

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

Liyana Atukoralalage Done
Thanuja Darshani,
No.251/78/3,
Imbulgoda,
Yakkala.
And 8 Others
Petitioners

CASE NO: CA/WRIT/410/2016

Vs.

Ceylon Electricity Board,
Sir Chittampalam A. Gardiner
Mawatha,
P.O. Box 540,
Colombo 2.
And 21 Others
Respondents

Before: Mahinda Samayawardhena, J.

Counsel: Mayuri Wijesooriya for the Petitioner.
Anusha Fernando, D.S.G., for the 1st-9th
Respondents.
Lilanthi De Silva for the 10th-21st and 23rd
Respondents.

Decided on: 22.05.2019

Samayawardhena, J.

The nine petitioners filed this application seeking to quash by way of writ of certiorari the decision made by the 1st respondent Ceylon Electricity Board (CEB) to promote the 9th-19th respondents to the posts of Accounting Assistants; and to compel the CEB by way of writ of mandamus to call the petitioners for an interview and to appoint them as Accounting Assistants.

The petitioners and the respondents (except the 1st-8th, i.e. the CEB and the Board Members) are employees of the CEB.

By P10 dated 12.01.2015, the CEB invited the employees to apply for the examination to fill 14 vacancies of Accounting Assistants. The selection procedure is stated in circulars marked P14-P16, and it is common ground that the final selection is dependent upon the vacancies exist at the time of the interview and not at the time of the advertisement.

It is the contention of the petitioners that at the time of the interview held on 26.11.2015 for the year 2015, there were 24 vacancies.

Various things such as calling for fresh applications stating that only 8 vacancies are available¹, promotions of some employees who have passed the examinations held in previous years² in compliance with the directions of the Public Petitions Committee

¹ Vide 3AR2.

² Vide Board decision 3AR1.

of Parliament ³ etc. have happened in between the P10 advertisement and the interview held, but there is no necessity to make a detailed analysis of those things as what is important is the vacancies existed at the time of the interview.

The petitioners do not dispute that 14 employees were promoted as Accounting Assistants in 2015 in order of the Merit List marked 3AR4.

Their complaint is that the balance 10 vacancies which should have been filled from 2015 Merit List were filled from employees applied for the said post in previous years to the detriment of the petitioners, which, according to the petitioners, is against the governing circulars referred to above.

The CEB admits that there were 10 more vacancies, but says that they were created after the aforesaid interview in 2015.

The petitioners vehemently deny this and tenders the Board Paper marked P12 dated 29.04.2016 to counter that position. In P12 it is stated *inter alia* that, according to the Financial Manager's letter, there were 10 vacancies for Accounting Assistants at the time of the interview.

The learned DSG for the CEB does not accept P12 as a valid document. Firstly learned DSG says that it is a confidential document; and secondly it is only a Board Paper and not a Board decision; and thirdly it reflects the position as at 29.04.2016 and not at the time of the interview held on

³ Vide P13.

26.11.2015 and tenders marked 3AR7(a) the Financial Manager's letter (dated 26.02.2016) referred to in P12.

Not to be outdone, learned counsel for the petitioners points to the letter marked 3AR3 dated 27.11.2015 of the same Finance Manager (prepared soon after the interview) for the purpose of comparison with 3AR7(a) to say that the said contention of the learned DSG is false and those vacancies were in existences at the time of the interview.

Although contents of 3AR3 and 3AR7(a) are not identical, there is great force in the argument of the learned counsel for the petitioners.

However, there is no agreement between the parties as to the exact number of vacancies existed at the date of the interview for 2015. Nor is there any document(s) by which Court can without any difficulty come to a firm finding on the exact number of vacancies existed at the date of the interview. Different documents give different figures and open for various interpretations.

If facts are in dispute, this Court in the exercise of writ jurisdiction has no authority hold an inquiry into it in order to ascertain the correct factual position (as to the number of vacancies) in order to grant or refuse relief to the petitioners. It is trite law that when major facts are in dispute, writ does not lie. (*Thajudeen v. Sri Lanka Tea Board [1981] 2 Sri LR 471, Dr. Puvanendran v. Premasiri [2009] 2 Sri LR 107, Wijenayake v. Minister of Public Administration [2011] 2 Sri LR 247*) Hence the petitioners cannot succeed in this application.

Let me add the following in passing. It is not the complaint of the petitioners that complete outsiders who did not possess the qualifications were promoted as Accounting Assistants. The respondents whom the petitioners say were wrongly promoted were in the same position as that of the petitioners. The only point raised was that they did not sit for 2015 examination. However, the petitioners admit (or do not dispute) that they sat for previous examinations and qualified to be promoted to the said post, but due to no fault of them, and due to the lapses on the part of the CEB administration, their promotions were not given at the right time—vide the direction of the Public Petitions Committee of Parliament marked P13. This is further understood by the additional petition filed by the petitioners dated 15.03.2017 whereby the petitioners sought an interim order preventing the CEB from holding the 2017 examination to fill the then existing vacancies stating that such a course of action will cause injustice to them (when promotions are given on 2017 examination). That is similar to the grievances of the employees whose promotions are being challenged in these proceedings. This is a never-ending process unless the CEB stops this unhealthy practice (which seems to be adopting with ulterior motives). This causes *inter alia* disunity among the employees (which may sometimes be one of such ulterior motives).

If the certiorari cannot be issued, consideration of the application for mandamus does not arise.

Application is dismissed without costs.

Judge of the Court of Appeal