

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
Mandamus in terms of Article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

C A (Writ) Application

No. 72 / 2011

1. E R Siriwardane
174/7,
Kolongasyaya Watte,
Metiyangane.

and 12 others

PETITIONERS

-Vs-

1. H M Gunasekere

Secretary,

Ministry of Education,

Isurupaya,

Battaramulla.

2. P B Abeykoon

Secretary,

Ministry of Public Administration,

Independence Square,

Colombo 07.

3. M A Dharmadasa

Director General of

Establishments,

Ministry of Public Administration,

Independence Square,

Colombo 07.

4. N Ariyadasa Cooray

Secretary,

Public Service Commission,

Colombo 03.

5. E A Samarasinghe

Chairman,

National Library and

Documentation Services Board,

Colombo 07.

6. Hon. Attorney General

Attorney General's Department,

Colombo 12.

RESPONDENTS

Before: A H M D Nawaz J

P. Padman Surasena J

Counsel : Gamini Perera for the Petitioners

Chaya Sri Nammuni, SC for the Respondents

Decided on : 2017 - 04 - 06

JUDGMENT

P Padman Surasena J

Petitioners were appointed as Librarians. The grades to which they were appointed and the dates of their appointments are set out in the schedule 1 annexed to this petition produced marked **P 1**.

Secretary to the Ministry of Public Administration, Provincial Councils and Local Government has issued the Public Administration Circular No.

47/1989 dated 1989-09-27, addressed to secretaries to all ministries and heads of all departments which is produced marked **P 3**.

The complaint made to this court by the Petitioners is that the 1st Respondent had absorbed certain petitioners to certain grades on the dates shown in paragraph 27 of the petition.

It is the claim of the Petitioners that they would have got their promotions if the 1st Respondent had implemented the said Public Administration Circular No. 47/1989 despite the fact that the above absorptions had been made. The Petitioners therefore state that they have a legitimate expectation to get their promotions in terms of the said Public Administration Circular No. 47/1989.

It is on that basis that the Petitioners have invoked the writ jurisdiction of this court praying for:

- I. A writ of Mandamus to compel the Respondents to implement the Public Administration Circular No. 47/1989 dated 1989-09-27.
- II. A writ of Mandamus "more specifically considering the effective date as 01-01-1989 with due promotions and other entitlements and privileges derived from the promotions if given to the Petitioners"¹

Learned counsel for both parties have requested this Court, to pronounce the judgment after considering the written submissions the

¹ It is not clear as to what the Petitioner has expected from prayer No. (c).

parties would file and hence this Court afforded both parties opportunity to file their respective written submissions. Therefore this judgment would be based on the material that has been adduced by parties in their written submissions.

It has to be noted at the outset that the circular marked **P 3** which is sought to be implemented by the Petitioners is a circular issued in the year 1989, about 12 years before this application was filed.

It is common ground that the Gazette Extraordinary bearing No. 1.002/13 dated 1997-11-19 produced marked **P 5** brought all librarians in the public service except those in provincial council public service under a unified service under the control of the Director General Combined Services with effect from 1997-08-01 through a publication of a minute.

It is the position of the Petitioners that they continue to serve under the appointing authority which is the Secretary, Ministry of Education or the Education Services Committee until they are absorbed individually, as per the circular No. 21/ 1998 dated 1998-09-23 produced marked **P 6**. It is on that footing that the Petitioners pray for a Writ of Mandamus on the Respondents to implement the old circular marked **P 3** dated 1989-09-27.

It is to be noted that the circular No. 21/ 1998 dated 1998-09-23 referred to above (marked **P 6**) has brought all the Librarians serving in the public service except those in provincial council public service under a unified service. This means that it is no longer possible to have the

scheme set out in the old circular marked **P 3** operational. This means that the said old circular cannot be applied to any scheme of promotions etc. All what the circular No. 21/ 1998 dated 1998-09-23 marked **P 6** states is that those who have not been fully absorbed to the unified service above referred to, will continue to work under their appointing authority.

It is clear from the above facts that the old circular marked **P 3** dated 1989-09-27 which is sought to be implemented by the Petitioners has been superseded by the Gazette Extraordinary bearing No. 1.002/13 dated 1997-11-19 marked **P 5**. Thus the Petitioners could not have had any legitimate expectation to get any promotion under the old circular. Further the Petitioners have failed to prove before this Court that the Respondents have at any time given a promise or an undertaking or that they had breached a procedural fairness towards the rights and expectations of the Petitioners. Similarly it cannot be said that the Respondents are under a legal duty to perform any such act under an obsolete circular.

In the case of Vasana Vs. Incorporated Council of Legal Education and others² Gamini Amaratunga J stated as follows; "... A writ of mandamus is available against a public or a statutory body performing statutory duties of a public character. In order to succeed in an application for a writ of mandamus the petitioner has to show that he or she has legal right and the respondent corporate, statutory or public body has a legal duty to recognize and give effect to the petitioner's legal right. .."

² 2004 (1) SLR 163

The Supreme Court endorsed the above view in the judgment it delivered in the case of Wannigama Vs. Incorporated Council of Legal Education and others³. The Petitioners in this case has established neither of the above requirements before this Court.

In these circumstances and for the foregoing reasons this court decides to refuse this application and proceeds to dismiss the same. However this Court makes no order for costs.

JUDGE OF THE COURT OF APPEAL

A H M D Nawaz J

I agree,

JUDGE OF THE COURT OF APPEAL

³ 2007 (2) SLR 281