

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

CASE NO: CA/WRIT/111/19

M.A.W.P. Gnanasena
339/7, 4th Lane,
Gajaba Mawatha, North Makola.
Makola.

PETITIONER

Vs.

1. Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

2. Somarathna Dissanayake
Chairman,
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

2A.Malaka Thalwatta
Chairman,
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

2B.Jagath Wickramasinghe
Chairman,
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

2C.Hudson Samarasinghe
Chairman,
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

3. Erananda Hettiarachchi
Director General,
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

3A.Chandrapala Liyanage
Director General,
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7

4. Bopage Nimalweera
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

4A.Heral Senadhira
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

4B.Sisira Munasinghe
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

5. Milton Amarasinghe
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

5A.A.M.P.T.B. Abeysinghe
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

5B.Gamini Wijewardene
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

6. H.M.P.B. Herath
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

6A.W.A.B. Wimalsiri
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

6B.Sanjeewani Weerasinghe
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

6C.Sammera Somasiri
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

7. H.A.S. Kumarasinghe
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

7A.Asanga Gunawansa
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

7B.G.M.J.K. Gunawardene
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.

8. A.G. Fernando
Director,
Department of Cultural Affairs,

8th Floor, *Sethsiripaya*,
Battaramulla.

9. W.H.W. Zoysa
Retired Consulting Administration
Officer,
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.
10. M.P. Bandara
Assistant Director Administration
Ministry of Mass Media,
163, Asi Disi Medura,
Kirulapana Mawatha,
Polhengoda.
Colombo 5.
11. T. Samarasuriya,
Director (Training and Foreign Relations),
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.
- 11A. Lalani Wickremeraja
Director (Training and Foreign Relations),
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.
12. M.P.M. Fernando
Assistant Director (Personal),
Director (Training and Foreign Relations),
Sri Lanka Broadcasting Corporation,
Baudhaloka Mawatha,
Colombo 7.
13. R.H.S. Samarathunga
Secretary to the Ministry of Mass Media,
163, Asi Disi Medura,
Kirulapana Mawatha,
Plohengoda.
Colombo 5.

13A.Sunil Samaraweera,
Secretary to the Ministry of Mass Media,
163, Asi Disi Medura,
Kirulapana Mawatha,
Plohengoda.
Colombo 5.

13B.Chulananda Perera
Secretary to the Ministry of Mass Media,
163, Asi Disi Medura,
Kirulapana Mawatha,
Plohengoda.
Colombo 5.

13C.Jagath P. Wijeweera
Secretary to the Ministry of Mass Media,
163, Asi Disi Medura,
Kirulapana Mawatha,
Plohengoda.
Colombo 5.

14. Director General,
Department of Management Services,
3rd Floor, Ministry of Finance,
The Secretariate,
Colombo 1.

RESPONDENTS

Before: **M. T. MOHAMMED LAFFAR, J. and**
S. U. B. KARALLIYADDE, J.

Counsel: Sahantha Jayawardene with Hirannya Damunupola,
instructed by G. Dinesh de Silva for the Petitioner.

Thisath Wijeyagunawardena, P.C., with Gihan Liyanage,
instructed by Widyanagoda Pasindu Prabath for the 1st,
2A, 3rd, 4A, 5A, 6A, 7A, 9th, 11th, and 12th Respondents.

Avanthi Weerakoon, S.C., for the 10th, 13C, and 14th
Respondents.

Argued on: 02.11.2021.

Written Submissions on: 22.12.2021 (by the Petitioner).
09.12.2021 (by the 1st, 2A, 3rd, 4A, 5A, 6A,
7A, 9th, 11th, and 12th Respondents).

Decided on: 19.01.2022.

MOHAMMED LAFFAR, J.

The Petitioner by her petition dated 21.03.2019, seeking, *inter alia*, the following reliefs:

- (c) a writ of *certiorari* quashing the appointment of the 12th Respondent as the Assistant Director (Personal) of the 1st Respondent.
- (d) a writ of *mandamus* directing the 1st to 7th Respondents to formulate and obtain the approval of the 14th Respondent for the Scheme of Recruitment, relevant for the post of Assistant Director (Personal).
- (e) a writ of *mandamus* directing the 1st to 7th Respondents to advertise and call for applications for the post of Assistant Director (Personal), afresh, in accordance with a Scheme of Recruitment approved by the 12th Respondent.

The Petitioner states that she was appointed as a Translator of the 1st Respondent, Sri Lanka Broadcasting Corporation (sometimes referred to as the “SLBC”), by the letter dated 30.12.2004, pursuant to a competitive examination and interview held by the SLBC. The Petitioner states that she had to resign the post temporarily due to a foreign training in Japan for a period of 6 months. She further states that after returning to Sri Lanka upon concluding the said training, she was re-appointed to the same post by the letter dated 30.09.2005 with effect from 01.10.2005.

The Petitioner states that on 10.04.2018, the 3rd Respondent issued a staff notice (marked as P15), calling for the applications for the posts of Assistant Director (Personal) and Assistant Director (Establishment). Since she was interested in the post of Assistant Director (Personal) she applied for the said post by the application dated 20.04.2018 (marked as P16). The interviews for the above posts were held on 14.06.2018 and the Petitioner faced the interview for the applied post i.e., Assistant Director (Personal) on the said date. The Petitioner further states that all the applicants were interviewed on the same day by the interview panel consisting of the 8th to 11th Respondents.

The Petitioner states that the interview panel went through her personal file and the certificates at the said interview. She also states that prior to the interview, the applicants were not informed any appropriate marking criteria.

The Petitioner states that although the interviews were held on 14.06.2018, no appointments were made for a considerable period of time. The Petitioner further states that, however, there were rumours that the 12th Respondent has been selected for the post of Assistant Director (Personal). In the circumstances, the Petitioner submitted a request dated 07.08.2018 under the Right to Information Act, No. 12 of 2016, requesting for the marks sheets of the interview held on 14.06.2018 (vide documents marked P17 and P18). Thereafter, in response to the said request, she was furnished with the composite marks sheet of the interviews for the above said posts held on 14.06.2018 (vide documents marked P19 and P20).

Refer to the marking sheet P20 (vide page 2), the Petitioner, states that the interview panel had made a note stating that they take responsibility only for the marks but not to the procedure as there is no approved Scheme of Recruitment. Therefore, the Petitioner takes up the position that when the interviews were held for said posts, even

the interview panel has not been aware of the approved Scheme of Recruitment. The Petitioner further states that on the face of the said marking sheets, it is evident that there are anomalies and irregularities regarding the marks given at the interview.

It was the contention of the Petitioner, that the 14th Respondent, Department of Management Services has issued the Management Services Circular No. 03/2018 dated 18.07.2018 [vide documents marked P21 and P21(a)], which specified that the public sector institutions should refrain from recruiting employees without obtaining prior approval of the Department of Management Services. The Petitioner further states that on 07.02.2019, she a clarification under the Right to Information Act to the Department of Management Services whether there is an approved Scheme of Recruitment. Accordingly, by a letter dated 14.02.2019 (marked P23), the Petitioner was informed by the Department of Management Services that the SLBC has not obtained approval of the Department for a Scheme of Recruitment.

The Petitioner states that surprisingly on or about 26.01.2019, she became aware that the 12th Respondent had been appointed to the said post i.e., Assistant Director (Personal) on permanent basis by the 1st Respondent, by its Board Decision No. 12.24 dated 14.12.2018 (vide document marked R13).

The Petitioner states that in the totality of the aforesaid circumstances, the appointment of the 12th Respondent as the Assistant Director (Personal) of the 1st Respondent, SLBC is *ultra vires* and illegal, *inter alia*, for the following reasons:

- a) applications have been called by the notice P15 issued by the 1st Respondent without an approved Scheme of Recruitment.

- b) The evaluation of the qualifications of the Petitioner and other applicants by the 8th to 11th Respondents is irrational and unreasonable.
- c) In view of the letter P23, the Department of Management Services has not approved Scheme of Recruitment of the SLBC.
- d) The entire selection process is a sham and has been for the ulterior purpose of appointing the 12th Respondent for the post of Assistant Director (Personal).
- e) The powers of the 1st Respondent to make appointments to its staff are conferred under section 19(4) of the Sri Lanka Broadcasting Corporation Act, No. 37 of 1966 and in the aforesaid circumstances the appointment of the 12th Respondent amounts to an abuse of statutory power.

(Vide para 29-30 of the petition)

The 1st, 2A, 3rd, 4A, 5A, 6A, 7A, 9th, 11th, and 12th Respondents in their statements of objection dated 30.08.2019 submitted that, initially, in the year of 2013, the Department of Management Services approved the cadre of 19 Assistant Directors [including the two post of Assistant Director (Personal) and Assistant Director (Establishment)] in the 1st Respondent Corporation. However, in 2018, as the above two posts fell vacant, there was an urgency to fill the said vacancies to avoid financial loss and Administrative breakdown in the Corporation. Thereby, on 14.02.2018, the Board Members of the 1st Respondent by R13, decided to recruit an Assistant Director (Personal) and an Assistant Director (Establishment) immediately to fill the said vacancies following the existing Scheme of Recruitment of the 1st Respondent. Accordingly, the 3rd Respondent issued a staff notice on 10.04.2018 calling for applications for the above posts.

The 1st, 2A, 3rd, 4A, 5A, 6A, 7A, 9th, 11th, and 12th Respondents further submitted that at the interview, the 12th Respondent scored the highest marks of 56 for the post of Assistant Director (Personal) whereas the Petitioner only scored 35 marks (vide P19). Accordingly, the Board decided to appoint the candidate who scored the highest marks i.e., the 12th Respondent to cover up duties of the said post by letter dated 13.08.2018. It is to be noted that thereafter, on 27.08.2018 the 1st Respondent SLBC obtained an approval from the Department of Management Services to the said vacancy [vide documents marked R8 and R15(h)] and accordingly, the 12th Respondent was made permanent to the post of Assistant Director (Personal) as per the Board Decision dated 14.12.2018.

The 1st, 2A, 3rd, 4A, 5A, 6A, 7A, 9th, 11th, and 12th Respondents, by appending documents marked R16-R20, further submitted that the reasons for the delay in obtaining an approved Scheme of Recruitment is due to the continues change of the cadre that occurred mainly due to the Trade Union disagreements and protest. Therefore, the Respondents argued that the non-availability of an approved Scheme of Recruitment does not make the recruitment of the 12th Respondent illegal to the said post on the basis of *Equity*.

This Court is mindful of the fact that, preparing a Scheme of Recruitment is an important segment in the process of recruiting public servants under Chapter II of the Establishments Code. Our Courts have consistently recognized that the provisions of the Establishments Code should be complied with and given effect to. That approach stems from early decisions such as ***Perera v. Jayawickreme [1985] 1 Sri LR 285***, where Wanasundera, J. at page 328 described the Establishments Code as the *basic enactment* governing the matters set out therein and as an authoritative enactment issued by the Cabinet of Ministers which has been designed to apply to all classes and categories of public officers falling under Article 55 of the Constitution.

As precisely observed by Amerasinghe, J. in ***Pereira and 9 Others v. Monetary Board of the Central Bank of Sri Lanka and 22 Others [1994] 1 Sri LR 152***, ‘a Scheme of Recruitment should be prepared in order to recruit persons replete with most appropriate knowledge, skills and attitudes to the respective positions in a transparent manner with a view to efficiently maintaining the public service with high productivity providing equal opportunities to all those who fulfill required qualifications. The announcement of the way in which the eventual selection will be made will serve as an assurance that the selection process is not a false, outward show, but an honest attempt to select the best person for the post, for those who wish to apply might be reasonably expected to do so only if they feel confident that there is a genuine search for the fittest person and not a masquerade resulting in a waste of time and effort’.

In the case in hand, the main contention of the learned Counsel for the Petitioner is to the effect, that the appointment of the 12th Respondent as the Assistant Director (Personal) of the 1st Respondent, SLBC is *ultra vires* and illegal for the reason that applications have been called by the notice P15 without an approved Scheme of Recruitment. This position is not disputed by the Respondents. However, the learned Counsel for the Respondents argued that at the interview, the 12th Respondent scored the highest marks of 56 for the post of Assistant Director (Personal) whereas the Petitioner only scored 35 marks. Accordingly, the SLBC Board decided to appoint the 12th Respondent who scored the highest marks to cover up the duties of the said post by letter dated 13.08.2018. Thereafter, on 27.08.2018, the 1st Respondent SLBC obtained an approval from the Department of Management Services to the said vacancy and accordingly, the 12th Respondent was made permanent to the post of Assistant Director (Personal) as per the Board Decision dated 14.12.2018. The learned Counsel for the Respondents submitted that the reasons for the delay in obtaining an approved Scheme of Recruitment, is due to the

continues change of the cadre that occurred mainly due to the Trade Union disagreements and protest. Therefore, the learned Counsel took up the position that the non-availability of an approved Scheme of Recruitment does not make the recruitment of the 12th Respondent illegal to the said post on the basis of *equity*.

To my mind, the reasons alluded by the Respondents are satisfactory.

Professor Wade in his monumental work – ***Administrative Law (Tenth Edition)***, at page 352, emphasizes that, “...*the courts constantly accuse them of bad faith merely because they have acted unreasonably or on improper grounds. Again and again it is laid down that powers must be exercised reasonably and in good faith. But in this context ‘in good faith’ means merely ‘for legitimate reasons’. Contrary to the natural sense of the words, they impute no moral obliquity*”.

In ***Roberts v. Hopwood [1925] AC 578*** Lord Wrenbury, at page 613 observed that,

A person in whom is vested a discretion must exercise his discretion upon reasonable grounds. A discretion does not empower a man to do what he likes merely because he is minded to do so – he must in the exercise of his discretion do not what he likes but what he ought. In other words, he must, by use of his reason, ascertain and follow the course which reason directs. He must act reasonably.

Further, in my view, the decisions of the 1st Respondent’s Board to appoint the 12th Respondent (the candidate who scored the highest marks) to cover up duties of the said post and the subsequent approval from the Department of Management Services are satisfy the proportionality standard.

The principle of proportionality envisages that public authorities ought to maintain a sense of *proportion* between their particular goals and

the means they employ to achieve those goals, so that his action impinges on the individual rights to the minimum extent to preserve the public interest [vide **Council of Civil Services Unions v. Minister for the Civil Services [1984] UKHL 9** - *per* Lord Diplock]. By “proportionality”, we also mean the question whether, while regulating exercise of individual’s rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case maybe. Under this principle, the court will see that the legislature or the administrative authority “*maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve*”. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court [vide **Om Kumar v. Union of India (2001) 2 SCC 386, at para 28**].

Therefore, in the facts and circumstances of this case, I cannot bring myself to conclude that the decision of the 1st Respondent to recruit the 12th Respondent to the said post is patently unreasonable or perverse.

The Petitioner principally, sought to quash the appointment of the 12th Respondent as the Assistant Director (Personal) of the 1st Respondent. The Petitioner also sought writs of *mandamus* directing the 1st to 7th Respondents to formulate and obtain the approval of the 14th Respondent for the Scheme of Recruitment, relevant for the post of Assistant Director (Personal) and directing the 1st to 7th Respondents to advertise and call for applications for the post of Assistant Director (Personal), afresh, in accordance with a Scheme of Recruitment approved by the 14th Respondent. In my view, if the instant application is allowed, a serious injustice would be caused to the 12th Respondent

who has had a legitimate expectation to be appointed to the said post of Assistant Director (Personal) upon receiving the highest marks at the interview. The Court will have regard to the special circumstances of the case before it, prior to issue a writ of *certiorari*. A writ of *certiorari* clearly will not issue where the result will be futility, frustration, injustice, and illegality (vide ***Siddeek v. Jacolyn Seneviratne and 3 Others [1984] 2 Sri LR 83***).

Let me add one thing. Judicial review of administrative actions is the most potent weapon in the hands of the judiciary for the maintenance of the Rule of Law. The key, in the context of administrative law, lies in the exercise of an *appropriate degree of restraint* by the courts in the intensity of their scrutiny of the decision in question. In some instances, the supervisory intervention of this Court may create unnecessary dire consequences or administrative inconveniences. The rules and procedures under which the courts perform this supervisory function should not interfere with good administration to any greater extent than is necessary.

Hence, I must state that prerogative writs will not be issued as a matter of routine, as a matter of course or as a matter of right. It is purely a discretionary remedy to be granted or denied in the unique facts and circumstances of each individual case (vide ***P. S. Bus Co., Ltd. v. Members and Secretary of Ceylon Transport Board [1958] 61 NLR 491***). Even if the party applying the writ is entitled to that relief, still it can be denied if the other factors stand against granting of that relief. Other factors will include matters of common benefit as opposed to individual benefit. Vide ***Jayaweera v. Assistant Commissioner of Agrarian Services, Ratnapura [1996] 2 Sri LR 70***; ***Siddeek v. Jacolyn Seneviratne (supra)***; ***Selvamani v. Dr. Kumaravelupillai [2005] 2 Sri LR 99*** and ***Edirisooriya v. National Salaries and Carde Commission [2011] 2 Sri LR 221***.

For the aforesaid reasons, I proceed to dismiss this application.

Accordingly, this application is dismissed without costs.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

S. U. B. KARALLIYADDE, J.

I agree.

JUDGE OF THE COURT OF APPEAL