

**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* under article 140  
of the Constitution of the Democratic Socialist  
Republic of Sri Lanka**

**CA/WRIT/403/2013**

1. Engineering Diplomates Association
2. Technical Officers Union  
Both of;  
National Water Supply and Drainage Board,  
Galle Road,  
Ratmalana.
3. E.D. Subadra,  
Jayathillake Garden,  
Munagama,  
Horana.
4. M.W. Chandrani,  
23/20, New Hospital Road,  
Pamunuwa,  
Maharagama.
5. J.D.S.N. Karunathilake,  
“Asiri Uyana”, Palathota,  
Kaluthara Sounth.
6. G.M. Ranasinghe,  
650/L, Sudawila Road,  
Nawagamuwa, Ranala.

7. H.P.N.C. Siriwaradana,  
205/9, 20<sup>th</sup> Mile Post,  
Yakkala.
8. S.G.S.S. Kumara,  
“Piyal”, Aralaganwila,  
Polonnaruwa.
9. R.H. Suriyaarachchi  
126/23A, Moratuwa Road,  
Piliyandala.
10. R.A. Kumanayake,  
383, Weliwala Road, Kitigahawatte,  
Angoda.
11. R.G. A. Ranatunga,  
483/11, Jeramius Fernando Mw,  
Rawathawatta,  
Moratuwa.
12. A.G.G.S. Kumara,  
73/8, River Side Garden,  
Peradeniya Road,  
Katugastota.
13. R.M.R. Rathnayake,  
372/1, Bulukandagoda,  
Embilmeegama,  
Pilimathalawa.

**PETITIONERS**

Vs,

1. National Water Supply and Drainage Board,  
Galle Road,  
Ratmalana.
2. W.A.C.N. Wickramarachchi,  
No. 120A, Kamaragoda Rd,  
Dewalapola.
3. A.M.H.K. Abeykoon,  
No. 24/2, Udathuththiripitiya,  
Gampaha.
4. M. Sahadevan,  
No.549/8, Galle Road,  
Colombo 06.
5. S.T.D.O. Warapitiya,  
No. 35/1, 1<sup>st</sup> Lane,  
Kawraj Road,  
Wekada,  
Panadura.
6. J.A.C. Priyal,  
No. 267/5, Sri Niwasarama Rd,  
Pallimulla,  
Panadura.

#### **RESPONDENTS**

AND NOW BETWEEN,

In the matter of an Application for Intervention,

National Water Supply and Drainage Board-  
Engineers Union,  
Galle Road,  
Ratmalana.

**INTERVENIENT-PETITIONER**

Vs,

1. Engineering Diplomates Association

2. Technical Officers Union

Both of;

National Water Supply and Drainage Board,  
Galle Road,  
Ratmalana.

3. E.D. Subadra,  
Jayathillake Garden,  
Munagama,  
Horana.

4. M.W. Chandrani,  
23/20, New Hospital Road,  
Pamunuwa,  
Maharagama.

5. J.D.S.N. Karunathilake,  
“Asiri Uyana”, Palathota,  
Kaluthara South.

6. G.M. Ranasinghe,  
650/L, Sudawila Road,  
Nawagamuwa,  
Ranala.

7. H.P.N.C. Siriwaradana,  
205/9, 20<sup>th</sup> Mile Post,  
Yakkala.

8. S.G.S.S. Kumara,  
“Piyal”, Aralaganwila,  
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126/23A, Moratuwa Road,  
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**PETITIONERS-RESPONDENTS**

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No. 267/5, Sri Niwasarama Rd,  
Pallimulla,  
Panadura.

**RESPONDENTS- RESPONDENTS**

**Before:    Vijith K. Malalgoda PC J (P/CA) &  
                  H.C.J. Madawala J**

**Counsel:** Faisz Musthapha PC with Lilanthi de Silva for the Petitioner-Respondents

Roshini Hettiarachchi for the Intervenant –Petitioner

Kushan de Alwils PC with Prasanna de Silva & Ayendra Wickramaratsekera

for the 1<sup>st</sup> Respondent- Respondent

Senany Dayaratne for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents- Respondents

Written Submission on: 12.10.2015

Order on: 11.12.2015

## **Order**

**Vijith K. Malalgoda PC J (P/CA)**

Petitioners to this application are two trades unions namely,

1. Engineering Diplomates Association
2. Technical Officer's Union and some of the members of the said unions of the 1<sup>st</sup> Respondent Board.

The above Petitioners have alleged before this court that the 1<sup>st</sup> Respondent board by an impugned decision reflected in documents produced marked P-17 (a) to P-17(e) decided to promote all Engineers from Board Grade 6 (MM1-1) to Board Grade 5 (MM1-1) and the said decision was illegal, unlawful, arbitrary and capricious and therefore ultra virus.

When the matter was supported before this court on 29.01.2014 court issued formal notices on the Respondents and thereafter granted time for the Respondents to file limited objection before considering the question of issuing interim relief as prayed in paragraph (e) to the prayer.

After giving due consideration to the limited objections filed by the 2<sup>nd</sup> to 6<sup>th</sup> Respondents this court on 27<sup>th</sup> January 2015 decided to grant interim relief as prayed in paragraph (e) to the prayer subject to the following conditions.

“If there are promotions of Engineers in Board Grade 6(MM1-1) to Board Grade 5 (MM1-1) which can be implemented without violating the provisions of Scheme of Recruitment this court is not going to stop such promotion.”

The said interim order is now in operation and the main matter is to be argued before this court once the pleadings are completed.

However when this matter was pending before this court to support for the interim relief as referred above by motion dated 21<sup>st</sup> July 2014, National Water Supply and Drainage Board – Engineers Union Submitted papers before this court seeking intervention to the present case.

This court was not inclined to entertain the said application at that stage and therefore proceeded to consider the issue of granting interim relief as prayed by the Petitioners.

At the conclusion of the said inquiry this court made the following order granting interim relief as prayed by the Petitioners in paragraph (e) to the prayer,

“Petitioners during the inquiry submitted that they will not press for the suspension of the letters P-17(a) – P-17(e) already issued and therefore we are not going make order suspending P-17(a) – P-17(e)

If there are promotions of Engineers in Board Grade 6(MM1-1) to Board Grade 5 (MM1-1) which can be implemented without violating the Provisions of Scheme of Recruitment this court is not going to stop such promotions.

Subject to the above limitation, this court decides to make interim order staying the operation of the said decision of the 1<sup>st</sup> Respondent Board reflected in the letters marked P-17 (a) – P-17 (e) to promote all Engineers from Board Grade 6 (MM1-1) to Board Grade 5(MM1-1) pending the final determination of this application.”

It is understood from the above Interim order by this court that the implementation of the decision reflected in documents produced marked P-17 (a)- P-17(e) were stayed, except for the promotions referred to in documents P-17 (a)-P-17 (e).

In other words all the promotions of the Engineers in Board Grade 6(MM1-1) to Board Grade 5(MM1-1) based on the decision reflected in P-17(a) –P17 (e) were stayed until the conclusion of this case.



Therefore this court is of the view that the request for Intervention by the Engineers Union will have to be considered in the light of the above interim order and its consequences, and the extent to which it affects its membership.

On behalf of the Intervenient -Petitioner it is submitted that, the said union represents over 450 Engineers attached to the 1<sup>st</sup> Respondent Board and the quashing of the purported decision reflected in documents produced marked 17(a) -17(e) will directly affect their members who are presently in Board Grade 6(MM1-1). It is further submitted that the Petitioners have, by not making all Engineers in Board Grade 6 (MM1-1) who are eligible to be promoted to Board Grade 5 (MM1-1) ensured that such engineers are deprived of their legitimate right to be heard in opposition of the said application.

Whilst raising an objection to the application for intervention by the Intervenient-Petitioner, the Petitioners-Respondents have raised two main objections, firstly that the said Intervenient –Petitioner has not established sufficient interest to intervene in the present application and secondly the Intervenient-Petitioner has no locus –standi in this matter.

In support of his first contention the Petitioners-Respondents have argued that,

- a) That the Intervenient –Petitioner has failed to produce any decision purported to have been taken by the 1<sup>st</sup> Respondent promoting all Engineers from Board Grade 6 to Board Grade 5 and
- b) That the Intervenient –Petitioner has failed to give any particulars of Engineers who are members of the Intervenient-Petitioner’s union purported to have been promoted by the 1<sup>st</sup> Respondent from Board Grade 6 to Board Grade 5

Petitioners have come before this court, seeking a Writ of *Certiorari* to quash the decision made by the 1<sup>st</sup> Respondent Board, as evinced in documents P-17(a)-P-17(e). The said document refers to promotions of 2<sup>nd</sup> – 6<sup>th</sup> Respondents from Board Grade 6 to Board Grade 5. By taking into consideration the above documents, this court granted an interim order preventing the 1<sup>st</sup> Respondent from promoting any other

Engineers from Board Grade 6 to Board Grade 5 subject to certain conditions which I have discussed above. Therefore it is understood that this court has now taken notice of a decision by the 1<sup>st</sup> Respondent to promote Engineers in Board Grade 6 to Board Grade 5 and that is the grievance of the Petitioners too. Therefore, I see no reason for the Intervenant-Petitioner to establish the same fact once again before us.

The 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners before this court are two trade unions representing their membership who were affected by the above decision of the 1<sup>st</sup> Respondent Board. Similarly, the Intervenant-Petitioner's Union represents Engineers attached to the 1<sup>st</sup> Respondent Board who are not belonging only to Board Grade 6 but belonging to the other Grades as well. The Intervenant- Petitioner have submitted before this court a list of 120 Engineers belonging to Board Grade 6 who are members of the Intervenant-Petitioner's Union marked X and further submitted that 53 such members are directly affected from the decisions of this court.

The Intervenant Petitioner has further argued that by the conduct of the Petitioners-Respondents, i.e. by not making the Engineers who are eligible to be promoted to Board Grade 5 under the impugned order, their rights have been violated and therefore the Intervenant – Petitioner is a necessary party who can assist the court to come to a correct finding.

As I have observed above, this court is mindful of the fact that an interim order has already been issued preventing Engineers in Board Grade 6 to be promoted to Board Grade 5 under the impugned order and therefore, this court has a duty to give an opportunity to those who are affected by the said order to place their position before this court.

The Petitioners-Respondents have further submitted before this court, to several discussions between the 1<sup>st</sup> Respondent and the Intervenant-Petitioner prior to reaching the said impugned decision, and therefore this court is of the view that it is the Intervenant-Petitioner who can assist this court with regard to their position, which resulted the 1<sup>st</sup> Respondent to implement the impugned decision.

The Petitioners-Respondents have further argued that the Intervenant -Petitioner has no locus –standi in this matter.

In the case of *Mahanayoka Thero, Malwattu Vihara V. Registrar General (1938) 39 NLR 186* the Supreme Court allowed intervention by a third party and in his judgment Soertsz J observed that the expelled priest was permitted to intervene “ as he was vitally concerned in the matter.”

In the case of *Government Dental Therapists Association V. George Fernando Director of Health Services CA Application No. 86/93 CA Minutes dated 27<sup>th</sup> July 1994* this court sought to adopt a liberal approach in permitting third party intervention in to Writ proceedings.

In his judgment Amir Ismail J observed that “Each of the Intervenant-Petitioner’s in the present case cannot be said to be a meddlesome busybody or a meddlesome interloper who do not have a sufficient interest in the pending application. I would therefore adopt the liberalized rules in regard to the case of an intervenient who similarly has a sufficient interest in the subject matter of a pending Writ Application and on this basis present intervention.

In the case of *L.U.P. Jayawardana V. Minister of Health and Others* [CA Writ Application No. 978/2008- CA minutes of 21.05.2009] Anil Goonaratne J observed.

What the court at this point of time need to consider is whether the intervenient party is a necessary party and having such party in the case would in all circumstances assist court in considering the merits and the demerits of the application before Court. I find that GMOA like the other party seeking to intervene has some interest in the transfer scheme of medical officers and it would be necessary to consider its view to arrive at a correct decision...”

When considering the circumstances under which the Intervenant-Petitioner has come before this Court, I observe that the above decisions of this court as well as by the Supreme Court permits me to conclude that the Intervenant–Petitioner in the present case is a necessary party who can assist this court to arrive

at a correct decision. I therefore overrule the objections of the Petitioners-Respondents and allow intervention of the Intervenant-Petitioner.

**PRESIDENT OF THE COURT OF APPEAL**

**H.C.J. Madawala J**

I agree,

**JUDGE OF THE COURT OF APPEAL**

Intervention allowed.