

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

In the matter of an application in terms of Article 140 of the Constitution for mandates in the nature of Writs of Certiorari and Mandamus

CA/Writ/88/2021

1. W.V. Karunaratna
No.90, Elkaduwa Road,
Ukuwela.
2. B.G. Ranawaka
23A, Kadnumulla,
Ambagaspitiya.
3. P.R.H. Ariyaratna
418 B1,
Minnana,
Getaheththa.
4. J.M. Meththananda Gamini
112/4, Ihalagama Road,
Weweldeniya.
5. A.M.J.G. Alahakoon
'Chandragiri', Badulupitiya,
Makehelwala.
6. C. Pasquel
32, Dilanka,
Maddegoda Road,
Matugama.

7. R.M.U.B. Rathnayake
22/8, Udaperadeniya,
Peradeniya.
8. J.L. Wasantha
“Nishani”,
Pahalagedara,
Elgiriya,
Telijjawila.
9. M. Ranjith
No.65, Pushparama Road,
Pothupitiya,
Wadduwa.
- 10.N.C. Palihawadana
No.40, Poramba Lane, Poramba,
Akuressa.
- 11.Sunanda Rajapaksha
‘Chandana’ Diyagaha,
Nawimana,
Matara.
- 12.K.A.G. Sirisena
Ihala Parussella,
Yatyanthota.
- 13.M.G.P.L.W. Fernando
50, Mahasen Mawatha,
Pallapitiya, Kuliypitiya.
- 14.N.M.A. Senarath Bandara
54, Urapola,
Pilimathalawa.

- 15.A.M.G.T. Bandara
104, Kurunegala Road,
Bingiriya.
- 16.A.W.C. Ranaweera
567, "Weeragiri", Nakanda,
Ahangama.
- 17.R.A. Sarath Kumara
54/C, Balabowa,
Dewalapola.
- 18.P.V.M. Rajakaruna
Wathurawila,
Kahaduwa.
- 19.J.A.A.D. Jayakody
181/1, Boding Watta,
Keselwathugoda,
Yakkala.
- 20.R.A.L. Wijesinghe
No.73,
Medagampitiya,
Diulapitiya.
- 21.G.H.H.B. Wijayawardana
13/5, Egodawaththa Road,
Thawalankoya,
Ukuwela.
- 22.W.K. Jinadasa
715/M, Mountain Hall watta,
Ambalanwaththa,
Galle.

- 23.E. Lakshman Rathnasiri
33, Walaliyadda,
Ellakkala.
- 24.M.A. Kasunthilaka
185/2, Marshal Waththa,
Nagoda,
Kaluthara South.
- 25.G.K.M. Jayawardana
Horahena Road,
Kamburawala,
Baduraliya.
- 26.H.K. Jayathissa
221/A, Gurupura Road,
Matugama.
- 27.N.W.V. Gamini
Kuroligewaththa,
Baddegama South,
Baddegama.
- 28.W.S. Sumathipala
37/D/1, Karasnagala,
Alawala.
- 29.U.M.T. Udugoda
339/3, Nikatenna,
Katugastota.
- 30.H.R.A.A.J. Bandara
55/6/1 "Dipani" Pirisyala,
Ambepussa.

31.R.I. Kumarasinghe
57C, Nawagamuwa,
Nittambuwa.

32.H.Wickramapala
31/F26, Thekkawaththa, Kekunudora,
Matara.

33.L.D. Withanaachchi
Opposite Timber Corporation,
Nelumdeniya.

34.S. Subhawickrama
Lankarangedara,
Bogamulla.

35.H.M.P.A.B. Herath
14/1, Kuruwwkotuwa,
Kengalla.

PETITIONERS

-Vs-

1. Justice N.E. Dissanayake
Chairman,
Administrative Appeals Tribunal.
2. A. Gnandasan, PC.
Member,
Administrative Appeals Tribunal.

3. G.P. Abeykeerthi
Member,
Administrative Appeals Tribunal.
All of No.35, Silva Lane,
Dharmapala Place,
Rajagiriya.
4. Hon. Justice Jagath Balapatabendi
Chairman,
Public Service Commission.
5. Indrani Sugathadasa
Member, Public Service Commission.
6. V. Shivagnansothy
Member, Public Service Commission.
7. Dr. T.R.C. Ruberu
Member, Public Service Commission.
8. Ahamod Lebbe Mohamed Saleem
Member, Public Service Commission.
9. Leelasena Liyanagma
Member, Public Service Commission.
10. Dian Gomes
Member, Public Service Commission.
11. Dilith Jayaweera
Member, Public Service Commission.
12. W.H. Piyadasa
Member, Public Service Commission.

13.M.A.B. Daya Senarath
Secretary, Public Service Commission.
All of 1200/9, Rajamalwatta Road,
Battaramulla 10120.

14.J.M. Mangalathissa
Director General,
Rubber Development Department,
465, Ganahena,
Battaramulla.

RESPONDENTS

Before : Sobhitha Rajakaruna, J.
Dhammika Ganepola, J.

Counsel : Chamantha Weerakoon Unamboowe
With Teesha Nanayakkara and O.L. Premaratne for
the 1st to 35th Petitioners.
Chaya Sri Nammuni, DSG for Respondents.

Argued On : 05.04.2022

**Written Submissions
Tendered On** : Petitioners 17.05.2022
: 4th to 14th Respondents 24.05.2022

Decided on : 17.06.2022

Dhammika Ganepola, J.

The Petitioners were employed as Rubber Development Officers Grade-II of the Rubber Development Department. In 2013 applications were called to fill vacancies for the post of Rubber Development Officer Grade - I. By the letter dated 24th December 2013 (P3), all Rubber Development Officers Grade - II including the Petitioners who were eligible to be promoted to the post of Rubber Development Officer Grade - I were so promoted with effect from 02.08.2013. Since the said promoted Rubber Development Officers had varying service periods in Grade- II, ranging from 17 years to 29 years, the Petitioners have requested the Public Service Commission to back date the said promotions to the date on which each of them became eligible for such promotions. The said request was refused by the Public Service Commission. Thus, the Petitioners together with some other Rubber Development Officers who were so promoted with effect from 02.08.2012 filed a Fundamental Right Application bearing No. SC/FR/32/2014 before the Supreme Court against said decision of the Public Service Commission. The Supreme Court by its judgment dated 16.06.2017 (marked X4) has directed the Public Service Commission to backdate the promotions of the Petitioners and the other effected officers to the date on which each of such officer became eligible to be promoted to the post of Rubber Development Officer Grade- I. Even though the promotions of the Petitioners to Grade- I were duly backdated consequently, the Petitioners have not been paid the arrears of salary with effect from the date on which their promotions took effect. In fact, the Public Service Commission has issued its direction requiring the Petitioners and the other effected officers be paid the arrears of their salary that they were entitled from the date of the Judgment of the Supreme Court. The said decision of the Public Service Commission had been challenged before the Administrative Appeals Tribunal and the Administrative Appeals Tribunal has dismissed the said Appeal by its decision dated 30.07.2020. The Petitioners state that the said decision of the Administrative Appeals Tribunal to dismiss the Appeal of the Petitioners is unreasonable, arbitrary, patently erroneous and *ultra-virus*. In the foregoing circumstances, the Petitioners seek intervention of this Court by way of a Writ of Certiorari to quash the order of the Administrative Appeals Tribunal dated 30.07.2020 and Writ of

Mandamus directing the 14th Respondent to pay the Petitioners the arrears of their salaries due to them as Grade- I Rubber Development Officers from the effective dates of their promotions to Grade- I.

The Respondents contention is that the 79 officers including the Petitioners were promoted to the post of Grade - I with effect from the date, each of them became eligible to be promoted to the said post and the Judgement delivered by the Supreme Court did not make any order directing the Respondents to pay the Petitioners any arrears of their salaries. The Respondents further claim that the Petitioners have not prayed for any relief in respect of the payment of arrears of their salaries in the Fundamental Rights Application filed before the Supreme Court. Hence, the Respondents claim that the Ministry of Plantations sought advice from the Public Service Commission in respect of the payment of the said arrears of salaries to the Petitioners and that accordingly, the Public Service Commission advised the Ministry of Plantations to pay arrears of salaries to the Petitioners with effect from the date of the judgement of the Supreme Court in the said Fundamental Rights Application. The Administrative Appeals Tribunal by its decision dated 30.07.2020, has dismissed the Appeal filed by the Petitioners against the said decision of the Public Service Commission. In arriving at the said decision, the Administrative Appeals Tribunal has taken into consideration *inter alia* the fact that the officers who did not have the opportunity to sit for the Efficiency Bar Examination due to non-holding of the said examination would be prejudiced if the concerned officers are awarded arrears of their salaries.

When this matter was taken up for the argument both parties made oral submissions and written submissions were also filed by both parties.

In the said Supreme Court Case of No.SC/FR 32/2014, the Supreme Court has delivered its judgement directing the members of the Public Service Commission to backdate the promotions of the Petitioners and other effected officers with effect from the date each of such officer became eligible to be promoted to the post of Rubber Development Officer Grade-I. However, the facts that the Petitioners have not prayed for any relief in respect of the payment of arrears of salaries to the Petitioners and the fact that no order

was made directing the authorities to pay the arrears of salary to the Petitioners in the said Supreme Court case remain undisputed. In accordance with the Judgement of the Supreme Court, the Public Service Commission has backdated the promotions of the Petitioners to the dates each of such officer became eligible to be promoted to the said post. However, the Public Service Commission advised the Director General of the Rubber Development Department that the Petitioners should only be paid their respective arrears of salaries due to them from the date of the said Supreme Court judgement. In arriving at the said decision dated 30.07.2020, unavailability of any order in respect of the payment of arrears in the Supreme Court Judgement has been taken into consideration by the Public Service Commission.

In the Appeal consequently filed by the Petitioners against the decision of the Public Service Commission, the Administrative Appeals Tribunal has observed as follows,

- a) *That in the application of the appellants made in the SC/FR 32/2014 the appellants have prayed antedating of their appointments. However, the payment of arrears of salary from the date of appointment had not been included as a plea in the petitions and affidavit of the appellants.*
- b) *By way of order in SC/FR 32/2014, the Supreme Court despite making an order of backdating the appointments of the petitioner to the date they had qualified for promotion to Grade-1, however in the said order payment of arrears of salaries had not been included; and*
- c) *Further it has to be borne in mind that the Efficiency Bar Examination required for promotions to Grade-1 had not been held after 2001, up to the time they said application was filed by the petitioners in Supreme Court had been filed in 2014. As a result of the said matter the said other officers of the Rubber Development Department who were required to complete the examinations for promotions to Class 1 of the Rubber Development Service did not have an opportunity to qualify themselves for promotion to Class 1*

According to the decision of the Administrative Appeals Tribunal marked P5(a), said observations have been based on the oral and the written submissions submitted by the parties, observations of the Public Service Commission, the relevant provisions of the two Schemes of Recruitments in respect of the said post, the relevant provisions in the documents relating to

the restructuring of the Rubber Control Department and the Advisory Services Department of the Rubber Research Board.

Finally, the Administrative Appeals Tribunal has concluded that the decision taken by the Public Service Commission to pay arrears of salaries due to Petitioners only from the date of the Supreme Court Judgement (Judgement dated 16.06.2017) is reasonable, despite the fact that their appointment had been backdated to 03.06.2006. It is clear that the issue before the Administrative Appeals Tribunal was whether the Petitioners were entitled to be paid their salaries from the effective date of their promotion to Grade-1. It has to be borne in mind that the Supreme Court judgement is silent on the issue of payment of arrears of salaries to the Petitioners. It is also observed that there had been no prayer to the effect of payment of arrears of salary in the Petition of the Petitioners to the Supreme Court. Based on the circumstances of this case, although there is no specific prayer for the arrears of salaries it is understood that arrears of salaries should be calculated from the date of the promotions in light of the provisions of the Establishment Code.

I am of the view that it was not rational on the part of the Administrative Appeals Tribunal to assume that the Supreme Court only intended to allow the payment of arrears of salaries of the Petitioners from the date of the Supreme Court judgement, merely because there was no specific direction regarding the payment of arrears of salaries. In such a circumstance, the applicable laws and regulations should have been considered in arriving at a decision in respect of the issue at hand. In a situation as such the provisions under Section 5:1 of Chapter VII of the Establishment Code should be made use of. Said Section 5:1 of Chapter VII of the Establishment Code is as follows:

“5:1 An officer will receive the salary of the post to which he is promoted from the effective date of his promotion as defined in sections 1:9 to 1:14 of Chapter II.”

Accordingly, it appears that a public officer is entitled to receive his/her salary for the post to which he/she is promoted from the effective date of his/her promotion.

In the case of ***Abeywickrama V. Pathirana [1986] 1 SLR 120*** the Supreme Court held that the Establishment Code has been issued under the authority and

with the approval of the Cabinet of Ministers in the exercise of the legislative power vested in the Cabinet of Ministers under Article 55(4) of the Constitution and that therefore, by virtue of its constitutional origin, it acquires statutory force. A similar view has been taken by the Supreme Court in the case of *The Public Services United Nurses Union V. Montague Jayawickrama, Minister of Public Administration and Others [1988]1 SLR 229*, that the Establishment Code has been issued by Government in the exercise of the legislative power vested in the Cabinet of Ministers under article 55(4) and has statutory force. Accordingly, it is apparent that the provisions under the Establishment Code have statutory force. Hence, the Administrative Appeals Tribunal was required under the law to comply with the Section 5:1 of Chapter VII of the Establishment Code unless otherwise sanctioned by law, in deciding on the date from which the Petitioners were entitled for their salary for the promoted post.

However, the Administrative Appeals Tribunal has failed to take into consideration and/or has overlooked the said provision under the Establishment Code in deciding the issue in subject. Neither has the Administrative Appeals Tribunal has provided reasons for its deviation from the application of Section 5:1 of Chapter VII of the Establishment Code. Since, the Administrative Appeals Tribunal was required by law to adopt the provisions under Section 5:1 of Chapter VII of the Establishment Code, the Tribunal had a legal duty to justify its decision to deviate from the application of the said provision to the given scenario. If a public authority who is under a statutory duty to follow a certain procedure, fails to take into account the relevant considerations in fettering its discretion by adopting a rigid policy will amount to illegality. In the case of *Girling V. Secretary Of State for the Home Development [2006] EWCA Civ 1779* it has been held that the decision maker must take the obligatory relevant considerations into account and if he fails to do so the judicial review court will set him right. But the weight to be attached to any consideration is a matter for the decision maker.

In view of the cases cited above and the said Section 5:1 of Chapter VII of the Establishment Code, the Petitioners are entitled for the payment of arrears of their salaries from the effective date of the promotion of each of officers. The issue as to the effective date of the Petitioners' promotions is matter which

has already been decided by the Supreme Court in the said Fundamental Rights Application as that the effective date of the promotion of the Petitioners is the date each of them became eligible to be promoted to the post of Rubber Development Officer Grade- 1. Accordingly, Petitioners are entitled to payment of arrears of their salaries from the date each of them became eligible to be promoted to the post of Rubber Development Officer Grade- 1.

The Administrative Appeals Tribunal has made a remark in its decision as, if officers who had completed all requirements before 2001 are paid arrears of their salaries from the date of promotions to Class I of Rubber Development Officers Services, the officers who lost their opportunity to be promoted due to the fact that the relevant efficiency bar examination was not held by the authorities, shall be prejudiced by the decision to pay arrears. I am of the view that it is a matter pertaining to the entitlement of the promotion of the officers who did not have the opportunity to sit for the examination and not a matter relating to the issue that was before the Administrative Appeals Tribunal. However, it is further observed that the said observation of the Administrative Appeals Tribunal was not based on any solid reasons or facts placed before them.

The Petitioners entitlement to the promotion was a fact that has been already decided by the Supreme Court in its decision in Case No. SC/FR 32/2014. The issue before the Administrative Appeals Tribunal was whether the Appellants who were promoted to Grade -1 were entitled to be paid their Grade -1 salary from the dates of their respective promotions. I am of the view that in concluding the matter, the Administrative Appeals Tribunal was not required to consider any alleged prejudice that may be caused to officers who did not have an opportunity to sit for the Efficiency Bar Examination and get duly promoted.

In addition, the Administrative Appeals Tribunal has observed that the Efficiency Bar Examination required for promotions to Grade-1 had not been held since 2001 up to the time Petitioners filed the said application before Supreme Court in 2014. Failure to hold the efficiency bar examination is a fault of the relevant authorities and is beyond the control of the Petitioners. The Petitioners should not be penalised for the fault of the authorities. As his

Lordship Hon Justice Aluwihare observed in the said case of SC/FR/32/2014, an employee cannot be penalized or deprived of his entitlement as a result of ineffectiveness or inability on the part of the authorities. I am of the agreement with the submission made by the Counsel for the Petitioners that the Administrative Appeals Tribunal has no authority to inquire in to said substance by engaging in a voyage of discovery on its own. In the above circumstances, I am of the view that the Administrative Appeals Tribunal has taken into consideration irrelevant considerations in arriving at the impugned decision.

The principles referred to by Basnayake, C.J. in the case of ***Ladamuttu Pillai v. The Attorney-General (1957) 59 N.L.R. 313*** had been conveniently summarized in the case of ***Sirisena and Others V. Honorable H. S. R. B. Kobbekaduwa, Minister Of Agriculture And Lands 80 NLR 1*** as follows,

" That authority must genuinely address itself to the matter before it; must not act under the dictation of another body disable itself from exercising a discretion it must not or do what it has been forbidden to do, nor must it do what it has not been unauthorized to do. It must act in good faith, must have regard to all relevant considerations and must disregard all irrelevant considerations, must not seek to promote purposes alien to the letter or spirit of the legislation that gives it power to act and must not act arbitrarily or capriciously."

In the Sirisena And Others V. Honorable H. S. R. B. Kobbekaduwa, Minister Of Agriculture And Lands (supra) with reference to the Halsbury 4th edition Vol. I paras 60, 62, 66 it was observed that,

" If the repository of a power exceeds its authority or if a power is exercised without authority, such purported exercise of power may be pronounced invalid. The lawful exercise of a statutory power presupposes not only compliance with the substantive, formal and procedural conditions laid down for its performance but also with the implied requirements governing the exercise of that discretion. All statutory powers must be exercised (i) in good faith (ii) for the purposes for which they are given and not for an extraneous purpose (iii) with due regard to relevant considerations and without being influenced by

irrelevant considerations and (iv) fairly and in some contexts reasonably.”

The Petitioners will become entitled for the reliefs prayed for in the prayer of the Petition due to the failure of the Administrative Appeals Tribunal to take into account relevant considerations and the Administrative Appeals Tribunal taking into account irrelevant consideration in arriving at the impugned decision. In the case of ***Laksith And Another V. Chairman, School Committee, Dharmasoka Vidyalaya, Ambalangoda and Others (2009) 2 SLR 267*** it has been held that:

“no administrative body can take into account irrelevant circumstances and extraneous matters into account. If it does so writ of certiorari would lie.”

In light of the above reasons, I issue Writs of Certiorari and Mandamus as prayed for in the prayer of the Petition of the Petitioner. I order no cost.

Judge of the Court of Appeal

Sobhitha Rajakaruna J

I agree

Judge of the Court of Appeal