

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.

K.A Shirani,
41/19F, Madulawa Road,
Meegoda.

C.A. (Writ) Application No.972/2008

PETITIONER

Vs

1. Ceylon Electricity Board,
Sir Chittampalam A.Gardiner Mw,
P.O. Box 540, Colombo 02.
2. M.M.C. Ferdinando,
Acting Chairman
3. K.A. Ranaweera
Vice-Chairman
4. D.A. Galwatta
Member
5. Lalith R. De Silva
Member

6. S.K. Attygalle

Member

7. R.V.D. Piyathilake

Member

2nd to 7th Respondents were of
Board of Directors,

Ceylon Electricity Board

Sir Chittampalam A.Gardiner Mw

P.O. Box 540, Colombo 02.

(7A)Prof.Wimaladharma Abeywickreme

Chairman

(7B)W.D. Anura Senaka Wijayapala

Vice-Chairman

(7C)P.P. Gunasena

Member and Working Director

(7D)Dr. B.M.S. Batagoda

Member

(7E)Dr. Nihal Jayathilake

Member

(7F)W.D. Jayasinghe

Member

(7G)K.D. Ranasinghe

Member

7A to 7G Respondents are of

Board of Directors,

Ceylon Electricity Board,

Sir Chittampalam A.Gardiner MW

P.O. Box 540, Colombo 02.

8. Badra Jayaweera
Former General Manager
Ceylon Electricity Board,
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.

(8A)Nihal Wickremasuriya
General Manager,
Ceylon Electricity Board
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.

9. D.R. Pulleperuma
Former General Manager of the
Ceylon Electricity Board
No.3, Alubogahawatte
Anderson Road, Dehiwala.

10. S. Rajakulendran
Finance Manager
Ceylon Electricity Board
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.

11. Prema Ariyatunga
Accountant
Ministry of Power and Energy
493/1, T.B. Jayah Mw, Colombo 10.

12. V. Edmond
Retired Deputy Auditor-General
Member
Institute of Chartered Accountants
of Sri Lanka,30A, Malalasekera MW
Colombo 07.

13. B. Chandrajith De Silva
Deputy Finance Manager
Ceylon Electricity Board
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.
14. R.A.B.J. Ranasinghe
Deputy Finance Manager
Ceylon Electricity Board
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.
15. S.C. Robertson
Deputy Finance Manager
Ceylon Electricity Board
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.
16. S.N. Fernando
Deputy Finance Manager
Ceylon Electricity Board
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.
17. M.K. Susila
Deputy Finance Manager
Ceylon Electricity Board
Sir Chittampalam A.Gardiner Mw
P.O.Box 540, Colombo 02.

RESPONDENTS

BEFORE : Deepali Wijesundera J.

COUNSEL : Shyamala A. Collure with
Dilanka Perera for the Petitioner.
D.S.G. Vikum De Abrew for the
Respondents.

ARGUED ON : 30th May, 2014

DECIDED ON : 04th August, 2014

Deepali Wijesundera J.

The petitioner has filed this application seeking a writ of Certiorari to quash the 1st respondent's act or decision to promote the 14th, 15th, 16th and 17th respondents as Deputy Finance Managers referred to in letters marked **P10, P13(a) to P13(g)** and also for a writ of Mandamus to direct the 1st to 8th respondents to cancel the said promotions and to remove the letters (**P14(a) (b) (c) and (d)**) dated 16/09/2008 from the personal file of 14th to 17th respondents.

The Petitioner has been appointed as a Class II Grade II Accountant of the 1st respondent Board on 01/09/2000 (P1 and P2). The post of Deputy Finance Manager of the 1st Respondent Board was advertised (P4) and the employees of the 1st respondent were sent a notice dated 24/04/2008 (P3). The required qualification for the employees of the 1st respondent was 9 years and outsiders 3 years service apart from the professional qualifications. The petitioner and 14th to 17th Respondents have applied as external applicants since they did not have the required 9 years service experience. The 13th respondent had the required number of years and his appointment the petitioner is not challenging. An interview was conducted but external candidates did not attend the said interview subsequent to the said interview the 14th to 17th respondents were promoted to Class II Grade I as Deputy Finance Managers along with the 13th respondent on the scheme of external recruitment.

The petitioner's counsel stated that the 14th to 17th respondents were very much junior to the petitioner and that the Ceylon Electricity Board accountants' Association protested against the said promotions (P8, P9 and P10). The petitioner has appealed to the Deputy General Manager (Personal) the 9th to 10th respondents and to the Minister of Power and Energy stating that the 1st respondent had deviated from the

approved scheme of recruitment and promotion in order to favour certain officers.

The learned counsel for the petitioner stated that the petitioner holds a Bachelor of Science Degree and is also an Associate Member of the Institute of Chartered Accountants of Sri Lanka.

The petitioner stating that the 14th to 17th respondents were illegally and arbitrarily and irrationally promoted and that the petitioner was thus compelled to demand the 1st to 8th respondent through her lawyer that the said promotions be cancelled within one month. The letters of Demand is marked **P13(a) to P13(g)**. The respondents have not replied to the said letters. The petitioner's counsel stated the said letters (**P13(a) to P13(g)**) were against the petitioner's legitimate expectations and was made arbitrarily and in excess of jurisdiction and thus completely contrary to law. He stated the 1st to 8th respondents had a public duty to cancel the promotions of the 14th to 17th respondents when a demand was made but it has been refused.

The petitioner's counsel stated that the 14th respondent's application marked as "1R2" shows that he has applied as an internal

applicant hence he was not even eligible to be called for the interview as he did not possess the required 9 years service. He further stated that the scheme applicable for external candidates required 5years post qualifying experience in executive level in an organization having a head count of over 100 persons and that the 16th respondent's application marked 1R4 shows that this requirement was not considered when the 16th respondent was promoted.

Citing the judgment in *Perera and Another Vs Cyril Ranatunga, Secretary Defence and Others (199 1 SLR 39)* the petitioner counsel submitted that as it was held in the said case the ad hoc procedure adopted by the 1st respondent was arbitrary, unpredictable and unguided by any rule or principle known in advance.

Petitioner's counsel further submitted that the marking scheme applicable to internal candidates allocates 30 marks for experience and that the 14th to 17th respondents are employees of the 1st respondent Board but the 1st respondent having set its own criteria for promotion of its employees had zigzagged its way arbitrarily avoiding its own criteria. He stated that non-disclosure of the marking scheme either in advance or at the interview was perse a fatal irregularity and the scheme disclosed to this court for the first time was not proper.

The learned Deputy Solicitor General for the respondents stated that the said marking scheme applied for internal candidates and it did not apply to the external candidates and in the absence of a marking scheme the respondents have followed a marking scheme described in the document marked **1R8** and evaluated all candidates on the same criteria. He stated that the petitioner's performance at the interview was duly assessed and no prejudice was caused. While admitting the allegation of the petitioner that the 9th respondent went out of the interview room without waiting for the petitioner's interview to answer a telephone call the Deputy Solicitor General stated that the other members posed questions to the petitioner.

The counsel for the respondent stated that the decision sought to be challenged is not before court and that the letters of appointment are not decisions, and court would not quash a document which is not before court.

He further submitted that mandamus cannot be issued since the petitioner has failed to establish a legal right and duty on the statutory functionary. He cited the judgments in *Borella Private Hospital Vs*

Bandaranayake 2005 1 ALR 27. Also the judgments in *Perera Vs National Housing Development Authority 2000 (3) SLR 53* and *Maritland International (Pvt) Limited Vs Director General of Customs CA 16/2012(writ)* and *Wickramasinghe Vs Ceylon Electricity Board 1997 2 SLR 377*. All three judgments discuss when a writ of Mandamus can be granted and is not relevant to the respondent's arguments.

According to the Scheme of Recruitment and Promotion of the 1st Respondent Board contained in the General Managers circular marked as P6 vacancies for the said post can be filled by promotion of suitable Class II Grade II officers and by appointment externally if there are no suitable applicants in the Board and there is a marking scheme applicable to the internal candidates. The respondents have adopted their own marking scheme at the interview which was not shown or made aware of to the candidates' therefore one can not say it was a transparent marking scheme no marks were given to the work experience of the candidates.

Document marked as 1R6 which lays down the rules for recruitments and promotions item No. 13 in page 47 under marking scheme for promotion of Executives in Class II Grade II to Class II Grade I to which the petitioner and 13th to 17th respondents belong to, it

is stated maximum of 30 marks has to be given for experience. This has not been considered in 1R8. In 1R8 it is titled interview for the post of Deputy Finance Manager Date of interview August 04, 2008 and five officers who were in the interview board has signed at the bottom and they have recommended the promotion of 14th to 17th respondents. It does not state whether they have been given marks as external or internal candidates, which is contrary to 1R6 which is the scheme of recruitments and promotions of the Ceylon Electricity Board.

In the case of *Perera Vs National Housing Development Authority 2001 (3) SLR 50* it is stated thus;

“On the question of legal right it is to be noted that the foundation of Mandamus is the existence of a legal right. Mandamus is not intended to create a right but to restore a party who has been denied his right to the enjoyment of such right”. In the instant case the interview Board has disregarded the scheme of promotion and recruitment of the 1st respondent which is a legal right of the petitioner as an employee of the 1st respondent.

Petitioner was subsequently promoted but after losing her seniority to the 14th to 17th respondents who had only 4 years service experience to the petitioner's 7 ½ years. By not considering the petitioner's years of service according to 1R6 the petitioner has been denied the due rights which should be restored by a writ of Mandamus as stated in the above case.

In Perera and Another Vs Cyril Ranatunga Secretary, Defence and Others (1193 1 SLR 39) it was held;

"In the absence of proof of 'substantial demerit' against senior officers or consideration of special skills or aptitudes justifying the appointment of junior officers over their seniors, the test for selection should be the existence of the minimum competence in a candidate to discharge the duties of the higher post and any officer having such competence would be entitled to appointment, in order of seniority". In the instant case the procedure adopted by the 1st respondent was unpredictable and not guided by any rule or principle therefore it becomes arbitrary.

For the afore stated reasons this court decides that the petitioner is entitle to the relief prayed for in prayer (d) and (e) of the petition. The prayer (d) and (e) of the petition is allowed.

JUDGE OF THE COURT OF APPEAL.