

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA.

In the matter of an application for a mandate in the nature of a Writ of Certiorari under and in terms of Articles 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application No.403/2013

1. Engineering Diplomats Association,
2. Technical Officers Union
Both of
National Water Supply and Drainage Board,
Galle Road,
Ratmalana.
3. E.D.Subadra,
Jayathilake Garden,
Munagama,
Horana
4. M.W. Chandani,
23/20, New Hospital Road,
Pamunuwa,
Maharagama.
5. J.D.S.N. Karunathilake,
"Asiri Uyana", Palathota,
Kalutara South,
6. G.M. Ranasinghe,
650/L1, Sudawila Road,
Nawagamuwa,
Ranala.
7. H.P.N.C. Siriwardana,
205/9, 20th Mile Post,
Yakkala.
8. S.G.S.S. Kumara,
"Piyal", Aralaganwila,
Polonnaruwa.
9. R.H. Suriyaarachchi,
126/23A, Moratuwa Road,
Pilliyandala.

10. R.A. Kumaranayake,
383, Weliwala Road,
Kitigahawatta,
Angoda.
11. R.G.A. Ranagunga,
483/11, Jeramius Fernando Mawatha,
Rawathawatta,
Moratuwa.
12. A.G.G.S. Kumara,
73/8, River Side Garden,
Peradeniya Road,
Katugastota.
13. R.M.R. Ratnayake,
372/1, Bulukandagoda,
Embilmeegama,
Pilimathalawa.

Petitioners

Vs.

1. National Water Supply and Drainage
Board,
Galle Road,
Ratmalana.
2. W. A.C.N. Wickramarachchi,
No.120A, Kamaragoda Road,
Ganehimulla,
Dewalapola.
3. A.M.H.K. Abeykoon,
No.24/2, Udathuththiripitiya,
Campaha.
4. M. Sahadevan,
No.549/8, Galle Road,
Colombo 06.
5. S.T.D.O. Warapitiya,
No.35/1, 1st Lane,
Kawraj Road,
Wekada,
Panadura.
6. J.A.C. Priyal
No.267/5, Sri Niwasarama Road,
Pallimulla,
Panadura.

Respondents.

BEFORE : VIJITH K. MALALAGODA PCJ (P/CA) &
A. H. M.D. NAWAZ, J.

COUNSEL : Faisz Musthapha P.C. with Uditha Egalahewa
P.C. and Gihan Galabadage for the petitioner.
Kushan de Alwis P.C. with Channa Cooray for
the 1st respondent.
Senanay Dayartne with Ariendra Wijesurendra
for the 2nd to 6th respondents
Rohan Hettiarachchi for intervenient –petitioner.

ARGUED ON : 05th December 2014

DECIDED ON : 27th January, 2015.

VIJITH .K. MALALGODA, PCJ(P/CA)

Petitioners to this application are two trade unions and some members of the said unions of the 1st Respondent Board. In their petition they alleged that the 1st Respondent Board by an impugned decision reflected in documents produced marked P-17(a) to P-17(e) decided to promote all Engineers from Board Grade 6 (MM1-1) to Board Grade 5 (MM 1-1) and

the said decision was illegal, unlawful, arbitrary and capricious and therefore ultra vires.

When this matter was supported for notice on 29/1/2014 Court issued formal notices on all respondents and granted time for respondents to file limited objections before considering the question of issuing interim relief as prayed in paragraph (e) of the prayer, pending final disposal of this case.

Paragraph (e) of the prayer reads as follows;

“ issue an interim order staying the operation of the said purported decision of the 1st Respondent Board reflected in the letter marked P17(a) to P17(e) to promote all Engineers from Board Grade 6 (MM 1-1) to Board Grade 5 (MM1-1) pending the final determination of this application.”

1st Respondent Board has not filed limited objections but represented at the inquiry by a President's Counsel. At the inquiry President's Counsel informed Court that the 1st Respondent Board is prepared to abide by any decision by this Court on the question of interim relief and further

submitted that, as directed by this Court, steps have been taken to maintain the status quo.

Second to sixth Respondents have filed limited objections before this Court on 7th February 2014 resisting the issuance of interim relief as prayed for.

It is important to note at this stage that the 1st Respondent has failed to officially place before this Court the purported Board decision which permitted the 1st Respondent to promote all Engineers from Board Grade 6(MM1-1) to Board Grade 5 (MM 1-1). At the inquiry the President's Counsel appearing for the 1st Respondent placed a document before Court but we cannot consider this document, since it is not submitted before this Court following the rules of this Court. Therefore, we have conclude at this stage that the purported Board Decision is not before us.

However, 2nd to 6th Respondents in their limited objections submitted that the decision to promote all Engineers in Board Grade 6(MM1-1) to Board Grade 5(MM1-1) was necessitated due to the implementation of a

purported decision of the 1st Respondent Board dated 26/05/2011 to create a promotional path for Engineering Assistants of special class up to Board Grade 6 and 5, which is contrary to the provisions of the Scheme of Recruitment of the 1st Respondent Board.

According to the objections filed by the 2nd to 6th Respondents the above decision was the subject matter in two Fundamental Rights Applications one filed by the Petitioners (SCFR 531/2011) and other filed by the Respondent (SCFR75/2013)

We are not going to give our mind to the outcome of the Board Decision dated 26/05/2011 or any subsequent decision, which is not the subject matter before us and also a matter before the Supreme Court in two Fundamental Rights Applications.

However, according to the limited objection before us 1st Respondent Board is going to promote 219 Engineers to Board grade 5 (MM1-1) (on a personal to the holder basis) and if that is permitted, the petitioner submits that it is contrary to the provisions of Scheme of Recruitment of the 1st Respondent Board.

In the present application the petitioners have prayed inter alia –

- “c) grant a mandate in the nature of Writ of Certiorari quashing the aforesaid impugned Board Decision (if any) of the 1st Respondent Board reflected in the letters marked P17(a) to P17(e) to promote all Engineers from Board Grade 6 (MM 1-1) to Board Grade5 (MM 1-1).

- d) grant a mandate in the nature of Writ of Certiorari quashing all the letters issued by the 1st Respondent Board upon the said impugned decision reflected in the letters marked P17(a) to P17(e) including the said letters P17(a) to P17(e) promoting all Engineers from Board Grade 6 (MM 1-1) to Board Grade 5 (MM 1-1) including the 2nd to 6th Respondents.

Petitioner further submitted that If no interim relief is granted at this stage, at least to stop issuance of letters similar to P17(a) to P17(e) an irreparable loss will be occurred to the petitioners and/or no purpose would be served in granting leave in the present application when there is a clear violation of the provisions of the Scheme of Recruitment in

promoting Engineers from Board Grade 6 (MM 1-1) to Board Grade 5 (MM1-1) by the purported Board Decisions (if any).

This Court is in agreement with the above submission of the Petitioner and I am of the view that until entire matter is looked into by this Court, purported decision reflected in P17(a) to P17(e) should be stayed subject to two limitations.

Petitioner during the inquiry submitted that they will not press for the suspension of the letters P17(a) to P17(e) already issued and therefore we are not going to make order suspending P17(a) to P17 (e).

If there are promotions of Engineers in Board Grade 6(MM1-1) to Board Grade 5 (MM1-1) which can be implemented without violating the provisions of Scheme of Recruitment this Court is not going to stop such promotions.

Subject to the above limitation, this Court decides to make interim order staying the operation of the said purported decision of the 1st Respondent Board reflected in the letters marked P17(a) to P17 (e) to

promote all Engineers from Board Grade 6(MM1-1) to Board Grade 5 (MM1-1) pending the final determination of this application as prayed in paragraph (e) of the prayer to the petition.

PRESIDENT OF THE COURT OF APPEAL

A.H.M.D. NAWAZ, J.

I agree.

JUDGE OF THE COURT OF APPEAL

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