

**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 Writ of Certiorari under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

Court of Appeal Case No.

CA/WRT/100/20

Devundara Liyanage Upali,
499 /6D, Hirimbura Road,
Galle.

Petitioner

Vs

1. Southern Province Provincial Road
Development Authority,
No. 19, Lower Dickson Road,
Galle.

2. H.LG. Chandima, Chairman,
Southern Province
Provincial Road Development Authority,
No. 19, Lower Dickson Road,
Galle.

3. Dr. W.W. Gamage, Hon. Governor of
Southern Province,
Governor's Office,
Lower Dickson Road,
Galle.

4. The Chief Secretary, Southern Provincial
Council,
Chief Secretary's Office,
S.H. Dahanayake Mawatha,
Galle.

5. The Secretary,
Ministry of Education,
Land and Land Development, Highways, and
Information,
Southern Provincial Council,
Ground Floor,
'Dakshina Paya',
Labuduwa, Galle.

7. Hon. Hemal Gunasekera,
(Former Governor of Southern Province)
'Dayani', Wellakka,
Weligama.

8. Mrs. P.P. Wickramasinghe
No. 98/59, Galusiri Uyana, Kithulampitiya,
Galle.

9. Sunil Poddiwela,
Board Member,
Deputy Chief Secretary (Finance),
Chief Secretary's Office, S.H.
Dahanayake Mawatha, Galle.

10. Athula Gamage Board Member,
Provincial Director (Southern),
Road Development Authority,
Matara.

11. T.V. Priyantha, Board Member,
Chief Accountant
Ministry of Education, Land and Land
Development, Highways, and Information,
Southern Provincial Council,
Ground Floor,
'Dakshina Paya', Labuduwa, Galle.

12. K.W.K Dayawansa, Board Member,

13. Norman Rajapaksha, Board Member,

Both of

Southern Province Provincial Road Development
Authority,
No. 19, Lower Dickson Road, Galle.

14. Hon. Attorney General
Attorney Generals' Department,
Colombo 12.

15. Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.

16. Ms. Dilihi Munasinghe,
Legal Officer,
Human Rights Commission of Sri Lanka,
No. 14, R.A. De Mel Mawatha,
Colombo 4.

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Harsha Fernando, with Vidura Ranawaka & Yohan Cooray,
instructed by Priyashantha Athukorala for the Petitioner.
M. Jayasinghe DSG for the Respondents.
Saliya Pieris, PC with Anjana Rathnasiri and S. Jayawardena for
the 8th Respondents.

Argued on: 06.02.2023

Written Submissions on: 09.04.2023 by the 8th Respondent
03.04.2023 by the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th,
9th, 10th, 11th, 12th, 13th & 14th Respondents
Not tendered by the Petitioner

Decided on: 07.06.2023

MOHAMMED LAFFAR, J.

The Petitioner joined the 1st Respondent Authority on 02-05-1995 as a Civil Engineer Grade IV and was promoted to the post of Chief Engineer (projects)-Grade 2-II on 01-12-2006. Subsequently, he was appointed as the Director to the Provincial Roads and Incomplete Assessts Projects.

The post of General Manager which is the Principal Executive Office of the 1st Respondent Authority became vacant in 2015, and the 1st Respondent Authority by its notice dated 03-06-2016 called applications for the said post. The Petitioner and three others including the 8th Respondent had tendered applications for the said post. Three candidates out of four applicants were interviewed on 28-09-2016, and the Petitioner was selected for the post. Accordingly, the 1st Respondent Authority by letter dated 01-08-2017 marked as P6 appointed the Petitioner to the post of General Manager of the 1st Respondent and the Petitioner assumed duties on the same date.

The 8th Respondent made a complaint to the Human Rights Commission of Sri Lanka against the said appointment stating that the Petitioner was not eligible to be selected for the post of General Manager. The matter was settled before the Human Rights Commission on the footing that the 8th Respondent would be appointed for the post of General Manager. Accordingly, by letter dated 10-09-2019 marked as P9, the Petitioner was informed that the 8th Respondent has been appointed for the post of General Manager and the Petitioner has been attached to the post of Middle-Level Manager Grade-I (Civil Engineer). The 1st Respondent, by letter dated 10-09-2019 marked as P7 requested the Petitioner to hand over duties of the office of General Manager to the 8th Respondent on or before 18-09-2019. In this scenario, the Petitioner states that the decisions of the 1st Respondent to remove him from the post of General Manager, placing him in the post of Middle-Level Manager Grade-I (Civil Engineering), and appointing the 8th Respondent to the post of General Manager are illegal, irrational, arbitrary and unreasonable act of the 1st Respondent. Therefore, the Petitioner seeks, *inter-alia* that;

1. A Writ of Certiorari quashing the decision of the 1st Respondent Authority to appoint the 8th Respondent to the post of General Manager of the 1st Respondent Authority.
2. A Writ of Certiorari quashing the decision of the 1st Respondent Authority, communicated to the Petitioner by letter marked P7 appointing the 8th Respondent to the post of General Manager.
3. A Writ of Certiorari quashing the decision of the 1st Respondent, communicated to the Petitioner by letter marked P9 placing the Petitioner in the post of Middle-Level Manager Grade-I (Civil Engineering).

The contention of the Respondents, in a nutshell, was that the Petitioner did not have the basic qualifications to be appointed to the post of General Manager and the appointment of the Petitioner to the said post is contrary to the recommendation made by the interview panel, and therefore, subsequently, the erroneous appointment of the Petitioner to the said post has been rectified by letters marked P7 and P9.

Admittedly, according to the selection criteria published in the notice marked as P4a, calling for applications for the post of General Manager of the 1st Respondent Authority and in accordance with the criteria in clause 4.1.2 of the scheme of recruitment marked as P5, the internal applicants for the said post, *inter alia*, are required to have completed five years satisfactory service period in the post of Deputy General Manager (Roads and Bridges), which is a senior management post in the said Authority or should have satisfied the criteria under clause 4.1.1, which *inter-alia* requires a minimum of five years experience in a senior management post.

A copy of the letter dated 28-05-2009 issued by the Director General of the Management Services Department with the approved restructured salary scheme of the 1st Respondent Authority is produced as 8R-2a and the Scheme of Recruitment bearing No. DMS/SP/0504 is produced as 8R-2b. According to 8R-2a and 8R-2b, the post of Chief Engineer is categorized as MIDDLE MANAGER and the salary Code of the Chief Engineer is MM 1-3. The post of Deputy General Manager (Roads and Bridges) is categorized as HIGHER MANAGER/SENIOR MANAGER and the salary Code of the Deputy General Manager (Roads and Bridges) is HM-1-1. In these respects, it is abundantly clear that the Petitioner who was holding the post of Chief Engineer was not considered as a higher/senior manager, and therefore, he had no basic qualifications to apply for the post of General Manager of the 1st Respondent Authority. The 8th Respondent was the Deputy General Manager (Roads and Bridges) of the 1st Respondent, and therefore, she was entitled to apply for the said post in dispute.

The Petitioner, the 8th Respondent, and two other persons presented themselves before an Interview Board as part of the recruitment procedure for the post of General Manager. The marking sheet of the interview is produced as 1R2. The observation of the interview board was that the Petitioner was not eligible for the said post in terms of section 4.1.2 of the Scheme of Recruitment. Moreover, the interview board had recommended the 8th Respondent for the post of General Manager. It is pertinent to be noted that the Petitioner is not challenging or seeking to quash the recommendation and observation of the interview board.

In this scenario, I observe that the appointment of the Petitioner to the post of General Manager was contrary to the Scheme of Recruitment and

recommendations of the Interview Board. As such, the said appointment was illegal, unreasonable and bad in law.

In these circumstances, subsequently, the 1st Respondent Authority rightly consented before the Human Rights Commission to rectify the erroneous and improper appointment of the Petitioner to the post of General Manager. Accordingly by letters marked P7 and P9 the 1st Respondent removed the Petitioner from the post of General Manager and appointed the 8th Respondent to the said post. Having considered the facts and circumstances of this matter, it is the view of this Court that the appointment of the 8th Respondent to the post of General Manager is lawful and reasonable. The 1st Respondent has not implemented the Order of the Human Rights Commission. When it is transpired before the Human Rights Commission that the appointment of the Petitioner is illegal, the 1st Respondent consented to rectify the error, whereas the 1st Respondent is duty bound to do so.

It is pertinent to be noted that, the decisions taken up by the 1st Respondent to remove the Petitioner from the post of General Manager and to appoint the 8th Respondent to the said post are in terms of the recommendations made by the Interview Board marked 1R2. The Petitioner is not disputing 1R2 and not seeking to quash the same as well. Hence, 1R2 is an undisputed and valid document. Without disputing 1R2 and seeking to quash the same, the Petitioner is not entitled to seek a Writ of Certiorari to quash the decisions marked P7 and P9.

The learned Counsel for the Petitioner was heard to say that the 1st Respondent Authority failed to adhere to the principles of natural justice before removing the Petitioner from the post of General Manager. It is my view that when the appointment of the Petitioner to the said post is *ex-facie* illegal, unreasonable, irrational, contrary to the Scheme of Recruitment and the recommendations of the Interview Board, and whereas the Petitioner had no basic qualifications which is well within his knowledge, hearing the Petitioner before removing him from the said post does not arise. This is a limitation of the rules of natural justice.

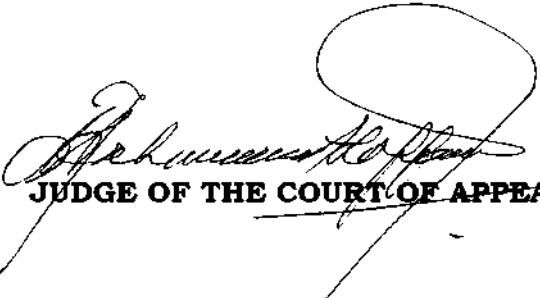
As per the document marked 1R2, the Petitioner obtained 56 marks and the 8th Respondent obtained 68.3 marks. As such, it is the observation of this Court that the Board of Interview should not have given marks to the Petitioner as he was not eligible to apply for the said post.

The Petitioner failed to produce the marking sheet of the Board of Interview. The 8th Respondent, under the provisions of the Right to Information Act, obtained the marking sheet and produced the same along with her objections. As such, it appears to this Court that the Petitioner failed to produce the marking sheet along with the Petition as it contains adverse recommendations against him, and

therefore, the Petitioner is not entitled to prerogative Writs as he has not invoked the Writ jurisdiction of this Court with clean hands.

As such, I hold that the decisions by the Respondents, *inter alia*, to remove the Petitioner from the post of General Manager of the 1st Respondent Authority and to appoint the 8th Respondent to the said post is in line with the Scheme of Recruitment and the recommendations of the Interview Board. In this respect, I hold that the impugned decisions are not liable to be quashed and that the Petitioner is not entitled to the Writs of Certiorari as prayed for. For the above reasons, I dismiss the Application of the Petitioner and I make no Order as to costs.

Application dismissed.



JUDGE OF THE COURT OF APPEAL

