

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST

REPUBLIC OF SRI LANKA

In the matter of an Application for a Writ of Mandamus
in terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

1. Mettibandiyegedara Upali Bandaranayaka,
Police Sergeant 6061,
Parliament Police Division.

And 365 others

PETITIONERS

Vs

CA Writ Application No:

0132/20

1. Kodagoda Vithanage Nelson Wijetilake,
Chief Inspector of Police,
Kelaniya Police Division.

And 552 others

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel: Pradeep Fernanado for the Petitioners

Ms. A. Gajadheera State Counsel for the 552nd and 553rd Respondents

Written submissions tendered on: 31.05.2022 (by the 552nd and 553rd Respondents)

Order delivered on: 18.07.2022

S.U.B. Karalliyadde, J.

This Order pertains to two matters. One is the preliminary legal objection raised by the learned State Counsel appearing for the 552nd Respondent, Inspector General of Police (the IGP) and the 553rd Respondent, the Attorney General about the maintainability of this writ Application. The Petitioners seek a writ of Mandamus directing the IGP to consider them for promotion to the rank of Sub Inspector from the rank of Police Sergeant. The grievance of the Petitioners is that even though, the approved scheme of promotion issued by the National Police Commission (the NPC) bearing number NPC/BD/NG/PR /07/Time Pro/ 2019 dated 27.05.2019 (marked as X 1) should apply for the promotions of the police officers who hold the post of Police Constable up to the post of Inspector of Police, disregarding the said scheme of promotion the IGP has taken steps to promote the 1st to 551st Respondents from the rank of Inspector of Police to the rank of Chief Inspector. The learned State Counsel appearing for the IGP has taken up the objection that the Petitioners are not entitled to maintain this writ Application in view of the provisions of Article 61 A of the Constitution.

Article 61A states thus;

“61A. [Subject to the provisions of Article 59 and of Article 126], no court or tribunal shall have power or jurisdiction to inquire into, or pronounce upon or in any manner call in question any order or decision made by the Commission, a Committee, or any public officer, in pursuance of any power or duty conferred or imposed on such Commission, or delegated to a Committee or public officer, under this Chapter or under any other law.”

In the instant Application, the Petitioners do not challenge the decision of the IGP marked as X6 to promote the 1st to 551st Respondents to the post of Chief Inspector.

The crux of the application of the Petitioners is to adopt the same criteria which are adopted in respect of the promotions of the 1st to 551st Respondents for their promotions as well. On that basis the Petitioners seek to issue a writ of Mandamus directing the IGP to consider the eligibility of them for their promotion to the post of Sub Inspector. Since the Petitioners do not challenge a decision of the IGP, I hold that there is no merit in the preliminary legal objection raised by the learned State Counsel.

The other objection of the learned State Counsel is regarding the amended Petition dated 15.1.2022. The positions of the learned State Counsel *inter alia*, is that the Petitioners have failed to set out the amendments sought to be affected by the amended Petition and the amended Petition lacks clarity on the said amendments, the failure to highlight the amendments has placed the Respondents as well as the Court in an inconvenient position. The amended Petition contains new and distinct grounds that are substantively and drastically different from the original Petition, the Petitioners are introducing a completely different course of action and even though the Petitioners had taken nearly 2 years to amend the Petition, the inordinate delay has not been explained. Rule 3(8) of the Court of Appeal (Appellate Procedure) Rules 1990 (Rules) deal with the amendment of pleadings. Rule 3(8) states thus;

“A party may, with the prior permission of the Court, amend his pleadings, or file additional pleadings affidavits or other documents, within two weeks of the grant of such permission, unless the Court otherwise directs. After notice has been issued, such permission shall not be granted ex parte.”

When perusing the facts stated in the Petition and the amended Petition, the Court can be satisfied that in the amended Petition the Petitioners have elaborated the facts stated in the original Petition and attempted neither to take up new or different position, nor to introduce a new cause of action nor to pray different reliefs than the reliefs sought in

the original Petition. Therefore, no prejudice will be caused to the Respondents if the Court accepts the amended Petition. Therefore, I decide to accept the amended Petition dated 15.01.2020. Furthermore, I am of the view that the Petitioners have presented a *prime facie* case and the delay of about two years therefore, in filing the amended Petition should not be taken into consideration.

Amended Petition dated 15.01.2022 is accepted. Objections overruled.

No costs ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL