

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

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

Case No: CA (WRIT) 222/2019

1. Sri Lanka Thapal Sevaka Ekamuthu Sangamaya,
Post Office, Kurunegala.
2. A.B. Wanninayaka,
President,
Sri Lanka Thapal Sevaka Ekamuthu Sangamaya,
Post Office, Kurunegala.
3. D.D. Abeynayaka,
Secretary,
Sri Lanka Thapal Sevaka Ekamuthu Sangamaya,
Post Office, Kurunegala.

PETITIONERS

Vs.

1. Ranjith Ariyaratne,
Postmaster General,
Postal Headquarters,

No. 310, D.R. Wijewardena Mawatha,
Colombo 10.

2. S.M. Mohomad,
Secretary,
Ministry of Postal Services and Muslim
Religious Affairs,
Postal Headquarters,
No.310, D.R. Wijewardena Mawatha,
Colombo 10.

2a. W.A. Chulananda Perera
Secretary,
Ministry of Information and Mass Media,
No. 437, Galle Road, Colombo 01.

3. J.J. Rathnasiri,
Secretary,
Ministry of Public Administration,
Disaster Management and Livestock
Development,
Independence Square,
Colombo 07.

3a. S. Hettiarachchi,
Secretary,
Ministry of Public Administration,
Home Affairs, Provincial Councils and
Local Government,
Independence Square,
Colombo 07.

3b. J.J. Rathnasiri,
Secretary,
Ministry of Public Services,
Provincial Councils and Local Government,
Independence Square,
Colombo 07.

4. National Pay Commission,
Room No 02 -116, BMICH,
Colombo 07.

5. Upali Wijayaweera,
Chairman,
National Pay Commission,
Room No. 02-116, BMICH,
Colombo 07.

6. Chandrani Senaratne,

7. Gotabhaya Jayaratne,

8. Sujatha Cooray,

9. Madhura Wehalla,

10. M.S.D. Ranasiri,

11. Ananda Hapugoda,

12. Sanjeeva Somaratne,

13. Ajith Nayanakantha,

14. Ravi Liyanage,

15. Sanath Ediriweera,

16. Ranjith Senarathne,

17. Eng. R.M. Amarasekara,

18. Major Gen (Rtd) Siri Jayaweera,

19. W.H. Piyadasa

All of,
Members,
National Pay Commission,
Room No -02-116, BMICH,
Colombo 07.

RESPONDENTS

Before: M. T. Mohammed Laffar, J.

S. U. B. Karalliyadde, J.

Counsel:

Chanuka Ekanayake for the Petitioners.

Sehan Soysa, SSC for the Respondents.

Argument concluded:

By way of Written Submissions.

Written submissions tendered on:

28.11.2022 by the Petitioners

25.11.2022 by the 1st – 3rd Respondents

Decided on: 21.09.2023

S.U.B. Karalliyadde, J.

The 2nd and 3rd Respondents are respectively the President and the Secretary of the 1st Respondent Trade Union known as Sri Lanka Thapal Sevaka Ekamuthu Sangamaya. It is a Trade Union of the Postal Department employees concerned with this Writ

Application. This action has been instituted challenging Circular No. 05/2019 dated 09.05.2019 marked as P-6 issued by the Post Master General. Before P-6 was issued the Post Master General had issued Circular No. 14/2014 dated 07.08.2014 marked as P-4 in terms of Circular No. 06/2006 (X1) dated 16.07.2014 marked as P-3 of the Secretary, Ministry of Public Administration. P-3 was regarding the payment of salary increments to the State officers who have satisfied all other qualifications and were stagnating on the maximum of the salary scale due to the unavailability of new service minutes. The position of the Petitioner is that the Circular of the Post Master General marked as P-4 is in conformity with the Public Administration Ministry Circular marked as P-3 and the subsequent Circular marked as P-6 does not give the correct interpretation to P-3 and therefore P-6 is illegal, erroneous, ultra vires, unfair, arbitrary, mala fide, unreasonable, unjustifiable, against the legitimate expectation of the Petitioners, malicious and capricious. The substantial reliefs sought in the amended Petition dated 01.02.2021 are, *inter alia*,

- c) Issue a mandate in the nature of a Writ of Certiorari quashing the decision and/or actions and /or attempts of the 1st and/or the 2nd Respondents under the Circular marked P-6.
- d) Issue a mandate in the nature of a Writ of Mandamus for the 1st and/or 2nd Respondents to comply with the Circulars marked as P-3 and P-4.
- f) Issue a mandate in the nature of Writ of Mandamus for the 1st and/or 2nd Respondents to repay the deducted salary increments to the members of the 1st Petitioner Trade Union with effect from 09.05.2019 and/or from the date which the purported Circular bearing No. 05/2019 was implemented.

The necessity for the Public Administration Ministry to issue P-3 is explained in paragraph 2 of the P-3. Accordingly, the intention of issuing P-3 was to take steps to pay salary increments beyond the maximum of the salary scale to the State officers who were stagnating on the maximum of the salary scale of Grades in between due to not revising service minutes or scheme of recruitment or scheme of promotions as per the Public Administration Circular No. 06/2006 dated 25.04.2006 marked as P-2(a) until they absorb into the relevant Grade after obtaining the approval for service minute or

scheme of recruitment or scheme of promotions. P-2(a) came into effect from 01.01.2006. The new service minutes (marked as P2(b)) were approved by the Public Service Commission on 21.06.2012. According to the new service minutes, the officers in the Postal Department belong to the service category of Supervisory Management Assistants-Technical/ Non-Technical. The said service category consists of three Grades, i.e., Grade III, Grade II and Grade I. While Grade III is the Grade to which the new appointments are made, Grade I is the highest Grade among the three Grades. In terms of the new service minutes, the officers should pass the Efficiency Bar Examination (කායිකෂමතා කඩයිම් විභාගය) to be eligible to get promotions from Grade III to Grade II or Grade II to Grade I. Before the new service minutes came into effect the service minutes dated 01.03.1993 marked as P-2(c)/1R1 (old service minutes) were applied to the postal service. By the old service minutes, the recruitment and promotion criteria which were there until 01.03.1993 restructured and the postal service was made a combined service. Accordingly, the officers were categorized as Class B Grade II and Class B Grade I officers. Recruitments were done to the Class B Grade II. The promotions were given from Class B Grade II to Class B Grade I upon passing the Common Charge Examination (පොදු කායිභාර විභාගය).

It is clear that by issuing Circulars marked as P-4 and P-6 the Post Master General intended to make arrangements to pay salary increments to the officers in the postal service in terms of the Public Administration Circular marked as P-3. In P-6 it has been stated that in order to be entitled to salary increments in terms of P-3, the officers concerned should have passed the Common Charge Examination (පොදු කායිභාර විභාගය) held under the old service minutes and as a result of paying salary increments beyond the maximum salary scale to those who had not satisfied that requirement had created a salary anomaly. The learned Counsel for the Petitioners argues that the words ‘satisfying all other qualifications’ in P-3 construe the officers who passed the “Efficiency Bar Examination” and not the “Common Charge Examination” (පොදු කායිභාර විභාගය).

The position of the learned Counsel for the Petitioner is that the operation of the old service minutes has been stopped/terminated with effect from 01.01.2006, the date on which the Public Administrative Circular No. 06/2006 marked as P-2(a) came into effect and from that date onwards the new service minutes should apply. The Public Service Commission approved the new service minutes of the officers in the postal

service on 21.06.2012 and it does not provide that the new service minutes apply retrospectively. Therefore, the new service minutes do not have a retrospective effect.

In the *Income-Tax Officer, Alleppey vs M.C. Ponnose & Ors*¹, Grover J. dealt with the issue of whether subordinate legislation has a retrospective effect,

“The courts will not, therefore, ascribe retrospectively to new laws affecting rights unless, by express words or necessary implication, it appears that such was the intention of the Legislature. Parliament can delegate its legislative power within the recognized limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the Legislature it may or may not be possible to make the same to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the persons or authority exercising subordinate legislative functions cannot make a rule, regulation or by-law which can operate with retrospective effect.”

In the recent Indian judgement *Bharat Sanchar Nigam LTD. And Others vs. M/S Tata Communications Ltd*², it was further held that,

“The power to make retrospective legislation enables the Legislature to obliterate an amending Act and restore the law as it existed before the amending Act, but at the same time, administrative/executive orders or circulars, as the case may be, in the absence of any legislative competence cannot be made applicable with retrospective effect. Only a law could be made retrospectively if it was expressly provided by the Legislature in the Statute. Keeping in mind the afore-stated principles of law on the subject, we are of the view that the applicability of the circular dated 12th June 2012 to be effective retrospectively

¹ 1970 AIR 385, 1970 SCR (1) 678

² Civil Appeal no(s).1699-1723 of 2015; (SC) September 22, 2022

from 1st April 2009, in revising the infrastructure charges, is not legally sustainable and to this extent, we are in agreement with the view expressed by the Tribunal under the impugned judgment.”

Accordingly, the new service minutes should apply from the date it was approved by the Public Service Commission, i.e., with effect from 21.06.2012. Therefore, the Court cannot accept the argument of the learned Counsel appearing for the Petitioner that old service minutes had been stopped/ terminated with effect from 01.01.2006. Until 21.06.2012, to be eligible for salary increments, the officers in the postal service had to pass the Common Charge Examination (පොදු කායිභාර විභාගය) mentioned under item 6 in the old service minutes and after 21.06.2012 as provided under items 8 and 10 in the new service minutes, the Efficiency Bar Examination (කායිකෂමතා කඩයිම් විභාගය).

Drawing the attention of Court to the final column in a document marked as P-2(d), the learned Counsel appearing for the Petitioner argues that the officers mentioned in P2(d) had passed the Efficiency Bar Examination (කායිකෂමතා කඩයිම් විභාගය) to be eligible for salary increments in terms of the new service minutes. The position of the learned State Counsel appearing for the Respondents is that, to be eligible for salary increments they should have passed the Common Charge Examination (පොදු කායිභාර විභාගය) as provided under the old service minutes and not the Efficiency Bar Examination (කායිකෂමතා කඩයිම් විභාගය) as provided in the new service minutes but none of them has passed the Common Charge Examination. The position of the learned State Counsel appearing for the Respondents is that the final column in P-2(d) refers to the service conditions mentioned in item 5 of the old service minutes which applied to the newly joined officers of the postal service. Item 5 (1) (අ) in the old service minutes provides that:

“තෝරාගත් අපේක්ෂක, අපේක්ෂකයන්ට තැපැල් පුහුණු අභ්‍යාස ආයතනයේ එක් අවුරුදු පුහුණු පාඨමාලාවක් හැදැරීමට සිදු වේ.

පුහුණු පාඨමාලාව අවසානයේ පුහුණුවුවන් ඉගෙනුම ලැබූ විෂයන් පිළිබඳව පරීක්ෂණයකට භාජනය කරනු ඇත. මෙම පරීක්ෂණය රුපියල් 23,040/= වැටුප්

තලයෙන් ඔබ්බට යාම සඳහා සුදුසුකම් ලැබිය යුතු කාර්යක්ෂමතා කඩයිම ලෙස සලකනු ලැබේ.

කනිෂ්ඨ සේවක පරීක්ෂකවරුන් විශේෂ රාජකාරියක් ඉටු කිරීම සඳහා පත් කරනු ලබන කොටසක් බැවින් ඔවුන් තවදුරටත් උසස්වීම් බලාපොරොත්තු වන්නේ නම් හැර මෙම පුහුණු පාඨමාලාව හැදෑරීම අනිවාර්ය නොවේ.

වයස අවුරුදු 45 සම්පූර්ණ වූ නිලධාරීන්ට කාර්යක්ෂමතා කඩයිමෙන් නිදහස් කිරීම සඳහා ඉල්ලුම් කිරීමට හිමිකම් තිබේ. එසේ නිදහස් කරගනු ලබන නිලධාරීන්ට කාර්යභාර විභාගයට පෙනී සිටීම සඳහා සුදුසුකම් අහිමි වනු ඇත.”

Accordingly, the selected candidates should have followed a training course and at the end of the training period they had to sit for an exam. That exam had been considered as an Efficiency Bar Examination to be eligible to go beyond the salary scale of Rs. 23,040/= which was the maximum salary scale in Class B Grade II under the old service minutes. The position of the Respondents is that the Efficiency Bar Examination mentioned in the final column in P-2(d) is not the Efficiency Bar Examination (කාර්යක්ෂමතා කඩයිම් විභාගය) mentioned in the new service minutes. To substantiate the position of the Respondents, a certificate issued to a trainee who had completed the training course in terms of item 5 of the old service minutes and a certificate issued to an officer who had passed the Common Charge Examination (පොදු කාර්යභාර විභාගය) in terms of item 8 of the new service minutes tendered to Court marked as 1R7 and 1R8 respectively. According to P2(d), the officers mentioned in the last column in P-2(d) had passed the Efficiency Bar Examination (කාර්යක්ෂමතා කඩයිම් විභාගය) mentioned in that document between 1985-1995 i.e. before the new service minutes came into operation in 2012. Before 2012, the applicable service minutes were the old service minutes. In terms of the old service minutes, the Examination which had to pass for promotions was the Common Charge Examination (පොදු කාර්යභාර විභාගය) and not the Efficiency Bar Examination (කාර්යක්ෂමතා කඩයිම් විභාගය). The Court therefore cannot accept the position of the learned Counsel appearing for the Petitioners that the officers mentioned in P2(d) had passed the Common Charge Examination (පොදු කාර්යභාර විභාගය) which was the requirement in terms of the old service minutes for promotions.

Under the above-stated circumstances, I hold that the impugned Circular issued by the Post Master General marked as P-6 is in conformity with the Public Administration

Circular marked as P-3 and therefore legal. Therefore, the Petitioners are not entitled to the reliefs sought in the amended Petition.

The Writ Application is dismissed. No costs ordered.

JUDGE OF THE COURT OF APPEAL

M.T. MOHAMMED LAFFAR, J.

I agree.

JUDGE OF THE COURT OF APPEAL