

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

Ganepola Arachchige Shanthi
Mala Ganepola,
36A, Kendaliyaddapaluwa,
Ganemulla.
Petitioner

CASE NO: CA/WRIT/371/2016

Vs.

1. W. Hilary E. Silva,
Director General,
Sri Lanka Institute of Advanced
Technological Education
(SLIATE),
320, Janawathupiyasa,
T.B. Jaya Mawatha,
Colombo 10.
2. Director General,
Department of Management
Services,
Ministry of Finance,
General Treasury,
Colombo 1.
3. D.C. Dissanayake,
Secretary,

Ministry of Higher Education and
Highways,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

4. Sri Lanka Institute of Advanced
Technological Education
(SLIATE),
320, Janawathupiyasa,
T.B. Jaya Mawatha,
Colombo 10.
5. Somarathna Widanapathirana,
6. Asoka Seenani Hewage,
5th and 6th Respondents all:
Members of the Governing
Council,
Sri Lanka Institute of Advanced
Technological Education
(SLIATE),
320, Janawathupiyasa,
T.B. Jaya Mawatha,
Colombo 10.
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: U.L. Ali Zakky for the Petitioner.

Anusha Fernando, D.S.G., for the Respondents.

Decided on: 19.10.2018

Samayawardhena, J.

The Petitioner filed this application seeking two substantive reliefs against the 1st Respondent:

- (a) to issue a writ of mandamus to promote the Petitioner to the Post of Lecturer Grade I under the previous scheme of promotion marked P8; and
- (b) to issue a writ of certiorari to quash the promotions of the Assistant Lecturers who had (as per P13 and P16) already availed themselves of one opportunity for promotion under the previous scheme of promotion.

The 1st Respondent in paragraph 5(e) of his statement of objections and also in the written submissions has stated that the (b) above need not be pursued as it has already been done after the institution of this action.

Then the outstanding matter to be decided is the (a) above.

The Petitioner at present is a Senior Lecturer (Lecturer Grade I) at the 4th Respondent Institution—Sri Lanka Institute of Advanced Technological Educations.

According to P8, a Lecturer Grade II is eligible to be promoted to Grade I provided he or she fulfils two conditions. If I may quote the relevant portion of P8 *verbatim*, those two conditions are: “A Masters Degree/Post Graduate Qualification in the field and 03 years experience as a Lecturer.”

It is common ground that the Petitioner completed her Post Graduate Diploma in Education on 01.08.2001 (P6) and

completed her three-year service as a Lecturer Grade II on 16.08.2005. Accordingly, it is the contention of the Petitioner that she should have been promoted to Grade I effective from 16.08.2005.

However, the 1st Respondent has denied the Petitioner the said promotion on the basis that her Post Graduate Qualification, which is the Post Graduate Diploma in Education, is not in the “*relevant*” field. It is the position of the 1st Respondent that the Petitioner was initially recruited as an Assistant Lecturer in Agriculture and therefore her relevant field is Agriculture.

In the first place, P8 does not say the Post Graduate Qualification to be “*in the relevant field.*” It only says “*in the field.*”

The 1st Respondent in paragraph 4(c) of his objections explains why “*in the field*” in P8 shall be read as “*in the relevant field*”. That paragraph reads thus:

“However, pursuant to a clarification obtained from the 2nd Respondent on 28.07.05 that eligibility for promotions to Senior Lecturer required a Postgraduate Diploma in the “relevant field” in terms of P8, no further promotions were given thereafter, to applicants who did not possess a relevant Postgraduate qualification.”

The clarification referred to in the above paragraph has been marked as 1R1.

It is my considered view that the former part of the above quoted paragraph is a misrepresentation of facts and the latter part is false.

The impression given to Court by the 1st Respondent by the former part of the paragraph was, that he obtained a clarification from the 2nd Respondent on what was meant by “*in the field*” in P8 and 1R1 was the reply to it.

As seen from paragraph 1 of 1R1, it is a reply to a letter sent by the 1st Respondent (in fact, the former Director General-Dr. Obeysekera) to the 2nd Respondent dated 25.07.2005. The letter dated 25.07.2005 was not tendered by the 1st Respondent, but it was tendered by the Petitioner marked P34A with her counter affidavit. By looking at P34A, it is abundantly clear that the 1st Respondent has sought a clarification not on the matter in contest, but on some other matter regarding promotions. It is on that basis I state that the former part of that paragraph is a misrepresentation of facts.

Leave that as it may, the 1st Respondent does not need to take pains to rely on 1R1 dated 28.07.2005 to say that “*in the field*” in P8 shall be taken to mean “*in the relevant field*”, because it has so been understood by his predecessors before the purported clarification was obtained by 1R1.

For instance, in P11, the former Director General of the 1st Respondent-Dr. Obeysekera in calling for applications for the Post of Lecturer Grade I, has stated that applicants *inter alia* “*Should have obtained Post graduate qualifications from a*

recognized University/Institution (Post graduate degree/Post graduate Diploma or equivalent Qualification in the relevant field."

The Petitioner is a lecturer. All these years the Post Graduate Diploma in Education has been considered as a qualification in the relevant field across the board irrespective of their field/subject of teaching when promotions are given from Grade II to Grade I—vide the List of names in P12 tendered by the Petitioner, which has been accepted by the 1st Respondent by paragraph 4(b) of the objections except in the case of Ms. K.N.D. Alwis.

In that sense, the Petitioner can also succeed on the ground of legitimate expectation.

Regarding Ms. Alwis, the 1st Respondent in paragraph 4(b)(i) of the objections says that "*Ms. K.N.D. Alwis named therein applied for a promotion to the post of Lecturer and not Senior Lecturer and as such P11 was not applicable to her*". This is also incorrect as seen from P34(b) tendered with the counter affidavit of the Petitioner, which proves that she was promoted to the Post of Senior Lecturer (i.e. Lecturer Grade I). If she in fact applied for a promotion to the Post of Lecturer and not to the Post of Senior Lecturer, it is not clear how she was given a double promotion even without a proper application!

It is incongruous to say in defence by the 1st Respondent in paragraphs 4(j) and 7(c) of the objections that those who were promoted as such under the misconception have now left the 4th Respondent Institution and therefore the same (mis)interpretation need not be given in the case of the

Petitioner. That argument would have had some validity if the Petitioner was offered the promotion to Grade I subject to her leaving the Institution!

I am unable to accept the argument of the 1st Respondent in paragraph 4(i) of the objections that “*the Petitioner is seeking to rely on a mistake made in the past in the interpretation of P8*”. In the facts and circumstances of this case, I cannot bring myself to consider it as a mistake made by the predecessors of the 1st Respondent.

According to P34(e), the following areas are covered in the Post Graduate Diploma in Education Programme.

1. Principles of Education
2. Educational Psychology
3. Assessment of Learning Outcomes
4. Student Adjustment and Counselling
5. Techniques of Teaching
6. Curriculum School and Society
7. Comparative Education and Educational Problems
8. Educational Administration and Management
9. Teaching Practice

As I have already stated, the Petitioner is a lecturer/teacher. There cannot be a dispute that having a thorough knowledge of the subject itself does not make a good lecturer/teacher. For effective learning to take place, the lecturer/teacher must not only have good subject knowledge but also effective pedagogical skills if they are to get the ideas across to the students. In that sense, the argument of the 1st Respondent in paragraphs 4(k)

and 7(e) of the objections that the granting of the relief would lower the standard of the Institution since the main duty of the lectures such as the Petitioners is teaching the subject, is misconceived.

Not only until purported clarification 1R1 was obtained, even thereafter, the Post Graduate Diploma in Education has been considered as a qualification in the relevant field across the board—vide P34(a)-(c) tendered with the counter objections of the Petitioner. That is why I stated earlier that the latter part of the paragraph 4(c) of the objections of the 1st Respondent is false.

According to the date stamp placed on it, 1R1 has been received by the 1st Respondent (former Director General) on 28.07.2005. Lecturer Mrs. Alwis whose field is English has been promoted to the Post of Lecturer Grade I, considering the Post Graduate Diploma in Education as a qualification in the relevant field after 1R1—vide P34(b) dated 29.07.2005. As per P34(d) dated 09.07.2008, nearly 3 years after 1R1, the Governing Council of the 4th Respondent Institution has confirmed that promotion. Lecturer Mrs. Hewapathirana whose field is commerce has been promoted to the Post of Lecturer Grade I, considering the Post Graduate Diploma in Education as a qualification in the relevant field after 1R1—vide P34(c) dated 29.07.2005.

At the argument, as the learned Deputy Solicitor General for the Respondents could not satisfactorily explain how those promotions were given after obtaining the purported clarification by 1R1, the Court with the consent of learned counsel for the Petitioner gave another opportunity to explain it by way of a

further affidavit, which has been done. In that affidavit, the 1st Respondent says that even though those letters have been signed after 1R1, as the interviews were held and promotions were decided before the receipt of 1R1, the promotions had to be effected from the date of the interview.

If that explanation is correct, I cannot understand why the 1st Respondent did not adopt the same theory in respect of some of the Assistant Lecturers who had tried to have a second promotion under the previous scheme of promotion, because by the time the clarification was obtained by 1R3, promotions of them had already been decided!

I must pause for a while to say that the 1st Respondent explains as such, as if those promotions reflected in P34(a)-(c) were given by him. But it is not so. Those decisions have been taken not by the 1st Respondent but by his predecessors. Therefore he cannot by way of an affidavit explain on what basis such promotions were given by his predecessors even after 1R1, taking the Post Graduate Diploma in Education as a qualification in the relevant field. The 1st Respondent is trying to mislead the Court on that point. In the facts and circumstances of this case, the predecessors of the 1st Respondent have not sent P34(b)-(d) on the basis the 1st Respondent is now attempting to attribute. Simply speaking, they did not have such an issue. This issue is a creation of the 1st Respondent himself.

The 1st Respondent with his objections has tendered 1R2 to say that he obtained a further clarification from the 2nd Respondent

on this matter which confirms that the Post Graduate Diploma in Education cannot be considered as a qualification in the relevant field. Firstly, if 1R1 was the clarification to “*in the field*” in P8, there was no necessity to have another clarification for the second time. Secondly, 1R2, like P11, speaks of “*in the relevant field*”, but does not say that the Post Graduate Diploma in Education shall not be considered as a qualification in the relevant field. Thirdly, in any event, 1R2 has been obtained about 9 years after P8 and about 9 months after the institution of the action. It is trite law that the rights of the parties shall be decided at the institution of the action. (*Talagune v. De Livera* [1997] 1 Sri LR 253 at 255, *Kalamazoo Industries Ltd v. Minister of Labour and Vocational Training* [1998] 1 Sri LR 235 at 248, *Lalwani v. Indian Overseas Bank* [1998] 3 Sri LR 197 at 198)

At this juncture it is pertinent to mention that this old scheme of promotion reflected in P8 is no longer valid and operative. It has been replaced with a new scheme of promotion effective as far back as from 01.01.2008. The new scheme of promotion marked P27 has a new set of qualifications. Hence the position of the 1st Respondent that if the application of the Petitioner is allowed “*it will result in a floodgate situation where others in a similar situation to the Petitioner could also seek to obtain their promotions based on the mistaken interpretation of P8*” is unfounded. The orders of the Court depend on the facts and circumstances of each individual case. There is no generalization. If there is a doubt, the new scheme of promotion can be amended to clear the doubt.

The 1st Respondent has also produced 1R4(a) and (b) with his further affidavit to say that “*subsequent to 1R1 being obtained, promotions have been granted subject to the lecturer obtaining the requisite post graduate qualification in the relevant field.*” IR4(a) and (b), in my view, do not satisfy, any of the two schemes of promotions—P8 or P27. By those two letters, two lecturers have been promoted to Grade I in anticipation of a future achievement! The two lecturers have been promoted to Grade I effective from 23.03.2011 “*subject to the condition that you will complete a Master Degree in the relevant discipline on or before 23rd March 2014.*” These two promotions have also been given by one of the former Director Generals of the 4th Respondent Institution and not by the 1st Respondent.

The 1st Respondent in the further affidavit also says that there were six others who were in the same position as the Petitioner (and the Petitioners in the two connected cases) who sought their promotions based on the Post Graduate Diploma in Education, but they in the meantime obtained the qualifications in their relevant fields and therefore “*enabled SLIATE to grant their promotions, which have been backdated in order to ensure that no prejudice is caused to them.*” It is not clear what the 1st Respondent meant by “*promotions were backdated*”. Is it, backdated to the date the Post Graduate Diploma in Education was obtained?

Further affidavit seems to be providing more questions than answers!

For the aforesaid reasons, I issue a writ of mandamus directing the 1st Respondent to promote the Petitioner to the Post of Lecturer Grade I under the previous scheme of promotion marked P8 with effect from 16.08.2005. The Petitioner will also be entitled to salary increments, salary arrears and other statutory entitlements accordingly. The 1st Respondent shall pay incurred costs of the action to the Petitioner.

As agreed, the parties in the two connected cases, i.e. CA/WRIT/372/2016 and CA/WRIT/387/2016, will abide by this Judgment.

Judge of the Court of Appeal