

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

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

Eliyathamby Nadesamoorthy,
Udayar Road,
Karaitivu - 02.

PETIONER

C.A. (Writ) Application
No. 875/2010.

Vs.

(1) T. Asoka Peiris,
Secretary,
Ministry of Land, Land Development
Janawasa and Ranaviru Welfare,
Govijana Mandiraya,
80/5, Rajamalwatta Avenue,
Battaramulla.
And 3 others.

RESPONDENTS

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

COUNSEL : Shymal A Collure,

for the Petitioner,

Anusha Samaranayake SSC

for the Respondents

Argued on : 16.03.2012

Decided on : 15.01.2013

S.Sriskandarajah, J,

The Petitioner submitted that he was recruited as a Class III Grade III officer of the Sri Lanka Surveyors Service with effect from 20/10/1989. Subsequently, after a probationary period of 3 years consisting of in-house training at the Institute of Surveying and Mapping at Diyatalawa, as well as field training, he was confirmed in the said post with effect from the afore stated date of appointment by letter dated 2/07/1993. The Petitioner submitted, as per the Service Minute, Class III Grade III officers had to satisfy the requirements stipulated therein in order to be promoted to Class III Grade II of the said service. The requirements are:

- a) A Pass in the Diploma of Surveyor Technician (Advance Level) Examination Conducted by the Institute of Surveying and Mapping, Diyatalawa;
- b) Complete 5 years of satisfactory service from the date of recruitment.

The Petitioner submitted that upon satisfying the above requirements, he was promoted to Class III Grade II of the said service with effect from 20/10/1994 by a

letter dated 26/06/1997. According to the Minutes of the said service, promotions of officers to Class III Grade I was to be effected upon the satisfaction of the following requirements:-

- a) Completion of 9 years of satisfactory service after the salary point of Rs.25,800/-; or
- b) Passing the Departmental Junior Professional Examination conducted by the Surveyor-General or any other equivalent examination conducted by an institution approved by the Surveyor-General.

The said Minutes also provide that when the officers reach an annual salary point of Rs.36,600/- of Class III Grade II, and if their services had been satisfactory, they could be considered as qualified for promotion to Class III Grade I.

The Petitioner submitted that by government notification published in the Gazette Extraordinary No.1434/5 of 27/02/2006, the Service Minute was repealed by the new Minute of the Sri Lanka Surveyors Services contained in the said gazette notification, this came into effect on 1/08/2005, and the Surveyor's service according to the new Minutes consist of the following classes or grades:-

- (a) Selection Class;
- (b) Class II;
- © Class II Grade I, and
- (d) Class II Grade II.

The said Minute provided that the passing of Class III/I, Class III/II, Class III/III

of the existing service and have passed the Junior Professional Examination in this course of time and have completed 15 years of service, will be absorbed into Class II/II on supernumerary basis. The said Minute also provides, if the Public Service Commission is fully convinced that the implementation of provisions in the new Minute has adversely affected the conditions of service of any officer to the extent that the grant of option for retirement under Section 7 of the Minutes on Pensions is justified. In such an event, such officer, on his own request can be allowed to exercise his option for retirement during the period of 5 years with effect from 1/08/2005, the date on which the provisions came into effect.

According to the new Survey Minute, the minimum requirement for the recruitment of Class II Grade II of the said service was raised to a degree either in survey science or physical science. The old recruits who were absorbed into Class II Grade II were placed on a supernumerary basis. Accordingly the Petitioner was also absorbed into Class II Grade II of the said service on supernumerary basis with effect from 2/11/2006.

The Petitioner's complaint is that without converting the salaries of officers in terms of the said restructuring of the service, he was placed on a salary point which is about Rs.7,000/- less than most of those of his colleagues. As a result, his seniority too was adversely affected. In those circumstances he made a request by letter dated 23/07/2009 that he be allowed to exercise his option for retirement from service in terms of the Service Minute. The Petitioner's said request was turned down by the 2nd Respondent Secretary to the Ministry of Land and Land Development on the basis that the Petitioner would not be affected by the implementation of the provisions in the new Service Minute. The Petitioner in this application is seeking a Writ of Certiorari to quash the decision of the 1st and/or the 2nd Respondent rejecting the Petitioner's request to allow him to exercise his option for retirement in terms of the Minute. It is the position of the Respondents that the request of the Petitioner for retirement under the

said Service Minute was turned down as he was not adversely affected by the implementation of the provisions in the new Minute, and the complaint of the Petitioner that when the restructuring of the services had taken place, that he was placed on a lower salary point which is about Rs.7,000/- less than those of most of his colleagues was not based on the restructuring, but he has availed himself of no-pay leave and due to the fact that he was on no-pay leave, he has lost his seniority, and that contributed to the loss of the salary by Rs.7,000/-. In those circumstances the Petitioner is not entitled to the benefit granted under the Service Minute for the option of retirement. The Petitioner's position is that he was on approved no-pay leave from 29/08/2000 to 4/09/2002 that the officers of the Survey Department had been informed that availing one of such leave would not generally affect their seniority. In the circumstances the Petitioner submitted that rejecting his request was unreasonable, arbitrary and, therefore, it has to be quashed by a Writ of Certiorari. The Petitioner further stated that disallowing his request to be allowed to exercise his option for retirement under and in terms of the Service Minute are against his legitimate expectations and, therefore, it is illegal and void.

The Respondents submitted that the request of the Petitioner to exercise his option was dated 23rd of November 2009 and the 1st Respondent, by his letters dated 25th January 2010 and 23rd March 2010 rejected the request and appeal of the Petitioner on the basis that the seniority of the Petitioner had been affected not by the provisions of the Service Minute, but as a result of the period of no-pay leave obtained by him. The Petitioner who did not possess a degree and who was in Class II Grade II at the time the new Service Minute came into force was absorbed into Class II Grade II on a supernumerary basis. This was done according to the Service Minute, but the seniority of the Petitioner was brought down on the basis of his no-pay leave. Therefore, the provisions under the Service Minute to the effect that the Public Service Commission is fully convinced that the implementation of the provisions in the new Service Minute have adversely affected his conditions of service or of any officer, that he could be

granted an option for retirement will not apply to the Petitioner as that the Petitioner has not established that his conditions of service was adversely affected by the implementation of the Service Minute. In those circumstances the Petitioner cannot claim that he should be given an option for retirement under the said Service Minute and, therefore, the Petitioner cannot have a legitimate expectation that he would be granted permission to exercise his option, and the refusal of the said option is not illegal or arbitrary and, in those circumstances, this Court dismisses this Application without cost.

President of the Court of Appeal