

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

In the matter of an application in the nature
of Writ of Certiorari and Mandamus in
terms of Article 140 of the Constitution.

1. Rajakaruna Herat Mudiyansele Deepa
Keerthi Mahinda Bandara Rajakaruna,
No.180/1, Colombo Road,
Gampaha.
And another.

PETITIONERS

C.A. (Writ) Application No.473/2011

Vs.

1. National Aquaculture Development
Authority of Sri Lanka,
No.41/1, New Parliament Road,
Pelawatta.
And 23 Others.

RESPONDENTS

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

COUNSEL : D,H.Siriwardene
for the Petitioner
Arjuna Obeysekera DSG,
for the 1st to 3rd,6th to 18th and 22nd Respondent
Sanjeewa Jayawadane PC,
for the 4th &5th Respondent

Argued on : 28.05.2013

Written Submission on : 28.06.2013 (Petitioners),12.07.2013(1st to 5th ,12th ,14th ,16th and 18th
Respondent),15.07.2013(4th and 5th Respondent)

Order on : 01.08.2013

S.Sriskandarajah,J

The 1st Petitioner is attached to the 1st Respondent Authority as Aquatic Extension Officer. The 2nd Petitioner is holding the post of Assistant Director at the 1st Respondent Authority. In December 2010, the 1st Respondent had called for applications for the post of Director (Fresh Water Aquaculture Development) and Director (Expansion). The said post, according to the scheme of recruitment, requires the following qualifications:-

For internal candidate: They should be employed in the middle management category, Grade I, with minimum of 5 years of service related to the field of aquaculture/extension work at the 1st Respondent.

For external candidates: Should have a minimum of 15 years experience in managerial level.

For Director (Fresh water Aquaculture Development): Petitioners had not applied for the said post. For the post of Director Expansion: There were 9 candidates, including the 1st Petitioner, applied for the said post.

After evaluating the basic qualifications of the candidates, only 3 candidates were short listed, and the 1st Petitioner was not short-listed since he did not possess the basic requirements for the said post. The 1st Petitioner did not challenge the said decision, not to short list him was incorrect or he has not challenged that he had the necessary qualifications to call him for an interview for the said post. After an interview for the post of Director, the 5th Respondent who had the required qualifications and had secured the highest marks was appointed to the post of Director (Fresh Water Aquaculture Development) and the 4th Respondent who was an external candidate and possessed the required qualifications and experience, had been selected for the post of Director Expansion.

The Petitioners in this application challenges the appointment of the 4th and 5th Respondents who were the successful candidates in the said interview, on the basis that they did not possess the required qualifications and, therefore, they are not entitled for the said

appointment. The Petitioners have sought a writ of certiorari in this application to quash the decision of appointing the 4th and 5th Respondents and a writ of mandamus to call for fresh applications and to hold interviews in respect of the said posts.

The Respondents, at the stage of argument, have raised a preliminary objection on the basis that the Petitioners had no *locus standi* as they were not qualified to be appointed to the said posts and, in particular, they had not applied for the post of Director (Fresh Water Aquaculture Development) and in relation to the post of Director Expansion, they were not qualified to apply for the said post. The Petitioners in their petition have specifically stated that they have filed this application in their personal capacity. This indicates that they have not filed this action in public interest as they have filed this action in their personal capacity, Petitioners have to show that their rights are affected by the decision of the Respondents to get relief in public law. In the instant case the Petitioners are not qualified to apply for the said post and, therefore, even if the 4th and 5th Respondents' appointments are quashed, they cannot seek the said post for themselves, and an order for calling for applications a fresh and holding a fresh interview will not assist the Petitioners to get the said appointments. The Petitioners have failed to demonstrate that their rights are affected in any way by the appointment of the 4th and 5th Respondents.

The Petitioners claim that they are members of a Regional Trade Union, viz., Aquatic Expansion Union in the National Aquaculture Development of Sri Lanka, and the 1st Petitioner is the President of the said Union, and the 2nd Petitioner was the Secretary to the said Trade Union at the time of filing the petition. These 2 Petitioners in their petition, had not said that they have filed this action and challenged the appointment of the 4th and 5th Respondents in the interests of their Trade Union or for the Members of the Trade Union. They have not pleaded that the appointment of the 4th and 5th Respondents would cause serious concern to the Members of their Trade Union and a resolution was passed in the Trade Union to this effect. The Petitioners in their petition have not established that they have filed this application in public interest. If an application is made in public interest, the Petitioners have to establish that they have a public interest in the relief they sought and that has to be specifically averred. The mere fact that they were Members of a Trade Union will not be sufficient to invoke the jurisdiction of a Court in public interest. The Petitioners, on the contrary, have stated that they

have filed this application in their personal capacity. When one files an application in his personal capacity, the fundamental rule is that the rights of that person would have been affected by any decision or determination for the Court to consider the issue of writ of certiorari. Lord Justice Atkin in *R Vs. the Electricity Commissioner (1924) 1 KB 171 at 205*, has given the circumstances in which a writ of certiorari and prohibition will lie. Whether he has held:

“Where any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially acts in excess of their legal authority, they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these writs.”

The above judgment insists the determination of questions affecting the rights of subjects. Therefore, in a writ application, if an application is filed in the personal capacity, the Petitioners have to establish that their rights are affected. In the instant case the Petitioners had not applied for the post of Director (Fresh Water Aquaculture Development) and the 1st Petitioner who applied for the post of Director Expansion was in fact not qualified to apply for the said post. In these circumstances the selection and the appointment of the 4th and 5th Respondents to the said post would not have in any event affected the rights of the Petitioners and, therefore, the objection raised by the Respondents that the Petitioners have no *locus standi* to file this application is substantiated by the above facts and, therefore, this Court upholds the preliminary objection and dismisses this application without cost.

President of the Court of Appeal