

**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.*

B. Sivapiragasam,
No.5 Cash Street,
Trincomalee.

Petitioner

Vs.

Writ Application No:
CA/ WRIT/254/2018

Appeal No:
AAT/184/2013 (SPC)

1. Justice Anil Gunaratne,
Chairman,
Administrative Appeal Tribunal,
35, Silva Lane,
Rajagiriya.
2. A. Gunathasan,
Member,
Administrative Appeal Tribunal,
35, Silva Lane,
Rajagiriya.
3. G.P. Abeyakeerthie,
Member,
Administrative Appeal Tribunal,
35, Silva Lane,
Rajagiriya.

4. Administrative Appeal Tribunal
35, Silva Lane,
Rajagiriya.

5. Mr. S. Dissanayake,
Secretary,
Administrative Appeal Tribunal
35, Silva Lane,
Rajagiriya.

6. Attorney General,
Attorney General's Department,
Colombo -12

Respondents

BEFORE : D. N. Samarakoon J
Neil Iddawala J

COUNSEL : G. Jayakumar with Rudani for the
Petitioner

Yuresha Fernando D.S.G for the
Respondents

Argued on : 15.03.2023

Decided on : 10.05.2023

Iddawala – J

The petitioner has filed this application for Writ of Certiorari and Mandamus with regard to the order delivered on 08/02/2018 by the Administrative Appeal Tribunal (hereinafter the AAT). A copy of the said determination No-AAT/184/2013 (SPC) made by the respondents has been produced marked as P36, claiming that the order is erroneous in nature.

The facts relevant to the application, according to the petitioner, are briefly as follows. The petitioner B. Sivapiragasam was born on 23/02/1954 and retired on 23/02/2014 at the age of 60 years. The petitioner joined the Public Service as a graduate trainee on 01/03/1990 and was appointed to a post of Plan Implementation Officer (PIO) on 01/04/1992. Thereafter, he was appointed to a post of Project Officer in the North and East Province with effect from 01/01/1997.

Later he was absorbed (appointed) into the Sri Lanka Planning Service (SLPS) and appointed as Assistant Director Class II Grade II with effect from 01/09/1999 subject to a 1-year probationary period (appointment letter **P2** dated 02/08/2000). Paragraph 13 of **P2** states that the initial salary scale attached to the post of the petitioner is Rs. 97,500/- with 15 increments enabling the petitioner to receive a maximum sum of Rs.138,000/-. The appointment letter further stated that the salary step for the 1st efficiency bar examination is Rs. 102,900/- while the salary step for 2nd efficiency bar examination is Rs.119,100/- .

The above-mentioned salary scales are validated through **P3**, the Service Minutes of the SLPS. Section 3:1 of the minutes on the SLPS published in the *gazette extraordinary bearing No.1134/5* dated 30/05/2000 which state that Class II Grade II employees are entitled to an initial salary scale of Rs. 97,500/- with 15 x Rs. 2,700/- increments enabling the employee to receive a maximum salary of

Rs.138,000/-. It is also stated that the salary step for the 1st efficiency bar examination is before Rs. 102,900/- and the salary step for 2nd efficiency bar examination is before Rs.119,100/-.

Nevertheless, **P3a** Section 8:3:2 of the minutes on the SLPS published in the *gazette extraordinary bearing No.1134/5* dated 30/05/2000 stated:

“An Officer in Class II Grade II will be exempted from the requirement of passing the prescribed Efficiency Bar Examination for promotion over the Efficiency Bar on completing the age of 45 years.”

Furthermore, the petitioner is informed through a letter **P4** dated 27/09/2002 by the Secretary of SLPS Board that subject to the SLPS minute and the *Public Administration Circular (PAC) No: 20/2001* that he is exempted from the 1st Efficiency Bar Examination.

Considering both the **P3a** & **P4** the petitioner claimed to state that, he is entitled to this exemption of the efficiency bar examination.

The Secretary of SLPS Board requested the Chief Secretary of Northern-Eastern Provinces (NEP) through a letter **P5** dated 21/07/2004 an inspection on all public service officer in the category Class II Grade II to access whether they have successfully completed their required efficiency bar examinations for the promotion. Subsequently through the letter **P6** dated 09/09/2004 Deputy Chief Secretary Planning confirms to the Secretary of Provincial Public Administration of NEP that the petitioner in this present application has been absorbed as to SLPS II/II from 01/09/1999 and is exempted from the 1st Efficiency Bar as per the SLPS board letter dated 27/09/2002.

Nevertheless, through a letter **P7** dated 28/11/2005 the Secretary of SLPS Board informed that public service officer of Class II Grade II B. Sivapiragasam (petitioner) is required to sit for the Efficiency Bar Examination. Thus, this letter indicates that the petitioner is not entitled to the exemption. As a response the petitioner sends a request letter **P8** dated 29/06/2006 to the Secretary of SLPS and others pleading to be exempted from sitting for the 1st Efficiency Bar

Examination claiming on the exemption grounds 8:3:2 of the minutes on the SLPS published in the *gazette extraordinary bearing No.1134/5* dated 30/05/2000 and *PAC No: 20/2001*. However, the request appeal was not accepted and thereby through a letter **P9** Director General of SLPS Board informs the Chief Secretary of NEP to abide by **P7** letter notifying that the petitioner is not entitled for any exemption.

Through a letter **P11** dated 05/04/2007 by the Assistant Director of SLPS Board to the Chief Secretary of Northern- Eastern Provinces it was aimed to clarify the salary scale of the petitioner, B. Sivapiragasam. Later, the Assistant Director of SLPS Board further through a letter (**P13**) dated 30/01/2008 informed the Chief Secretary of NEP that B. Sivapiragasam is not entitled to the exemption of the Efficiency Bar Examination.

Subsequently, on 19/08/2008 the petitioner B. Sivapiragasam addressed a detailed appeal letter **P14** to the Director General of Establishments of the Ministry of Public Administration through the Deputy Chief Secretary of Administration Eastern Province through the Deputy Chief Secretary of Provincial Planning Secretariat of Eastern Province, explaining the grounds on which the petitioner claims for the prescribed exemption of the Efficiency Bar Examination.

The letter elaborated that the petitioner was appointed to the SLPS II/II with effect from 01/09/1999 and the salary scale applicable to the post was indicated as Rs. 97,500/- with 15 x Rs. 2700/- increments resulting in a maximum salary scale of Rs.138,000/-. It also stated that an officer must pass the 1st Efficiency Bar Examination before 3rd step of Rs. 102,900/- and 2nd Efficiency Bar before 9th step of Rs. 119,100/-. (*For easy reference the salary scale and dates are mentioned below*)

1. **Rs. 97,500/- on 01/09/1999**
2. Rs. 100,200/- on 01/09/2000
3. **Rs. 102,900/- 1st Efficiency Bar Exam on 01/09/2001**
4. Rs.105,600/-

5. Rs. 108,300/-
6. Rs. 111,000/-
7. Rs. 113,700/-
8. Rs. 116,400/-
9. **Rs. 119,100/- 2nd Efficiency Bar Exam on 01/09/2007**

The letter also further elaborated that section 2 of the PAC No: 20/2001 of 12th September 2001 states “Officers serving in posts in which the scheme recruitment or the service minutes presently having provisions to exempt from passing the Efficiency Bars on completing 45 years of age, such officers shall be exempted from the Efficiency Bars provided they complete 45 years of age prior to the date of the implementation of this circular”. (Date of implementation of PAC 20/2001 – 01/10/2001).

Thereby the petitioner submitted his claims stating that he has completed the age of 45 years on 23/02/1999, reached the Efficiency Bar on 01/09/2001 and stated that both dates (23/02/1999 & 01/09/2001) are prior to the date of implementation of the PAC No:20/2001 (01/10/2001) and thus is entitled to the said exemption with effect from 01/09/2001.

Through the letter **P15** dated 01/09/2008 the Chief Secretary of Eastern Province forwarded the appeal request of the petitioner to the Director General of Establishments, Ministry of Public Administration requesting consideration on **P14**.

With reference to **P15** Director General of Establishment informs the Chief Secretary of Eastern Province through the letter **P16** dated 17/10/2008 that the officers of SLPS II/II would only be eligible for the exemption if they fulfill the requirements of completing 45 years of age and reaching the Efficiency Bar salary step prior to 01/10/2001 which is the date of implementation the PAC 20/2001.

The letter **P17** dated 11/11/2008 by the Deputy Chief Secretary of Eastern Province to the Secretary of Ministry of Finance and Planning responded stating that according **P16** the officers are eligible for the said exemption as they have fulfilled both requirements of completing 45 years of age and reaching the

Efficiency Bar salary step before 01/10/2001. Thereby the Deputy Chief Secretary of Eastern Province recommended that petitioner is entitled to the claimed exemption.

Nevertheless, through a letter **P19** dated 15/07/2009 the Ministry of Finance and Planning informed the Chief Secretary of Eastern Province that B. Sivapiragasam , the petitioner is not entitled to the said exemption as they are bound by the letter **P13** of the Assistant Director SLPS dated 30/01/2008 which annunciated the order of the Public Service Commission.

However, the petitioner had made an appeal **P35** against the decision of the Public Service Commission, along with which a list of annexures marked A1 – A37 were submitted to the AAT for consideration. The annexed documents are similar to the documents annexed in the instant application. Upon consideration of all facts and documentations, the order **P36** by the AAT was delivered on 08/02/2018 stating the appeal was dismissed on the ground that “*Although the appellant had completed 45 years of age before 01/10/2001, he would be reaching the E.B. salary point on 26/02/2003, that was a later date than the effective date of the P.A. Circular No: 20/2001 of 13/09/2001.....*”. Yet, it could be stated that the AAT has not correctly scrutinized the documents when delivering the order as it is challenged to be erroneous in nature.

Prior to determining whether the order by the AAT is erroneous in nature it is essential to establish whether the petitioner has successfully fulfilled the 2 requirements for the exemption. The requirements are:

1. Completing the age of 45 years &
2. Reaching the Efficiency Bar salary step prior to 01/10/2001

Thereby if the petitioner fulfills both requirements it is a legitimate expectation that he is entitled to the exemptions.

- **Age Requirement**

Section 8:3:2 of the Service Minutes on the SLPS published in the *gazette extraordinary bearing No.1134/5* dated 30/05/2000 indicates:

“An Officer in Class II Grade II will be exempted from the requirement of passing the prescribed Efficiency Bar Examination for promotion over the Efficiency Bar on completing the age of 45 years.”

As cited and annexed through **P1** (Birth Certificate) it is proved that the petitioner, B. Sivapiragasam was born on 23/02/1954 and thereby reaches the age 45 years on 23/02/1999. This thereby fulfills the 1st requirement for the exemption as the petitioner reaches the age 45 years prior to 01/10/2001 which the date of implementation of the PAC 20/2001.

- **Salary Step Requirement**

Secondly for the public officer to be exempted from the said exemption it is necessary to prove that the petitioner reached the required Efficiency Bar salary step prior to 01/10/2001.

The annexed documents affirm the petitioner had joined the Public Service as a graduate trainee on 01/03/1990 and later upon a cabinet decision the petitioner was absorbed (appointed) to SLPS II/II with effect from 01/09/1999. Further in paragraph 13 of **P2/ (P2a)** it states that the initial salary scale attached to the post of the petitioner is Rs. 97,500/- with 15 increments enabling the petitioner to receive a maximum sum of Rs.138,000/-. The letter further stated that the salary step for the 1st efficiency bar examination is Rs. 102,900/-. Nevertheless, as per **P12** the letter confirming the service of the petitioner, point 2 stated *“Salary step **entitled and paid** at the time of absorption into SLPS II/II is **Rs. 105,600/- pa**”.*

Thereby it is evident that the salary step paid to the petitioner at the initial stage of absorption to the position of SLPS II/II is Rs. 105,600 and thus is higher than the expected level of Rs. 102,600/-. Hence, it is apparent that the petitioner has undoubtedly reached the required salary step prior to 01/10/2001.

Additionally, the ‘Establishment Code’ of the Democratic Socialist Republic of Sri Lanka *Chapter VII: Clause 5 – ‘Salary on Promotion’* sets out the rules to adhere when converting the salary scales of officers promoted to new positions.

“5:3 – If the salary of the post to which an officer is promoted has an incremental salary scale, his salary should be converted from one scale to the other in accordance with the following rules.

5:4 – If on promotion, the last salary drawn by an officer falls between salary step of the new scale, he will be placed on the higher step and also be given an additional increment.

5:5 – If on promotion, the last salary drawn by an officer corresponds to the initial or a step on the new scale, he will be placed on the next higher step.

5:6 - If on promotion, the last salary drawn by an officer is less than one incremental step or more below the initial salary, he will be placed on the initial of the new scale. “

It is apparent that the petitioner has fulfilled both requirements stated in Section 8:3:2 of the Service Minutes on the SLPS published in the *gazette extraordinary bearing No.1134/5* and *Public Administration Circular 20/2001* which amends the Section 15 of Chapter II of the Establishment Code, by completing 45 years of age and reaching the Efficiency Bar salary step prior to 01/10/2001 which is the date of implementation the PAC 20/2001 and is thereby legitimately eligible for the said exemption from the Efficiency Bar Examination.

The AAT order cited the **Supreme Court FR Application No: 432/2003** dated 04/05/2006 claiming as a case decided on a similar matter which focused on the eligibility of the public officers to the exemption from the Efficiency Bar Examination. Her Ladyship Justice Shirani Bandaranayake in the said judgment further reiterated that in order, for the petitioner to be entitled to concessions granted, it is necessary to fulfill two specific requirements. Which were:

1. The petitioner has reached the age of 45 years &
2. Reached the required salary step at the time he applied for the concessions prior to the implementation of PAC 20/2001.

Nevertheless, in the said FR matter though the petitioner reached the age of 45 years prior to the implementation date of PAC 20/2001, he had not reached the required salary step and thereby was denied access to the said exemption.

The learned DSG during the argument stage of the instant case enunciated and cited the **No: 432/2003** FR case (Supra) and the *PAC 20/2001* while agreeing that it is essential that the petitioner must fulfill both requirements stated in the *PAC 20/2001* prior to 01/10/2001. However, it appears that the learned DSG has not accurately examined **P12** when claiming to the state the order of the AAT is correct which states that the petitioner only reaches the E.B. salary scale on 26/02/2003.

Yet, in the instant case it is evident the petitioner has fulfilled both requirements of completing the age of 45 years and reaching the Efficiency Bar salary step prior to 01/10/2001 which is the date of implementation the PAC 20/2001 and is thereby eligible for the said exemption from the Efficiency Bar Examination.

As such, the impugned order by the AAT delivered on 08/02/2018 could be deemed as prima facie erroneous as it states, *“Although the appellant had completed 45 years of age before 01/10/2001, he would be reaching the E.B. salary point only on 26/02/2003 that was a later date than the effective date of P.A. Circular No. 20/2001 of 12/09/2001.....”*.(emphasis added) Thus, the counsel for the petitioner argued that the AAT order is error on the face of record, as the date on which the petitioner reaches the required salary step is identified erroneously as 26/02/2003 when he has already reached the salary scale requirement (*proved by P12*) prior to the implementation date (01/10/2001) of the PAC 20/2001.

For an order to be quashed for error, that error must appear upon its face. Accordingly, there has arisen a deal of confusion as a record, though consistent in its parts with no error appearing may, on comparison with some extraneous

document or information appear to be erroneous in its presumptions or mode of reasoning. In the case of ***Brittain v. Kinnaird*** 129 E.R. 789 admittedly a case primarily on the issue of jurisdiction, the opening comments of Burrough J. are of relevance in considering certiorari for error of law: where a magistrate has jurisdiction, a conviction having no defects on the face of it is conclusive evidence of the facts which it alleges. It is not enough that the record should be erroneous, it must appear upon its face to be erroneous. So far is this notion of 'incontrollable verities' of the record carried, that it has been a subject for academic discussion whether the text of a statute, relevant to the original issue is or is not a part of the 'record' of the original proceedings.

R (Cart) v Upper Tribunal [2011] UKSC 28 - This case concerned an appeal from a decision of the Upper Tribunal. The Supreme Court held that the Upper Tribunal had made an error on the face of the record by failing to consider relevant evidence, and therefore its decision was quashed.

R v Central Criminal Court ex parte Clarke [1994] 1 WLR 1084 - This case concerned an application for judicial review of the Central Criminal Court's decision to refuse to grant bail. The High Court held that the Central Criminal Court had made an error on the face of the record by failing to consider relevant evidence, and therefore the decision was quashed

While considering the fourth proposition whether the writ can be issued in the case of a decision which was erroneous in law, in the case of ***Nagendra Nath Bora & Another vs The Commissioner of Hills*** 1958 AIR 398 decided on 07/02/1958 it was observed that "*It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error: it must be one which must be manifest on the face of the record.*"

Since the decision by the Supreme Court of Canada in the case of ***Nicholson v. Haldimand-Norfolk Regional Police Commissioners***, (1979) 1 S.C.R. 311 decided on 03/10/1979 the ambit of certiorari has been expanded to supervise the procedural fairness of merely administrative bodies. In principle, therefore,

certiorari should be available to correct errors of law committed by merely administrative bodies, and not be restricted to those which are exercising judicial or quasi-judicial functions.

After considering the above findings, this Court has determined that the AAT's order is erroneous and constitutes an error on the face of the record due to its failure to consider relevant documents properly. The petitioner has fulfilled the requirements for exemption from the Efficiency Bar Examination and therefore has a legitimate expectation of eligibility. Accordingly, this Court rules that the petitioner is entitled to be promoted to Class II of the SLPS effective from 01/09/2009, having completed 10 years of service and receiving due concessions accordingly. Hence, a Writ of Certiorari is issued to quash the AAT's order dated 08/02/2018. Further, the petitioner is entitled to receive other benefits that come with the promotion to the higher grade, with effect from September 1, 2009.

Neil Iddawala

JUDGE OF THE COURT OF APPEAL

D.N. Samarakoon J.

I agree.

JUDGE OF THE COURT OF APPEAL