

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

In the matter of an application under and in
terms of Article 126 of the Constitution

J. A. Saman Kumara,
Kajugaha Koratuwa,
Walgama North,
Matara.

Petitioner

SC /FR/ Application No. 591/2008

Vs,

1. General Manager,
Sri Lanka Government Railways,
Railway Headquarters,
Colombo 10.
2. Secretary,
Ministry of Transport,
D.R. Wijewardena Mawatha,
Colombo 10.
3. Operating Superintendent,
Operating Superintendent Office,
Sri Lanka Railways,
Colombo 10.
4. Transportation Superintendent (Colombo)
Transportation Superintendent's Office,
Sri Lanka Government Railway,
Colombo 10.
5. Ceylon Station Masters' Union,
No. 01, Railway Passage,
Sri Lanka Government Railway,
Colombo 10.

6. Transportation Superintendent (Nawalapitiya)
Divisional Transportation Superintendents'
Office,
Sri Lanka Government Railway,
Nawalapitiya.
7. Secretary,
National Salaries and Cadre Commission,
Room No. 2G10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
- 7A. Secretary,
National Pay Commission,
Room No. 2G10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
- 7B. Secretary,
National Salaries and Cadre Commission,
Room No. 2G10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
8. Secretary,
Ministry of Finance,
Colombo 01.
9. Hon. Attorney General
Attorney General's Department,
Colombo 12.

Respondents

Before: **Hon. Justice B.P. Aluwihare PC**
 Hon. Justice Vijith K. Malalgoda PC
 Hon. Justice E.A.G.R. Amarasekara

Counsel: Thanuka Nandasiri for the Petitioner,

 Ms. Anusha Jayathilleka, SSC, for the 1st, 2nd, 7B, 8th and 9th Respondents

Argued on: 23.07.2020

Judgment on: 01.04.2021

Vijith K. Malalgoda PC J

The petitioner who faced an examination for the post of Station Master, Class II of the Sri Lanka Government Railways which was held on 06th November 1999 was successful in the said examination and was informed by the 1st Respondent by letter dated 8th March 2001 to be present to obtain the letter of appointment. Accordingly, the Petitioner was issued with a letter of appointment dated 2nd April 2001 appointing him to the post of Station Master of Railways (Class II) and posted him to Maradana Railway Station from that date. (P-3)

According to the Petitioner, as per the said letter of appointment he was placed on, an annual Basic Salary of Rs. 57, 120/- and was entitled to earn seven increments of Rs. 1320/- and ten increments of Rs. 1560/-. As per the letter dated 21st July 2004 (P-6) he was confirmed in service as a Grade II Station Master of the Sri Lanka Railways with effect from 2nd April 2001. (from the date of 1st appointment)

Petitioner's complaint of the violation of his Fundamental Rights guaranteed under Article 12 (1) of the Constitution is based on a directive issued by the Secretary of the National Salaries and Cadre Commission by letter dated 30th August 2006 to the 1st Respondent, (P-8) which resulted;

- a) His demotion to Grade III of the Station Master's Service without any rational or any reason or any reasonable basis
- b) Him being placed on the salary scale applicable to the Grade III of the Station Masters' Service
- c) Him being treated differently from other Station Masters similarly circumstanced;

In the said circumstances the Petitioner had further prayed to quash the above letter date 30th August 2006 bearing No; NSCC/2/7/6.

In support of his contention the Petitioner has further submitted that,

- a) A meeting was held between the National Salaries and Cadre Commission, the Ceylon Station Masters Union and an organization named Train Control Union which is not registered as a Trade Union under the Trade Union Act, on 22nd August 2006
- b) The said meeting was held in order to implement the provisions of the Public Administration Circular 06/2006 (P-7) and at the said meeting it was agreed for the establishment of a new grade in the Station Masters Cadre as Grade III and to “absorb the existing Grade II officers to the said Grade III”
- c) Subsequent to the said meeting the impugned document P-8 was issued and in the said letter the following reference was made with regard to Grade II Station Masters;
 - i) Salaries of the Station Masters among the Grade II, who has passed the 1st and 2nd Efficiency Bar Examination and who have over 10 years of satisfactory service as at 01.01.2006 should be adjusted at the 12th step of the MN 3-2006 salary code.
 - ii) Salaries of the Station Masters among the Grade II who has passed the 1st and 2nd Efficiency Bar Examination and who have less than 10 years and over 6 years of satisfactory service as at 01.01.2006 should be adjusted at the 12th step of MN 3-2006 salary code but the said category of station Masters shall not be entitled to earn further increments until they pass the examination as specified in the new service minute.
- d) However, there is no reference to the Station Masters who have satisfactory service in the Sri Lanka Railways for less than 6 years as at 01.01.2006 such as the Petitioner, and when he received his salary conversion based on Public Administration Circular 6/2006 (P-7) the Petitioner had realized that he was placed in Grade III of the Station Masters Cadre of Sri Lanka Railways and the salary conversion was based on the salary step entitled to a Grade III officer
- e) The Petitioner whilst claiming that he has been demoted to Grade III from Grade II of the Station Masters Cadre of Sri Lanka Railways had lodged a complaint with the Human Rights Commission and also made an appeal to rectify the above position to the 1st Respondent as well as to the salaries and Cadre Commission.
- f) In support of his claim that he had been differently treated in violation of Article 12 (1) of the Constitution, the Petitioner further submitted that, the Officers similarly circumstanced as the Petitioner in Nawalapitiya Division, continued to be in Grade II of the Station Masters Cadre of Sri Lanka Railways and their salaries too have been adjusted accordingly.

As observed by me, the Petitioner had relied upon two main grounds in establishing his allegation before this court. Petitioner firstly contended that he had been differently treated among similarly circumstanced officers in the Grade II Station Masters Cadre of Sri Lanka Railways

His second argument was that he had been arbitrarily demoted to Grade III of the Station Masters Cadre of Sri Lanka Railways.

In response to the 1st ground the Petitioner had relied upon, the 1st Respondent in his objections tendered before this court had submitted that,

“Whilst denying the averments contained in paragraph 18 of the said affidavit, I state that the Divisional Transportation Superintendent of Nawalapitiya had inadvertently placed the Class II Station Masters (prior to P.A. Circular 6/2006) on a higher step on the new salary scale which was rectified when it was brought to the notice of my predecessor and any overpayment made to the said Station Masters have been recovered by way of surcharge.”

When the above position taken up by the 1st Respondent is considered along with the position the Petitioner had further taken up in the counter objections dated 2nd May 2014 to the effect that;

“Answering the averments contained in paragraph 16 of the affidavit of the 1st Respondent I only admit that the Station Masters in the Nawalapitiya Transportation Division have been subsequently demoted to the Class III and placed in the same salary step and certain amount of money had been recovered from their salary considering that they have been overpaid”

it is clear that the complaint made by the Petitioner with regard to similarly circumstanced Station Masters in Nawalapitiya Division is an isolated incident which cannot be taken as a ground before this court.

As admitted by both parties before this court, the Public Administration Circular 06 of 2006 which introduced the structure for the future Public Service by introducing new salary structures, required to restructure each service, including Sri Lanka Railways to make it equal with the other all island services. As further admitted by the Petitioner, National Salaries and Cadre Commission has had consultations with the stake holders when implementing the provisions of the said circular which needed specific instructions with regard to each service, since the main circular (P. A. Circular 6 /2006) does not refer to each service in detail.

As submitted by the Respondents, there was a necessity to have consultations with the stake holders when implementing the provisions of the above circular within Sri Lanka Railways since the circular recommended to expand each and every service into three grades including the recruitment grade and with regard to Station Masters' Service which comprised only two grades needed to be expanded in to three grades.

As further observed by this court, by Circular 6/2006, the salary structure for Station Masters' Service had been identified under MN 3 category and what is to be further clarified is the different points that the Station Masters of each grade are to be placed on.

As admitted by both parties, subsequent to the consultation with the stake holders, P-8 was issued deciding the above points but there was no requirement to identify a starting point to the recruitment grade which will be the Grade III of the Station Masters Service. In the said circumstances, I see no merit in the argument by the Petitioner that there is no reference in P-8 with regard to the Station Masters who have satisfactory Service for less than Six years.

However, the ground that was raised before us, "whether the Petitioner was arbitrarily demoted to Grade III" and thereby it violates the legitimate expectation of the Petitioner, needs to be looked into by this court.

The question of Arbitrariness was discussed by *Bhagwati J* in the case of ***E. P. Royappa Vs. State of Tamilnadu 1974 AIR 555, 1974 SCR (2) 348*** in the following terms;

"From a positive point of view, equality is antithetic to Arbitrariness, in fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in that it is unequal both according to political logic and Constitutional Law and is therefore violative of Article 14"

When considering the right to equality guaranteed under Article 12 of our Constitution, our courts too have followed the above doctrine even in the absence of any evidence that some other person similarly circumstanced was treated differently but the threshold expected from the Petitioner in establishing the violation (in the instant case the act of Arbitrariness) was at a very high degree.

This position was discussed in the case of ***Jayasinghe Vs. The Attorney General and Others [1994] 2 Sri LR 74 at 88*** by *Fernando J* as follows;

“It is not enough for the Petitioner to show that he has been denied the protection of law. He must also show that he has been denied equal protection that he was treated less favourably than others similarly situated. Since the Petitioner has not produced any evidence of the delay in similar cases, it is contended on behalf of the 2nd Respondent (relying on *Perera Vs. Jayawickrema*) that the Petitioner has failed to prove this essential ingredient, I doubt whether that decision must be regarded as laying down an inflexible principle of universal application; the facts of each case must be considered. If an employee alleges a denial of equal protection because he was compelled to participate in a disciplinary inquiry without ever being told that the charges against him were, would a court demand evidence to prove at least one other contrary instance? I think not.”

However, when considering the arguments the Petitioner advanced before us it appears that the Petitioner never contended to challenge the provisions of Public Administration Circular 6 of 2006 as unreasonable or arbitrary. As submitted by the Petitioner, he was aware of the discussion the National Salaries and Cadre Commission had with the Ceylon Station Masters Union and another unregistered Trade Union on 22nd August in order to implement the Public Administration Circular 06 of 2006 and that “both parties agreed for the establishment of a new grade in the Station Masters Cadre as Grade III.”

Moreover, neither the Petitioner nor the Trade Union which represents the Petitioner challenged the provisions of Public Administration Circular 6 of 2006 which introduced the creation of a new grade as Grade III in the Station Masters Cadre even after the outcome of the of the said meeting was conveyed to the 1st Respondent by the National Salaries and Cadre Commission on 30th August 2007.

In these circumstances, it is very much clear,

- a) That the Petitioner was belonged to the recruitment grade (i.e., Grade II) of the Station Master’s Cadre at the time Public Administration Circular 6 of 2006 was issued
- b) That there were only two Grades in the Station Masters Cadre i.e., Grades I and II including the recruitment grade, prevailed at that time.
- c) That by the said Public Administration Circular 6 of 2006, introduced the Government Policy on the Public Service and in the said Policy it was recommended that in the Public Sector, every service should have three grades including the recruitment grade

- d) That after a meeting with the stake holder a scheme was prepared as to how the three-tier service was going to be implemented and that was conveyed to the 1st Respondent by letter dated 30th August (P-8)
- e) That the 1st Respondent carried out the said guidelines and implemented P. A. Circular 6/2006 by introducing three-tier Station Masters' Service keeping the Petitioner who has had satisfactory service less than six years at the initial step of MN 3-2006 which is the scale identified for the Station Masters' Service by the said circular.
- f) Those who had passed the 1st and 2nd Efficiency Bar Examination and more than six years and ten years satisfactory service were kept at different steps of the same scale but some of them (those who had more than six years) had to fulfill further requirements to obtain further increments.
(in other words, to get into Grade II under the new service minute based on Public Administration Circular 6/2006)

Therefore, the Petitioner who has not completed the necessary requirements, was placed on the recruiting grade which was earlier the Grade II but now it is Grade III. What is important to be mindful at this stage is, that the Petitioner who had less than six years of satisfactory service in the recruiting grade will have to be continued in the same recruiting grade until he fulfills the requirements to be eligible for the next level.

In the case of ***Madawalagama V. Director of Irrigation and Others SC FR 317/2010 Bar Association Law Report 2012, 112 at 116***, *Shirani Bandaranayake CJ* had observed;

“Equality does not mean that identical rules of law should be applicable to all persons. What it postulates is that equals should be treated equally and that equality treatment be given equal circumstances. This means that the legislature is entitled to make reasonable classification for purposes of legislation and thereafter treat all those who belong to one group equally on the basis that the said group falls into one separate class”

In the case of ***Ferdinandis and Another V. Ariruppola and Others SC FR 117/2011, Bar Association Law Report 2012, 169 at 173*** the Supreme Court held;

“Reasonable classification cannot be rejected as a violation of Article 12 (1) of the Constitution, if it is a valid classification that is not arbitrary. It is necessary to satisfy two conditions for such a classification to be valid

- i. The classification must be founded on an intelligible differentia which distinguish persons that are grouped in from others who are left out of the group; and
- ii. That the differentia must bear a reasonable or a rational relation to the objects and effects to be achieved”

As already observed by this court, the Petitioner who had less than 6 years of satisfactory service in the Station Master Grade II Cadre which is the recruiting grade prior to the implementation of Public Administration Circular 6 of 2006, has been kept at the same “recruiting grade” which is Grade III in the new Station Master Cadre of Sri Lanka Railways. It was further observed that MN3 scale had been identified as the salary scale for the Station Master Service by the Circular 06 of 2006, and when implementing the said Circular, Station Masters who had passed the efficiency bar examination and completed more than 10 years satisfactory service, Station Masters who had passed the efficiency bar examination and completed more than 6 years and less than 10 years satisfactory service and Station Masters who had less than 6 years satisfactory service had been placed separately in the said scale at different salary steps.

The Petitioner has not complained, that the Petitioner or any other person similarly circumstanced had been placed at a different salary scale other than the scales referred to in P-8, except in the instance where some officers similarly circumstanced continued to be in Grade II which was rectified subsequently.

In these circumstances it is clear that the classification made in this case is based on the years of satisfactory service the Petitioner has served in the Station Masters Service. Such classification cannot be rejected and therefore would satisfy the requirements of equal treatment

In the said circumstances, it is clear to this court that the Petitioner who belonged to the recruitment Grade prior to P-7 (Public Administration Circular 6/2006) and P-8 (letter dated 30th August 2006) and who does not belong to either category of (i) and (ii) referred to above in this judgment should be placed in Grade III of the Station Masters Cadre until he fulfills the necessary criteria as referred to in P-8 and thus placing the Petitioner in Grade III of the Station Master Cadre is neither a demotion to him nor an arbitrary act of the Respondents.

For the foregoing reasons I hold that the Petitioner before this court had failed to establish that the issuance of P-8 by the 7th Respondent and the implementation of the guidelines as per P-8 by

the 1st Respondent or any other Respondents, is in violation of the Petitioner's Fundamental Rights guaranteed under Article 12 (1) of the Constitution.

I make no order with regard to the costs.

Application is dismissed/ No costs.

Judge of the Supreme Court

Justice B.P. Aluwihare PC

I agree,

Judge of the Supreme Court

Justice E.A.G.R. Amarasekara

I agree,

Judge of the Supreme Court