

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

In the matter of an application in the
nature of Writs of *Certiorari* and
Mandamus under article 140 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Amarasinghage Champa Damayanthi Silva
545A, Ruvanpura Road,
Aggona,
Angoda.

Petitioner

CA (Writ) 437/2014

Vs,

1. Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.
2. T.G.Jayasinghe,
Chairman,
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.
3. T.G.Jayasinghe,
Managing Director,
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.
4. S.W.Gamage,
Deputy General Manager
(Human Resources and Administration),
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.
5. Sandhya Wijeyabandara,
Director,
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.

6. Samantha Pushapala Withana,
Manager – Human Resources
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.
7. Wasantha Abeysekara,
Deputy Operations Manager
(Sapugaskanda Terminal)
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.
- 7A. P.F.Yesmen,
Deputy Operations Manager
(Sapugaskanda Terminal)
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.
8. Priyantha Dayarathne,
Deputy Manager (Human Resources),
Ceylon Petroleum Corporation
No. 609, Dr Danister de Silva Mawatha,
Colombo 09.

Respondents

Before : Vijith K. Malalgoda PC. J (P/CA) &
S. Thurairaja PC. J

Counsel : Anandalal Nanayakara for the Petitioner
Chaya Sri Nammuni, SC for the Respondents

Order on : 28/02/2017

Order

S.Thurairaja PC J

The Petitioner joined as a Trainee technician grade B3 of the Ceylon Petroleum Corporation in 1984 and gradually rose to the position of instrument superintendent grade A7.

The present dispute is that there was an internal circular/ advertisement under the reference number of HR/E/13/035(අ)/ (ඉ)/035(උ) marked as P14 by the Petitioner. Where it was advertised for several positions including Assistant Manager grade A5 required qualifications was among other things an employee of CPC at grade 7 with..... or NDT with 6 years' service or.....

The Petitioner claims that she had necessary qualifications and experience hence she applied to the said post and was selected and informed that she will be placed at grade 6 for one year and after completion of one year with recommendation of HOF will be promoted to grade A5. The Petitioner by letter dated 08/04/2013 (P16) while not accepting the promotion she requested her to be placed at grade 5.

Petitioner seeks the following reliefs from the court:

1. Writ of Mandamus to place her at grade 5 from 27th March 2013 and to provide all allowances and benefits since that day.
2. Issue a Writ of Certiorari quashing the second inherent notice marked P22 at P26.

The Respondents takes up legal objection to the maintainability of this application stating that the relationship between the Petitioner and Respondents are purely of contractual nature namely Contract of employment hence the Petitioner is not entitled for Writ of Mandamus.

Further the Respondent submits that there is an undue delay by the Petitioner to seek the remedy hence the Petitioner is liable for laches

Respondent also submits that considering all facts of the petition does not qualify to obtain writs as she prayed for.

Now I consider the 1st legal objection, it is accepted by both parties that the Petitioner is an employee attached to the Ceylon Petroleum Corporation, since 3rd September 1985 and presently she holds a position of instrumental Superintendent grade A7. Respondent is a government establishment established by Parliamentary statute. The relationship between the Petitioner and Respondent is in the nature of Employer - Employee. The question is to decide whether the Respondent was doing a public duty or not. If the Respondent is performing a public duty the Petitioner will be entitled for Writ of Mandamus subject to other conditions are fulfilled, if not this application will fail.

In Ratnayake V Perera 2 SLR 451 the court held that "the general rule of mandamus is that its function is to compel s public authority to do its duty. The essence of mandamus is that it is a command issued by a superior court for the performance of a public authority of a public legal duty. It is only granted to compel the performance of duties of a public nature, and not merely of private character, that is to say, for the enforcement of a mere private right stemming from a contract of the parties."*

In Weligama Multi Purpose Co-operative society V Chandradasa Daluwatta 1984 1 SLR 195 courts held that "Mandamus lies to secure the performance of a public duty, in the performance of which an applicant has sufficient legal interest. To be enforceable by Mandamus the duty to be performed must be of a public nature and not of a merely private character. A public duty imposed by statute, charter the common law or custom."

H.W.Wade & C.F.Forsyth in Administrative Law 9th edition at page number 621 states as follows: *"A distinction which needs to be clarified is that between public duties enforceable by Mandamus which are usually statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by the ordinary contractual remedies such as damages, injunction, specific performance and declaration, they are not enforceable by Mandamus which in the first place is confined to public duties and secondly is not granted where there are other adequate remedies."*

In **K.S de Silva V National Water Supply and Drainage Board and another (1989) 2 SLR 1**, the National Water Supply and Drainage Board called for applications from its employees for the post of Accountant grade iv. The Petitioner applied for the post, was called for an interview and the board approved his appointment to the post of grade iv Accountant. The 2nd Respondent, the general manager has failed to carry out the directions of the board and as failed to issue to the Petitioner the letter of appointment. The Petitioner accordingly prayed for a Writ of Mandamus directing the 2nd Respondent to issue the letter of appointment.

The Supreme Court held that *"in my opinion the office to which the Petitioner is seeking admission is not a "public office" of the kind which attracts the remedy by way of Mandamus. It is an office essentially of a contractual or private character. Accordingly, as a matter of law, the Writ of mandamus does not lie and the application must fail."*

In **Jayawardena V Peioples Bank 2002 3SLR 17** the court held that *"courts will be ready and willing to apply the constitutional remedy of Mandamus in the appropriate case. The appropriate case must be necessarily be a situation where there is a public duty. In the absence of a public duty an intrusion by this court by way of mandamus into an area where Remedial measures are available in private law would be to redefine the availability of a prerogative writ."*

In **Wickramasinghe V Ceylon Electricity Board and another 1997 2 SLR 377** court held as follows. *"the Petitioner has failed to satisfy this court that he has a statutory right to an extension of services under the 1st Respondent for a further period from 10.10.96. By P2 the Petitioner has entered into a private contract to serve as an engineering Assistant according to the terms and conditions in the letter of appointment. It is not an office created by statute with attendant legal rights to an extension of service till he reaches the age of sixty. He has no legal right to insist on the 1st Respondent extending his services on the basis of a right conferred by any statutory provision. Nor is the 1st Respondent under a statutory duty to extend the Petitioner's services. Thus, his application for relief by way of certiorari and mandamus must fail."*

The Petitioner submits that she was affected by the decision made on the 21st June 2012 (P18 & R5). Perusing the said letter, it is revealed that the Manager, Human Resources of Ceylon Petroleum Corporation had promoted the Petitioner to A6 from A7 according to the Respondents the Petitioner was the only candidate who came for interviews and the panel

of interviewers thought it fit to promote her to A6 instead of A5. Further the same was placed before the Board of Directors of Ceylon Petroleum Corporation and decided to promote her to A6. It is submitted that the Petitioner had not accepted the promotion given to her to date. Further she had informed the management by letter dated 10/07/2013 that she cannot accept the promotion.

Considering the facts before the court I am of the view that the advertisement clearly says that the promotion is from A7 to A5. According to the notes of the interview panel which is attached to R5 reveals that the Petitioner is fit to promote to A6 and recommendation reads as follows: "the interview panel recommends to promote Mrs. A.C.D. Silva (9284) to the post of Assistant Operational Manager grade A6 w.e.f. 27/03/2013 and after completion of one year at grade A6 with the recommendation of HOF to promote to the grade A5" (sic)

Considering the materials before us, I find the decision and the recommendation appears to be reasonable and humane, the interview panel could have refused the promotion but it was not so. Further the promotion to A6 is time lined and promotion to A5 was clearly recommended and informed to the Petitioner.

The promotion was given on the **27th March 2013**, the Petitioner came before the court was on the **19th December 2014**. It is more than 1 ½ years. She had not purged her default or explained the circumstances for her laches. Further the Petitioner had not properly prosecuted her petition before the court. I find the Petitioner guilty of laches.

Considering all material facts before the court, I find that the relationship between the Petitioner and the Respondent is of the nature of Employer – Employee contractual relationship. Further the Respondent was not performing a public duty at this given circumstances. I also find that the undue delay of the Petitioner to come before this court is not explained appropriately; hence the Petitioner is guilty of laches. After considering all circumstances, I find that the Petitioner is not entitled for any relief by way of a Writ. Court refuses to grant any relief.

Application dismissed without cost.

JUDGE OF THE COURT OF APPEAL

Vijith K. Malalgoda PC J (P/CA)

I agree,

PRESIDENT OF THE COURT OF APPEAL