

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

S.C (FR) 383/2008

In the matter of an Application under Articles 17 and 126 in terms of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. W.J. Fernando
77/1, Church Road
Gampaha.
2. A.M.M. Aththanayake
199/1, Borella Road,
Godagama.
3. J. Wijesinghe
LG-3, Maligawatta Flats,
Colombo 10.
4. E.A.D. Weerasekera
Bhathiya Mawatha,
Kiribathgoda.
5. K.N. Perera
65/1, Weli Amuna Road,
Hendala,
Wattala.
6. S. Hewavitharana
89, Temple Lane,
Colombo 10.
7. B.D.D. Kularatne
89, Thelangapatha Road,
Wattala.
8. W.C. Alwis
217, J.N.H.S. Gogithota
Wattala.

9. G.D.K. Rathnasekera
51-4, Galudupita Road,
Maththumagala,
Ragama.

21. P.K. Dayananda
Wikumpadma
Hikkaduwa.

22. S.P. Guruge
37, Pallewela Road,
Katetiya.

23. K.I. Premadasa
202, Thotupola Road,
Bolgoda,
Bandaragama.

PETITIONERS

Vs.

1. Priyantha Perera
Former Chairman.

2. Gunapala Wickramaratne
Former Member.

3. M. J. Mookiah
Former Member.

4. Srima Wijeratne
Former Member.

5. W.P.S. Wijewardena
Former Member.

6. Mendis Rohanadheera
Former Member.

7. Bernard Soyza
Former Member.
8. Palitha Kumarasinghe
Former Member.
9. Dayasiri Fernando
Former Member & former Chairman .

All of the Public Service Commission
Presently of No. 177,
Nawala Road, Narahenpita,
Colombo 5.

10. R.M.K. Rathnayake
Former Secretary, Ministry of Trade and
Consumer Affairs and Acting Food
Commissioner, Department of Food,
330, Union Place, Colombo 02.
- 10A. Lalith Rukman de Silva
Former Secretary,
Ministry of Trade Marketing
Development Co-operative and
Consumer Service,
Union Place,
Colombo 02.
- 10B. Sunil Sirisena
Former Secretary,
Ministry of Trade Marketing
Development Co-operative and
Consumer Service,
Union Place,
Colombo 02.
- 10C. G.K.D. Amarawardena
Secretary,
Ministry of Trade Marketing
Development Co-operative and
Consumer Service,
Union Place,
Colombo 02.

- 10D. P.S.J.B. Sugathadasa
Secretary,
Ministry of Food Security
Sathosa Building
Vauxhall Street, Colombo 02.
- 10E. T.M.K.P. Tennakoon
Secretary
Industrial & Trade Marketing
Affairs Ministry
No. 73/1, Galle Road,
Colombo 3.
11. Mrs. P. Siriwardena
Former Director of Establishments
Ministry of Public Administration and
Home Affairs,
Torrington Square,
Colombo 7.
- 11A. M.A. Dharmadasa
Former Director of Establishments
Ministry of Public Administration and
Home Affairs,
Torrington Square,
Colombo 7.
- 11B. W.S. Somadasa
Director of Establishments
Ministry of Public Administration and
Home Affairs,
Torrington Square,
Colombo 7.
12. Justice Nimal Dissanayke
Former Chairman
Administrative Appeals Tribunal
Colombo 8.
- 12A. Justice Imam
Chairman,
Administrative Appeals Tribunal
Horton Place,
Colombon7.

13. Attorney General
Attorney General's Department
Colombo 12.
14. S.C. Mannapperuma
Former Member
14. A A.A. Salam Abdul Waid
Member
15. Ananda Seneviratne
Former Member
- 15A. D. Shirantha Wijetilake
Member
16. N.H. Pathirana
Former Member
- 16A. Prathap Ramanujam
Member
17. S. Thillanadarajah
Former Member
- 17A. V. Jegarasasingam
Member
18. M.D.W. Ariyawansa
Former Member
- 18A. Shanthi Nihal Senevirathna
Member
19. A. Mohomed Nahiya
Former Member
- 19A. S. Ranugge
Member
20. Sathya Hettige
Former Chairman
Public Service Commission
No. 177, Nawala Road, Narahenpita.

- 20A. Dharmasena Dissanayake
Chairman
21. Kanthi Wijetunga
Former Member
- 21A. D.L. Mendis
Member
22. Sunil A. Sirisena
Former Member
- 22A. Sarath Jayatilake
Member
23. I.N. Soyza
Former Member

All of the Public Service Commission
No. 177, Nawala Road,
Narahenpita.

RESPONDENTS

BEFORE: S.E. Wanasundera P.C., J.
B. P. Aluwihare P.C., J. &
Anil Gooneratne J.

COUNSEL: Manohara de Silva P.C., for the Petitioners

Viraj Dayarathne D.S.G. for the Attorney General

ARGUED ON: 18.01.2017

DECIDED ON: 28.02.2017

GOONERATNE J.

The Petition dated 23.09.2008 states the Petitioners served as Wharf Field Officers of the Department of Food and are now retired. Thereafter caption had to be amended and the Petitioners have filed amended petition. It is averred that this application relates to the wilful failure of the Public Service Commission (1st to 9th Respondents) to implement the order of the Administrative Appeals Tribunal. It is pleaded that the Administrative Appeals Tribunal has been established by Article 59(2) of the Constitution which is final in terms of Section 8(2) of the Administrative Appeals Tribunal Act No. 4 of 2002. This case has a history and the facts need to be ascertained carefully firstly from the petitioners.

It is stated that the Petitioners joined the Department of Food as Casual Wharf Clerks and thereafter appointed as Wharf Clerk. Letter of appointment is dated 08.02.1967 (P2). In 1975 Wharf Service of the department was re-structured and three classes were created. Scheme of recruitment is produced marked P3. In the manner pleaded in paragraph 7 of the petition, the Petitioners were absorbed to Class II (b) of the service and thereafter promoted to Class II (a). They also state that their promotions were back dated to 01.04.1975. Letter P4, P5 & P6 annexed to the petition seems to support this

position but some of these documents are not legible and back dating cannot be clearly ascertained. The next promotion was to the post of Field Officer–Class I (paragraph 5:5 & 5:6 of P3). The Wharf Field Officers in Class II (a) and who have passed the Efficiency Bar Examination and are placed in the Rs. 5880/= salary scale, are eligible to be promoted to Class I upon facing an interview. The Efficiency Bar Examination was scheduled to be held on 19.11.1977 but postponed on several occasions (P7A to P7D) for various reasons.

Petitioners allege that postponement of the Efficiency Bar Examination was done to enable 12 Wharf Field Officers who reached the age of 45 and who had not passed the Efficiency Bar Examination, to be promoted. By letter P8, Food Commissioner sought the approval of Director Establishments and the Director by letter P9 approved the promotions of 12 Wharf Field Officers on the conditions that such promotions should not be a precedent. However the Efficiency Bar Examination was ultimately held on or about 1982, but Petitioners were not promoted to Class I though there were vacancies. Several requests were made to the relevant authorities to promote the Petitioner to Class 1.

A letter that seems to help the Petitioners is produced marked P11. By P11 Food Commissioner informs the Petitioners that in respect of Wharf Field Officers Class II (a) who applied for Efficiency Bar, in 1977 and who sat the examination in 1982, the year of passing the examination will be considered as 1977. By letter

P12 of 12.03.1994 the 3rd Petitioner was promoted. In the same way 1st to 10th, 12th, 16th, 18th, 21st and 22nd Petitioners were promoted to Class I with effect from 15.01.1992. The rest of the Petitioners to this application were not promoted as they had retired by that time.

The Petitioners in view of letter P11 issued by the Food Commissioner, had requested the authorities concerned that their promotions to Class I be back dated to 1978 on a Supernumerary basis (vide P13A to P13 D). Petitioners get more support for their plea to back date the appointment, also from the Food Commissioner by letter P13 E of '05.11.1993. P11 & P13 E fortify the position of Petitioners'.

Petitioners aver that they made further requests to the authorities concerned as stated above that their promotions to Class I be back dated to 1978 on a supernumerary basis and state that the Director, Establishment by his letter of 29.08.1994 informed the Secretary to the Department of Food that such an approval cannot be granted to the Petitioners in the manner requested by them, as stated above (P13F). The Public Service Commission by its letter of 08.07.2002, (P13G) informs the Secretary, Ministry of Co-operatives that the requests as above by the Petitioners were considered and directed that those officers who passed the Efficiency Bar Examination in 1982, can be promoted to Class I on the basis they passed the Efficiency Bar Examination in 1977, if they

have 10 years' service and other necessary qualifications. Thereafter the Petitioners informed the relevant authorities that they have fulfilled all the requirements as per the scheme of recruitment and to back date their promotions to 1978. However the PSC by their decisions P14 & P15 refused to do so as the Petitioners have not fulfilled the necessary qualifications as per the scheme of recruitment.

Details of the employment of the Petitioners are produced marked P15A. It is also disclosed by the Petitioner in paragraph 22 of the petition that the 2nd Petitioner filed a Fundamental Rights Application bearing No. SC 299/2005 alleging that the PSC has violated the Fundamental Rights of the 2nd Petitioner by their aforesaid decisions. But the Supreme Court refused to grant leave to proceed. Thereafter 33 Wharf Field Officers including the Petitioners appealed to the Administrative Appeals Tribunal against the decision of the PSC on 22.08.2005 (P16). The Administrative Appeals Tribunal having heard the appeal held in favour of the Petitioners, and the tribunal made order rescinding the above decision of the PSC and made order that all 33 Appellants in Class I of the Wharf Field Service be promoted by antedating their appointment to 01.05.1978 and that they would be entitled to all consequential benefits (P17). In spite of the order P17 by the Administrative Appeals Tribunal, the Public Service Commission failed to give effect to the above order dated 19.07.2006

(P17) to date. Though numerous requests were made to the PSC, the PSC failed and rejected to take action as required by order P17 of the Administrative Appeals Tribunal.

It is also pleaded that the Petitioners informed the PSC to implement the order P17 and also at a meeting by some of the Petitioners with officers of the PSC, the Petitioners were informed that the matter has been referred to the Hon. Attorney General to whom the Petitioners made several requests. Hon. Attorney General by P20A, P20B & P20C referred the matter to the PSC for consideration and necessary action.

It is not incorrect to state that the Administrative Appeals Tribunal (AAT) is the Appellate Body and the PSC will be bound to abide by a decision of the AAT. The AAT which is established under Article 59(1) of the Constitution and in terms of Article 59(2), the AAT has the power to alter, vary or rescind any order or decision made by the commission. Article 59(3) states the Constitution, powers and procedure of the AAT is to be provided for by law and the Administrative Appeals Tribunal Act No. 4 of 2002 was enacted for that purpose. Section 3(a) of the said Act, AAT has the power to hear and determine any appeal preferred to it from any order or decision made by the PSC in the exercise of powers under Chapter IX of the Constitution. Further Section 8(2) provides

that a decision made by the tribunal (AAT) shall be final and conclusive and shall not be called in question in any suit or proceedings in a court of law.

The preclusive clause has been included in the said Act with regard to challenging the decision of the AAT and the legislature has done so to ensure that a decision of the AAT must have finality. As such PSC will be bound to abide by a decision of the AAT.

I have also perused the affidavit of the then Chairman (1st Respondent) of the PSC. It is pleaded that Wharf Field Officers in Class II (a), who have passed their Efficiency Bar Examination and placed in the Rs.5880/- salary scale are eligible to be promoted to Class I, upon facing an interview. On a perusal of the affidavit of the 1st Respondent I find that very many factual positions taken up by the Petitioner are admitted by the Respondents. It is admitted that the Petitioners on several occasions requested that their promotion to Class I be antedated to 01.05.1978, and such requests were made on the basis that on previous occasions, certain officers had been promoted to Class I though they did not satisfy the eligibility criteria for promotions. Such promotions were made on the basis that there should not be a precedent.

It is further pleaded by the 1st Respondent that requests made by the Petitioners have been turned down by the Director, Establishments by letters of 31.03.1992 & 29.08.1994 (P13F). Repeated requests of these officers

were submitted to the relevant Minister who submitted a Cabinet Memorandum and called for a report from Salaries and Cadre Committee. The resulting position was that the Cabinet as well as the Salaries and Cadre Committees pointed out that these officers are not entitled to be promoted and thus the Cabinet of Ministers had not approved such manner of promotions. In this regard letter 1R4, 1R5, 1R6 & 1R8 are produced. What is emphasised is that the eligibility criteria for promotions and that the promotions can only be granted if there were substantive vacancies at the relevant time. Petitioners sought appointments on a supernumerary basis very well knowing that there were no vacancies as at that date, and knowing that previously it was due to certain officers which were not to be relied upon as a precedent. All 17 officers promoted in 1978 were senior to the Petitioners. Thereafter there was only one (1) promotion to Class I in 1983 and four (4) promotions in 1986. As such there were no vacancies to promote the Petitioners though they passed the Efficiency Bar Examination in 1982.

The Director General of Establishment by letter of 31.03.1999 (1R7) stated that promotions to Class I, should be on seniority in service and availability of vacancies. 1st Respondent specifically aver that the Administrative

Appeals Tribunal had not considered the above matters in arriving at its finding. Finally the 1st Respondent, plead that it is not possible to implement the said decision of the AAT, taking into consideration the serious repercussions that would have followed if such decision of AAT was implemented.

This seems to be a long standing issue. The law on the point of constitutional provisions need not be disturbed by this court. There is finality attached to the AAT order P17. The Public Service Commission should have canvassed this order and placed the matters pleaded by the 1st Respondent in this application before a Court of Competent Jurisdiction. It was not done. It is stated that this court refused to grant Leave to Appeal to the 2nd Petitioner on the same issue. That was prior to the AAT order. Perhaps if the PSC took the step to canvass the AAT order the position may have been different. i.e this court should not disturb the regular procedure pertaining to appointments, promotions, transfer, dismissal etc. of the Public Service. In fundamental Rights Applications this court has wide powers to make just and equitable orders. Petitioners have with them a valid unchallenged order (P17). Thereby acquired

a right to enjoy the fruits of the order. As such I hold that the Petitioners are entitled to relief as per sub paragraphs (b) and (c) of the prayer to the last Amended Petition.

Application allowed, without costs.

JUDGE OF THE SUPREME COURT

S.E. Wanasundera P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

B.P. Aluwihare P.C., J.

I agree.

JUDGE OF THE SUPREME COURT