

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

In the matter of an Appeal in terms of Article 138
of the Constitution of the Democratic Socialist
Republic of Sri Lanka.

A.V. Gunarathna
No.47, 4th Lane
Dutugamunusaya Near
Nawanagaraya Ambilipitiya.

Petitioner

Court of Appeal

Application No.CA(PHC)244/2004

Provincial High Court Sabaragamuwa

Case No.HCRA/71/2001

Vs.

1. Dr D.A.B. Dangalle,
Deputy Provincial Health Service Director
Deputy Provincial Health Service Office
Nawanagaraya,
Rathnapura.

2. Dr. N. Edirisingha,
Provincial Health Service Director
Sabaragamuwa Provincial
Health Service Director's Office,
No.75, Dharmapala Mawatha, Rathnapura.

3. District Medical Officer
Base Hospital, Embilipitiya.

Respondents

AND BETWEEN

A.V. Gunarathna
No.47, 4th Lane, Dutugamunusaya Near
Nawanagaraya, Ambilipitiya.

Petitioner-Petitioner

Vs.

1. Dr D.A.B. Dangalla
Deputy Provincial Health Service Director
Deputy Provincial Health Service Office,
Nawanagaraya, Rathnapura.
2. Dr. N. Edirisinghe
Provincial Health Service Director
Sabaragamuwa Provincial Health Service Director's Office,
No.75, Dharmapala Mawatha,
Rathnapura.
3. District Medical Officer
Base Hospital, Embilipitiya.

Respondent-Respondents

Before:

PRASHANTHA DE SILVA, J.
K.K.A.V. SWARNADHIPATHI, J.

Counsel: K. Aziz with Ershan Ariyaratna
For the Appellant

C. Sri Nammuni
For the Respondents

Decided on: 19.10.2022

K.K.A.V. SWARNADHIPATHI, J.

JUDGMENT

The Petitioner-Appellant, who shall be called as "**Appellant**", filed papers in the High Court of Ratnapura praying for a Writ of Mandamus ordering the Respondents to take steps to pay salary increments to the Appellant for the years 1996 and 1997, among other relives. According to the Appellant, he had served as a Pharmaceutical officer until 1999 attached to the Base Hospital of Ambilipitiya. While serving in the base hospital of Embilipitiya, he was under the control of the 1st, 2nd and 3rd Respondents.

In 1991, the Petitioner qualified as a Grade III Pharmaceutical Officer. In 1995 he was served with a letter by the Director General of Health Services promoting him to Class II B of the middle-level technical Services (M.L.T.S.) from 20.03.1992. The appointment letter marked as X2 shows the date as 07.08.1995. The date of effect was 20.03.1992.

In 1993 the Appellant sought permission to sit the Efficiency Bar Examination 1993. His application was not allowed due to noncompliance with the necessary qualification. He had continuously written letters requesting to allow his application as the delay of his promotion was not his fault but a lapse on the part of the officials. However, he was denied the facility to sit the examination as he had not fulfilled the requirement of qualifying for the Efficiency Bar Examination by letter marked **X5**. He was denied his annual increment for the years 1996 and 1997. All requests to regularise his increments were not considered favourably. Therefore, the

Appellant sent a letter of demand through an Attorney-at-Law. When even the letter of demand was not bringing any relief, he lodged an application for a Writ of Mandamus before the High Court of Rathnapura. Both parties were heard, and the learned High Court Judge refused the prayer of the Appellant. Aggrieved by that decision, the Appellant had prayed for relief in the Court of Appeal.

Both parties had agreed that the Appellant should have completed the Efficiency Bar examination within three years from the date of the letter promoting him. In 1995 an examination was held to which the Appellant had not applied. Considering facts placed before the court by both parties, it is clear that after the letter of promotion was handed over; all back wages were paid. There are no arrears regarding wages due to him.

According to the Establishment Code, the Appellant must qualify for the Efficiency Bar examination within three years. Both parties had no issues regarding increments up to the year of promotion.

The current issue is regarding increments due for 1996 and 1997. The Respondent's position is that the increment cannot be considered until the Appellant completes the Efficiency Bar Examination.

The learned High Court Judge of Rathnapura had very correctly analysed this issue. According to the judgment, even if the Appellant did not have the opportunity to apply for the efficiency bar examination, he was not deprived of his increments from 1993 to 1995.

The learned High Court judge had also observed that the Appellant had not fulfilled the requirement of passing the Efficiency Bar Examination. Therefore, his increments got frozen. The Appellant has to earn his increments. The learned High Court Judge had further observed that even though the Appellant brought to the notice of the court that he applied in 1993, his application was turned down as he had not fulfilled the requirements. If he felt that was unfair, he should not have waited six years to take action.

According to **R4**, the Appellant had accepted that his increment for 1996 was not given as he had not fulfilled the requirements. He had asked from that letter that he had qualified, therefore, to grant his increment. Since there was no date in the letter, the year cannot be established.

Any person who comes before a court must comply and complain. Here the Appellant requested the increment without complying to sit the examination.

The letter of demand marked as **X12** on page 17 of the Appeal brief would have no bearing on the present case even if it had; there is no basis to send such a letter without complying with the requirements.

In the Petition dated 16.07.2001 to the High Court, the Petitioner had not mentioned the requirement to qualify for the Efficiency Bar examination. Paragraph 11 stated that the Petitioner had no opportunity to sit the examination from 1995.

The Writ of Mandamus is available to compel an authority to validity exercise power. According to the Establishment Code, the validity will only arise when the Appellant has qualified for the Efficiency Bar examination. Therefore, the power to exercise the promotion or the increment does not lie with the Respondents.

For the reasons discussed above, we see no reason to disturb the order dated 23.02.2004 by the High Court Judge of Rathnapura. The Appeal is dismissed. No order is made regarding costs.

Judge of the Court of Appeal

PRASANTHA DE SILVA, J.

I agree.

Judge of the Court of Appeal