

**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 *Writ of Certiorari and Mandamus*
under article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka**

K.M.C.J.B. Kangara,
No. 11/5, 'Nugasewana,'
Melvan Place,
13th Mile post,
Ukuwela.

PETITIONER

CA/WRIT/33/2014

Vs,

1. Education Services Employees Thrift and
Credit Cooperative Society Limited,
No. 294, Galle Road,
Colombo 03.
2. Co-operative Employees Commission,
No. 100 1/1,
Lady Lochora Loan Fund Building,
Sir Chittampalam A. Gardiner Mw,
Colombo 02.
3. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

**Before: Vijith K. Malalgoda PC J (P/CA) &
H.C.J. Madawala J**

Counsel: Widura Ranawaka with J.M.R.A. Jayasundara for the Petitioner,
L.K. Rajapaksha with Shantha Perera and W.L.S. Gayani for the 1st Respondent,
Vikum de. Abrew DSG with M. Jayasinghe SC, Chaya Sri Nammuni SSC,
Ruwanthi Herath SC for 2nd and 3rd Respondents.

Argued on: 17.03.2015, 21.05.2015

Written Submissions on: 20.10.2015, 03.11.2015

Order on: 12.02.2016

Order

Vijith K. Malalgoda PC J

Petitioner to the present application K.M.C.J.B. Kangara had come before this court seeking inter alia,

- b) Issue a *Writ of Certiorari* quashing the decision of the 1st and/or 2nd Respondent cancelling the permanent appointment of the Petitioner in the post of Administrative Officer (Executive Grade Class III) which was conveyed to the Petitioner by X-17
- c) Issue a *Writ of Mandamus* directing the 1st and 2nd Respondents to appoint the Petitioner in the permanent post of Administrative Officer (Executive Grade Class III) in the 1st Respondent society

The Petitioner who has joined the 1st Respondent co-operative society as a temporary clerk on 1st June 2003 was confirmed in his service on the 10th October 2006. The 1st Respondent by his letter dated 29th January 2011 appointed the Petitioner to the post of Zonal Manager of Uva Province on acting basis pending the approval of the 2nd Respondent with effect from 1st February 2011.

While the Petitioner was holding the said post on acting basis, 1st Respondent had called for internal applications for the post of Administrative Officer (Executive Grade Class III) by X-10 and the closing date for the above application was 06.08.2011.

According to the Petitioner, the said post of Administrative Officer is higher than the post the Petitioner was holding in the institutional hierarchy, and also in the belief that he has all the qualifications to apply for the above post, Petitioner has submitted an application to the above vacancy.

According to the Petitioner, one of the category under which a person could apply for the above position was “Diploma in Human Resource Management from National Institute of Co-operative Management at Polgolla or equivalent with two years experience. The Petitioner took up the position that, he was having the following qualifications, when he submitted the application,

1. Higher Diploma in Accountancy from the National Institute of Co-operative Development ranked 1st in the batch
2. Diploma in Business Management from the National Youth Services Council

He had further submitted that he was reading for the Diploma in Human Resource Management at the time the applications were called but since he had an equivalent Diploma from the National Institute of Co-operative Development i.e. the Higher Diploma in Accountancy from the same institute he had fulfilled all the requirement to be selected for the above post.

It was revealed during the argument before this court that the Petitioner who faced the said interview was selected to the above position by the 1st Respondent and by letter dated 12th October 2011 the Petitioner was appointed to the post of Administrative Officer on acting basis subject to the approval of the 2nd Respondent for confirmation. The Petitioner was issued with a letter of confirmation by the 1st Respondent dated 24th April 2012 subject to the approval of the 2nd Respondent (X-14).

While the Petitioner was performing his duties in the substantive post of Administrative Officer, on or about September 2012 the 1st Respondent re called internal applications for the same post stating that it had made a mistake in the earlier notice.

Subsequent to the said advertisement, calling for applications for the same post for applicants who were qualified to apply as at 06.08.2011, by letter dated 25.06.2013 the 1st Respondent cancelled the appointment letter dated 1st April 2012 issued to the Petitioner but appointed him to the same post on the basis of covering up duties but he was placed at his original salary scale. Even though the Petitioner has submitted an application for the said post and faced the interview, the results of the said interview were not made available at any stage.

Petitioner had further submitted before this court that the 1st Respondent had called internal applications for several posts between the posts of Management Assistant and Administrative Officer in the institutional hierarchy during the period on which he held the permanent appointment as Administrative Officer and thereby he was deprived in making applications for these vacancies and grave prejudice had been caused to him due to the afore said decision of the Respondents.

During the argument before us the 2nd Respondent was represented by the Learned Deputy Solicitor General and he challenged the position taken up by the counsel for the Petitioner. However the 1st Respondent did not challenged either party but informed the court that the 1st Respondent will abide by the decision of this court.

Learned Deputy Solicitor General challenged the position taken up by the Petitioner based on two grounds. Firstly he argued that the Petitioner did not possess the required qualifications to be appointed as Administrative Officer (Executive Grade Class III) as at 06.08.2011.

He secondly took up the position that the letter of appointment issued by the 1st Respondent dated 24.04.2012 appointing the Petitioner to the post of Administrative Officer (Executive Grade Class III) with effect from 01.04.2012 was bad in law.

The Petitioner has produced a Diploma Certificate in Human Resource Management marked X-7 from the National Institute of Co-operative Development but the court observes that the said document is valid only from 28th October 2011 and therefore it is understood that the Petitioner did not possess the Diploma in Human Resource Management from the National Institute of Co-operative Development as at 06.08.2011 and therefore he will have to depend on the second limb to the said requirement i.e. – equivalent qualification.

In this regard the Petitioner's argument was that, the two qualifications submitted by him, i.e. Higher Diploma in Accountancy from the National Institute of Co-operative Development – Polgolla and Diploma in Business Management from National Youth Services Council of Sri Lanka were considered on similar or equivalent Diplomas by the 1st Respondent when he was appointed to the post of Administrative Officer (Executive Grade Class III) of the 1st Respondent society.

However in this regard, the 1st Respondent argued that equivalent qualification for the post of Administrative Officer should be the qualification similar to Diploma in Human Resource Management and not in any other field of study such as Accountancy.

When considering the scope of the work of an Administrative Officer, which is far different to the functions of an accountant, the requirement to have equivalent, qualification to Diploma in Human Resource Management can't be the Diploma in Accountancy or Business Management.

When the specific words are followed by general words, the general words cannot be construed to a different meaning of the specific words. In this regard this court is mindful of the *Ejusdem Generic* rule which was interpreted by court as follows,

In the case of *U.P. Seb V. Hari Sankar Jain (1978) 4 SCC 16* it was observed that “the rule of ‘*Ejusdem Generic*’ is that words of a ‘general nature’ following specific and particular words should be construed as limited to things which are of the same nature as those specified”

The term *Ejusdem Generic* was further discussed by the Indian Supreme Court in the case of *Amar Chandra Chakraborty V. Collector of Excise (1972) 2 SCC 442, AIR 1972 SC 1863* as follows, “ the *Ejusdem Generic* rule strives to reconciles the incompatibility between specific and general words.

This doctrine applies when

- I The statute contains an enumeration constitute of specific words
- II The subject of enumeration constitute a class or category
- III That class or category is not exhausted by the enumeration
- IV The general term follows the enumeration
- V There is no indication of a different legislative intent.

Under these circumstances, this court cannot agree with the Learned Counsel for the Petitioner when he submitted that the two diplomas possessed by the Petitioner at the time he submitted an application to the post of Administrative Officer (Executive Grade Class III) were equivalent to the specific requirement of Diploma in Human Resource Management, as required to the said post.

Section 11 of the Co-operative Employees Commission Act No 12 of 1972 which deals with the powers of the Co-operative Employees Commission read as follows,

Section 11,

- a) To determine all matters relating to methods of recruitment to, and conditions of employment of employees of co-operative societies, and the principles to be followed by such societies in making appointments and in making promotions from one post in a co-operative society to another post in the same society
- c) To determine the qualifications necessary for appointment to any such post, to fix the scales of salaries to be attached to any such post or posts in any class or grade, to revise or adjust such scales of salaries, from time to time,....

Section 25 of the said Act further provides that,

25(1) Regulation may be made,

a) In respect of the recruitment, appointment, promotion, transfer, resignation and termination of services of employees of co-operative societies.

(2) Every regulation made in respect of any matter referred to in subsection (1) shall be binding on all co-operative societies and their employees

and according to the regulations made under the above provision in the Government Gazette notification No. 1712/36 dated 02.07.12011 (R-1) it is clear that the prior approval from the co-operative Employees Commission is necessary for the recruitment of permanent staff to the co-operative societies.

When looking at the above provisions, it is clear that, any appointment to a permanent cadre in the co-operative society requires prior approval from the Co-operative Employees Commission but, in the present case the letter of appointment issued by the 1st Respondent was issued without obtaining prior approval from the 2nd Respondent but subject to the approval of the 2nd Respondent.

As submitted by the Petitioner, after the first interview, he was appointed to the post of administrative officer by the 1st Respondent on acting basis subject to the approval of the 2nd Respondent for confirmation by letter dated 12th October 2011. Thereafter he was issued with a letter of confirmation by the 1st Respondent dated 24th April 2012 again subject to the approval of the 2nd Respondent. Therefore it was argued that the Petitioner has a legitimate expectation to hold the said position.

However, if the petitioner did not possess the required minimum qualification to be appointed to the post of Administrative Officer (Executive Grade Class III) the legitimate expectation cannot exist any longer.

In this regard the court is mindful of the decision in *Vasana V. Incorporated Council of Legal Education and Others reported in (2004) 1 Sri LR 154* where Amaratunga (J) observed,

“When the basic ingredient necessary for the formation of a legitimate expectation is marks over and above the cutoff point is lacking the Petitioner cannot rely on document which contains a provisional decision which has been subsequently found to be a decision based on erroneous factual data submitted to the Law College due to an inadvertent error committed by an examiner”

In the said case the Court of Appeal held,

- I The legitimate expectation of any candidate sitting for the Law College entrance examination is that if at the examination he scores the minimum mark necessary to gain admission to the Law College, he would be admitted; accordingly earning the necessary minimum mark is the foundation on which the legitimate expectation of a candidate rests.
- II If he fails to get the necessary minimum mark the legitimate expectation cannot exist any longer.

For the reasons set out above I see no legal basis for this court to grant the relief prayed by the petition even though this court observes that the petitioner was unfortunate in this instance.

I accordingly dismiss this application without cost.

PRESIDENT OF THE COURT OF APPEAL

H.C.J. Madawala J

I agree,

JUDGE OF THE COURT OF APPEAL