

**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.

1. S.K.M. Silva,  
No. 35, Soloman Mawatha,  
Panadura.
2. A.A. Piyadasa,  
“Shiran”, 3<sup>rd</sup> Lane,  
Nagoda, Kalutara.

**PETITIONERS**

**CA (Writ) Application No: 36/2013**

**Vs.**

1. Bank of Ceylon,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
2. Razik Zarook P.C.,  
Bank of Ceylon,  
People’s Bank,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
3. S.R. Attygala,  
The Executive Officer Director,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.

4. Raju Sivaraman,  
Director,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
5. Nalani Abeywardana,  
Director,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
6. Chandrasiri De Silva,  
Director,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
7. K.L. Hewage,  
Director,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
8. V. Kanagasabhpathi,  
Alternate Director,  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
9. K.B.S. Bandara,  
Deputy General Manager (Product and  
Development Banking),  
No. 04, Bank of Ceylon Mawatha,  
Colombo 01.
10. The Secretary,  
Ministry of Finance and Planning,  
The Secretariat,  
Colombo 01.

**RESPONDENTS**

**Before** : P. Padman Surasena, J. (P/CA)

&

A.L. Shiran Gooneratne J.

**Counsel** : G. Wijemanna with Wijeratne Hewage for the Petitioners.

Farzana Jameel, P.C., A.S.G. for the Respondents.

**Written Submissions of the Petitioners & Respondents filed on:** 07/02/2017

**Argued on** : 26/03/2018

**Judgment on** : 12/07/2018

**A.L. Shiran Gooneratne J.**

The Petitioners have invoked the jurisdiction of this Court inter alia, to seek, a mandate in the nature of writ of Certiorari to quash the decision of the 1<sup>st</sup> to 8<sup>th</sup> Respondents denying the Petitioners of their promotion to the post of Assistant General Manager of the 1<sup>st</sup> Respondent Bank. In the written submissions filed of record the Petitioners state that presently they are not in service in the 1<sup>st</sup> Respondent Bank and therefore, would not peruse a mandate in the nature of writ of Mandamus for re-instatement, but instead be satisfied with the lesser remedy of a declaratory order compelling the promotion of the Petitioners to the post of Assistant General Manager. The Petitioners also seek a writ of Mandamus compelling the said Respondents to pay back wages and other retirement benefits applicable to the post of Assistant General Manager with retrospective effect.

The Petitioners were among several other senior officers of the 1<sup>st</sup> Respondent Bank, who were eligible to apply for the post of Assistant General Manager in terms of circular 61/2007, marked P2. According to the said circular, when an application is received for consideration, the personnel Department submits their comments and observations to the General Manager regarding the acceptance or rejection of such application. Staff Department Circular No. 36/2002, marked P3, sets out the scheme of promotion and the evaluation criteria of the applicants to the said post.

By this application, the Petitioners are challenging the decision dated 24/01/2008, by the Board of Directors of the 1<sup>st</sup> Respondent Bank, promoting nine other applicants with the exclusion of the Petitioners, as reflected by the circular marked P6.

The Respondents, have raised several preliminary objections to this application, inter-alia, that;

- (a) the relationship between the Petitioner's and the 1<sup>st</sup> Respondent is based on contract and is a relationship of employment which is not amenable to writ jurisdiction.
- (b) the Petitioner's are guilty of laches due to the undue delay in invoking the jurisdiction of this Court to challenge the impugned decision and therefore the application should fail.

In response, the Petitioners have drawn attention of Court to document marked P1(a), and submits that the 1<sup>st</sup> Respondent Bank is a statutory functionary created by statute and therefore, the relationship between the parties are statutory. The Petitioners have also drawn attention of Court to *Section 6 of the Bank of Ceylon Ordinance No. 53 of 1938*, where it is stated that,

*“The management and administration of the affairs of the bank shall be vested in a board, consisting of six directors appointed by the Minister one of whom shall be a representative of the Ministry in charge of the minister to whom the subject of finance is assigned.”*

In the said background, I will deal with the preliminary objection (a) stated above, in the first instance, since the said issue goes to the root of this application, which could decide its worth.

It is observed that, internal administration policy applicable to promotions are communicated to the relevant officers by the Personal Policy Committee, through staff department Circulars. As observed in documents marked P1B and P1C, the Personal Policy Committee at its meetings decide on promotions of applicants and communicates, inter alia, the date of such promotion, to the relevant officers by way of circular. The Board of Directors at a meeting held on 18/01/2008, has decided on promotions of applicants to the post of Assistant General Manager, and has communicated the date of such promotion to the relevant officers by the impugned Circular marked P6.

In the case of *Piyasiri Vs. Peoples Bank (1982) 2SLR 47*, this Court has considered the effect of a direction given to the Board of Directors in terms of the *People's Bank Act*, to implement the recommendations relating to promotions of Bank clerks in consequence of the Board of Directors issuing a Circular to formulate the implementation of the said recommendation. In this case,

*“the Petitioner who is a clerk in the Respondent Bank has applied for an order in the nature of a Writ of Mandamus directing the Respondent to call the Petitioner for an interview in terms of the Staff Circular No. 186/82 dated 27/05/1982, in respect of promotion to Grade III, Class I.”*

The Respondent Bank took up several preliminary objections among which was that the Respondent Bank *“is not a public authority nor a department of the state amenable to the supervisory jurisdiction of this Court, but is an independent corporate body engage in the purely commercial activity of the business of banking... ..”*.

The court held, inter alia, that;

*“the Bank though subject to ministerial control is not a public body but basically a commercial bank.”*

In this context the Court has to determine whether the impugned circular marked P6 has any statutory force.

The Petitioners submit that the appointment of staff to the Bank by Circular marked P6, is not governed by ordinary contractual relationship but by a statutory relationship which underpins a statutory right. However, the Petitioners have not urged a violation of a specific statutory right which deprived the Petitioners of an employment contract.

“In the case of *Malloch Vs. Aberdeen Corp. (1971) 2 All ER 1278* Lord Wilberforce said that it was the existence of statutory provisions which injects the element of public law necessary to attract the remedies of administrative law”. This case has been cited with approval, in *Piyasiri Vs. People’s Bank* (supra).

In terms of Section 56 of the Bank of Ceylon Ordinance, the Board of Directors are empowered to appoint staff to the Bank. Accordingly, statutes can expressly or impliedly confer power on a public body to enter into contracts in order to enable it to discharge its functions.

However, as *Sir Clive Lewis, Judicial Remedies in Public Law 5<sup>th</sup> Edition, at page 558* has observed,

*“Contracts of employment between public bodies and their staff may not raise any public law issue, and the enforcement of specific contractual rights and the question of the remedies available will be dealt with in accordance with the usual principles applicable to such disputes.”*

In the circumstances, I uphold the preliminary objection marked (a), that the impugned circular marked P6, does not raise any public law issue and therefore, the Petitioners have no legal right for the reliefs prayed for. In view of the said finding it would not be necessary to deal with the rest of the objections raised by the Respondents.

Petition is dismissed without costs.

JUDGE OF THE COURT OF APPEAL

**P. Padman Surasena, J. (P/CA)**

I agree.

PRESIDENT OF THE COURT OF APPEAL