

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

1. Wasalamuni Arachchilage Senaviratne
Ambahera, Uhumeeya.
2. Dodamgoda Gamage Ajantha
S. Wijethilake
Malini Villa, Agaragama, Makulpotha.
3. Rajapakse Withanilage Sunil Chandrasiri
No. 179, Akkara Hathara, Nelawa
Ganewatta, Nikadalupotha.
4. Weerasinghe Mudiyanseelage Nimal
Gamini Bandara
Beligahawatta, Hmbara, Uhumeeya.
5. Sudasing Manchanayake Appuhamilage
Jinendra Dharmapriya Manchanayake
Barigoda, Nakkawatta.
6. Keselwatte Yapa Wasantha Edirisinghe
No. 02, Opposite the Hospital
Ambanpola.
7. Palle Gedara Cyril Wijesiri
No. 14, Ranawiru Uyana
Pallekale.

PETITIONERS

C.A. (Writ) Application No.307/2009

Vs

1. National Youth Service Council
P.O. Box 17, Maharagama.
2. Bashwara Senaka Gunaratne
Director General/Chairman
National Youth Service Council
P.O. Box 17, Maharagama.
3. S.P.N. Cyril Somawickrama
Director-Administration
National Youth Service Council
P.O. Box 17, Maharagama.
4. Piyadasa Kandamby
Director –Development
National Youth Service Council
P.O. Box 17, Maharagama
5. R.M.K.U. Ratnayake
Assistant Director-Planning
Ministry of Youth Affairs
420, Bauddhaloka Mawatha
Colombo 07.
6. Ridley Jayasinghe
Deputy Director
National Institute of Social
Development
191, Dharmapala Mawatha
Colombo 07.
7. P. Koralegedara
Assistant Director-Banking and
Finance
Samurdhi Authority of Sri Lanka
4th Floor, Sethsiripaya

- Battaramulla.
8. C.K. Herath
Internal Auditor
National Youth Service Council
P.O. Box 17, Maharagama.
9. D.D. Nandasiri
Council Director
National Youth Service Council
P.O. Box 17, Maharagama.
10. Sarath Kodikara
National Youth Council,
District Office, Monaragala.
11. Malith Peiris
National Youth Council
District Office, Monaragala.
12. Kariyakarawana
National Youth Council
District Office, Maharagama.
13. Saman Ekanayake
National Youth Council
District Office, Chilaw.
14. M.B. Sarath Chandrapala
National Youth Council
District Office, Maharagama.
15. M.D. Gunasena
National Youth Council
District Office, Anuradhapura
16. D.J. Senarathne
National Youth Council
District Office, Maharagama.
17. Shantha Wimal Abeywickrama.
National Youth Council
District Office, Maharagama.

18. Sarath Ukwatta
National Youth Council
District Office, Maharagama.
19. Rathnasiri
National Youth Council
District Office, Gampaha.
20. Saman Abeywardena Bandara
National Youth Council
District Office, Maharagama.
21. A.A.N.D. Sampayo
National Youth Council
District Office, Maharagama.
22. Chandana Uyangoda
National Youth Council
District Office, Maharagama.
23. Kapila Viraj
National Youth Council
District Office, Maharagama.
24. Thushara Wickramarachchi
National Youth Council
District Office, Maharagama.
25. Ranjith Widanapathirana
National Youth Council
District Office, Ratnapura.
26. A.P.A. Gafoor
National Youth Council
District Office, Ampara.
27. L.G. Nandalatha
National Youth Council
District Office, Ampara.
28. Senadheera Gunarathne
National Youth Council
District Office, Maharagama.

29. Ishwararaja
National Youth Council
District Office, Batticaloa.
30. Lal Hemantha
National Youth Council
District Office, Maharagama.
31. Anil Siri Herath
National Youth Council
District Office
Nugaliyadda, Kandy.
32. Reginald Ranasinghe
National Youth Council
District Office, Badulla.
33. H.K. Karunadhipathi
National Youth Council
District Office, Maharagama.
34. Sisira Senarathane
National Youth Council
District Office, Vavuniya.
35. Kalarani
National Youth Council
District Office, Batticaloa.
36. D.G. Kanthi Jayatissa
National Youth Council
District Office, Kegalle.
37. Mahesh Chandrasekara
National Youth Council
District Office, Kalutara.
38. Sunil Pathmasiri Jayamaha
National Youth Council
District Office, Maharagama.
39. Munavar
National Youth Council

District Office, Mannar.
40. Vinodhini Shriminon
National Youth Council
District Office, Jaffna.
41. Thilak Dharmakeerthi
National Youth Council
District Office. Mathale.

RESPONDENTS

BEFORE

COUNSEL

: Deepali Wijesundera J.
: Chula Bandara with
M.L.K de Silva for the Petitioners
Faisza Marker with Thushani
Machado for the 1st to 4th and 5th
to 9th Respondents.
Viran Corea with Chaya Sri
Nammuni S.C. for the 10th to 41st
Respondents.
Respondents.

ARGUED ON

DECIDED ON

: 23rd October, 2014
: 28th September, 2015.

Deepali Wijesundera J.

The petitioners have filed this application seeking a writ of certiorari to quash the appointments of tenth to forty first respondents by the first respondent on the recommendations made by second to ninth respondents as District Youth Service Officers.

The petitioners who are Grade I Youth Service Officers have applied for the post of District Youth Service officers and were called for Interviews by the respondents. The first respondent is a council established in terms of the *National Youth Service Act No. 69 of 1979*. The second respondent has been appointed as Chairman and Director General of the said council in terms of *Sec. 8 (1) (a) of the said Act*. The third to ninth respondents are members of the interview panel.

The petitioners have forwarded their application in response to internal circulars dated 05/07/2007 and 15/09/2008 by the first respondent both circulars are marked as **P9** and **P10**. The petitioners have gone for the interview and have not been selected. The petitioners stated the interview panel only had one marking sheet on which they noted the marks given to them contrary to the practice of every member

having a separate marking sheet. The petitioners stated that they requested for a marking scheme prior to the interview, the second respondent indicated that the marks would be allocated according to the circular **P10**. The petitioners stated that the tenth to forty first respondents were promoted subsequent to the interview without publicizing and scheme of marking and that the tenth to forty first respondents are not promoted according to merit but based on extraneous factors.

The petitioners stated that prior to the interview the first to ninth respondents did not have an approved marking scheme. The marking scheme adopted by the panel was not approved by the first respondent's council. Therefore the appointments of tenth to forty first respondents are arbitrary, capricious, unreasonable and irregular and contrary to accepted procedure. The petitioners stated on the facts stated above they are entitled in law to seek a mandate in the nature of writ of certiorari to quash the appointment of tenth to forty first respondents.

The council for the first to ninth respondents stated that the candidates who secured thirty two marks were promoted to the post of District Youth officers and the documents marked as **1R3** contains the

marks collectively determined by the members of the interview panel. The respondents stated that the marking scheme was laid down in the first respondent memorandum bearing *no. 19 of 2008* marked as **1R4** and **1R5**. He stated that marks were given strictly in accordance with **1R4**.

Answering the sixth respondent's claim that he was given a letter of appointment to cover up duties of the District Youth Officer which gave him legitimate expectation the respondents stated that the said letter does not confirm suitability for the said post and as such it could not have created legitimate expectations for the petitioners to be appointed as District Youth Service Officers.

The respondents further submitted that the petitioners voluntarily applied for the said post and as such acquiesced to the marking scheme laid down in **1R4** and as such are not entitled to challenge the said marking scheme.

The respondents submitted that the correct procedure was followed when tenth to forty first respondents were recruited. He stated that the interview board was properly constituted and marks were given

strictly on the marking scheme **1R4** and that **1R3** mark sheet contains the marks collectively determined by the members.

The respondents stated that the instant application is not properly constituted and that the petitioners have not produced the decision of the first respondent appointing the tenth to forty first respondents which the petitioners are seeking to quash. Citing the judgment in **S.M. Mangala Pushpakumara Vs Air Chief Marshal Roshan Gunathilake and others (CA Minutes 28/03/2012)** stated that it was held in this case that court cannot quash a document containing the decision which was not before court. Respondents stated that the application of the petitioners is not properly constituted and it should be dismissed. The respondent stated only the third petitioner has affirmed to the facts contained in the petition which shows that the petitioners have not complied with rule third 3 - 1 of the Supreme Court rules 1990.

The petitioners are seeking to quash the appointment of tenth to forty first respondents by the first respondent. In their prayer to the petitioner the relief sought is to quash the appointment of tenth to forty first respondents, no document is marked and sought to be quashed. Petitioners' argument was that the said interview panel did not have individual marking sheets. But on perusal of **1R3** it can be said that

there was a marking sheet to which all the members of the board have signed. This is a common marking sheet, **1R4** is the marking scheme. Therefore it can be said that the scheme of marking was in accordance with the memorandum marked as **1R5**. The candidates who secured thirty two marks were promoted to the post of Youth Services Officers.

The petitioners are seeking to quash the appointments of tenth to forty first respondents their petition is supported by one affidavit given by the third petitioner where as the other petitioners have not affirmed to the contents of the petition.

The petitioners stated that they had legitimate expectations when they applied and was called for an interview of getting promoted. Just because a person was called for an interview one can not say he had legitimate expectation of getting the job. In the circumstances the petitioners could not have had a legitimate expectation to be appointed to the said post by merely presenting themselves for the interview.

The petitioners have not stated anywhere in the petition or during the course of their argument any particulars of why they believe that the appointments of the tenth to forty first respondents were not based on

merit. The relief sought by the petitioners lacks precision and clarity and is outside *the scope of article 140 of the Constitution*.

The petitioners have failed to show court that the said appointments have been arbitrary capricious irregular, unreasonable and contrary to law.

For the afore stated reasons the application of the petitioners is refused with costs fixed at Rs. 50,000/=.


JUDGE OF THE COURT OF APPEAL