

**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
in terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.*

CA/WRIT/647/2021

W. A. A. C. Weerasinghe
No. 253/C,
Galahitiyawa
Ganemulla.

Petitioner

Vs.

1. Ceylon Petroleum Corporation
2. Mr. W. W. D. Sumith Wijesinghe
Chairman
3. Mr. Buddhika Madihahewa
Managing Director
4. Mr. R. M. D. K. Rathnayake
Director
5. Mr. Chaminda Hettiarachchi
Director
6. Mr. Dhammika Rathmale
Director
7. Mr. Prabath Samarasinghe
Director
8. Mr. Bandula Saman Kumara
Director
9. Mr. K. W. Samantha Pushpalal
Deputy General Manager
(HR and Admin)

1st to 9th Respondents all of;

Ceylon Petroleum Corporation,
No. 609,
Dr. Danister De Silva Mawatha,
Colombo 09.

10. Mr. G. P. Upananda
No. 308/12,
Ranamuthugala Vihara Mawatha,
Sooriyapaluwa,
Kadawatha.

11. Mrs. Kumudu Hewagamage
No. 341/2,
Robert Gunawardane Mw,
Malabe.

12. Mrs. Nirmala Ranaweera
No. 451/2,
Manakada Road, Kadawatha.

13. Mr. Sumith Litanaarachchi
No. 36/1,
Temple Road, Katawala,
Leula, Kandy.

14. Mr. Priyantha Dayarathne
No. 8/C/1,
Ja-Ela Road, Gamapaha.

Respondents

Before : Sobhitha Rajakaruna J.

Dhammika Ganepola J.

Counsel : Thanuka Nandasiri for the Petitioner.

Chaya Sri Nammuni, DSG for the 1st to 9th Respondents.

Shantha Jayawardana with Thilini Vidanagamage for the 10th
Respondent.

Argued on : 25.05.2022

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| Written Submissions: Petitioner | -04.10.2022 |
| 1 st to 9 th Respondents | -31.08.2022 |
| 10 th Respondent | -02.09.2022 |

Decided on : 29.11.2022

Sobhitha Rajakaruna J.

The Petitioner and the 10th Respondent are currently serving at the 1st Respondent Ceylon Petroleum Corporation ('Corporation') in the posts of Manager-Human Resources Development-Grade A-3 ('Manager HR-DEV') and Manager-Human Resources-Grade A-3 ('Manager HR') respectively. The Petitioner in this application is seeking for writs of Certiorari and writs of Mandamus.

The marks allocated for the 10th Respondent at the interview held on 30.11.2021 to promote a suitable candidate for the post of Manager HR are sought to be quashed by way of a writ of Certiorari. Even the decision of the relevant interview panel and the decision of the 2nd to 8th Respondents, who are the members of the Board of Directors of the Corporation, to recommend and appoint the 10th Respondent to the said post of Manager HR are also being challenged by the Petitioner.

Similarly, the Petitioner seeks for a mandate in the nature of a writ of Mandamus directing the members of the interview panel (sat on 30.11.2021) to allocate marks in favour of the Petitioner and also to appoint the Petitioner to the post of Manager HR.

The Petitioner whilst serving as a Deputy Manager-Human Resources of the Corporation initially faced an interview conducted on 29.04.2021 to promote a suitable candidate to the post of Manager HR-DEV. The Petitioner was the only successful candidate who applied for the said post and she has accepted the said post with effect from 30.11.2021. In view of the letter issued by the Managing Director of the Corporation on 05.01.2022

('1R19'), the Petitioner has been assigned to the said post as a promotion accorded to her and the Petitioner's original letter of appointment dated 15.03.2000 has also been amended accordingly by the same document '1R19'. This clearly implies that the appointment to the post of Manager HR-DEV is solely a promotion accorded to the Petitioner.

After the Petitioner facing the said interview on 29.04.2021, she has faced another interview on 30.11.2021 conducted to promote a candidate to the post of Manager HR. The 10th Respondent who was an Assistant Manager-Human Resources has also faced the same interview. In view of letter dated 05.01.2022 ('1R15'), the 10th Respondent has been assigned to the said post and that was also clearly a promotion accorded to the 10th Respondent. It is noted that the Petitioner was assigned to the post of Manager HR-DEV by way of '1R19' issued on the same day, i.e., 05.01.2022 based on the merits gained by her at the interview on 29.04.2021.

The alleged grievance of the Petitioner is that she has not been given marks at the interview held on 30.11.2021 and further, the 10th Respondent has no required qualifications to be appointed as the Manager HR. The primary question which needs consideration by this Court is whether the Petitioner can demand that she be promoted to the post of Manager HR in the given instance where she has been promoted to the post of Manager HR-DEV following an interview held prior to the date of the second interview.

I must draw my attention to the Procedural Rules published by the Public Service Commission in Extraordinary Gazette Notification No. 1589/30 on 20.02.2009, although such Rules have no direct application to the Corporation. In terms of the said Rules, "Promotion" means the appointment in accordance with an approved service minute or a scheme of recruitment, of an officer holding a post in the public service, to a post, class or grade which is superior to the post he holds, or a class or a grade to which he belongs. The term "Appointment" has been defined therein as the conferment of any paid office in the public service subject to or not subject to subsequent confirmation, to a person not already in the public service, or an appointment, or a promotion or transfer involving an increase of salary or any change in status of a person already in public service. The material before Court clearly reflects that the applicants have been called for relevant interviews by way of internal notifications and as such both the above interviews (on 29.04.202 & 30.11.2021) have been conducted not to appoint external candidates to such posts but to promote officers internally to the posts of Manager HR and Manager HR-DEV.

The fundamental question that arises here is whether an employee can pick and choose to which post that he should be promoted especially when he applied for promotion to two distinct posts during the same period. The effect of facing two different interviews pursuant to two different posts for the purpose of promotion, in my view, is voluntarily ceasing the choice between two posts and becoming incapacitated to demand for one particular post of your choice. There is a tendency of this position being varied in an event where there is an explicit precondition governing such situation. There can be occasions where an applicant does not challenge a decision at the initial stages but waits until some consequential or unfavourable decision is taken. In other words, such latter decision will be challenged only after somebody else other than such applicant is benefited by such latter decision. Thus, the conduct of the Petitioner should also be assessed in line with the above findings.

I see no evidence of any declaration made by the Petitioner at the interview on 30.11.2021 that she would relinquish her rights in pursuant to the interview conducted in reference to the post of Manager HR-DEV. It may be true that the authorities, after the related interview, had not taken a decision in regard to the post of Manager HR-DEV even until 30.11.2021. The Respondents in this Application have taken effort to justify the delay in announcing the outcome of the interview held on 29.04.2021. But no employee should get an undue advantage of such situation, especially with regard to promotions in the service. The Petitioner is now holding the post of Manager HR-DEV and no attempt has been made voluntarily by her to get her existing promotion invalidated. Then what is the rationale for her to raise a claim that she should be promoted to the post of Manager HR instead of the 10th Respondent, even if it is assumed that non allocation of marks at the interview on 30.11.2021 is irrational?

‘Irrelevant considerations may also be innocuous if the action taken is reasonable in itself, in fixing the level of pay of its employees, which is required by the court to be reasonable, a local authority may act on entirely wrong ground and yet its payments, if not in themselves excessive, are not unlawful’ (Vide- *‘Administrative Law’ by H. W. R. Wade and C. F. Forsyth (11th Edition) Oxford at p. 329*).

Furthermore, the aforesaid notion of voluntary ceasing of the choice which emerges as a result of applying to two distinctive posts at the time of promotions, should be properly assessed along with the substantive prejudice that can be presumably caused to the

Petitioner. In this regard attention should be drawn to the purported damage that can be caused to the Petitioner by promoting the 10th Respondent to the post of Manager HR; and the purported damage that can be caused to the 10th Respondent in an event of her being taken away from the post of Manager HR, based on all the circumstances of this case. The 1st to 9th Respondents contend that the two posts are comparable in status as well as in remuneration and further, the 10th Respondent cannot gain anything more than the Petitioner's entitlements in the new post. This position is clearly evinced in the Salary Conversion Forms '1R9' and '1R10'. Additionally, the attention of Court was drawn to the fact that a sum of Rs.105,000.00 had been paid by the Corporation, in view of the document marked '1R8', enabling the Petitioner to follow one-year 'National Diploma in Training and HR Development' Course which commenced in January 2021.

On a careful perusal of the internal advertisements calling for applications for both above posts imply that the applicants should at least be in the service of Grade A-5, a requirement set down even in the Scheme of Recruitment approved by the Board in 1991 ('1R13'). Even the Department of Management Services has observed that no Scheme of Recruitment is in existence other than for the posts in the category of Grade A. It is obvious that the draft Scheme of Recruitment, marked 'P13', cannot be officially adopted as it has not yet been approved by the Department of Management Services, although the Petitioner takes a different view on the point. The contention of the Respondents is that the administrative practice of not allocating marks at an interview in an event where the respective candidate has previously applied (or has been assigned) for a promotion in respect of another post has existed for a considerable period of time at the Corporation.

In ***R vs. Broadcasting Complaints Commission ex parte Owen (1985) 2 All ER 522 (at p.523)***, the Court has held that;

“When the reason given by a statutory body for taking or not taking a particular course of action were not mixed and could be clearly disentangled and where the court was satisfied that even though one reason might be bad in law the statutory body would nevertheless have reached precisely the same decision for the remaining, valid reasons, the court would not interfere by way of judicial review.”

I am convinced, based on the material submitted to Court that the 10th Respondent has reasonably fulfilled the required criteria to be appointed to the post of Manager HR in terms of the aforesaid Scheme of Recruitment adopted in 1991. In these circumstances and

on the above grounds, I take the view that no adequate material has been placed before Court in order to arrive at a conclusion that the decision of the interview panel not to allocate marks to the Petitioner on 30.11.2021 is ex facie illegal or ultra vires.

In passing, I comment that the upper Management of the Corporation is ought to consider many facets in due administration within the institution and also serious attention should be drawn to the past record of an officer in addition to the qualifications when appointing an officer to an important and responsible post such as Manager Human Resources. The 1st to 9th Respondents tendering letters, marked '1R1' to '1R6', alleged that the Petitioner had been warned and issued letters pertaining to at least six incidents of violation of the disciplinary provisions and disrupting service while she was serving in the Human Resources sector. The Management should be able to use their discretion to a greater extent but, according to law, especially when making appointments to senior posts in the Human Resources sector which has a direct link to leave, promotions, overtime work, transfer etc. of the employees. Anyhow, based on the above findings, I am not inclined to examine such issues as well as the preliminary objections raised by the Respondents.

In the circumstances, I hold that the decisions of the 1st to 9th Respondents not to allocate marks to the Petitioner at the interview conducted on 30.11.2021 and to promote the 10th Respondent to the post of Manager HR are not illegal and ultra-vies as claimed by the Petitioner. Thus, the Petitioner is not entitled to any of the reliefs prayed for in the prayer of the Petition.

Application is dismissed.

Judge of the Court of Appeal

Dhammika Ganepola J.

I agree.

Judge of the Court of Appeal