy occurred on 13/04/2009, the 16th Respondent was given the promotion, and when the cadre vacancy occurred on 25/05/2009, the 17th Respondent was promoted from that date, and the Petitioner was promoted from 8/06/2009 when the 4th cadre vacancy occurred.

Even though all the promotions were considered on the same day, their promotions were back dated to the above dates depending on the cadre vacancy. In this instance the relevant authority had not made any policy decision with regard to promotions of persons who are on the same seniority. In the absence of a policy decision, taking the order in which the names are placed in the list of the Department file, and promoting the person who appears on top of the list to a cadre vacancy that occurs first, cannot be justified, and it could be considered as a decision made arbitrarily.

In the above circumstances the Petitioner has a legitimate expectation that she will be given her due place when she is promoted to the post of Deputy Commissioner Class I of the Sri Lanka Inland Revenue Service, and she cannot be deprived of her

seniority when compared to the 15th, 16th and 17th Respondents, as the Petitioner and 16th to the 17th Respondents were of same seniority. In the absence of a policy as to how to deal with when promotions among more than one officer holding the same seniority to a higher post is considered, the only rational approach would be to await for sufficient number of vacancies to occur to promote all those who were in the same seniority to the said post, and as at 8/06/2009, there were 4 cadre vacancies that had occurred in the post of Deputy Commissioner Class I. The Petitioner, along with the 15th, 16th and 17th Respondents could be promoted to the said post with effect from 8/06/2009.

Hence, this Court issues a Writ of Mandamus directing the 1st to 14th Respondents to antedate the promotion of the Petitioner as well as the promotions of the 15th to the 17th Respondents to an equal single date, that is to be effective from 8/06/2009. I also issue a Writ of Mandamus directing the 14th to the 17th Respondents to formulate and implement a specific scheme which would be applicable in all instances where officers of equal or similar seniority are to be promoted, based purely on seniority. Accordingly, I allow the application of the Petitioner, for Writ of Mandamus as prayed for, in prayer (f)(ii) and (i) of the petition and I order no costs.

President of the Court of Appeal

Deepali Wijesundara, J

I agree,

Judge of the Court of Appeal