

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

1. Lathpandurage Manjula Promodini Peerera  
No. 50, Mahaloluwa, Kirindiwela.

**And 75 others**

**PETITIONERS**

C.A. 543/2011 (Writ)  
&  
551/2011

Vs.

1. Ceylon Electricity Board  
No. 540, Sir Chittampalam A Gardiner Mawatha  
Colombo 2.
2. The Chairman  
Ceylon Electricity Board  
No. 540, Sir Chittampalam A Gardiner Mawatha  
Colombo 2.
3. General Manager  
Ceylon Electricity Board  
No. 540, Sir Chittampalam A Gardiner Mawatha  
Colombo 2.
4. Deputy General Manager  
(Personnel), Ceylon Electricity Board  
No. 540, Sir Chittampalam A Gardiner Mawatha  
Colombo 2.
5. The Secretary  
Ministry of Power & Energy  
No. 493/1, T. B. Jayah Mawatha,  
Colombo 10.

6. The Secretary  
Ministry of Finance and Planning,  
The Secretariat, Colombo 1.

**RESPONDENTS**

**BEFORE:** Anil Gooneratne J. &  
Malinie Guneratne J.

**COUNSEL:** Upul Kumarapperuma with U. Dassanayake for the Petitioner  
Yuresha Fernando S.S.C. for the Respondents

**ARGUED ON:** 17.02.2014

**DECIDED ON:** 03.07.2014

**GOONERATNE J.**

Two similar Writ Applications are filed by 76 Petitioners (C.A 543/2011) and 10 Petitioners (C.A. 551/2011) respectively for a Writ of Mandamus as per sub-para 'b' of the prayer to the petition which reads thus:

(b) Issue and grant a mandate in the nature of Writ of Mandamus compelling the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 5<sup>th</sup> Respondents to implement the government policy pertaining to provide employment for unemployed graduates embodied in P-3, P-4 and P-5, and place the Petitioners in the positions where the degree is considered as the basic qualification for the said positions and introduce a scheme of recruitment and promotions in accordance with the government policy embodied in P-3, P-4 and P-5 and formulate a salary scale in a manner where due recognition is given for holding of the degree.

Perusal of the prayer gives an indication that the Petitioners urge the Respondents to implement government policy as in document P3 to P5 and place the Petitioners in the position where a degree is considered as the basic qualification and introduce a scheme of promotion and recruitment. The writ is sought to direct the Respondents to take steps in a particular way. Can it be done?

The Petitioners claim to be graduates who were appointed as Staff Coordinators in the year 2005 based on a policy decisions of the Government. Petitioners rely on circular P3 which refer to a training scheme. As such Petitioners were selected for in service training scheme as described in para 8 of the petition, bearing No. C.A 543/2011. Since relief sought is the same in both applications this court would consider the case presented in CA 543/2011 and deliver the judgment accordingly which would bind the Petitioner in CA

551/2011. Petitioner also rely on circulars P4 & P5 where the 5<sup>th</sup> & 6<sup>th</sup> Respondents directed the 2<sup>nd</sup> Respondent to take immediate steps to fill existing vacancies considering the degree qualification as the basic, to implement Government policy. In response the 1<sup>st</sup> Respondent Board created the cadre provisions in the 1<sup>st</sup> Respondent as per P6 and described in para 11 of the petition. Para 12/13 further details are provided re-qualifications etc. salary scale (M1). The scheme of recruitment and procedure to be adopted in the 1<sup>st</sup> Respondent Board is supported by document P7 (marked in same as X & X1). The complainant of the petitioners are contained in paras 20 to 24 of the petition. It states:

1. The Petitioners state that even though they have been recruited considering the degree as the basic qualification for their designation, they have been placed in the salary scale of the clerical service, which scale has been introduced to the employees whose basic qualification is six subjects in GCE Ordinary Level Examination with 5 credit passes.
2. The Petitioners state that no promotion scheme has been introduced for the post of Staff Coordinator and they were informed that since they were placed in the M-1 salary scale, the promotion criteria of the clerical and allied serves is also applicable to them.
3. The Petitioners state that the said decision of placing them in the salary scale of the clerical service is a violation of the above mentioned Government Policy since the fundamental objective of the said policy was to provide employment to the unemployed graduates where the degree was considered as the basic qualification and further there

was specific instructions to create cadre provisions to accommodate the said unemployed graduates in the aforesaid institutions.

4. The Petitioners state that according to the scheme of recruitment and promotions of the 1<sup>st</sup> Respondent, the degree is considered as the basic qualification for the following positions:
  5. (a) Engineering Services
  - (b) Accounts and Audi Service
  - (c) Human Resources Service
  - (d) Ancillary Service (Chemist, Deputy Security Manager, Legal Office, Statistician).
6. The Petitioners state that at the time of the recruitment of the Petitioners there were vacancies in the aforesaid positions, however the Respondents have only filled vacancies in the post of electrical engineers and have failed to fill the vacancies in the other positions. Therefore the failure to appoint qualified persons to the said vacancies is a violation of the aforesaid government policy.

Petitioners demonstrate that contrary to Government policy the decision of placing the Petitioners, in the salary scale of the clerical service of the 1<sup>st</sup> Respondent is illegal/unlawful etc. Petitioner complain that they have been placed in a salary scale where the required qualification is 6 subjects at the G.C.E (Ordinary) Level Examination. By P8a to P8g representations had been made to support the above to the authorities concerned. There is material to support the position that the Petitioners filed an application in the Human Rights Commission (P9). Petitioners have filed report P10 and the directions given therein as P10a.

### The position of 1<sup>st</sup> to 4<sup>th</sup> Respondents

These Respondents admit the receipt of document P5 and publication of P6. It is stated that a Cabinet Memorandum was presented by Minister of Finance to give effect to the Government policy to solve unemployment problem, subject to condition as in R1 (A). Decision of 28.4.2004 has been produced R1. Accordingly the policy decision was conveyed to all concerned. Steps taken by 1<sup>st</sup> & 2<sup>nd</sup> Respondents as per P4 and by P2 the 2<sup>nd</sup> Respondent sent a letter giving details of existing vacancies for 74 Electrical Engineers and 8 Civil Engineers and 7 Mechanical Engineers. Prior to P4 schemes of recruitment had been formulated considering the nature, mandate and needs of the 1<sup>st</sup> Respondent Board to create number of vacancies and posts where a degree qualification was essential to entertain Government policy (vide R10). The Human Resources Policy Committee of the 1<sup>st</sup> Respondent took steps to formulate proposals provided by Government. It is pleaded that 4 new posts were created to accommodate 136 Graduates, considering the following.

- (i) Requirement of the government policies of providing employment to unemployed graduates.
- (ii) Possibility of engaging the services of such graduates in a fruitful manner;
- (iii) Comments and views of the CEB Trade Unions;

- (iv) Promotional prospects of the existing CEB employees

Respondents argue and deny that M1 salary scale and promotional prospects within the same are exclusively for the clerical grade. It is added that there are numerous posts in M1 category where a degree qualification is required as a basic qualification (R11). Respondents also state in para 11 that the Petitioner named therein had been promoted as per the sub para.

Respondents also plead the following:

- (i) That there is no provision to recruit external candidates for the Class 1 of the clerical and parallel services;
- (ii) That there had been provision to recruit candidates with a university degree for the posts such as that of "Statistical Enumerator" based on existing (prior to the new scheme) Scheme of Recruitment provided by the Ceylon Electricity Board, whereby the recruitment salary scale is the same as that of a Class 1 member of the Clerical service (M – 1).
- (iii) That therefore, it is noticed that M-1 salary scale is assigned to persons in Class 1 of the clerical service as well as for such posts as "Statistical Enumerator" where the university degree is considered as the basic qualification for recruitment.
- (iv) That as such, persons recruited to posts where the university degree is considered as the basic qualification for the recruitment were also placed on the M-1 salary scale and that such placement has not, in any way, adversely affected the implementation of the government policies or the rights of such persons recruited into the services.

The position of the 5<sup>th</sup> & 6<sup>th</sup> Respondents as pleaded is almost the same as the above Respondents. There are no divergent views expressed by the 5<sup>th</sup> & 6<sup>th</sup> Respondents as all Respondents provide material to demonstrate Government policy and its implementation. I also find an important document (R11) which gives certain details of schemes of recruitment and promotions of the 1<sup>st</sup> Respondent Board.

This court having considered the material produced by both parties, observe that the Respondents had at all times complied with Government policy and attempted in every respect to implement the policy to provide employment to unemployed graduates. No doubt in the process the Respondent have to consider the fact that the Government policy need to be adopted in the best possible way and at the same time look after the interest of the 1<sup>st</sup> Respondent Board, and its well being and efficiency of the 1<sup>st</sup> Respondent organization itself, as it's an essential industry for the entire country. In these circumstances and considering the material made available by the Respondents this court cannot conclude of any breach of statutory or public duty on the part of the Respondents. There is no justification to interfere with the role of the Respondents in the process of implementing Government policy. The grant of mandamus is a matter for the discretion of



the court. It is not a writ of right and not issued as a matter of course 1 CLW 306. A mandamus will not be issued where it is futile and cannot be obeyed. 33 NLR 257. Petitioners should demonstrate a legal right and a legal obligation. Respondents have provided enough and more material to demonstrate due compliance with Government policy.

As such this court is not inclined to grant the remedy sought. Therefore both applications are dismissed without costs.

Applications dismissed.

JUDGE OF THE COURT OF APPEAL

W.M.M. Malinie Gunaratne J.

I agree.

JUDGE OF THE COURT OF APPEAL