

**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.

Court of Appeal Case No.

CA/WRT/0096/2019

1. **Mirissage Priyantha Ranjith,**
Washington Gunawardene Mawatha,
Dummalasooriya.

Petitioner

Vs

1. **Mr. P.B.S.C. Nonis,**
Director General of Customs
Customs House,
No. 40, Main Street,
Colombo 11.
2. **Mr. K.M. Mahinda Siriwardena,**
Secretary,
Ministry of Finance
The Secretariat
Colombo 1.
3. **Hon. Attorney General**
Attorney General's Department
Colombo 12.
4. **Ranil Wickramasinghe,**
Minister of Defense, Finance, Economic
Stabilization, National Policies,
Technology, Women, Child Affairs, Social
Empowerment and Investment Promotion.

Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

5. **Vidura Wickramanayake**,
Minister of Buddha Sasana, Religious &
Cultural Affairs,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

6. **Nimal Siripala de Silva**,
Minister of Ports, Naval and Aviation
Services,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

7. **Ali Sabry**,
Minister of Foreign Affairs,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

8. **Dinesh Gunawardana**,
Prime Minister,
Minister of Public Administration, Home
Affairs, Provincial Councils and Local
Government,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

9. **Douglas Devananda**,
Minister of Fisheries,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,

Colombo 01.

10. **Susil Premajayantha,**
Minister of Education,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.
11. **Bandula Gunawardana,**
Minister of Transport and Highways and
Mass Media,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.
12. **Wijeyadasa Rajapakshe,**
Minister of Justice, Prison Affairs,
Constitutional Reforms,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.
13. **Kanchana Wijsekera,**
Minister of Power & Energy,
Office of Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.
14. **Tiran Alles,**
Minister of Public Security,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.
15. **Nalin Fernando,**
Minister of Trade, Commerce, and Food
Security,

Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

16. **Ahamed Naseer,**
Minister of Environment,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

17. **Mahinda Amaraweera,**
Minister of Agriculture,
and Forest Resources and Wildlife,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

18. **Roshan Ranasinghe,**
Minister of Irrigation, Sports and Youth
Affairs,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

19. **Ramesh Pathirana,**
Minister of Plantation
Industries/Industries,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

20. **Prasanna Ranatunga,**
Minister of Urban Development and
Housing,
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,

Colombo 01.

21. **Keheliya Rambukwella,**
Minister of Health & Water Supply
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.
22. **Manusha Nanayakkara,**
Minister of Labour & Foreign Employment
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.
23. **Harin Fernando,**
Minister of Telecommunication, Foreign
Employment and Sports
Office of the Cabinet of Ministers
Republic Building, Sir Baron Jayathilaka
Mw,
Colombo 01.

Respondents

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

Counsel: Mahendra Kumarasinghe with Ms. Samanthi Dissanayake for
the Petitioner.

Ms. Yuresha Fernando DSG for all the Respondents.

Argued on: 24.01.2023

Written Submissions on: 09.05.2023 by the Petitioners.
Not Filed by the Respondents.

Decided on: 30.10.2023

MOHAMMED LAFFAR, J.

The Petitioner in this Application is seeking an Order in the nature of a Writ of Certiorari quashing the decision of the 1st Respondent dated 26-10-2018 (marked as **P30**), refusing to appoint the Petitioner to the post of Assistant Superintendent of Customs Grade II with effect from 15-12-1997 with all due salary increments as directed by the Cabinet of Ministers by its decision dated 27-03-2018 (**P28**). Further, an Order in the nature of a Writ of Mandamus directing the 1st Respondent to comply with the Cabinet decision dated 27-03-2018 (**P28**) by appointing the Petitioner to the post of Assistant Superintendent of Customs Grade II with effect from 15-12-1997 with all due salary increments (without back wages).

Factual Matrix in a nutshell:

The Petitioner was appointed as Trainee Development Programmes Assistant attached to the Department of Customs with effect from 01-07-1994, and thereafter, the Petitioner was appointed to the permanent and pensionable post of Tax Officer, Excise Directorate of Sri Lanka Customs with effect from 01-01-1997 (**P3/R1**). By notice published in Gazette No. 892 dated 06-10-1995 (**P4**), applications were called for the post of Assistant Superintendent of Customs Grade II. The Petitioner has sat for the examination held on 06-04-1996 and faced the interview conducted on 13-05-1997. The total marks obtained by the Petitioner at the examination and the interview was 189 (**R3**) and accordingly, he has been placed 145th on the merit list. However, approval had been granted only for the recruitment of 126 candidates on the total marks obtained. The Petitioner was not appointed to the said post on the basis that he failed to secure adequate marks.

A cabinet Memorandum dated 22-01-1997 (**P5**) was presented to the Cabinet seeking to give permanent appointments to graduates who were serving in various government institutions as trainees. According to **P5**, an additional 10% of the total maximum marks stipulated for a selection examination, an interview or a combination of the two are to be granted to graduate trainees having over two years of training when filling staff-level vacancies

in accordance with the relevant schemes of recruitment. The Petitioner states that in view of **P5**, he is entitled to obtain an additional 30 marks. **P5** was approved by the Cabinet on 26-02-1997 (**P6**) and accordingly, the Public Administration Circular No. 13/1997 dated 13-06-1997 (**P7**) was issued. By letter dated 01-05-1997 (**P8**), the Petitioner requested the 1st Respondent that he be granted the reliefs stipulated in **P6**. The Petitioner further states that due to political reasons he did not receive the additional marks that he was entitled to in terms of **P6** and **P7**.

The Petitioner states that the Review Committee appointed by the Cabinet has recommended that the Petitioner be granted the relief sought by him by appointing him to the post of Assistant Superintendent of Customs Grade II with effect from 15-12-1997. The Petitioner further states that on 27-03-2018 the Cabinet decided to implement the above recommendation (**P28**). The said Cabinet decision was communicated to the Director General of Customs by the Ministry of Finance by a letter dated 25-04-2018 (**P29**). By a letter dated 26-10-2018 (**P30**), the Director General of Customs informed the Ministry of Finance that in terms of the Circular marked as **P7** the Petitioner was not entitled to the reliefs as prayed for on the basis that the said Circular was not applicable to the Petitioner.

In these circumstances, the Petitioner states that the decision of the 1st Respondent (**P30**) is illegal, unlawful, unreasonable, *mala-fide* and void in law, and therefore, seeks *inter-alia* a Writ of Certiorari quashing **P30** and a Writ of Mandamus directing the 1st Respondent to comply with the Cabinet Decision (**P28**) by appointing the Petitioner to the post of Assistant Superintendent of Customs Grade II with effect from 15-12-1997 with all due salary increments (without back wages).

The Respondents move for a dismissal of this Application on the footing that;

1. The Petitioner is not entitled to any relief in terms of the Circular **P7**.
2. The necessary parties are not made as Respondents.

First of all, I will have to determine whether the Petitioner is entitled to the relief as prayed for in terms of **P7**. The Cabinet

Decision (**P6**), granting additional marks to the graduate trainees was made on 26-02-1997. It is pertinent to note that the date of implementation of the said Cabinet Decision was not stipulated in **P6**. The interview for the post of Assistant Superintendent of Customs Grade II was held on 13-05-1997. For the implementation of the said Cabinet Decision, the Public Administration Circular No. 13/1997 (**P7**) was issued on 13-06-1997. As per **P7**, the date of implementation of **P6** is 13-06-1997. In these circumstances, the Petitioner was not entitled to the benefit of **P6** as the date of implementation of the same was after the interview that he faced. It appears to this Court that there is a delay in issuing Circular **P6**. However, it has not been challenged before the Court of law. Hence, *ex-facie*, the Petitioner is not entitled to the benefits set out in **P6** and **P7**.

Moreover, it is pertinent to note that only the graduate trainees are entitled to the benefit of additional marks in terms of Cabinet Decision **P6**, and that permanent employees are not subject to **P6**, which reads;

*“.....Cabinet Paper 97/0379/100/007, a Memorandum dated 22-01-1997 by the President on “**Employment of Graduate Trainees**” – approval was granted for the recommendations in the Memorandum.”*

It is established that, the Petitioner was appointed to the permanent and pensionable post of Tax Officer, Excise Directorate of Sri Lanka Customs with effect from 01-01-1997 (**P3/R1**). Since the Petitioner was not a graduate trainee at the time of the Cabinet Decision **P6** (26-02-1997), he is not entitled to the benefits stipulated therein. In these respects, I am inclined to accept the contention of the learned Deputy Solicitor General that the Petitioner is not entitled to any relief in terms of **P6** and **P7**.

Furthermore, at the relevant time period (1997), the appointing authority of the Assistant Superintendent of Customs was the Public Service Commission. Accordingly, the Public Service Commission had issued appointment letters to selected candidates. As per **P4**, the applications were called for the post of Assistant Superintendent of Customs Grade II by the Public Service Commission. The powers of appointment in respect of the

relevant post were delegated to the Director General of Customs under Article 57 of the Constitution only on 25-11-2011 (**R12**). As such, at the relevant time, as the Public Service Commission was the appointing authority of the post in dispute, it is a necessary party to this Application, whereas the Petitioner failed to name the same as a Respondent.

The Cabinet Decision marked as **P28**, directing the implementation of the recommendations of the Committees appointed by the Cabinet cannot be considered in isolation as **P28** originated from **P6** and **P7**. Similarly, the Petitioner's claim also originated from **P6** and **P7**. As I have already observed that the Petitioner is not entitled to any relief in terms of **P6** and **P7**, I hold that he is not entitled to any relief under **P28** as well. In those circumstances, it is the considered view of this Court that the decision of the 1st Respondent (**P30**) is lawful and within the purview of **P6** and **P7**.

For the foregoing reasons, the Application is dismissed. I make no Order as to the costs of this Application.

Application dismissed. No costs.

JUDGE OF THE COURT OF APPEAL