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 of the Democratic Socialist Republic of Sri Lanka for a Mandate in the nature of a Writ of *Certiorari*.

Court of Appeal Case No.

CA/WRT/124/2020

1. Rajakaruna Mohottige Abeyratne,
   68A, Bodhi Mawatha,
   Balikawa Road,
   Kosgama South,
   Kosgama.

2. Nalin Anupriya Samarawickrama,
   180/2A, 2nd Lane
   Egodawatte,
   Boralesgamuwa.

3. Naanami Aarachchilage Prasad Anuradha,
   Kumbalaluwagama,
   Pudaluoya.

4. Udumullage Susila Priyangani,
   "Susil", Yalagala,
   Halthota.

5. Ranpatabendi Mudiyanselage
   Wickramaratne,
   417/5/1, Elapahala Road,
   Pelanwatte,
   Pannipitiya.

6. Balasuriya Appuhamilage Menaka
   Nishantha Balasuriya,
   184/137, Nisala Rajadahana,
   Wilimbula,
   Henegama.

Petitioners

Vs.

1. The National Youth Services Council,

No. 56, Highlevel Road,
Maharagama.

2. Director-General of Youth Services

3. Director-Administration

2nd and 3rd Respondents, both of
The National Youth Services Council,
No. 56, Highlevel Road,

4. K. G. Asiri Upasena.

5. D. M. Mahinda Dissanayake,

6. Nirmalie Wathsala De Silva,

7. K. A. Nimal Padmasiri,

8. P. A. Upul Bandulasinghe,

9. Mahesh Tilakaratne,

10. P. A. C. Priyal,

11. Z. A. Hilurdeen,

12. E. Dayaratne,

13. M. A. Jayathilaka,

14. N. Kugendra,

15. Anusha Indrani,

16. K. Saroja,

17. Nirmala Dhanushka Gamage,

18. K. M. Premasiri,

19. Rajeev Thushitha Kumara De Silva,

20. Samantha Arangalle,

21. Mala Damayanthi Withana,

22. K. Gnanasekaram,

23. Siril Wijesiri,

24. Lal Premasiri,

25. Neelnanda A. Perera,

26. A. G. Wasantha Premalalani,

27. Rohini Hemamala,

28. I. V. Anil Dhammika,

29. Nirosha Malkanthi,

30. Bulugammadalige Ranil,

31. K. C. C. Gamini,

32. Kapila Gunasekara,

33. Pushpa,

34. Priyankara,

4th to 34th Respondents, all of, Senior Youth Services Officer (District),
The National Youth Services Council,
No. 56, Highlevel Road,
Maharagama.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

S. U. B. Karalliyadde, J.

Counsel: Sanjeewa Ranaweera for the Petitioners.

Supported on: 30-03-2022

Decided on: 28-07-2022

MOHAMMED LAFFAR, J.

The Petitioners are seeking a mandate in the nature of a Writ of Certiorari to quash the decision of the 1st, 2nd and 3rd Respondents, promoting the 4th to 34th Respondents to the post of 'Senior Youth Services Officer'. We heard the learned Counsel for the Petitioners in support of this application.

The Petitioners and 4th to 34th Respondents are employees of the 1st Respondent, National Youth Services Council. The 2nd Respondent is the Director and the 3rd Respondent is the Director-Administration of the 1st Respondent Council. On 11-10-2016, the 2nd Respondent called for applications for the post of 'Senior Youth Services Officer' (P4). The Petitioners and 4th to 34th Respondents applied for the said posts and thereafter, duly attended the interviews as well. Thereupon, on 20-08-2018, only the 4th to 34th Respondents were promoted to the post of 'Senior Youth Services Officer'.

The learned Counsel for the Petitioners contents that, at the interview, marks should be given in terms of the scheme of recruitment marked P6, which reads thus;

Relevant additional experience.....30 marks.

Relevant additional qualifications.....30 marks.

Additional skills and performance.....30 marks.

Skills demonstrated at the interview.....30 marks.

The learned Counsel for the Petitioners alleges that the 2nd and 3rd Respondents, only for the purpose of promoting the 4th to 34th Respondents, had introduced new educational and other qualifications for the criteria of the selection for the promotion to the said posts, which is illegal, *ultra-vires* and contrary to the scheme of recruitment marked P6.

At first, it appears to this Court that there is a delay and laches on the part of the Petitioners in invoking the Writ jurisdiction of this Court. A Writ of Certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. Even if the Petitioners are entitled to relief, still the Court has the discretion to deny them relief having regard to their conduct: delay, laches, waiver, and submission to jurisdiction are all valid impediments that stand against the grant of relief. The Apex Court of India in **K.V. Raja Lakshmiah v. State of Mysore (AIR 1967 SC. 973),** held that,

"The High Court in the exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic and that the Court may decline to intervene and grant relief in exercise of its writ jurisdiction because it is likely to cause confusion and public inconvenience and bring, in its train new injustices. The Court observed that if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties."

In the case of **State of U.P. vs. Raj Bahadur Singh & another (1998) 8 SCC 685**, the Apex Court of India observed that:

"There is no time limit for filing the writ petition. All that the Court has to see is whether the laches on the part of the petitioner are such as to disentitle him to the relief claimed by him"

The Court of Appeal in **Sivapalanathan Vs. Raj Gopal (2005)-1SLR-p67**, observed that;

"The grievance of the petitioners arose in November 1994, when the arrears of the enhanced cost of living allowance was paid to the employees in service at that time. The petitioners should have sought a writ of mandamus in 1994 and not in 2003. It is settled law that inordinate delay in invoking the jurisdiction of the Court does not entitle the petitioners to any relief under writ jurisdiction."

In the instant application, as per the averments in paragraph 12 of the amended Petition, the 4th to 34th Respondents were promoted to the said posts on 20-08-2018 and the Petitioners have invoked the Writ jurisdiction of this Court on 18-06-2020, nearly after one year and eight months. The delay is not explained to the satisfaction of this Court.

In these circumstances, this Court is mindful of the fact that, if the promotions are quashed, as observed in **Raj Bahadur Singh case** (Supra), hardship, inconvenience and injustice will cause to the 4th to 34 Respondents.

It is pertinent to be noted that, in P6, though 30 marks are given for the additional qualifications, it is not explained what the additional qualifications are. As such, the required additional qualifications are properly elaborated subsequently in P7a, which reads thus;

1. මානව සම්පත් සංවර්ධනය, තරුණ වැඩසටහන් සංවර්ධනයට, භාෂා සඳහා අදාළ ක්ෂේත්‍රයන්හි පිළිගත් ආයතනයකින් ලබා ගත් සුදුසුකම්. (උපරිම ලකුණු 30)

2. ශ්‍රාස්ත්‍රපති උපාධිය සඳහා (ලකුණු 08)

3. ඩිප්ලෝමාව සඳහා (ලකුණු 06)

4. සහතික පාඨමාලා සඳහා (ලකුණු 04)

5. පරිගණක ක්ෂේත්‍රයන්හි ලබා ඇති සුදුසුකම් (උපරිම ලකුණු 10)

6. වසර 01 හෝ ඊට වැඩි (ලකුණු 10)

7. මාස 06 ට (ලකුණු 05)

8. මාස 03 ට (ලකුණු 03)

(උපරිම ලකුණු 30)

Similarly, relevant additional experience and relevant additional skills and performance that appears in P6 have been elaborated in P7a. Thus, the allegation of the Petitioners stating that the scheme of recruitment marked P6 has subsequently been changed by the 2nd and 3rd Respondents is devoid of merits.

Moreover, it is the view of this Court that the elaboration given by the 2nd and 3rd Respondents that the additional qualifications consist of Decrees, Diplomas and Certificates is reasonable and tenable.

The attention of this Court is drawn to the fact that the Petitioners in this application have no additional qualifications other than the long-term experience that was considered at the interview. Undisputedly, the Petitioners have obtained reasonable marks for their experience.

It is to be noted that the Petitioners are seeking to quash the decision to promote the 4th to 34 Respondents to the post of 'Senior Youth Services Officer', but not seeking a Writ of Mandamus for their promotion. In these circumstances, even if the relief prayed for is granted, the Petitioners will not be benefited. In this regard, I refer to the case of **Pradeshiya Sabava-Hingurangoda Vs. Karunaratne (2006-2SLR-410).**

This is a case where the 1st and 2nd Petitioners - Respondents filed an application for Writs of Certiorari and Mandamus in the High Court pleading the Hingurakgoda Pradeshiya Sabha acted contrary to law in selecting lessees for the shops at Hingurakgoda. The High Court issued a Writ quashing the selections and issued a Writ of Mandamus compelling the Pradeshiya Saba to make the selections according to the tender procedure. The Respondent - Petitioners sought to quash the said orders of the High Court.

The Court of Appeal held that;

> *"The petitioner - respondents admit that they made an application and participated at the interview but were not selected, then the petitioner-respondents having accepted the selection criteria are not entitled to claim that the method of selection is invalid. They cannot challenge the method of selection by way of Writ of Mandamus directing a new method of selection."*

Per Somawansa. J,

> *"the method of selection was published in April 1995, the interviews were held in July 1995, the agreements were signed with the selectees and keys were handed over in August 1995. The application to the High Court was filed in September 1995. Their own conduct would show that they acquiesce in the method of selection.*
>
> *This is not the case where the petitioner-respondents state that they received the highest marks at the interview but were not selected, there is no guarantee that the petitioner-respondents will be selected even on a fresh selection. The petitioner respondents have no status or right to maintain the application for the writ."*

Per Somawansa. J (P/CA),

> *"The High Court judge had erred in going through the correctness of the allegations of the petitioner-respondents and imposing his decision over the decision of the interview Panel without understanding the limited scope of the inquiry in a writ application. One should keep in mind the consequences that would flow if the order of the High court judge is not set aside for the selection list will stand quashed when selected 36 are already carrying on business in shops from August, 1995. They have entered into valid agreements; rents have been paid and the 36 selectees are in occupation of the aforesaid 36 shops. Thus,*

not setting aside the order of the High Court Judge would bring disastrous consequences. A Court before issuing a Writ of Mandamus is entitled to take into consideration the consequences which the issue of the writ will entail."

For the foregoing reasons, I see that there is no basis to issue notices on the Respondents. Thus, I refuse to issue notices to the Respondents and dismiss the application without costs.

JUDGE OF THE COURT OF APPEAL

S. U. B. Karalliyadde, J.

I agree.

JUDGE OF THE COURT OF APPEAL