

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

In the matter of an Application for Writs of Certiorari
and Mandamus under and in term of Article 140 of the
Constitution of the Democratic Socialist Republic of
Sri Lanka.

**CA (Writ) Application No.
0500-19**

Ranasinghage Rajeewa Sampath Ranasinghe
alias Rajeewa Ranasinghe,
No.22/6, Daladawatta Lane,
Thalpitiya South, Wadduwa.

PETITIONER

VS.

1. I. R. Bandara,
The Director General,
Department of Census and Statistics,
No.306/71, Polduwa Road,
Battaramulla.
2. D. C. Gunawardhana,
The Director General (Former),
Department of Census and Statistics,
No.306/71. Polduwa Road,
Battaramulla.
3. P. S. S. Wijerathna,
Senior Assistant Secretary,
Ministry of National Policies, Economic Affairs,
Child, Youth and Cultural Affairs,
Bristol Street,
1" Floor, "Miloda",
Colombo 1.

4. W. K. N. N. S. Bandara,
Assistant Director - Combined Services,
Ministry of Public Administration,
Local Government and Democratize Governance,
Independence Square,
Colombo 7.

5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Ms. Geethanjalee Amarasinghe instructed by Ranabahu Galhenage for the
Petitioner.

S. David, SC for the Respondents.

Written submissions tendered on:

20.09.2022 by the Petitioner.

Argued by way of written submissions

Decided on: 13.10.2022.

S.U.B. Karalliyadde, J.

The Petitioner to this Writ Application is a graduate of the National Institute of Social Development with a Bachelor of Social Work. The applications were called for an open competitive examination for the recruitment of Statistical Officers, Grade-II to the Department of Census and Statistics by the Gazette Notification dated 20.04.2012 marked as P5 and the Petitioner preferred an application to sit for the examination. He sat for the open competitive exam and obtained 118 marks which placed him in the rank of 178. Thereafter, he was called for an interview on 23.02.2015. However, he was not selected for the post. When inquiring from the Department of Census and Statistics as to why he was not selected, he was informed by the Information Officer of that Department by letter dated 16.10.2017 marked as P7 that, he has not been recommended for a post by the 2nd to 4th Respondents who were the members of the interview panel, as he does not have required educational qualifications in terms of Chapter 7.2.2.1 of the Scheme of Recruitment marked as R1 or the Paragraph 5 of the Gazette Notification marked as P5. By this writ Application, the Petitioner is seeking for mandates in the nature of writ of Certiorari to quash the decision of the 2nd to 4th Respondents not to recommend him and a writ of Mandamus directing the Director General of the Department of Census and Statistic (the 1st Respondent) to recruit him to one of the posts of Statistical Officers.

According to Chapter 7.2.2.1 of the Scheme of Recruitment which is similar to the Paragraph 5 of the P5, there are two requirements to be fulfilled to satisfy the required educational qualifications for a post of Statical Officer, Grade II.

Chapter 7.2.2.1 states as follows,

“7.2.2.1 අධ්‍යාපන සුදුසුකම් : සංඛ්‍යාතය, ගණිතය, ආර්ථික විද්‍යාව, පරිගණක විද්‍යාව, තොරතුරු තාක්ෂණය, ප්‍රජා විද්‍යාව, භූගෝල විද්‍යාව, සමාජ විද්‍යාව, යන විෂයන්ගෙන් අවම වශයෙන් එක් විෂයක් අන්තර්ගත වූ විශ්ව විද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව විසින් පිළිගත් විශ්ව විද්‍යාලයකින් ලැබූ උපාධියක් තිබිය යුතුය.”

Accordingly, the first requirement is that the applicant must possess a degree from a university recognized by the University Grants Commission (hereinafter referred to as UGC) and secondly, such degree must consist of one of the subjects mentioned under Chapter 7.2.2.1. The Court can be satisfied that the National Institute of Social Development which the Petitioner was graduated is a recognized university by the UGC as a degree awarding institution under section 25 of the Universities Act No. 16 of 1978 by the document dated 07.11.2017 issued by the Secretary to the UGC, the Extraordinary Government Gazette Notification No's 1557/7 dated 07.07.2008 and 139/15 dated 01.06.2005 marked as P8, P9 and P10 respectively and therefore, the first requirement has been fulfilled. The Petitioner has tendered to Court the results sheet of his degree marked as P2. According to P2, the Petitioner has followed the course units mentioned in that document for his degree programme. However, the Court has no knowledge as to whether those course units could be regarded as subjects mentioned in the Scheme of Recruitment marked as R1.

Furthermore, the Petitioner has submitted to Court that a graduate from the Sri Lanka Institute of Information Technology has been recruited to a post of Statistical Officer Grade-II and that the Sri Lanka Institute of Information Technology has a similar recognition as the National Institute of Social Development from which the Petitioner obtained his degree. However, the position of the Respondents is that, irrespective of

similar nature of the institutions, the person referred by the Petitioner holds a degree of Bachelor of Information Technology which is a specified subject within the Scheme of Recruitment marked as R1 and therefore, he possesses the required educational qualifications.

As specified in the Gazette Notification dated 20.04.2012 marked as P5, the method of recruitment for the posts of Statistical Officer Grade II is two folded. Firstly, under item No's 3, 5, 6 and 7 of the P5, the qualified applicants should pass the written examination. Secondly, the applicants who passed the written examination should be recommended by the interview board.

In the case of *Abeyasinghe and 3 others Vs. Central Engineering Consultancy Bureau and 6 others*¹ the Court had to consider whether a foreign degree could be regarded as a degree in Engineering or its equivalent in Sri Lanka. Fernando, J. held that, *“Learned Counsel for the Petitioners submitted that the 5th Respondent's Leningrad Diploma could not be regarded as being a degree in Engineering, or its equivalent, as it was a qualification in Geology, and not in Engineering as understood in Sri Lanka. The Respondents produced details of the subjects offered for that Diploma, and Counsel submitted that these could not be considered equivalent to those prescribed for a local degree in Engineering. It is not for us to determine, on the merits, whether the Diploma conferred by the Leningrad Institute of Mining was the equivalent of a degree in Engineering from a recognized University; that was a matter for the 1st Respondent and the Interview Board, and as long as their decision was not perverse*

¹ [1996] 2 Sri L. R. 36.

or unreasonable, or tainted by procedural error, this Court would not seek to substitute its views.” (Emphasis added)

Therefore, on a consideration of the above stated decision and the facts and circumstances of the case at hand, we are of the view that it is the duty of the interview panel to decide and not a task of the Court to examine, whether the course units mentioned in P2 are equivalent to the subjects mentioned in R1. As long as the decision of the interview board is not perverse or unreasonable, or tainted by procedural error that decision would stand. Since there is no material before the Court for its satisfaction that the decision of the interview panel is perverse or unreasonable or tainted by procedural error a necessity does not arise for this Court to interfere with the decision of the interview board.

In *Regina Vs. Hull University Visitor, Ex parte Page Lord Browne-Wilkinson*² it was observed that,

“Over the last 40 years, the courts have developed general principles of judicial review. The fundamental principle is that the courts will intervene to ensure that the powers of public decision-making bodies are exercised lawfully. In all cases, save possibly one, this intervention by way of prohibition or certiorari is based on the proposition that such powers have been conferred on the decision maker on the underlying assumption that the powers are to be exercised only within the jurisdiction conferred, in accordance with fair procedures and, in a Wednesbury sense, reasonably. If the decision maker exercises his powers outside the jurisdiction

² (1993) AC 682 at page 701.

conferred, in a manner which is procedurally irregular or is Wednesbury unreasonable, he is acting ultra vires his powers and therefore unlawfully”

The Respondents have tendered the mark sheet used by the interview board at the interview marked as R4. The Court could observe that another applicant who has the same educational qualifications as the Petitioner and whose name is in the place of 84 in R4 has not been selected. Under such circumstances, the Court could be satisfied that the interview panel has followed fair procedures and acted reasonably as well as lawfully when recommending the candidates who have fulfilled the educational qualification as articulated in R1/P5.

It is settled law that a Mandamus to issue, the Petitioner must have a legal right and the Respondents must have a corresponding public duty. In the case of *Kaluarachchi Vs. Ceylon Petroleum Corporation and Others*³ Fernando J, stated that,

“the foundation of mandamus is the existence of a legal right. A court should not grant a Writ of Mandamus to enforce a right which is not legal and not based upon a public duty.”

As stated above, since the Petitioner in the instant Application has no required educational qualifications, he neither has a legal right to compel the Respondents to select him for a post of Grade-II Statistical Officer nor the Respondents have a public duty with this regard. Therefore, the Petitioner is not entitled to a Writ of Mandamus

³ SC Appeal No. 43/2013; SC Minutes of 19th June 2019.

either. Considering all the above stated facts and circumstances the Court decided to dismiss the Application. No costs ordered.

Application dismissed.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL