

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

*In the matter of an Application for  
mandates in the nature of Writs of  
Certiorari and Mandamus in terms of  
Article 140 of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka.*

C A (Writ) Application

No. 234 / 2012

Sri Lanka Nidahas Podu Sewaka Sangamaya,  
Colombo Municipal Council Workshop,  
No. 175 B,  
T B Jaya Road,  
Colombo 10.

and 23 others

**PETITIONERS**

-Vs-

1. Saliya W Mathew,  
Chairman,  
National Salaries and Cadre  
Commission,  
No. 2G-10,  
Bandaranayake Memorial International  
Conference Hall (BMICH),  
Buddhaloka Mawatha,  
Colombo 07.  
  
and 12 other members
  
14. S. Alavi Mowlana  
Governor,  
Western Province,  
Governor's Secretariat,

4<sup>th</sup> floor,  
Unity Plaza,  
Colombo 04

15. Colombo Municipal Council  
Town Hall,  
Colombo
16. A J M Muzamil  
Mayor,  
Colombo Municipal Council,  
Town Hall,  
Colombo
17. Mrs. Badrani Jayawardena  
Municipal Commissioner,  
Colombo Municipal Council,  
Town Hall,  
Colombo
18. G Samarakoon  
Commissioner of Local Government  
(Western Province),  
Department of Local Government -  
Western Province,

Independence Square,  
Colombo 07

**RESPONDENTS**

**Before:     **A H M D Nawaz J****

**P. Padman Surasena J**

Counsel     :     C Weliamuna for the Petitioner

Murdu Fernando PC, Additional Solicitor General for  
Respondents

Argued on   :     2016 - 10 - 26

Decided on  :     2017 - 01 - 25

JUDGMENT**P Padman Surasena J**

Petitioners are members of Sri Lanka Nidahas Podu Sevaka Sangamaya, a registered trade union. They were employed at the 15<sup>th</sup> Respondent council namely the Colombo Municipal Council in the following posts.<sup>1</sup>

- i. 2<sup>nd</sup> to 5<sup>th</sup> Petitioners - Fitters
- ii. 6<sup>th</sup> to 8<sup>th</sup> Petitioners - Electricians
- iii. 9<sup>th</sup> to 12<sup>th</sup> Petitioners - Welders
- iv. 13<sup>th</sup> Petitioner - Lathe Machine Operator
- v. 14<sup>th</sup> Petitioner - Drilling Machine Operator
- vi. 15<sup>th</sup> Petitioner — Motor Mechanic
- vii. 16<sup>th</sup> and 17<sup>th</sup> Petitioners- Tinker
- viii. 18<sup>th</sup> Petitioner - Bar bender
- ix. 19<sup>th</sup> Petitioner — Auto Tinker
- x. 20<sup>th</sup> Petitioner - Carpenter
- xi. 21<sup>st</sup> Petitioner — Technician
- xii. 22<sup>nd</sup> Petitioner - Poundrیمان

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<sup>1</sup> paragraph 1 of the Petition

xiii. 23<sup>rd</sup> Petitioner - Blacksmith

xiv. 24<sup>th</sup> Petitioner - Mason.

The 1<sup>st</sup> - 13<sup>th</sup> Respondents are the chairman and the other members of the National Salaries and Carder Commission. In this proceedings the Petitioners seek to challenge the failure on the part of any one or more of the Respondents to place them at the respective salary scales which the Petitioners claim they are entitled to be placed at. The basis put forward by the Petitioners for this move is that most of them possess vocational training certificates pertaining to the duties of the posts held by them.

It is on this footing that the Petitioners have prayed inter alia from this Court,

- a) a writ of Certiorari to quash the part of the decision reflected in **P 12(a)** and/or **P 12(b)** and/or **P 19** and/or **P 24(b)** and/or any other document/s incidental thereto to place the Petitioners at the PL salary codes/scales;
- b) a writ of Certiorari to quash the part of the decision reflected in **P 22(b)**, to place the new recruits at MT salary codes/ scales without placing the Petitioners;

- c) a writ of Mandamus to direct any one or more of the Respondents to absorb the Petitioners and/or officers similarly circumstanced within the 15<sup>th</sup> Respondent Council to Management Assistant (Technical) level reflected in **P 11** and/or **P 22(b)** or any other incidental document with effect from 2006 – 01 – 01 or from a date determined by court;
- d) a writ of Mandamus to direct any one or more of the Respondents to place the Petitioners and/ or officers similarly circumstanced within the 15<sup>th</sup> Respondent Council at an appropriate salary code/s or scale/s within MT salary code/scale reflected in **P 11** and/or any other document incidental thereto with effect from 2006 - 01 - 01 or from a date as determined by Court and grant them the salary increments incidental thereto;
- e) a writ of Mandamus to direct any one or more of the Respondents to implement the decision/s contained in the report, which is reflected in **P 26(j)** and referred to in paragraph 26(e) of the Petition and place the Petitioners at MT salary code/scale.

According to the Public Administration Circular No. 06/2006 dated 2006-04-25 produced marked **P 11**, employees of public sector have been categorized into three grades with effect from 2006 - 01 - 01. This categorization (3 grades) is as follows,<sup>2</sup>

- i. Primary Grade
- ii. Secondary Grade
- iii. Staff Grade.

These grades have been defined in annexure II of the above circular as follows,<sup>3</sup>

- i. Primary Grade
  - Primary Level - Unskilled
  - Primary Level - Semi skilled
  - Primary Level - Skilled
- ii. Secondary Grade
  - Management Assistants ; Non technical

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<sup>2</sup> clause 11 of the Public Administration Circular No. 06/2006 dated 2016-04-25 marked **P 11**

<sup>3</sup> clause 3 of the annexure II



- Management Assistants; Technical
- Associate Officers  
Sri Lanka Teacher's Service
- Police Constables / Sergeants / Sergeants Major/ Sub  
Inspectors and similar posts in other regulatory services.
- Supervisory Management Assistants
- Nurses / PSM Services / Para-Medical Services except the  
Special Grades of these services

iii. Staff Grade

Tertiary Level

- Field/Office Based Officers
- Supra/Special Class Management Assistants
- Sri Lanka Principal's Service
- Police Inspectors/Chief Inspectors and similar posts in other  
regulatory services
- Special Grades of Nurses, PSM Services and Para-Medical  
Services
- Medical Practitioners

#### iv. Senior Level

- Executives / Senior Executives
- Judicial / Law Officers
- Medical Officers

The Petitioners claim that they should fall under the definition of Management Assistants (under Secondary Grade) of the circular **P 11**, as most of them possess vocational training certificates.

At this stage it is relevant and appropriate to consider the definitions given to various levels formulated by this circular. These definitions are found in Annexure II of the circular which is as follows;

### 3. Definitions

#### **3.1 Primary Level; (Unskilled - Semi-skilled - Skilled)**

Employees performing the basic functions that facilitate the implementation/carrying out of activities of the government institutions at the Primary level are brought under the broad category of Primary Level Employees. Functions such as cleaning, lighting, transporting, operating of communicatory systems etc. required for the operational/ administrative/

executive grades to perform their duties are described under this category of employees. This category is further divided into 3 sub-categories, namely, un-skilled, semi-skilled and skilled.

### **3.1.1 Un-skilled**

This is the category of employees, who are not required to possess any vocational training or tradesmanship of any nature in performing their duties as an entry qualification in their case. Seniority/experience only are taken in to account for the purpose of promotion but not any Vocational skills. The minimum basic educational qualification for this category is 8<sup>th</sup> std/Gr. or Year 9.

### **3.1.2 Semi-skilled**

Employees who are required to possess educational qualifications stated under the category of un-skilled above and skills / tradesmanship / Vocational training of any defined nature proven at a practical test but who have not acquired a relevant certificate awarded by an authorized institution are listed under the category of Semi - skilled employees. These employees can be promoted to the category of skilled employees once

they acquire the qualifications defined as necessary under a promotional scheme.

### **3.1.3 Skilled**

Employees, who possess the educational qualifications stated under the category of Un-skilled above and skills / tradesmanship / vocational training leading to a certificate or license awarded by an authorised institution /person as an entry qualification, are listed under the category of skilled employees.

### **3.2 Management Assistants (Non-Technical / Technical)**

Management Assistants are the employees who facilitate and assist the administrative, managerial and executive grades in the discharge of their duties. Their entry qualifications differ in keeping with the duties assigned to them. This category is further divided into 2 Sub -categories, namely Non - Technical and Technical.

Management Assistants in charge of supervisory functions are brought under a separate category titled "Supervisory Management Assistants".

When one considers the posts held by the Petitioners which have been set out earlier in this judgment, it is clear that they cannot be brought under the Secondary Grade as their posts cannot be categorized under that Grade in keeping with the definitions assigned to it.

Therefore, there appears to be no basis or justification to place the Petitioners at the next higher level namely under the category of Management Assistants as has been suggested by them.

Further, the letter produced marked **P 21** is just a proposal, the employer of the Petitioners had made to the Salaries and Cadre Commission. It is understandable that the Salaries and Cadre Commission has a duty to look at it as a whole and in comparison to the other public officers. It is not justifiable for this Court to compel the Salaries and Cadre Commission to implement the said proposal merely because it was made by the employers of the Petitioners.

In these circumstances and for the foregoing reasons we see no merit in this application.

Therefore we decide to dismiss this application. However we make no order for costs.

Application dismissed without costs.

**JUDGE OF THE COURT OF APPEAL**

**A H M D Nawaz J**

I agree,

**JUDGE OF THE COURT OF APPEAL**