

**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.*

CA/WRIT/35/2021

Siddadurage Kalyani Silva
No. 130/4, Arunodaya Mawatha,
Kottawa Road, Maviththara,
Piliyandala.

Petitioner

Vs.

1. Sri Jayawardenepura General Hospital
Board
Thalpathpitiya,
Nugegoda.
2. Prof. S. D. Jayaratne
Chairman,
Sri Jayawardenepura General
Hospital,
Thalpathpitiya,
Nugegoda.
3. Dr. Rathnasiri A. Hewage
Director,
Sri Jayawardenepura General

Hospital,
Thalapathpitiya,
Nugegoda.

4. Dr. S. Sridharan
Director General,
Sri Jayawardenepura General
Hospital,
Thalapathpitiya,
Nugegoda.
5. Dr. J. R. C. Jayathilake,
Treasury Representative,
Sri Jayawardenepura General
Hospital,
Thalapathpitiya,
Nugegoda.
6. Janaka Sri Chandraguptha
Health Ministry Representative,
Sri Jayawardenepura General
Hospital,
Thalapathpitiya,
Nugegoda.
7. Dr. V. K. P. Indraratne
Consultant,
Sri Jayawardenepura General
Hospital,
Thalapathpitiya,
Nugegoda.

8. Dr. P. J. Ambawatte
Consultant,
Sri Jayawardenepura General
Hospital,
Thalapathpitiya,
Nugegoda.

9. Madhawa Karunaratne
Consultant,
Sri Jayawardenepura General
Hospital,
Thalapathpitiya,
Nugegoda.

10. Bhashwara Gunarathna

11. Manjula Weerakkody

12. Senaka Rajapakse

Director PGIM

13. Ruwanthika Gunawardhana
Board Secretary cum Legal Officer,
Sri Jayawardenepura General
Hospital,
Thalapathpitiya,
Nugegoda.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Jagath Nanayakkara for the Petitioner.

Manohara Jayasinghe, DSG for the Respondents.

Argued on : 05.05.2021

Written Submissions : Petitioner - 08.06.2022

Respondents - 17.06.2022

Decided on : 10.08.2022

Sobhitha Rajakaruna J.

The Petitioner in this application seeks to challenge;

- a) the decision of the Respondents, dated 31.07.2020, taken at the 441st Board meeting of the Sri Jayawardenepura General Hospital ('SJGH') to suspend the post of 'Staff Assistant';
- b) the decision of the Respondents, dated 27.08.2020, taken at the 442nd Board meeting of the SJGH to revert back the Petitioner to the post of 'Management Assistant' from the post of 'Staff Assistant';
- c) the decision of the Respondents, dated 24.09.2020, taken at the 443rd Board meeting of the SJGH to reduce the salary and/or the salary grade of the Petitioner from MN3 category to MN2 Grade/category.

Further, the Petitioner is seeking for a mandate in the nature of a writ of Mandamus directing the 1st to 13th Respondents to reinstate and/or allow the Petitioner to serve in the post of Staff Assistant with back wages.

The Petitioner was appointed to the post of Clerk Grade III at the SJGH on permanent basis from 23.07.1985. The Petitioner having completed five years of service in the aforementioned post, was promoted to the post of clerical and allied service Grade I on 23.07.2000.

The designation of 'Clerk' was changed as 'Management Assistant' in compliance with the Circular dated 13.05.2003 issued by the then Secretary to the Ministry of Health, Nutrition and Welfare. The Petitioner was thereafter placed at the Health Management Assistant Grade I of the SJGH by letter dated 28.08.2003, marked 'P5', as a consequence to the decision taken by the Board of SJGH on 15.07.2003.

The Chairman of the Board of SJGH by a letter dated 01.11.2012, marked 'P6', informed the Petitioner that the designations of the 'Health Management Assistant' and 'Stenographer' were changed to 'Management Assistant' and further, all the services pertaining to the post of 'Health Management Assistant' were absorbed in to the Government Management Service in alignment with the Extraordinary Gazette Notification No. 1372/23 (dated 26.12.2004).

The Board of SJGH on 21.01.2016, at its 396th meeting (minutes are marked as 'P7'), took a decision regarding the criteria for the creation of the post of Chief Management Assistant as per the guidelines in the Public Administration Circular bearing No. 06/2016. At the said meeting the Board decided to appoint Chief Management Assistants after obtaining the approval from the Department of Management Services and also to advertise the said post internally.

Subsequently, the 3rd Respondent - Director of the SJGH by way of a notice dated 07.07.2017, marked 'P8', has called for applications for the post of 'Staff Assistant' from the internal officers who possessed the required qualifications. The Petitioner applied for the said post as she had fulfilled the requisite qualifications and she was informed by a letter dated 04.09.2017 (marked as 'P13') that the Board of SJGH had decided to appoint her as a Staff Assistant with effect from 01.09.2017. The letter of appointment dated 12.09.2017, marked 'P14', is composed of the terms and conditions of the service.

After completing a period of one year, the Petitioner's appointment to the post of Staff Assistant was confirmed with effect from 01.09.2017 by letter dated 14.09.2018 marked 'P15'.

In a later development, the Board of SJGH took a decision on 31.07.2020 at the 441st Board meeting (minutes are marked as 'P19') to suspend the post of 'Staff Assistant'. Thereafter, at the 442nd meeting held on 27.08.2020 (minutes are marked as 'P20'), the Board has decided to strictly adhere to the decision of the 441st meeting and to revert the 'Staff Assistant' post back to the post of 'Management Assistant'. On 10.09.2020 through letter marked 'P21', the 2nd Respondent has communicated the decision taken at the 442nd meeting to the Petitioner.

As a result, the Board has taken a decision at the 443rd meeting on 24.09.2020 (minutes are marked as 'P23(a)') to change the salary step of the Petitioner from MN 3 category to MN 2 category and such was made aware to the Petitioner by the 2nd Respondent by letter dated 23.10.2020 marked 'P23(b)'. The issues raised by the Petitioner in the instant application emanates from the said decision in 'P23(a)'.

In light of the above, the main grievance of the Petitioner is that the said decision taken by the members of the Board on 24.09.2020 affected the salary drawn by her over a period of two years and as a consequence, she has been placed on a lower salary scale. Petitioner's contention is that such decision of the Board is violative of her legitimate expectation and is baseless/irrational/unreasonable/illegal/ultra vires.

At this stage, it is necessary to ascertain whether adequate reasons have been given by the Board to reduce the salary of the Petitioner and if so, what those reasons are. The only reason which appears in the minutes of the 443rd meeting ('P23(a)') in its particular paragraph under the heading "Reporting irregular appointments at SJGH – vide item 442:02.3" is as follows;

*"The Board decided that when the post is reverted back, **automatically** their salaries need to be placed to the appropriate salary scale of their current post". (Emphasis added)*

Therefore, the reason to place the Petitioner on a lower salary scale appears to be a mere opinion formed by the said Board itself and not based on a reason in compliance of any law or regulation. It is observed that the said Board has not considered any rationale to reduce the salary and instead opined that the salary scales would be automatically reverted due to the changes in the designation. The vires of changing the designation of the Petitioner is also being highly challenged in this application.

Although the Establishment Code is not directly applicable to SJGH, I need to draw my attention to the rationale adopted in its provisions of Chapter VII of the said Code which deals with 'salaries'. The Clause 9:1 of the Establishment Code stipulates that when an officer who had prior service under government whether in a permanent or temporary capacity, secures a fresh appointment under the government, he may be given incremental credit for the prior service as mentioned therein. I am aware that those provisions mainly deal with the increments entitled to an employee but what is necessary to abstract from those provisions is the particular rationale adopted therein. In those provisions, a proper mechanism has been introduced for an employee to secure another position within the government sector without any hinderance to the rights in reference to his or her previous service in the government sector. The usual practice is that if a government servant secures another position within the government sector, subject to necessary sanctions, such person would be placed at the fitting salary step of the new salary scale without discriminating rights of such person.

Anyhow, it doesn't appear that any such effective rationale has been adopted by the Board of SJGH when taking the decision to reduce the salary of the Petitioner or change her salary scale. The phrase used by the said Board when arriving at the said impugned decision in 'P23(a)' is "automatically". I cannot accept any reason for deduction of the salary or placing the Petitioner at a different salary scale only based on the term "automatically" without enumerating a proper rationale for the decision. I take the view that the Board of SJGH has failed to give adequate and lawful reasons for deducting the salary and also, I am unable to accept the opinion of the said Board that 'automatically' a person's salary needs to be changed merely based on the salary scale applicable to the reverted post.

The Petitioner's argument is that the post of 'Chief Management Assistant' and 'Staff Assistant' is one and the same. However, the Respondent totally deny such assertions. The Respondents' contention is that any change/alteration in the name of post within the SJGH should be approved by both the Board of Management of SJGH and the Department of Management Services. The Respondents further allege that the stand taken by the Petitioner is not acceptable as no such board decision or a relevant document has been produced by the Petitioner.

Anyhow, I am unable to accept the defense taken up by the Respondents as the change of designation has been effected not due to a request of the Petitioner but done solely on the desire of the Board of the SJGH. The failure on the duty of obtaining necessary approvals from the Department of Management Services by the SJGH should not affect the rights of any employee who will eventually be bound by decisions of the Board whether such decisions are right or wrong.

My attention now shifts to Section 19 of the Shop and Office Employees (Regulation of Employment and Remuneration) Act 19 of 1954 (as amended). The Section 19(1)(a) provides that the employer of a shop or office shall, subject to the provisions of the said section, pay such remuneration in legal tender directly to such person without any deduction **other than an authorised deduction**, as defined therein, made with the consent of such person. In terms of the interpretation section of the said Act, “Remuneration” means salary or wages including other items mentioned in the said section.

Salary is a periodical payment which may be specified in an employment contract, made by an employer to the employee. Monthly salary to an employee who looks forward for a specific sum by the end of the month for the services rendered by him, has a major impact on social structure theories which deals with several problems in how society is structured. In my view this includes family, religion, law, economy & class etc. Therefore, I am of the view that when an employer, without the consent of such employee, takes a decision to reduce, deduct or suspend an existing salary of an employee including the change of salary scale, such employer should follow a procedure, according to law, where the decision making power may;

- a. not trespass unduly on personal rights and liberties of the employee,
- b. not infringe the rule of law and the rule of natural justice,
- c. not violate any law, regulation & duly issued government circulars/directions.

For the reasons set forth above, I take the view that the Board of SJGH has taken irrelevant facts in to consideration or has not taken relevant facts in to consideration and as such the decision of the said Board reflected in ‘P23(a)’ is irrational and unreasonable. Furthermore, the Board of the SJGH has not given lawful reasons to reduce the salary of the Petitioner and the relevant decisions affect the rights of the Petitioner. Hence, I proceed to issue a mandate

in the nature of a writ of Certiorari as prayed for in paragraph (d) of the prayer of the Petition of the Petitioner.

Moreover, I am not inclined to grant other reliefs as prayed for by the Petitioner and I have arrived at that decision based on the defense taken up by the Respondents. The contention of the Respondents is that they were compelled to suspend the appointments made to the post of 'Staff Assistant' as the required approval of the Department of the Management Services had not been obtained to establish the said post of 'Staff Assistant'.

I am aware that the Public Sector cadre management, remuneration management and consultancy are also among the objectives of the Department of Management Services. It is a prime duty of the said Department to provide the necessary management service assistance to the Public Sector Organizations. Accordingly, I take the view that this Court should not trespass the authority of the Department of Management Services at this stage substituting or recommending any decision of this Court for that of the said authority in reference to the change of designations of SJGH. It is the duty of the Board of SJGH to resolve, according to law, the issues on changing the designations of the employees.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal