

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

L.D.C. Jayantha Kumara,
No.120, Araliya Gahawatta,
Nawuththuduwa, Mathugama.

And another

Petitioners

Vs.

C A Writ Application
No. 362/2009

1. Thilak Collure
The Secretary,
Ministry of Transport,
No.1, D.R. Wijewardhana Mawatha,
Colombo 10.

And 17 others

Respondents

Before : L.T.B. Dehideniya J.

Counsel : Manohara de Silva PC with Mrs. P. Wickramaratne for the
Petitioners.

Milinda Gunathilake DSC for the Respondents.

Argued on: 15.10.2015

Written submission filed on: 26.11.2015 and 30.11.2015

Decided on: 31.03.2016

L.T.B. Dehideniya J.

The Petitioners filed this application by way of the petition dated 12th June 2009 against four Respondents; that is the Secretary to the

Ministry of Transport, General Manager of Railways, Additional General Manager of Railways and the Minister of Transport in their personal capacity, seeking a mandate in the nature of Writ of Mandamus to compel the 1 to 4 Respondents to implement the selection made by the interview board and to appoint 1 and 2 Petitioners to the post of Assistant Divisional Transportation Superintendent of the Department of Railway, a Writ of Mandamus to compel the Respondents to follow the scheme of recruitment, a Writ of Prohibition preventing the 1st and/or 2nd and/or 3rd Respondents from filling the carder vacancies from candidates of the internal category, a Writ of Mandamus compelling the 4th Respondent to submit a Cabinet Memorandum, and a stay order and costs. The Respondents filed objections to this application.

The Petitioners tendered an amended petition dated 10th June 2013 to add the present holders of the office of 1 to 4 Respondents, to add the 5 to 13 Respondents who are the members of the Public Service Commission who are now exercising the powers that were exercised by the 1st Respondent at the time of the application was originally filed and to make the consequential amendments to the paragraph 30 and to the prayer to the petition. The Respondents filed a statement of objections dated 19th March 2014 and stated that they have no objection to add 1A to 4A Respondents as the present office holders of 1 to 4 Respondents. The Respondents further stated that they have no objection to add the members of the Public Service Commission, the 5 to 13 Respondents. The Respondents admitted that the members of the Public Service Commission were appointed after filling of this application. They objected to the proposed amendment to the paragraph 30. The Respondents stated in paragraph 5 of their statement of objection that they do not object to the proposed amendment to the prayer to the petition

as the said amendments are consequential to the addition and substitution sought to be effected.

The paragraph 30 of the petition discloses the causes of action accrued to the petitioners. In the original petition paragraph 30 reads as thus;

The Petitioners state that the decision to appoint 5 applicants from the internal category and reserving the right to appoint 1 more making it a total of 6 applicants is manifestly unjust and/or illegal and/or irrational and/or discriminatory and/or ultra vires the recruitment criteria and also the directions contained in the aforementioned letter dated 19.11.2007 (P9). In the circumstances aforesaid the Petitioners are entitled in law:-

- (a) Grant and issue a mandate in the nature of a Writ of Mandamus compelling the 1st to 4th Respondents to implement the selection made by the interview board on 10.07.2008 by P10 and to appoint Petitioners to the post of Assistant Divisional Transportation Superintendent (Non Mechanical) of the Department of Railways.*
- (b) Grant and issue a mandate in the nature of a Writ of Mandamus compelling the 1st to 4th Respondents to follow the criteria laid down in the said Scheme of Recruitment dated 2001.02.12 (P1) and also the directions set out in the said letter dated 19.11.2007 (P9) and thereby fill 60% of the Carder vacancies from the external category and 40% of the vacancies from the internal category, when filling the Carder vacancies in the said post of Assistant Divisional Transportation*

Superintendent (Non Mechanical) of the Department of Railways.

- (c) Grant and issue a writ of Prohibition preventing the 1st and/or 2nd and/or 3rd from filling the Carder vacancies from the candidates of the internal category.*
- (d) Grant and issue a Writ of Mandamus compelling the 4th Respondent to submit a Cabinet Memorandum to give effect to P9.*
- (e) Grant an interim/stay order preventing the 1st to 4th Respondents from taking any further steps to fill the existing Carder vacancies and/or appoint any other candidate to the post of Assistant Divisional Transportation Superintendent (Non Mechanical) of the Department of Railways until the final hearing and determination of this application.*

The only amendment proposed to the paragraph 30 of the amended petition dated 10.06.2013 is that the words “*1A to 4A Respondents and/or 5 to 13 Respondents*” to be inserted in place of the words “*1st to 4th Respondents*” in sub paragraphs of (a), (b), (c) and (e) of the original petition. The Respondents admitted that the Public Service Commission was appointed after the institution of this action and they have no objection in adding the members of the Commission as parties to the application. The Petitioners took up the position that the powers of the 1st Respondent exercised at the time of filling of this application are now exercised by the Public Service Commission. This position was not denied by the Respondents. As such, the relief sought against the 1st Respondent in the original petition, is now to be sought against the members of the Public Service Commission, the 5 to 13 Respondents.

The Respondents in paragraph 6 of their statement of objections dated 19.03.2014 said that they have no objection to the proposed amendments to the prayer to the petition. They admitted that those amendments are consequential to the addition and substitution of parties. It is the same amendment that was proposed for the prayer too. That is to insert words "*1A to 4A Respondents and/or 5 to 13 Respondents*" in place of the words "*1st to 4th Respondents*" in sub paragraphs of (a), (b), (c), (d) and (f) of the prayer to the original petition.

If the amendment to the prayer is consequential to the addition and substitution of parties, there is no reason to object to the amendment of the paragraph 30 of the petition, as it is the same amendment that was proposed to the paragraph 30 too.

The Respondents, in paragraph 4 of the statement of objections, raised several objections to the proposed amendment to the paragraph 30 of the petition. The first objection is that the proposed amendment is not consequential to the addition and substitution of parties. I have already considered this objection. The second objection is that the matters relate to the amendment took place prior to the institution of this action. The Respondents admitted that the Public Service Commission was appointed after institution of this action. Therefore this objection cannot sustain. The next two objections are that the proposed amendment will bring in a substantive change in the pleadings and a fundamental change in the basis of the application. As I pointed out earlier, the Respondent do not object to the amendment proposed to the prayer to the petition. If the substantive reliefs that were prayed by the Petitioners were not changed by the proposed amendment, the Respondents cannot argue that the basis of the application is changed. The other objection is that the Petitioners are guilty of laches. The Public Service Commission was appointed after

filling of this application. Therefore there was no possibility for the Petitioners to add the members of the Commission as parties at the time of filling this application.

Under these circumstances, the objections raised in the statement of objections of the Respondents cannot sustain.

The members of the Public Service Commission were changed and the Chairman and three members were appointed after filling the first amended petition. The Petitioners filed the second amended petition on 10.09.2014 adding the new Chairman and the members and amending the said paragraphs to include the added parties. It is the only amendment in the second amended petition.

Whether the Petitioners can seek relief against the members of the Public Service Commission in the Court of Appeal is a matter to be considered separately. Allowing the proposed amendments will not have any adverse effect on the said issue.

I overrule the objections and accept the amended petition dated 10.06.2013.

Judge of the Court of Appeal.