

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

CA (Writ) Application No. 1870/2006

1. G. Nimal Ransiri,
Garusingheniwasa,
No. 99, Gangeyaya, Embilipitiya.
2. J.M.Piyaratne Bandara,
Hidellana Kanda, Goluwawila, Ratnapura.
3. P.S.Wijayasiri,
No. 23, 'Yamuna', Paniyankadawela,
Saliyapura.
4. M.S.B.A.Samarasekara,
No. 39A, Thalpegedara Watta,
Nadugala, Matara.
5. R.J.K.S.Ranatunga,
No. 115A,
Devala Mawatha, Paththaduwana,
Minuwangoda.
6. J.A.L.A.Jayaweera,
No. 1/9, Kos Hena, Udatuttiripitiya,
Gampaha.

PETITIONERS

Vs.

1. M.E. Lionel Fernando,
Co-Chairman,
National Salaries and Cadre
Commission,
Room 2-G 10,
BMICH, Bauddaloka Mawatha,
Colombo 7.

And 60 others

RESPONDENTS

Before: Arjuna Obeyesekere, J

Counsel: Manohara De Silva, P.C., with Ms. Nadeeshani
Lankatilleka for the Petitioners

Ms. Anusha Fernando, Deputy Solicitor General for
the Respondents

Written Submissions: Tendered on behalf of the Petitioners on 3rd June
2019

Tendered on behalf of the Respondents on 13th
December 2018

Decided on: 30th July 2019

Arjuna Obeyesekere, J

When this matter was taken up on 7th June 2019, the learned President's Counsel for the Petitioners and the learned Deputy Solicitor General for the Respondents moved that this Court pronounce its judgment on the written submissions that have been tendered on behalf of the parties.

The issue that arises in this application is whether the Petitioners should be placed on the Salary Code MN-1-2006 as decided by the Respondents or on the Salary Code MT-2-2006 as argued by the Petitioners.

The facts of this matter very briefly are as follows.

The 1st – 4th Petitioners are Agricultural Overseers employed by the Department of Prisons. The 5th and 6th Petitioners had joined the Department of Prisons as Agricultural Overseers and pursuant to the promotions received by them to the post of Agricultural Instructors on 15th April 1997, were holding the said post of Agricultural Instructor at the time this application was filed in 2006.

According to the Scheme of Recruitment for the post of Agricultural Overseer annexed to the petition marked 'P3', the educational qualifications that an applicant for the said post must possess are as follows:

“බඳවා ගැනීමේ හා උසස් කිරීමේ පටිපාටිය –

කෘෂිකර්ම බවර්ධයේ තනතුර - බන්ධනාගාර දෙපාර්තමේන්තුව

03. අධ්‍යාපන සුදුසුකම් :-

(අ.) අ. පො. ස. (ස. පෙළ) විභාගයේදී දෙවරකට නොවැඩි වාර ගණනකදී සිංහල/දෙමළ භාෂාව සහ අංක ගණිතය/ව්‍යාපෘති අංක ගණිතය/ගණිතය ඇතුළුව කවර හෝ විෂයයන් දෙකකට සම්මාන සහිතව විෂයන් හයකින් සමත්වීම. (මුල් අවස්ථාවේදී විෂයයන් පහක් සමත්වී සිටිය යුතුය).

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(ආ.) පා. පො. ස. විභාගයේදී දෙවරකට නොවැඩි වාර ගණනකදී සිංහල භාෂාව/දෙමළ භාෂාව සහ ගණිතය ඇතුළුව කවර හෝ විෂයයන් දෙකකට ඒ හෝ ඩි ශ්‍රේණියේ සාමාර්ථ සහිතව විෂයයන් හයකින් සමත්වීම. (මුල් අවස්ථාවේදී විෂයයන් පහක් සමත්විය යුතුය).

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(ඇ.) රජයේ ගොවිකම් පාසැලක අවුරුදු දෙකක පාඨමාලාවක් සාර්ථකව හදාරා ඉන් සමත්ව ඇති බවට සහතික තිබීම.

(I) කෘෂිකර්ම හා කිරිපිටි පාලනය, සත්ත්ව පාලනය, කුකුළන් ඇති කිරීම පිළිබඳව රජයේ ලියාපදිංචි ගොවිපලක සේවය කර එක් අවුරුද්දක සතුටුදායක ප්‍රත්‍යාපනයක් ලබා ඇති බවට සහතික ලබා තිබීම.

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(II) අ. පො. ස. (සාමාන්‍ය පෙළ) විභාගයේදී හෝ ප. පො. ය. විභාගයේදී ඉංග්‍රීසි විෂයය සමත්වී තිබීම."

This Court must observe at this stage that neither the Petitioners nor the Respondents have placed any material before this Court to demonstrate that the programme of study that a candidate is required to follow at a Government Agricultural School and the qualifications that such person obtains are of a technical nature.

The Petitioners state that they possessed the required results at the General Certificate of Education (GCE) Ordinary Level examination and a Diploma in Agriculture at the time they applied for the post of Agricultural Overseer. While the 1st, 3rd and 4th Petitioners had been appointed to the said post with effect from 3rd July 2000, the 2nd Respondent had been appointed to the said post on 21st July 2000. The letters of appointment issued to the Petitioners have been annexed to the petition marked 'P5A3', 'P5B2', 'P5C', 'P5D', 'P5E' and 'P5F'.

The Petitioners state that the next promotion an Agricultural Overseer can aspire to is that of an Agricultural Instructor. The Scheme of Promotion for the post of Agricultural Instructor has been annexed to the petition marked 'P6'. In order to be eligible to be promoted as an Agricultural Instructor, an Agricultural Overseer (an internal candidate) should have completed ten years of service in the post of Agricultural Overseer; should have passed the Efficiency Bar; should have earned all salary increments; and should not have been subject to any punishment for a period of five years.

The Petitioners state that pursuant to the Budget proposals for the year 2006, the Government had decided to implement a new salary structure for all Public Servants with effect from 1st January 2006. The Petitioners have annexed to the petition marked 'P8', Public Administration Circular No. 6 of 2006 which contains the new salary structures that were introduced in 2006. Paragraph 2 of 'P8' is titled 'Re-categorisation and Re-grouping of Posts/ Services' and reads as follows:

“In order to implement the new salary structure all posts/services in the Public Service should be re-categorised/re-grouped by each Ministry and Department based on the definitions given in Annexure II and in terms of Annexure III – ‘Index to Salary Conversion’”.

Thus, the primary function of identifying the new category or group to which an employee should belong to is vested with the relevant Ministry or Department, which is required by ‘P8’, to follow the definitions given in Annexure II of ‘P8’ in carrying out the re-categorisation and re-grouping. Paragraph 1 of Annexure II sets out that the categorisation of employees has been prepared on the basis of the following criteria:

- 1) Entry qualifications / Scheme of recruitment
- 2) Promotional procedures
- 3) Nature of duties
- 4) Simplicity
- 5) Practicability
- 6) Consistency / compatibility.

The relevant Ministry and Department are required to follow the above criteria and the descriptions given in ‘P8’, which would be adverted to later on in this judgment, when determining the new category or group of an existing employee.

‘P8’ also sets out four service levels identified as Primary level, Secondary level, Tertiary level and Senior level, and re-grouping with the new terminology, with detailed definitions for each group. The level that is relevant to this application

is the Secondary level and the relevant group is that of Management Assistants.

Consequent to the issuance of 'P8', the 16th Respondent, the Commissioner General of Prisons had issued the letter dated 31st May 2006, annexed to the petition marked 'P9' informing the new salary groups within the Department of Prisons. According to 'P9', the post of Agricultural Instructor had been placed under salary category 'MN-1-2006 – Step 12' while the post of Agricultural Overseer had been placed under salary category 'MN-1-2006 – Step 1'.

Having had several discussions with the officials of the Department of Prisons, the National Salaries and Cadre Commission, by a letter dated 5th July 2006 annexed to the petition marked 'P10', had agreed with the recommendation in 'P9' that the post of Agricultural Overseer should be assigned the salary code 'MN-1-2006 – Step 1' and that the post of Agricultural Instructor should be assigned the salary code 'MN-1-2006 – Step 12'.

The grievance of the Petitioners is that the classification of Agricultural Overseers and Agricultural Instructors under the category of MN-1-2006 is unreasonable and arbitrary, in view of the qualifications that they are required to possess and the job functions that are carried out by them. It is in the above circumstances that the Petitioners have filed this application seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the recommendation of the National Salaries and Cadre Commission, as contained in 'P10';

- b) A Writ of Certiorari to quash the direction of the 16th Respondent, as contained in 'P9';
- c) A Writ of Mandamus directing the National Salaries and Cadre Commission to recommend the categorisation of the posts of Agricultural Overseers and Agricultural Instructors under the salary category 'MT-2-2006'.

The argument of the learned President's Counsel for the Petitioners is three fold.

The first argument is that it is unfair and unreasonable to classify the Petitioners under MN-1-2006 in view of the fact that they have completed a 2 year specialised technical course in addition to passing the GCE (O/L) examination.

In considering the said argument of the learned President's Counsel for the Petitioners, this Court must bear in mind the submission of the learned Deputy Solicitor General that this Court does not have the expertise to decide on classification of employees by applying the criteria laid down in 'P8'.

The approach that should be adopted has been laid down by this Court in Wakwella Kankanamge Dayananda vs. National Salaries and Cadres Commission¹, where it was held as follows:

¹ CA 682/2009; CA Minutes of 3rd June 2009.

"The 1st Respondent Commission (National Salaries and Cadre Commission) was appointed for the purpose of categorisation of the employees and allocation of salary code and it has authority to make such decision because of the special expertise and it has material and evidence to come to a specific finding. This court in these proceedings does not have all the material that the 1st Respondent relied to arrive at its finding. In judicial review proceedings this court can only consider the legality of a decision and not whether a decision is right or wrong."

When one considers the salient features of 'P8' which has been referred to earlier in this judgment, it is clear to this Court that 'P8' is a document carefully prepared by experts in the field, having taken into consideration a wide array of factors, and is best interpreted by experts. As observed earlier, the initial recommendation 'P9' has been made by the Commissioner General of Prisons, and the decision of the National Salaries and Cadre Commission, confirming the recommendation in 'P9' had been taken after several meetings with the officials of the Department of Prisons, as borne out by 'P10'. This Court is therefore in agreement with the submission of the learned Deputy Solicitor General that this Court should be cautious when reviewing a decision of an expert body.

The submission of the learned Deputy Solicitor General is a reiteration of the principle that, when considering an application for a Writ of Certiorari, a Court looks at the legality of the decision and not whether it is right or wrong. As Lord Brightman stated in the House of Lords in Chief Constable of North Wales Police v Evans², applications for judicial review are often misconceived:

² [1982] 1 WLR 1155 at 1174

“Judicial review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the court is observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power..... Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.”

Even though a decision may have been taken by experts, it is the view of this Court that in an application for judicial review, this Court is entitled to look at *inter alia* the reasonableness of the decision, keeping in mind the following statement made by Lord Diplock on irrationality in **Council of Civil Service Unions vs Minister for the Civil Service**³,

“By ‘irrationality’ I mean what can now be succinctly referred to as ‘Wednesbury unreasonableness’⁴. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.”

The above position has been considered by the Supreme Court of India in **Dalpat Abasaheb Solunke and Others. Vs. Dr. B.S. Mahajan and Others**⁵ where it was held as follows:

³ [1985] AC 374.

⁴ Associated Provincial Picture Houses Ltd v Wednesbury Corporation 1948(1)KB 223.

⁵ AIR 1990 SC 434. Also referred to in Chief Inspector C.V. Weerasena vs. Officer in Charge/Personnel SC (FR) No. 880/2009; SC Minutes of 8th December 2017.

"It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc."

This Court must state that it is not within the parameters of its role, nor is it its function to determine which salary code the Petitioners should come under, and will only go so far as to determine if all the relevant factors were considered by the Respondents in making their decision in 'P9' and 'P10', and whether the said decision is reasonable as opposed to being "outrageous in its defiance of logic."

According to 'P8', MN-1-2006 carries the title, 'Management Assistants Non Tech Segment 2'. Management Assistants are defined in paragraph 3.2 of Annexure II of 'P8' as follows:

"Management Assistants are the employees who facilitate and assist the administrative, managerial and executive grades in the discharge of their duties. Their entry qualifications differ in keeping with the duties assigned to them. This category is further divided into two sub-categories, namely Non-Technical and Technical."

Paragraph 3.2.1 of Annexure II of 'P8' defines 'Management Assistants (Non-Technical) as follows:

"Management Assistants **recruited purely on educational qualifications** and in whose case no technical expertise is required at recruitment or for promotion, are listed under the category of Management Assistants – Non Technical. This category is further divided into 2 segments as follows:

3.2.1.2 – Segment 2

Employees who fall within the above category of 'Management Assistants' whose basic educational qualification in terms of the Scheme of Recruitment is a pass at the G.C.E. (O/L) or (A/L) examinations and are not required to possess skills of any defined nature as an entry qualification, are included in Segment 2 of Management Assistants – Non-Technical."

This Court has examined 'P3' which is the Scheme of Recruitment for Agricultural Overseers and observes that in addition to the GCE (O/L), at the time of recruitment a candidate is required to have successfully followed a two year course of study at a Government Agricultural School and possess a

certificate confirming completion of a one year period of training in agriculture and cow husbandry, animal husbandry and chicken husbandry at a Government registered farm. This Court observes that 'P6', which is the Scheme of Recruitment for Agricultural Instructors, does not require any further educational qualifications from internal candidates who are Agricultural Overseers. When one considers paragraph 3.2.1.2 of 'P8' in the context of 'P3', it is clear that what a candidate must have to become an Agricultural Overseer are the aforementioned educational qualifications and work experience. A candidate is not required to have skills which are of a defined nature. Furthermore, it appears that the requirement to successfully complete a two year programme cannot be equated to technical expertise but rather an exercise to ensure that the candidate has the necessary knowledge on the subject and has acquired the necessary work experience required for such post. The work experience gained in particular areas cannot be classified as a skill of any defined nature. Thus, it appears to this Court that the classification of an Agricultural Overseer under MN-1-2006 is not unreasonable. As observed earlier, in order to be promoted to the post of Agricultural Instructor, an Agricultural Overseer is not required to acquire any further educational qualifications, and therefore the decision to place an Agricultural Instructor in MN-1-2006 – Step 12 cannot be considered as being unreasonable.

According to the Petitioners, they should be categorised under MT-2-2006, which is titled 'Management Assistant Technical Segment 2'. Annexure II of 'P8' defines 'Management Assistants – Technical' as follows:

"All employees falling within the above definition of Management Assistants who are required to possess an institution/in-service vocational training of a technical nature leading to a certificate or a diploma **for the purpose of recruitment** in addition to the G.C.E.(O/L) or G.C.E.(A/L) qualifications. This category is further divided into 4 segments:

3.2.2.2 – Segment -2

Employees whose technical/vocational training is of a duration between 13-24 months are brought under this category."

The issue that this Court is therefore called upon to consider is whether the failure to classify the Petitioners under 'Management Assistants – Technical', is unreasonable? The answer to this question is perhaps found in the Schemes of Recruitment marked 'P3' and 'P6', which do not require any certificate of a technical nature for the purpose of recruitment to the said posts. In the absence of such a requirement, and considering the fact that in re-classifying employees, the Department of Prisons is required to consider the entry qualifications and the Scheme of Recruitment, the decision of the Respondents not to apply MT-2-2006 to the Petitioners cannot be considered as being unreasonable.

The second argument of the learned President's Counsel for the Petitioners is that in terms of Paragraph 6.4.1 of the Service Minute of the Sri Lanka Technological Service published in Extraordinary Gazette bearing No. 1094/2 dated 23rd August 1999, annexed to the petition marked 'P11', a two year agricultural diploma offered by an institute approved by the Government has

been considered as a technical qualification for recruitment to the said service. The position of the Respondents in this regard is that the posts held by the Petitioners were not absorbed into the Sri Lanka Technological Service at the time the said Service was established in 1999 by 'P11' as they were not qualified in terms of 'P11', even though certain other posts such as Works Inspector, Assistant Works Inspector and Draughtsman under the Department of Prisons were absorbed to the said service. Once again, this Court must state that it does not have the expertise to decide if the qualifications possessed by the Petitioners are similar or identical to the qualifications required from those who enter the Sri Lanka Technological Service. In these circumstances, this Court cannot agree with the submission of the Petitioners.

The final argument advanced by the learned President's Counsel for the Petitioners is that in terms of 'P9', drivers in the Department of Prisons who have lesser entry requirements than the Petitioners are drawing a salary which is higher than the Petitioners' salary, and that for that reason too, the classification of the Petitioners under MN-1-2006 is unreasonable. This Court must observe that in terms of 'P8', drivers are classified under category PL-1/2/3 and that the starting salary under each of the said categories is less than the starting salary of MN-1-2006. However, with the salary increments that a driver is entitled to earn, there can be drivers who draw a salary higher than what an Agricultural Overseer who has just joined the service would earn. This cannot be termed unreasonable. The Respondents have infact pointed out that the reference made by the Petitioners to a driver placed on step 22 of PL-3-2006 drawing a salary higher than the Petitioners is a reference to a heavy vehicle driver in Class 1. The Respondents have stated further that even prior to 'P8', heavy vehicle drivers in Class 1 were drawing a salary higher than

Agricultural Overseers. This Court therefore does not see any merit in the final argument of the Petitioners.

In the above circumstances, this Court does not see any legal basis to grant the relief prayed for by the Petitioners.

It appears to this Court that the Respondents have not shut the door on the Petitioners, for in paragraph 7 of the Statement of Objections, which is supported by an affidavit of the then Chairman of the National Salaries and Cadre Commission, it has been stated that, "the 16th Respondent⁶ is taking steps to ascertain whether the Petitioners possess the qualifications that will be adequate to categorise them under the Management Assistant – Technical category." This position has been reiterated in paragraph 12 of the Statement of Objections. The Petitioners have also filed by way of a motion dated 9th November 2010, a letter dated 19th March 2010 marked 'X3' written by the Secretary, Ministry of Justice and Legal Reform to the Chairman of the National Salaries and Cadre Commission, recommending that the post of Agricultural Overseer and Agricultural Instructor be classified under MT-2 category. This Court, whilst observing the absence of any specific justification for the said recommendation save the repetition of the educational qualifications that a candidate must possess to become an Agricultural Overseer, has not been apprised of the decision of the National Salaries and Cadre Commission on 'X3'. Hence, this Court is of the view that this judgement shall not be an impediment to the National Salaries and Cadre Commission considering the complaint of the Petitioners afresh. Such a course of action would enable the National Salaries and Cadre Commission of examining the rationale behind

⁶ The Commissioner General of Prisons.

'X3', the entry requirements for the post of Agriculture Overseer, and the qualifications required to join the Sri Lanka Technological Service, and thereafter arrive at an appropriate decision.

Subject to the above, this application is dismissed, without costs.

Judge of the Court of Appeal