

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

1. K . A. T. P. Jayasinghe
7th Lane, School Road,
Deraniyagala.
2. K.A.D.M. Kuruppuarachchi
No.17/6, Galapitamadama Road,
Avisawella.
3. R.K.I. Sampath
133, Ranagiri,
Malimbada,
Palatuwa.
4. D.G.M.P. Dharmasena
555/53, 3rd Lane, Araliya Land,
Karuwalapitiya,
Meegoda.
5. C.S. Withanage
75/44, "Sadun Uyana",
Mambulgoda,
Pannipitiya.
6. E.W.Vudekshi
Sri Vijayarama Road,
Ketaladeniya,
Pinnaduwa,
Walahanduwa.
7. R.P.T. Sampath
160A, Punghananda Mawatha,

- Dibbadda,
Panadura.
8. W.A.K. Weerarathna
Muththettu Waththa,
Kongahagedera,
Kuliyapitiya.
9. J.B. Rathnayaka
51, Vijaya Mawatha,
Wijayapura,
Anuradhapura.
10. H.M.H.C. Gunawardhana
2/95/A/1. Paragahakale,
Ampara.
11. A.M. Kalith
39/C, Mal 3rd Road,
Vilinayady 03,
Sammanthurai.
12. R.K.S. Silva
No. 01, Patuwatha,
Dodangoda.
13. G. S. Ranaweera
384/120, Richmand Hills,
Wakwella Road,
Galle.
14. K.P.G.S. Kithulgoda
479/3, Geethanjali,
Elapatha South,
Rathnapura.
15. W.L.S. Asanka
Geethanjali,
Elapatha South,
Rathnapura.

16. M.Z.M. Fayaz
115B, G.M.M.S. Road,
Sainthamaruthu -12.
17. M.G.U. Senarathna
B-154 Meepitiya New Road,
Meepitiya,
Kegalla.
18. W.M.R.P. Sanjeewa
No. 198 B, Pinhena Road,
Ethauda Kanda,
Alawala,
Veyangoda.
19. L. Manora
323/02, Minuwanwila,
Kahathuduwa,
Polgasowita.
20. D.C. Dissanayake
“Pahan Piyasa”
Galoya, Katudeniya,
Mathale.
21. H.W.L. Kumara
No. 12G, Paralakupuhena,
Waduveliwitiya North,
Kahaduwa.
22. S.H.M.U. Kumara
166/14, Godaehala,
Walliwala,
Weligama.
23. D.M.I.P. Dissanayake
248, Down Patna Road,
Diyathalawa.
24. K.G. Senevirathna
Near Temple,
Kiraba,

Opanayaka.

25. H.D.S.R. Hathurusingha
Pahala Piduma,
Kuliyapitiya.
26. N.D.A. Kamalabandu
Kaludurugedara,
Morathiha.
27. L.D.U.A. Jayasinghe
110B, Kaswala,
Raddolugama.
28. K.I.P.S.R. Kumara
No. 50, Hediawala,
Wewaldeniya.
29. M.D.C.P. Mapatunage
34/12, Galapitamadama Road,
Avissawella.
30. U.K.P.T.J. Warnakula
No. A170/3, Gangani Garden,
Madola,
Avissawella.
31. K.D.A.M. Abeyrathna
18, Kakulagama,
Upper Karawita,
Rathnapura.
32. G.D.D.M. Galabada
No.B-42/6, Wendesiwaththa,
Batawala,
Hingula.
33. I.D.D.P.K. Ekanayaka
No. 206, Ganihigama (South)
Pepiliyawala.

34. W.A.S.T. Fernando
No.542/1/2, Shramadhana
Mawatha,
Dhaluwakotuwa,
Kochchikade.

Petitioners

Vs

Respondents

1. Kanchana Wijesekara
Minister of Power & Energy
Ministry of Power,
No. 437, Galle Road,
Colombo 3.
2. Ceylon Electricity Board
Sir Chittampalam A Gardiner
Mawatha
Colombo 02.
3. N.S. Ilangakoon
The Chairman,
Ceylon Electricity Board,
Sir Chittampalam A Gardiner
Mawatha,
Colombo 02.
4. Dr. D. C. R. Abeysekara
Acting General Manager,
Ceylon Electricity Board,
Sir Chittampalam A Gardiner
Mawatha,
Colombo 02.

5. P.A.J.P.K Perera
Deputy General Manager (Personal),
Ceylon Electricity Board,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.
6. P. R. Hadapangoda
Human Resource Manager
Ceylon Electricity Board,
Sir Chittampalam A Gardiner
Mawatha,
Colombo 2.
7. R.R. Jayarathna
Deputy General Manager (WPN),
Ceylon Electricity Board,
Sir Chittampalam A Gardiner
Mawatha,
Colombo 2.
8. W.M.A.S. Wijayathunga
Chief Engineer
Ceylon Electricity Board,
Sir Chittampalam A Gardiner
Mawatha,
Colombo 2.
9. K.M.S.C. Somarathna
Chief Engineer
Ceylon Electricity Board
Sir Chittampalam A Gardiner
Mawatha,
Colombo 2.
10. S. Sudhakaran
Kollankalady,
Maviddapuram,
Tellippalai.
11. D.M.W. Gunawansa
758, Sivali Junction,

- Hidellana,
Rathnapura.
12. P.A.S.N. Wijesinghe
Gala,
Ambagaswewa,
Nagollagama.
13. H.B.D. Hitibandara
No.145, Rathmale,
Nagollagama.
14. K.D.W.M.C.K. Divarathna
No. 38, Colombo Road,
Ginigathhena.
15. T.C.S. Jayathissa
No. 13/1, Thibbatuhena,
Godakawela.
16. G.R.C.K. Rathnapala
Galkotuwa Waththa,
Karamada,
Gelioya.
17. H.K.A.S.G. Ranasinghe
No. 101/2, Pahalagama,
Pelena,
Hatharaliyedda.
18. D.M.G.D. Ranasinghe
15/A, Rajya SewakaGammanaya
Diyurumpitiya.
19. M.G.C.P. De Silva
Jayantha Sewana
Mapakanda,
Nawalapitiya.
20. R.G.A.S. Udaya Kumara
No. 06, Karaweldeniya
Barigama.

- Werelagama,
Kandy.
21. C.M.R.R. Samarasekara
“Wasana”, Jayamalapura,
Gampola.
22. G.G.P.S. Abeysundara
No. 210, Yaya 02,
Udaragama Newtown,
Medirigiriya.
23. H.M.I.S. Kumara
No. 383, 22 Mile Post,
Jayanthipura,
Polonnaruwa.
24. R.M.J. Priyantha
“Nethmi”, Sirisagabo Mawatha,
Batticaloa Road,
Bibile.
25. H.W.K.A. Karunarthna
Ramyavila,
Walallawita,
Mathugama.
26. G.A. Gammudalidu
Siri Niwasa,
Balana,
Kadugannawa.
27. K.M.S.R. Jayarathna
No. 13, Kadangoda,
Kuruwita.
28. M.T. Chathuranga
No. 135/C, Mawathgama,
Halhota,
Bandaragama.
29. J.A.W. Jayasinghe
No. 93/2B, Nagahawaththa,

- Dunukewala,
Giriwadunna.
30. A.L.S. Liyanage
No. 62/1, Udagama Kanda,
Ulapane.
31. M. Ajith Kumara
Kaju Waththa,
Kottukachchiya.
32. D.M.M.K.P. Pradeep
No. 03, Parackrama Mawatha,
Kanthale.
33. W. M. D. Madushanka
No. 129, Track 08,
Mahaambagaswewa,
Medirigiriya.
34. M. W. K. Chathuranga
No. 689/19, Korosduwa,
Wadduwa.
35. M. G. C. C. Mudaligedara
No. 106/3, Moragolla,
Imbulgasdeniya.
36. T. H. N. G. Amaraweera
No. 168/2, Gabbela,
Udispathihuwa.
37. H. A.S. Kumara
No. 44/2, Yaya 05,
Rajanganaya.
38. U. S. Sandaruwan
Jayasiripura,
Nagollagoda.
39. M. G. D. Padmakumara
No. 159/8, Minigamuwa,

- Galagedara.
40. H. P. G. G Gunasekara
Pachchalawela,
Nagolagoda,
Hettipola.
41. H. G. C. P. Kelum
No. 144/08, Bandaranayaka
Mawatha,
Wallakka,
Weligama.
42. R. A. Asela Prasad
H86/4, Mawela,
Hingula.
43. I. A. I. G. Chandrarathna
No. 73, Hapuwalana,
Marandagahamulla.
44. P. G. S. P. K. Egodawita
No. 15, Balana,
Kadugannawa.
45. W. N. Sampath Kumara
No. 50, Nelumpokuna,
Mailagamma,
Wellawa.
46. I. R. G. R. G. Jayarathna
No. 4/1, Sri Indrajothi Mawatha,
Waldeniya,
Bokkawala.
47. I. B. B. R. L. Bandara
Samagi Mawatha,
Mirihenegama,
Wariyapola.
48. D. G. S. Jayalath
No. 59/21, Galketiyawaththa,

- Siyabalagoda,
Lenagahakotuwa,
Kandy.
49. W. U. Nishantha
No. 53/1, Godawanagoda,
Tangalle.
50. Y. R. D. S. Gunarathna
336/C, Pattiyalanda,
Ellawala,
Eheliyagoda.
51. J.M. Priyantha
“Amodya”
Middeniyagoda,
Hakmana.
52. G. D. A. P. Ranaweera
“Siriuyana”
Yakadawala,
Madawila.
53. B. M. C. K. Bannahaka
Kasunsiri,
Magulagama.
54. N. Thajiwana
No. 155, Ampalavanar Road,
Uduvil North,
Chunnakkam.
55. T. M. U. S. Thilakarathna
No. 165, Amunugama Garden,
Sirimalwaththa,
Gunnepana.
56. E. M. N. Amaranath
No. 227, Galtenna Road,
Ampitiya,
Kandy.

57. J. M. R. C. K. Jayasinghe
No. 449. Silver Land,
Hingurugamuwa Road,
Badulla.
58. G. R. Sudarshani
Athpitiya Temple Road,
Walasmulla.
59. B. A. N. T. Shantha
74/1, Nandana Stores Bare,
Allepola,
Balangoda.
60. A. G. S. K. Rathnayaka
8 Mile Post, Wendesiwaththa,
Diyakalamulla,
Kuliyapitiya.

C.A. WRIT NO. 0350 - 22

Before : **Hon. N. Bandula Karunarathna, J.(P/CA)**

: **Hon. M. Ahsan R. Marikar, J.**

Counsel: Shamil Perera, P. C. with Chamath Fernando
for the Petitioner insisted by Sadun
Nagahawatte.

M. Kannangara, S. C. for the Respondents.

Written Submission : Filed on 05.09.2023 by the Petitioner
Filed on 05.09.2023 by the 2nd to 60th Respondents

Argued on : 31.07.2023

Decided on : 22.09.2023

M. Ahsan R. Marikar, J.

Introduction

- 1) The Petitioners have instituted this action to invoke the Writ Jurisdiction of this Court to obtain reliefs prayed for in the prayers a, b, c, f and g.
- 2) The said prayers are referred to in the petition dated 27th September 2022 as follows.
 - a) Issue notice of this application on the Respondents;
 - b) Issue a mandate in the nature of Writ of Certiorari quashing the decision to hold an interview to decide the eligibility of the Petitioners to commence the Training Programme of two years duration conducted by the training branch of CEB as a qualification for the promotion to the post of Superintendent (Electrical);
 - c) Issue a mandate in the nature of Writ of mandamus directing the 2nd to 9th Respondents to permit the Petitioners to follow the Training Programme of two years duration conducted by the training branch of CEB as a qualification for the promotion to the post of Superintendent (Electrical);
 - f) Grant costs; and
 - g) Grant such other and further relief as to Your Lordship's Court shall seem fit and meet.

The factual position of this case

- 3) The Petitioners have contended that they belonged to Billman or Middle Level Technical Service or Clerical or Allied Services.
- 4) The Petitioners have stated that the 2nd Respondent had issued a circular No. 2002/GM/32(3)/Policy for internal recruitment for the post of Superintendent (Electrical). This circular had been issued in terms of the revised scheme of recruitment and promotions of Middle Level

Technical Services. The said circular refers to the internal recruitment as follows;

- 1.1. (a) 45% of the cadre of EES should be filled from the CEB employees who have successfully completed the First Examination for the Electrical Superintendents' Service. Present qualifications continue to apply.
- 5) Subsequently, the qualification criteria for recruitment had been revised by the Board Decisions taken by the 2nd Respondent.
- 6) Accordingly, the Board approval had been granted to include the following criteria for employee categories of Billman or Middle Level Technical Service or Clerical or Allied Services who have passed 3 subjects out of Pure Mathematics, Combined Mathematics, Chemistry or Physics at the GCE Advanced Level Examination.
- 7) Subsequently, the Petitioners have received letters from the HR Manager stating that the Petitioners are eligible to face the interview to be considered for the recruitment for the post of Electrical Superintendent - Grade II.
- 8) It is the general practice of the 2nd Respondent to include the relevant marking scheme in the letter issued to an employee, to attend an interview in order to maintain the transparency of the process, but the letters received by the Petitioners did not contain such information.
- 9) Further, the Petitioners have stated that, the impression given was that the purpose of the interview was to ascertain whether the Petitioners had satisfied the educational requirements as the Petitioners were directed to produce the originals and photocopies of the respective educational certificates.
- 10) The Petitioners were well aware that the qualification criteria for the promotion to the post of Superintendent (Electronic) do not entail an interview in order to be eligible to commence the said training programme.

- 11) As the Petitioners were noticed of a marking scheme, they questioned about the said purported marking scheme, and the interview panel assured that they had received strict instructions to follow it.
- 12) The Petitioners were made aware, that the “Marking Scheme for Interview of Recruitment to Superintendents’ Service from Field Technical Service (Examination Stream)” was used and the Petitioners state that it is not applicable to the promotion of the Petitioners.
- 13) It is further stated that Petitioners have not been informed of the outcome of the said interview despite attempts by the Petitioners to ascertain the final results. Thus, the Petitioners have also requested under Right to Information.
- 14) The Petitioners have become aware that the name lists had been published from the interview under the title “The Electrical Superintendents required to report to Deputy General Manager (Training) for training on 15.09.2022”.
- 15) The 2nd to 9th Respondents have failed to state any basis and/or reasons to justify the decision to afford special treatment and/or preference and/or priority to the 10th to 60th Respondents. Thus, it is stated that the 2nd to 9th Respondents would continue to afford undue advantage, preference, special treatment and priority.
- 16) The Petitioners argued that the purported decisions to hold interviews for the Petitioners are *ex facie* arbitrary, unreasonable and capricious and clearly against the fundamental principles of natural justice, *ultra-vires* and of no effect in law, or have taken irrelevant matters into consideration and misdirected themselves in law and fact.
- 17) The Respondents have filed the statement of objections and contended that a candidate must pass the First Board Examination, thereafter will face an interview and the qualifying candidates will be sent for a two year training programme.

- 18) Upon the conclusion of the two year training programme, an evaluation will be conducted, namely a trade test and a viva.
- 19) Those candidates who pass the trade test and the viva will eventually be recruited to the post of Superintendent (Electrical).
- 20) The Respondents have denied the position taken by the Petitioners that they did not have any access to the SORP and/or the marking scheme applicable to be recruited to the post of Superintendent (Electrical), as the Petitioners have access to the internet site known as 'CEB info' which contains all circulars, manuals and guideline.
- 21) Furthermore, successful candidates who procured the requisite pass mark at the said interview were duly informed and notified of the training programme.
- 22) CEB is preparing a response to the Right to Information requests forwarded by the Petitioners.
- 23) As per the decision of the Board dated 11th December 2013 to be appointed to the post of Superintendent (Electrical), a candidate must pass the First Board Examination, face an interview and then the qualifying candidates will be sent for a two year training programme.
- 24) The Petitioners' grievance is that they do not belong to a category of employees who do possess "Experience in the field Technical Service" and therefore will not receive marks under that category at the interview.
- 25) For such reasons the Petitioners claim that the said marking scheme cannot be applied to the Petitioners.
- 26) The Board has decided to allow employees in the Non-Technical Service category to enter into field service through this recruitment process.
- 27) An examination is held to select those employees who demonstrate technical knowledge and expertise at an interview, consequent to which such employees in the Non-Technical Services may enter into the field service.

- 28) Although Petitioners were not qualified, employees of the same category of the Petitioners have obtained the requisite pass mark and have been admitted to the two year training programme.
- 29) No preferential treatment meted out to any of the candidates.
- 30) The Respondents have further stated that they have at all times to this application, acted in good faith and in compliance with all applicable laws, rules and regulations.

Disputed facts

- 31) Considering the facts pertinent to the application made by the Petitioners and on perusal of the documents, written submissions and the arguments raised before this Court, I am of the view that to grant the reliefs claimed by the Petitioners in the petition dated 27th September 2022, the following questions should be addressed.
 - I. Do the Petitioners belong to Billman or Middle Level Technical Service or Clerical or Allied Services?
 - II. Are the Petitioners entitled for the revised scheme of recruitment and promotions of Middle Level Technical Services (Superintendent Service)?
 - III. Has the 2nd Respondent decided on 11th December 2013, that to be appointed to the post of Superintendent (Electrical), a candidate must pass the First Board Examination, face an interview and then the qualifying candidate will be sent for 2 years training programme?
 - IV. If so, are the Petitioners entitled for Writ of Certiorari and Writ of Mandamus prayed for in the prayer of the petition date 27th September 2022 against the Respondents?

I. Do the Petitioners belong to Billman or Middle Level Technical Service or Clerical or Allied Services?

- 32) The Respondents have not challenged that the Petitioners do not belong to the categories of Billman or Middle Level Technical Service or Clerical or Allied Services.
- 33) On perusal of P1 to P7 documents, it is proven that the Petitioners have been recruited for the aforesaid categories.
- 34) Thus, there is no dispute in respect of the categories referred to by the Petitioners as to their employment.

II. Are the Petitioners eligible for the revised scheme of recruitment and promotions of Middle Level Technical Services (Superintendent Service)?

- 35) All the Petitioners have been recruited as Billman or Middle Level Technical Service or Clerical or Allied Services. That fact is proven by P1 to P7 documents. The said documents are not challenged by the Respondents.
- 36) Subsequently, the said Petitioners have duly passed the First Board Examination. That fact is confirmed by P46 to P79 documents. The said documents have not been challenged by the Respondents.
- 37) P36(a) document under which the Petitioners have applied for the revised scheme of recruitment and promotions of Middle Level Technical Service (Superintendent Service) is referred to on page 29 of P35 document.
- 38) It is obvious when observing P36(a) and P36(b) that the Board decisions of the 2nd Respondent had decided that the Billman who passed the First Board Examination will be eligible for promotion to the post of Superintendent.
- 39) The relevant portion of the said P36(a) document is reproduced as follows;

“Note: Employees in category i, ii and iii other than Billman, who pass the First Board Examination will be eligible for promotion to the Post of Superintendent (Electrical, Mechanical or Civil) on successful completion of;

- a) Two years’ service in the skilled field service*
- b) Training program of three months duration conducted by the training branch, and*
- c) Passing of Trade test and viva”*

40) Further, the relevant portion of the P36(b) document is reproduced as follows;

“The Board approval was granted to include following qualification criteria for employee categories of Billman, Middle Level Technical Service and for Clerical and Allied Services who had passed three subjects out of Pure Mathematics, Applied Mathematics, Combined Mathematics, Chemistry or Physics at GCE Advanced Level Examinations, as recommended in the Board Paper to the decision under minute number 13.17.98”.

“Billman who pass the first board examination will be eligible for promotion to the post of Superintendent (Electrical) on successful completion of

- i) Two years service in the skilled field service*
- ii) Training program of two years duration conducted by the training branch, and*
- iii) Passing of trade test and viva”*

“Employee in the categories of middle level technical service and clerical and allied service who passed the 1st Board Examination will be eligible for promotion to Post of Superintendent (Electrical, Mechanical or Civil) on successful completion of

- i) Training Program of 2 years duration conducted by the training branch, and
- ii) Passing of trade test and viva”.

- 41) In considering the said two documents it is obvious that the Petitioners category employees are eligible, after passing the First Board Examination to be promoted to the post of Superintendent.
- 42) Now, I draw my attention to the document marked and produced as P8. The said P8 document is issued by the Human Resource Manager who is the 6th Respondent.

නියෝජ්‍ය සාමාන්‍යාධිකාරී (පිරිස්) ආචාර්ය
 ගොඩුනි මහල,
 ලංකා විදුලිබල මණ්ඩලය,
 50, ශ්‍රීමත් වත්තමපලම ඒ ගාඩනර් මාවත,
 කොළඹ 00200.

දිනය : 2022 ජූනි මස 30 වැනිදා

මගේ අංකය : DGM(P)/HRM(RJ DM)/RP2/ES(EXAM)/Vol. III

ප්‍රාදේශීය විදුලි ඉංජිනේරු (කුලියාපිටිය) මණික්,

ඩබ්.ඒ.කේ. වීරරත්න මහතා
 පාරිභෝගික සම්බන්ධීකාරක
 අ.අ.අ. 32694

ලංකා විදුලිබල මණ්ඩලයේ II වන පන්තියේ “ආ” ඛණ්ඩයේ විදුලි අධිකාරී තනතුරට බඳවා ගැනීම පලකා බැලීමේ සම්මුඛ පරීක්ෂණය (විභාග පදනම මත).

ලංකා විදුලිබල මණ්ඩලයේ II වන පන්තියේ “ආ” ඛණ්ඩයේ විදුලි අධිකාරී තනතුරට බඳවා ගැනීම සඳහා බැලීමේ සම්මුඛ පරීක්ෂණය (විභාග පදනම මත) සඳහා බඳවා ගැනීමේ සම්මුඛ පරීක්ෂණය 2022 ජූලි මස 06 දින පෙ.ව. 11.45ට පැවැත්වීමට, කිලිනොච්චි, නියෝජ්‍ය සාමාන්‍යාධිකාරී (බස්නාහිර පළාත උතුර) කාර්යාලයෙහිදී පැවැත්වීමට කටයුතු කෙරුණි.

පවතින කොට්ඨාස-19 වසංගත තත්වය යටතේ සම්මුඛ පරීක්ෂණය සංවිධානය කිරීමේ ක්‍රියාමාර්ග හා පිළිවෙල අනුගමනය කරන බවට දන්වා සිටිමි.

--- * ආරක්ෂක මුහුණු ආවරණ හා මුඛ ආවරණ පැළඳීම අනිවාර්ය වෙයි.
 * සම්මුඛ පරීක්ෂණ කටයුතු සිදුකරන පරිදියේ පමණක් සියළු දෙනාම එහි රැඳී සිටිය යුතුයි.
 * සම්මුඛ පරීක්ෂණය අවසන් වූ විභාග, බව පිටව යා යුතු වේ.
 * නි.සා. (බපඋ) කාර්යාලය හා ඒ අවට නිකරුන්ගේ ගැටිලි නොකළ යුතුය.

තවද, සම්මුඛ පරීක්ෂණය සඳහා පහත සඳහන් සහතිකයන්හි මුල් පිටපත් හා ඡායා පිටපත් බැගින් ද යැපෙන සම්මුඛ පරීක්ෂණ මණ්ඩලය ඉදිරියේ පෙනී සිටින ලෙස කාරුණිකව දන්වා සිටිමි.

01. ජාතික හැඳුනුම්පත හෝ මණ්ඩලීය හැඳුනුම්පත
02. තනතුරට අදාළ අතිරේක සුදුසුකම් පිළිබඳ සහතික (NVQ සහතිකය හෝ වෙනත්, ඊට සමාන සහතිකයන්)
03. සේවා සහතිකය
04. ලං.වි.ම. 1 වන මණ්ඩලීය විභාගය සමත් බවට සනාථ කිරීමේ ලියකියවිලි
05. ලං.වි.ම. සේවාකාලය තහවුරු කිරීමට අදාළ ලියකියවිලි
06. ඉංජිනේරු හවුන්සිල් ආයතනයේ ලියාපදිංචි සහතිකය (ඇත්නම් පමණක්)

අ/කළේ : ඉංජිනේරු පී. ඒ. ජේ. පී. කේ. ජයවර්ධන
 නියෝජ්‍ය සාමාන්‍යාධිකාරී (පිරිස්)
 ලංකා විදුලිබල මණ්ඩලය

පී. අර්. හදපානගොඩ
 මානව සම්පත් කළමනාකරු
 (ආර්පීඩීඉඉ)
 P. R. Handapanagoda
 HRM (RPDM)

පිටපත : ප්‍රාදේශීය විදුලි ඉංජිනේරු (කුලියාපිටිය) - එදිනට එම සේවක මහතා හට සම්මුඛ පරීක්ෂණයට සහභාගීවීමට බැඳීමක පරිදි රාජකාරි විලීන් නිදහස් කරන බවට කාරුණිකව ඉල්ලමි.

- 43) In the said document it states that the employment category that the Petitioners belong to, are eligible to be considered to face the interview for the recruitment to the post of Electrical Superintendent - Grade II.
- 44) In view of P8, P36(a), P36(b) and considering the recruitment letters of the Petitioners P1 to P7 and P46 to P79 documents on which the Petitioners have passed the First Board Examination had given them the eligibility to face the interview to be considered for the post of Electrical Superintendent - Grade II.

III. Has the 2nd Respondent decided on 11th December 2013 that to be appointed to the post of Superintendent (Electrical), a candidate must pass the First Board Examination, face an interview and then the qualifying candidate will be sent for 2 years training programme?

- 45) On perusal of P36(b) the 2nd Respondent's Board Decision, it has specifically stated that Billman who passes the First Board Examination will be eligible for promotion to the post of Superintendent on the successful completion of
- i) 2 years' service in the skilled field service,
 - ii) training program of 2 years duration conducted by the training branch,
 - iii) passing of trade test and viva.
- 46) Further, in P36(a) the Board Meeting of the 2nd Respondent had reiterated the same P36(b) criteria.
- 47) Beside these facts, P8 document confirms that the 6th Respondent, the Human Resources Manager of the 2nd Respondent had issued the letter dated 30th June 2022 stating that the Petitioners are eligible to face the interview to consider for the recruitment to the post of Electrical Superintendent - Grade II.

48) In the said circumstances, it is obvious by P36(a), P36(b) and P8 documents that the employees of the category of the Petitioners' Grade are eligible to face an interview and then the qualifying candidates will be sent for 2 years training programme.

IV. If so, are the Petitioners entitled for Writ of Certiorari and Writ of Mandamus prayed for in the prayer of the petition dated 27th September 2022 against the Respondents?

49) In the instant application the Petitioners have raised their arguments based on the documents marked as P35, P36(a), P36(b) and P8. The President's Counsel Shamil Perera brought to the notice of the Court that the category on which the Petitioners are eligible is different to the Field Technical Service category employees, who are eligible to face the same interview.

50) The position taken by the Respondents is that the eligible candidates had been interviewed and recruited as per the marking scheme marked and produced as R1.

51) Further, the Counsel for the Respondents had reiterated that the technical knowledge possessed by the eligible candidates had been considered as per P35 document.

52) However, the Counsel for the Petitioners challenged the said argument and brought to the notice of the Court that P35 document promotion scheme under 5.1 states that only Field Technical Service employees are eligible to face the said interview and should possess technical experience.

53) None of the Board Circulars contain that the Billman category should possess technical knowledge. It is obvious that the Billman category employees will not have the opportunity of gaining technical experience during their career.

- 54) Thus, after taking the Board Decisions reflected in P36(a) and (b) to recruit the Billman category to the post of Electrical Superintendent and rejecting their applications on the ground that they have no technical experience is arbitrary and unreasonable to my considered view.
- 55) In considering the facts pertinent from P5 to P107 documents and R1 and R2 documents, the marking scheme which had been given to the field officers or which is in the website of CEB Info is immaterial pertinent to the recruitment eligibility for the post of Electrical Superintendent - Grade II.
- 56) Thus, to my view as per P35, P36(a), P36(b) and P8 documents the Petitioners have a legitimate expectation that they will be recruited for the post of Electrical Superintendent - Grade II.
- 57) In view of that, the Petitioners have the right to obtain a Writ of Certiorari to review that the appointment is unreasonable.
- 58) In Writ of Certiorari court has to consider;
1. Want or excess of jurisdiction
 2. Denial of Natural Justice
 3. Unreasonableness
- 59) The said 3 principles are relevant to this application. Lord Denning in the case of **Metropolitan Properties Co. V Lannon and Others**¹ had emphasized that what is important is that there is no appearance of bias, stating:

“The Court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidences and confidence is destroyed when right-minded people go away thinking: “The Judge was biased”.

¹ [1968] EWCA Civ 5, [1969] 1 QB 577.

- 60) Further, Justice Palakidnar in the case of **Podimahtthaya V the Land Reform Commission**² had said that;

“On the more basic circumstance of the interference of this Court by a writ, one must examine whether there was reasonableness This Court can interfere where there is manifest unreasonableness in an administrative act. The test is whether the administrative authority has acted within the rules of reason and justice. The conduct of the administrative authority must be legal and regular as one correlates the acts complained about to the powers given under the statute”.

- 61) Further, it is reported in the case of **Premachandra V Montague Jayawickrama and Others**³. His Lordship the Chief Justice in the said judgement had referred to as follow;

“It is a cardinal maxim that every power has legal limits, however wide the language of the empowering Act. If the Court finds that the power has been exercised oppressively or unreasonably, or if there has been some procedural failing, such as not allowing a person affected to put forward his case, the act may be condemned as unlawful. There are no absolute or unfettered discretions in public law; discretions are conferred on public functionaries in trust for the public, to be used for the public good, and the propriety of the exercise of such discretions is to be judged by reference to the purposes for which they were so entrusted”.

- 62) In the case of **Kotakadeniya V Kodituwakku and Others**⁴ as per the facts of the case, the De Silva J. held that;

² [1990] 2 SLR 416 at page 419.

³ 1994 2 SLR 90.

⁴ [2000] 2 SLR 175.

“There are several decisions of the Supreme Court where it has been held that the ouster clause would be of no effect if the order is made by an officer who does not have legal authority to do so. In such case the decision is null and void and the preclusive clause in the Constitution is no bar to review”.

- 63) As per the said judgements it is obvious when the conduct of an institution is unreasonable against the employees, the Court has the power to review it.
- 64) The 2nd relief claimed by the Petitioners is to issue a Writ of Mandamus. A Writ of Mandamus is sought by a party to compel the performance of a public duty.
- 65) In the decision of **Karawita and Others and Welikanna V Inspector General of Police and Others**⁵ Gamini Amaratunga, J. held that;

“Within the field of Public Law, the scope of Madamus is still wide and the Court may use it freely to prevent breach of duty and injustice... The absence of precedent does not deter me when I am convinced that the only effective remedy to remedy the injustice caused to the petitioners is an order of Mandamus.”

- 66) In considering the aforesaid decisions, my candid view is that the 2nd Respondent had acted arbitrarily and unreasonably without considering the Borad decision which is reflected in P36(a), P36(b) and letter of interview P8 documents.
- 67) Therefore, the Petitioners in the instant application have proven the facts that their rights were arbitrarily deprived by the 2nd Respondent in the interview for them to gain marks under technical experience category.

⁵ [2002] 2 SLR 287.

CONCLUSION

68) In view of the aforesaid facts and documents, we grant the reliefs (b), (c), and (f) subject to tax cost as prayed for in the prayer of the petition dated 27th September 2022.

Judge of the Court of Appeal

N. Bandula Karunarathna, J. (P/CA)

I agree

President of the Court of Appeal