

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

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

Court of Appeal (Writ)
Application No: 424/2014

1. N. A. Pulwansa
Chandada”
Nawarathgoda,
Balapitiya.
2. Vijitha Pushpakumara
Andarawewa Road,
Thalawa.
3. Upul Chandranath Weerasingha
No. 59/9,
School Lane,
Rukmale,
Pannipitiya.
4. K. T. Thabrew
No. 14/4,
“Nisalagana” Muthuhena Road,
Panagoda,
Homagama.
5. R. C. Hettiarchchi
No. 122/20,
MC Road,
Matale.

Petitioners

-Vs-

1. The Chairman
State Timber Corporation,
“Sampathpaya”
Rajamalwatta Road,
Battaramulla.

2. P. G. Kumarasingha
(General Manager)
State Timber Corporation,
“Sampathpaya”
Rajamalwatta Road,
Battaramulla.

3. K. Siriniwansa
Deputy General Manager (Human
Resource and Administration)
State Timber Corporation,
“Sampathpaya”
Rajamalwatta Road,
Battaramulla.

4. H. P. S. Nawarathne
Deputy General Manager
(Operation),
State Timber Corporation,
“Sampathpaya”
Rajamalwatta Road,
Battaramulla.

5. G. Senanayaka
Deputy General Manager
(Marketing)
State Timber Corporation,
“Sampathpaya”
Rajamalwatta Road,
Battaramulla.

- 5(A) P. G. R. Samaraweera
Deputy General Manager
(Marketing),
State Timber Corporation,
"Sampathpaya"
Rajamalwatta Road,
Battaramulla.
6. Dr. N. D. Ruwanpathirana
Deputy General Manager (Research,
Development and Training),
State Timber Corporation,
"Sampathpaya"
Rajamalwatta Road,
Battaramulla.
7. S. S. Paduwala
Senior General Manager
(Operation),
State Timber Corporation,
"Sampathpaya"
Rajamalwatta Road,
Battaramulla.
8. T. S. C. Pushpakumara
Senior General Manager
(Producting),
State Timber Corporation,
"Sampathpaya"
Rajamalwatta Road,
Battaramulla.
- 8(A). M. G. M. Tharik
Senior General Manager
(Producting),
State Timber Corporation,
"Sampathpaya"
Rajamalwatta Road,
Battaramulla.

9. M. D. Lalith,
Coup Officer,
Regional Office,
State Timber Corporation,
Meerigama.
10. B. A. Upathissa
Depot Officer,
Regional Office,
State Timber Corporation,
Nelumdeniya.
11. N. M. Gunathilaka
Coup Officer,
Regional Office,
State Timber Corporation,
Kurunegala.
12. J. R. T. Gunasekara
Coup Officer,
Regional Office,
State Timber Corporation,
Anuradhapura.
13. D.M. P. Sudarshana
Deport Officer,
Regional Office,
State Timber Corporation,
Athgale.
14. O. P. K. U. Pathirana
Coup Officer,
Regional Office,
State Timber Corporation,
Matara.
15. S. C. Priyankara
Coup Officer,
Regional Office,
State Timber Corporation,
Bandarawela.

16. S. M. T. Bandara
Deport Officer,
Regional Office,
State Timber Corporation,
Puttalam.
17. A. S. P. Silva
Deport Officer,
Regional Office,
State Timber Corporation,
Pannipitiya.
18. K. G. A. Karunasinghe
Deport Officer,
Regional Office,
State Timber Corporation,
Madewachchiya
19. K. W. A. D. Appuhami
Coup Officer,
Regional Office,
State Timber Corporation,
Matale.
20. K. G. S. Sandaruwan
Coup Officer,
Regional Office,
State Timber Corporation,
Matara.
21. V. P. Ajith
Deport Officer,
Regional Office,
State Timber Corporation,
Boossa.
22. W. L. N. Rodrigo
Coup Officer,
Regional Office,
State Timber Corporation,
Meerigama.

23. D. D. A. C. Wickramaratna
Deport Officer,
Regional Office,
State Timber Corporation,
Kaldemulla.
24. S. M. Karunathilaka
Coup Officer,
Regional Office,
State Timber Corporation,
Madewatchchiya.
25. T. W. U. Bandaranayake
Deport Officer,
Regional Office,
State Timber Corporation,
Nikaweratiya.
26. S. M. W. Thilakeratne
Banda
Coup Officer,
Regional Office,
State Timber Corporation,
Maha Nuwara.
27. W. G. J. C. Wijeratne
Deport Officer,
Regional Office,
State Timber Corporation,
Dambuluoya.
28. G.G. Roshan Nilanga
Coup Officer,
Regional Office,
State Timber Corporation,
Matara.
29. H. R. N. S. Gunasekara
Acting Assistant Regional Manager,
Regional Office,
State Timber Corporation,
Thimbolketiya.

30. T. S. Mudalige
Coup Officer,
Regional Office,
State Timber Corporation,
Ratnapura.
31. J. D. C. Ruwan
Coup Officer,
Regional Office,
State Timber Corporation,
Balangoda.
32. W. T. U. P. Jayantha
Coup Officer,
Regional Office,
State Timber Corporation,
Ampara.
33. H. A. S. S. Bandaranayaka
Coup Officer,
Regional Office,
State Timber Corporation,
Nuwara Eliya.
34. A. D. Nilantha
Coup Officer,
Regional Office,
State Timber Corporation,
Bdulla.
35. K.M. N. U. Bandara
Coup Officer,
Regional Office,
State Timber Corporation,
Kurunegala.
36. M. G. S. K. Udapitiya
Coup Officer,
Regional Office,
State Timber Corporation,
Kegalle.

37. R. M. D. L. Bandara
Coup Officer,
Regional Office,
State Timber Corporation,
Kurunegala.

38. W. N. R. Weerasinghe
Coup Officer,
Regional Office,
State Timber Corporation,
Matale.

39. H. P. Pliyage
Coup Officer,
Regional Office,
State Timber Corporation,
Kaduruwela.

40. A. G. Bandula Karunaratne
Deport Officer,
Regional Office,
State Timber Corporation,
Thalawa.

41. K. B. S. K. Abeykoon
Coup Officer,
Regional Office,
State Timber Corporation,
Nuwara Eliya.

Respondents

Before: C.P. Kirtisinghe – J.
Mayadunne Corea – J.

Counsel: Darshana Kuruppu with Sajini Elvitigala, Dineru Bandara, Buddhika Thilakarathna, Chinthaka Udadeniya and Sudarsha Silva for the Petitioner.

Yuresha Fernando, DSG for the Respondent.

Argued on: 31.10.2022

Decided On: 30.11.2022

C. P. Kirtisinghe – J.

The Petitioners are seeking for a mandate in the nature of a Writ of Certiorari quashing the decision of the 1st – 8th Respondents to promote the 9th – 41st Respondents as Assistant Regional Managers, for a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to introduce a new scheme of promotion to the post of Assistant Regional Manager with maximum 10 marks for the personality and/or to introduce the rational and reasonable basis to allot marks for the personality and for a mandate in the nature of a Writ of Mandamus directing the 1st Respondent to promote the Petitioners to the post of Assistant Regional Manager with effect from 03.02.2014.

The 2nd, 4th and 5th Petitioners have been promoted to the post of Assistant Regional Manager while this application was pending and the learned Counsel for the Petitioners inform Court that he is seeking the relief contained in paragraph 'G' of the prayer only in respect of 1st – 3rd Petitioners.

The facts of the case can be summarized as follows;

The 1st Respondent who is the Chairman of State Timber Corporation had called for applications from the employees who are qualified to apply, to fill 33 vacancies of the post of Assistant Regional Manager and the 5 Petitioners had applied for the post along with several others. They were called for interviews. Those who had the qualifications set out in the document marked P1 were eligible to apply for the post and the relevant marking scheme is also set out in the document. A candidate was required to obtain a minimum of 40 marks to qualify for the post and the relevant marking scheme is as follows;

Experience – 30 Marks

Educational Qualifications – 30 Marks

Personality shown at the interview – 20 Marks

Report of the Service Assessment – 15 Marks

The format of a report of the Service Assessment contains in the document marked P4. The Petitioners presented themselves for the interviews before an

interview board comprising of the 2nd – 8th Respondents. None of the Petitioners were selected for the post. The 1st Respondent by his letter dated 19.11.2014 have informed the selected candidates that they have been promoted.

According to P1 “Satisfactory Service” means, obtaining all increments and not receiving any punishment other than a warning. Petitioners state that during their tenure of office they have neither been punished nor been warned by the authorities. The Petitioners state that the members of the interview board did not maintain individual mark sheets. The Chairman instead of maintaining mark sheets took down marks with a pencil even without discussing with the other members of the interview board. The Petitioners state that they were questioned only for about 3-4 minutes on what their present duties were and whether they have shown profit in the last year. No other questions were raised regarding their area of work. Although the Petitioners had certificates, the interview board was not bothered to check them. The Petitioners state that the interview board neither sought any relevant certificates nor did question regarding their area of work to allot marks for personality and did not carry out any test in order to arrive at a fair and satisfactory evaluation of the personality of the candidates. Petitioners state that they verily believe that the interview board has granted high marks for the candidates who were personally known to the Chairman and the members of the interview board. The Petitioners state that there is apparent and/or actual bias on the part of the 1st – 8th Respondents. Therefore, the Petitioners state that the decision of the 1st – 8th Respondents to promote 9th – 41st Respondents is *ultra vires, malafide*, arbitrary, capricious, vexatious and without any legal basis.

The 1st – 8th Respondents state that the Petitioners were not selected for the respective posts as they did not obtain the required marks at the interview. They state that at all times they acted in an unbiased manner and acted within their powers and the legal framework. They state that in the circumstances of this case, there is no legal basis to invoke the extraordinary powers of review of this Court.

The 1st – 8th Respondents have tendered to Court marked R1 – R88 the mark sheets of each applicant who was interviewed that show that the interview board had maintained separate mark sheets to each candidate which were signed by the members of the board. That negates the allegation made by the Petitioners that the members of the interview board did not maintain individual mark sheets. 1st – 8th Respondents had denied the allegation contained in

paragraph 18 of the petition and there is no evidence to show that no questions regarding the Petitioners' area of work other than their present duties and the profits shown in the last year were put to them and the interview board was not bothered to check the certificates they had. The Petitioners state that in allotting marks for personality the board neither sought any relevant certificates nor did question regarding their area of work. When testing for personality it is not necessary to examine the certificates or question regarding their area of work. It is always not necessary to carry out a test in order to arrive at a fair and a satisfactory evaluation of the personality of the candidates.

There is no material to show that the 30th and 31st Respondents were not eligible to apply for the promotion and the 1st – 8th Respondents had denied that allegation. There is also no material to show that the 32nd Respondent had not applied for the promotion. The Respondents had denied that allegation also. The learned Counsel for the Petitioners has made an attempt to introduce new evidence by way of written submissions. He has stated that the 9th Respondent had been fined Rs.250 and therefore did not have a satisfactory service. New material had been introduced in respect of the period of service of the 36th Respondent. Based on that new material the learned Counsel for the Petitioners has submitted that the 36th Respondent should have been allotted less marks. Similar evidence had been introduced in respect of the period of service of the 39th Respondent to show that he had only a period of 08 years in service. The Petitioners had not mentioned any of those facts in their petition and affidavit and they become facts which are not supported by an affidavit. Therefore, those facts cannot be treated as evidence and they cannot be taken into consideration at this stage.

The Petitioners, in their petition and affidavit had stated that the junior officers have been promoted, disregarding the Petitioners, on the basis that they have obtained high marks for personality. The learned Counsel for the Petitioners had stated in his written submissions that the majority of the candidates who were promoted had exceeded the minimum mark necessary for the selection with the aid of marks obtained for the personality evaluation. The 1st Petitioner who had got 30 marks (full marks) for the experience had got only 04 marks in the personality evaluation. The 3rd Respondent who had also got 30 marks for the experience had got only 05 marks in the personality evaluation. But it is also important to note that the 2nd Petitioner had obtained 17 marks for personality evaluation and the 5th Respondent also had got 16 marks for personality evaluation. Both had scored comparatively less marks for the service. That

shows that a person who had scored high marks for professional experience can score less marks for personality evaluation and a person who had scored less marks can score high marks in the personality evaluation. There is no hard and fast rule that a person who had scored high marks for the service should score high marks in the personality evaluation also. That is a factor that will depend on the personality of the candidate. In the same way there may be candidates who had scored high marks under both those categories. That is evident by the mark sheets. Although the Petitioners state that the majority of the successful candidates had got through the interview with the aid of marks obtained for personality evaluation that is not an inevitable conclusion. It is apparent from the contents of the mark sheets that several candidates who had scored the full marks in the relevant field of the experience had also scored high marks in the personality evaluation. Although there are several others who had scored comparatively less marks for service had scored high marks in personality evaluation one cannot come to such an inevitable conclusion.

The learned Counsel for the Petitioners had cited the judgement of **Narangoda and others Vs Kodituwakku, Inspector General of Police and others 2002 (1) SLR 247**. In that case Fernando J. had observed as follows;

“45 officers were selected in advance for promotion, for good reasons or bad, and at the interviews the allocation of marks was manipulated to give more for the favoured few and less for the others, without disturbing their seniority *inter se*.”

However, in this case there is no material to show that some of the candidates were selected in advance for promotion and at the interview the allocation of marks was manipulated to give more for the favoured candidates and less for the others. In Narangoda’s case there were huge discrepancies in the allocation of marks and there was no satisfactory explanation as to these huge discrepancies. The situation in this case is different.

The Petitioners had stated that there was apparent bias and/or actual bias on the part of the 1st – 8th Respondents. They have also made the allegation that the 1st – 8th Respondents acted *malafide*. But one cannot come to the conclusion that the 1st – 8th Respondents were biased against the Petitioners and acted *malafide*. The learned Counsel for the Petitioners had conceded the fact that the 2nd, 4th and 5th Petitioners were promoted subsequently pending this application. If the Respondents acted maliciously towards the Petitioners and

were biased against the Petitioners, it is very unlikely that three of them would have got promoted while this application was pending.

In the case of **Samarasinghe Vs Air Lanka Ltd and others 1996 (1) SLR 261** Wijetunga J. had observed as follows;

“The principle of equality applies from the stage of one’s recruitment to the state sector right up to the end of one’s career. It applies to the ever-important matter of promotions too. This Court has, in dealing with the equality provisions of the Constitution, insisted that while there should be proper schemes of recruitment and promotion, their implementation should not be tainted by caprice, bias or prejudice. Favouritism on the one hand or the evil eye on the other, necessarily militate against the very concept of equality and should, therefore, be abhorred. There must in the public interest, always be honesty, openness, and transparency in regard to executive or administrative acts.”

However, in this case there is no evidence to show that the 1st – 8th Respondents had favoured some of the successful candidates and discriminated the petitioners.

In the case of **Piyasena and another Vs the Peoples’ Bank and others 1994 (2) SLR 65** Fernando J. had observed as follows;

“It was impossible to ensure that marks were allocated by each interviewer with some degree of uniformity, and fairness, unless there had been some indication, at least in a general way, of the factors relevant to each criterion. I must not be understood as suggesting that a strict allocation of marks for each such factor was necessary; especially at this level of management that would unduly constrict a fruitful selection process. For example, one or two extraordinarily innovative strategies for development might win one candidate full marks for interview performance, just as a serious deficiency in management capabilities may lead to the conclusion that any further promotion of another candidate would be detrimental to the institution. I am also not of the view that a proper selection process must necessarily incorporate a marking scheme; but if selection is to be on the basis of marks, then the scheme must be clear, fair, and uniform.”

In that judgment Fernando J. had observed that a strict allocation of marks for each factor was not practicable as it would unduly constrict a fruitful selection process. He was also not of the view that a proper selection process must necessarily incorporate a marking scheme. But he had expressed the view that

if the selection is to be on the basis of marks, then the scheme must be clear, fair and uniform. In this case the promotions were done on the basis of marks and the scheme was clear and uniform. Just because 25% of the marks were allocated for personality evaluation, the scheme cannot be condemned to be unfair although a scheme with a lesser percentage of marks for the personality evaluation would have been fairer. Within the marking scheme the examiners have a discretion in allotting 25% of marks for personality evaluation although they must exercise that discretion fairly and reasonably. In this case there is no evidence to show that the examiners had exercised this discretion in an unfair and unreasonable manner and there is no evidence to show that the examiners were biased against the Petitioners and acted maliciously towards them. Just because the 1st and the 3rd Respondents had scored full marks on the basis of their service one cannot come to the inevitable conclusion that they should have been given more marks in the personality evaluation. Therefore, one cannot come to the conclusion that the decision of the Respondents is *ultra vires* and bad in law. One cannot come to the conclusion that the decision is *malafide* or arbitrary.

For the aforesaid reasons, we refuse to grant a mandate in the nature of a Writ of Certiorari as prayed for by paragraph 'E' of the prayer to the petition. We also refuse to grant a mandate in the nature of a Writ of Mandamus as prayed for by paragraphs 'F and G' of the prayer to the petition. We make no order for costs.

Judge of Court of Appeal

Mayadunne Corea – J.

I Agree

Judge of Court of Appeal