

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 Mandamus
under and in terms of Article 140 of the
Constitution.

1. J.J. Ginige
2. M.S. Perera
3. W.M.D.J Weerasekera
4. K.P. Kumararatne
5. W.D.S.L.M. Abeysekera
6. Wimal R. De Alwis
7. W.S.C. Fernando

All the above of the District Irrigation
Engineer's Office, Kaluthara.

8. W.A.W. Palitha
9. D.A. Priyantha

All the above of the District Irrigation
Engineer's Office, Colombo.

10. D.D.S.D. Jayamanna
11. W.R. Silva
12. Gamini Seneviratne
13. G.M.G.P. Goonawardana

All the above of the District Irrigation
Engineer's Office, Gampaha.

PETITIONERS

C.A. (writ) Application No.443/11

Vs

1. Prasanna Ranathunga
Western Provincial Council
Shrawasthi Mandiraya
Sir Marcus Fernando Mawatha
Colombo. 07
2. Mrs. Jayanthi Wijethunga
Chief Secretary
Western Provincial Council
Shrawasthi Mandiraya
Sir Marcus Fernando Mawatha
Colombo. 07
3. P.H. Jayawardena
Deputy Chief Secretary
(Engineering)
Western Provincial Council
Shrawasthi Mandiraya
Sir Marcus Fernando Mawatha
Colombo. 07
4. W.D.R.P. Chitrangani
Provincial Irrigation Director
(Western Province)
Provincial Irrigation Director's
Office
No. 25, Maligawa Road
Ratmalana.
5. Mrs. Vineetha Rajapaksha
Secretary
Provincial Public Service
Commission (Western Province)
Independence Square
Colombo 07.

6. Hon. Alavi Moulana
Office of the Governor of the
Western Province
4th Floor, Unity Plaza.
Colombo 03.
7. P.B. Abeykoon
Secretary
Ministry of Public Administration
and Home Affairs
Independence Square
Colombo. 07
8. Hon. Attorney General
Attorney General's Department
Hultsdorp, Colombo 12.
9. A.M. Karunaratne
Chariman
Provincial Public Service
Commission (Western Province)
Independence square
Colombo 07.
10. P.G.H.A. Mahendra
Member
Provincial Public Service
Commission (Western Province)
Independence square
Colombo 07.
11. K. Mustapha
Member
Provincial Public Service
Commission (Western Province)
Independence square
Colombo 07.

12. H. Sumanapala
Member
Provincial Public Service
Commission (Western Province)
Independence square
Colombo 07.

RESPONDENTS

BEFORE

: Deepali Wijesundera J.

COUNSEL

: Sanjeewa Jayawardene P.C

With Kamran Aziz and

C Rupasinghe for the Petitioners

Mrs. Fernando D.S.G. with

Chaya Sri Nammuni S.C. for the

Respondents.

ARGUED ON

: 04th December, 2014

DECIDED ON

: 01st April, 2016

Deepali Wijesundera J.

The petitioners have filed this application praying for a Writ of Mandamus directing the first to sixth and ninth to twelfth respondents to give effect and implement the decision contained in document marked 4R4 (c) .

The Western Provincial Council in September 2000 classified the officers of the Sri Lanka Technical Service (SLTS) into two divisions namely Buildings and Irrigation, and the cadre vacancies for the special Grade the Western Province was 43 for buildings and 9 for irrigation. This classification was challenged in the Court of Appeal and the classification was set aside. Acting on the judgment of the Court of Appeal the Western Provincial Council had taken measures to promote the officers irrespectively of any speciality based on the list of seniority in 2000. Promotions were given to 32 officers, 26 from the irrigation division and 6 from the buildings division.

There was an appeal to the Supreme Court against the Court of Appeal judgment, and by the Supreme Court judgment it was held that the said categorization of the Sri Lanka Technical Service into two divisions was lawful and an in accordance with the Sri Lanka Technical Service minutes and reversed the said decision of the Court of Appeal. By this time there were only 19 vacancies in the buildings division and in the irrigation division, 17 were in excess.

The petitioners submitted that the document referred to as **4R4 (c)** in the Supreme Court judgment is a copy of the minutes of a meeting in the Western Provincial Council held to resolve the grievances and

issues faced by the officers in the Sri Lanka Technical Service which included some of the petitioners.

The petitioners stated that they have suffered prejudice as a result of the categorization and that they are eminently suitable for promotions. The petitioners stated that the respondents failed to grant promotions to special grade from Class I as directed by the Supreme Court though they made representations to the respondents concerned. The petitioners marked the letter they wrote to the respondents as well as the replies in this regard as **P7, P8, P9, P10 and P11**. The petitioners stated that since the respondents failed to give effect to these undertakings in Rem the petitioners were compelled to institute this action seeking a writ of Mandamus. The petitioners argued that they are entitled to be promoted in terms of the Supreme Court judgment and in terms of the undertaking in Rem contained in **4R4 (c)**. The petitioners argued that these actions of the respondents created a legitimate expectation in the minds of the petitioners in that, these due promotions will be given. The petitioners cited the judgment in **Karavita and others and Welikanna vs Inspector General of Police and others 2002 (2) SLR 287** and said that within the field of Public Law the scope of Mandamus is still wide and the court may use it freely to prevent breach of duty and injustice.

The petitioners further stated that the purported contention of the respondents is untenable, in fact and in law.

The respondents stated that promotions can only be given if cadre vacancies exist in the special Grade and according to the requirements of each department as per Clause 5:1 of the Sri Lanka Technical Service minutes and since the petitioners belong to the irrigation division there are no cadre vacancies since there are 17 extra cadres promoted based on the Court of Appeal order. The respondents further stated that promotions were given to all officers who were adversely affected and who were in Class I on the date the decision to categorize was to take effect which is 22/09/2000. Respondents further stated that on their own documents marked **P6 (a) to P6 (m)** the petitioners were promoted to Class I in the year 2003 which was back dated to take effect from the years preceding 2000, thus on the material time of granting promotions the petitioners were not in Class I therefore could not entertain any expectations or have any right to be promoted to the special grade.

The respondents further stated that the document marked **4R4 (c)** is not a decision but minutes of a meeting of the Western Provincial Council which advise the Governor to promote all those who were in

Class I to the special Grade at the time the said advise was given which is August 2000. The respondents referred to Clause 5 of **4R4 (c)** which they said clearly is not a decision but advise of the Board of Ministries to the Governor.

The respondents further submitted that acting on the order of the Court of Appeal they took measures to promote officers irrespective of any categorization as a common cadres based on the list of seniority by the year 2000. The report and recommendations of the interview board and the list of seniority of the officers in both divisions are marked as **RX1, RX2 and RX3** which shows the material date taken for promotions was 22nd September 2000. The respondents stated that at the material time of granting promotions the petitioners were not in Class I thus could not entertain any expectations or have any right to be promoted to the special Grade.

The respondents argued that although the petitioners have written letters to the respondents regarding their promotions and although the respondents to the said letter, they have only stated that they have taken action to promote persons based on the advice stated in document **4R4 C** and therefore there is no expectation that they will be promoted as of right.

Citing the judgment in **Perera vs National Housing Authority 2001 1 SLR 50** the respondents said that promotions are not a statutory duty cast on the respondents and those promotions are done on merit and also on circumstances.

The respondents further stated that the petitioners failed to name the Board of Ministers of the Western Provincial Council who decided to advice the Governor to make a decision to categorize, who are necessary parties to this action. Citing the judgment in **Farook vs Siriwardena, Election Officer 1997 1 SLR 145** and **Ghanasambanthan vs Rear Admiral Perera 1983 2 SLR 169** said failure to cite the necessary parties are fatal.

The respondents also stated the petitioners had an alternate remedy by way of Fundamental rights application to the Supreme Court if others were promoted above them.

On perusal of document **4R4 (c)** which has been acknowledged in the judgment in Supreme Court 7/2005 is merely minutes of a meeting held on 02nd August 2000. Although decisions were taken to undertake action these are the views and advice of the Chief Minister and not a

decision approved by the Governor. In the Supreme Court judgment it was held that the Governor has acted on the advice of the Board of Ministers and the advice of the Board was held to be in documents marked as **4R4 (a)**, **4R4 (b)** and **4R4 (3)** therefore the document **4R4 (c)** was not considered as a decision but advice of the Board of Ministers by the Supreme Court.

As per their own documents the petitioners in the instant application were promoted to Class I in the year 2003 therefore at the material time of granting promotions they were not in Class I and they could not have any expectation or have any right to be promoted to the special Grade.

The petitioners are well aware that all promotions now have been given and that there are no cadre vacancies in either division. The letters written to the respondents and the reply sent by the respondents only states that they have taken action to promote persons based on the advice given in **4R4 (c)** and no where it is stated that the promotions are to be given to the petitioners. Therefore there is no expectation arriving from these documents.

The petitioners are not rightfully entitled to get promoted when there are no vacancies. The foundation of Mandamus is the existence of a right and Mandamus is not intended to create a right but to restore a right which has been denied. In the instant application the petitioners have not been denied their right to promotions the simple reason for not getting the promotion is the lack of vacancies. The petitioners were not in Class I when the categorization took place in 2000, to be promoted to special Grade and those who were in Class I at that time were promoted to the special Grade. Under these circumstances the petitioners could not have legitimate expectations to be promoted to the special Grade.

The petitioners application is based on document **4R4 (c)** but they have failed to add the members of the Board as parties to this application. This has been mentioned in the Supreme Court judgment.

For the afore stated reason this court decides to refuse the application of the petitioners.

JUDGE OF THE COURT OF APPEAL