

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

1. Additional District Registrars' Union
Of the Department of Registrar General
Pathadumbara,
Divisional Secretariat's Office
Pitiyagedera.

And 02 others

PETITIONERS

C.A 512/2009

Vs.

1. M. A. Dharmadasa
Director General of Establishments
(Acting)

And 12 others

RESPONDENTS

BEFORE: Anil Gooneratne J. &
Deepali Wijesundera J.

COUNSEL: Prinath Fernando for Petitioners

A. Samaranayake S.S.C., for Respondents

ARGUED ON: 28.05.2013

DECIDED ON: 02.09.2013

GOONERATNE J.

Petitioners in this application have sought a Writ of Certiorari and Mandamus, and what has to be decided is only the issuance of Mandamus since on the date of argument learned counsel for Petitioners informed this court that relief prayed for in subparagraph (b) of the prayer to the Amended Petition would not be pursued, and recorded accordingly. As such this case is confined to the relief sought in subparagraph (c) of the prayer to the petition. There appears to be a long standing grievance as described by the Respondents, pertaining to salary scale. Mandamus is sought to place the Petitioners in the scale described as MN-5-2006 and be placed at step 23 of the salary scale, applied to the Public Management Assistant's Service.

Petitioners were in Grade III Class III of the Registrars' Service which had been created by the Cabinet decision of P11. However the learned Senior State Counsel on behalf of the Respondents argue that the Petitioners in effect had been granted the relief as prayed for and to be placed in the scale MN-5-2006. But learned State Counsel state that the fact that the Petitioners have to sit for a qualifying examination or they are unable to do so since they have retired

prior to 2R1 coming into force, are not grounds that could be urged by the Petitioners in this application.

The Amended Petition of the Petitioners and the submissions made on their behalf give very many details of the Petitioners service record. It is not possible to refer to each and every step or item referred to by learned counsel for Petitioner but this court would only refer to the gist of the Petitioners service record. Petitioners aver that due to representations and certain approvals the salaries and carders committee approved the creation of 90 posts of Additional District Registrars Grade III and approved the salary scale entitled to the General Clerical Service Class I. Application for the posts were called by P12. 90 persons were appointed as referred to in paragraph 16 -19 of the Amended Petition. There is reference to Public Administration Assistant's Service (P17/P18) and the gradual shift to the above service as regards salaries and the respective grades as described in the petition. Good part of the petition relate to making representation to various authorities like the Human Rights Commission, the Salaries and Carders Commission etc. to demonstrate the grievance of the petitioners and their entitlement to be placed in the salary scale referred to in subparagraph (c) of the prayer to the petition.

This court has noted the several aspects that have been urged by the Petitioners in their Amended Petition and the Written Submissions tendered to this court. No doubt the new salary structures introduced from time to time resulted in salary anomalies. P30a, P30b and several other documents are annexed to demonstrate salary anomalies.

Learned Senior State Counsel argues that a Writ of Mandamus does not lie in the circumstances of this case. Further the prayer for a Writ of Mandamus is misconceived and cannot be granted. My attention is drawn to the case of Perera Vs. NHDA 2001 (3) SLR 50. "The foundation of Mandamus is the existence of a right. Mandamus is not intended to create a right but to restore a party who had been denied his right to the enjoyment of the said rights".

Petitioners in this case did not have a statutory right to be placed in the salary scale referred to in sub paragraph (c) of the prayer to the Amended Petition. Our attention is drawn to another decided case which is somewhat similar to the way in which the Petitioners in this case attempt to demand a right or seek a writ of Mandamus in the manner pleaded. C.A. Application 1068/05 decided on 4.5.2007 "The object of Mandamus being simply to compel performance of a legal duty on the part of some person or body which is entrusted by law with that duty, the court in a proceedings for Mandamus, will

never sit as a Court of Appeal so as to examine facts or to substitute its own wisdom for the discretion vested by law in the person or against whom the Writ is sought”.

The Respondents urge two other important matters of law that would disentitle the Petitioner for the remedy of Mandamus. The prayer to the Amended Petition does not specifically name the parties against whom a Mandamus is sought, must be specifically named. Some of the Respondents no longer hold office. Prayer merely refer to all the Respondents. Some cannot obey such an order from court and others have left their employment. Prayer ‘C’ lacks clarity.

The other important point is that the Public Service Commission which is the appointing authority and responsible for the formulation of the new scheme of recruitment are not made parties. As such the necessary parties are not before court. Therefore this court cannot grant the remedy of Mandamus.

This court would not ordinarily interfere regarding salaries of Public Servants since it is a matter best left to be decided by the authorities dealing with the subject of salaries of Government Servants. Court could be invited to interfere where an authority exceed constitutional or statutory rights. Petitioners have not been able to bring their case to that point to justify any kind of interference or

violations contrary to law. Therefore we are not inclined to grant the remedy of Mandamus as in subparagraph 'C' of the prayer to the petition. Therefore we refuse to grant relief and dismiss this application without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

Deepali Wijesundera J.

I agree.

JUDGE OF THE COURT OF APPEAL