

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI

LANKA

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

Thilangani Kandambi,
No.259/1A, Sethsiri Mawatha,
Panamura Road,
Koswatta,
Thalangama.

Petitioner

S.C.F.R. Application No: 452/2019

Vs.

1. State Timber Corporation,
No.82, Rajamalwatta Road,
Battaramulla.
2. Niluka Ekanayake,
Chairperson (Ceased to hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 2A. U.C. Walisinghe,
Chairman (Ceased to hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 2B. M.S. Karunarathna,
Chairperson,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

3. H.Y.T. Pawakumar
Working Director (Ceased to hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

- 3A. H.K.M.J.H. Kumarasinghe,
Working Director (Ceased to hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

4. D. Wijesiriwardhana (Ceased to hold
office)
Director and Senior Assistant
Secretary and General Treasury,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

- 4A. B.N. Gamage,
Director (Ceased to hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

- 4B. S.A.C. Kulathilake,
Director (Finance Ministry
Representative),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

5. W.A.C. Weragoda,
Director and Conservator (Ceased to
hold office),
General of Forests,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 5A. Dr. K.M.A. Bandara,
Director and Conservator General of
Forests,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
6. A.M.C. Perera,
Director (Deputy Director) (Ceased to
hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 6A. G.K. Prasanna,
Director (Ceased to hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 6B. B.T.B. Dissanayake,
Director,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

7. M.V. Karunaratne,
Director (Ceased to hold office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 7A. B.A. Dharmarathne,
Director (Ceased to hold office),
State Timber Corporation,
No.82, Rajamalwatta Road,
Battaramulla.
- 7B. M.R.A.K. Bandara,
Director,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
8. Ranjan Fernando,
Director and Senior Assistant (Ceased to
hold office),
Secretary,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 8A. D.G.S. Dasanayake,
Director,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

- 8B. Chamila Samarasinghe,
Deputy General Manager (Human
Resources and Administration),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
9. Leslie Fernando,
Secretary to Board (Ceased to hold
office),
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 8A. M.G.D. Sharika,
Secretary to Board,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 10.K. Siriwansa,
Former Acting General Manager,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 11.Ananda Tilakasiri,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.
- 12.Priyani Perera,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

13.K. Sandamali Abeynayake,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

14.Nimal Ruwanpathirana,
Managing Director,
State Timber Corporation,
No. 82, Rajamalwatta Road,
Battaramulla.

15.Department of Management Services,
Ministry of Finance,
Lotus Road,
Colombo 01.

16.Human Rights Commission of Sri Lanka,
No. 14, R.A. de Mel Mawatha,
Colombo 04.

17.Hon. Attorney General,
Attorney General's Department,
Colombo 12

Respondents

Before: Murdu N. B. Fernando, PC, J.
Kumuduni Wickremasinghe, J.
Janak De Silva, J.

Counsel:

S.N. Vijith Singh for the Petitioner

M.D.J. Bandara for the 1st, 2(b), 8A and 14th Respondents instructed by Mrs. K.I. Dilani P. Kariyawasam

I. Randeny, State Counsel for the 15th to 17th Respondents

Written Submissions tendered on:

20.10.2022 and 27.12.2022 by the Petitioner

04.01.2022 by the 1st and 2nd Respondents

27.10.2022 by the 1st, 2(B), 8A and 14th Respondents

Argued on: 06.10.2022

Decided on: 14.12.2022

Janak De Silva J.

The Petitioner joined the 1st Respondent as a Clerk-Grade IV on 15.12.1983. During her more than 30 years of service, she rose through the ranks and held the position of Assistant Director (Administration) at the time of this application.

On 19.02.2016, the 1st Respondent requested internal candidates for the post of Deputy Director (Human Resources). The Petitioner presented herself for the interview on 24.03.2016. However, the 11th and 12th Respondents were selected and appointed to the post of Deputy Manager (Human Resources).

The complaint of the Petitioner is against the interview process. The Petitioner argues that she was assessed unfairly and was denied marks that prevented her from being appointed to the position.

Time Bar

A time bar objection has been raised by the 1st Respondent.

In terms of Article 126(2) of the Constitution, a fundamental rights application must be filed within one month of the infringement. In **Gamaethige v. Siriwardena and Others** [(1988) 1 Sri.L.R. 384 at 402] Fernando J. held:

“Three principles are thus discernible in regard to the operation of the time limit prescribed by Article 126(2). Time begins to run when the infringement takes place; if knowledge on the part of the petitioner is required (e.g of other instances by comparison with which the treatment meted out to him becomes

discriminatory), time begins to run only when both infringement and knowledge exist (Siriwardena v. Rodrigo (2)). The pursuit of other remedies, judicial or administrative, does not prevent or interrupt the operation of the time limit. While the time limit is mandatory, in exceptional cases, on the application of the principle lex non cogit ad impossibilia, if there is no lapse, fault or, delay on the part of the petitioner, this Court has a discretion to entertain an application made out of time.”

It was submitted on behalf of the 1st Respondent that the Petitioner should have filed this application within one month of the promotions being given to the 11th and 12th Respondents. In the alternative, it was contended that the application should have been filed within one month of the date on which the report of the 16th Respondent was received by the Petitioner.

The Petitioner claims of becoming aware of the promotions of the 11th and 12th Respondents only around 3rd June 2016. This information was conveyed to her by the Shihabdeen Mohammed Faum, then Acting Deputy Manager (Sales) of the 1st Respondent. An affidavit of Shihabdeen Mohammed Faum has been annexed to the petition (P8) in which he corroborates the Petitioner's version. The 1st Respondent, other than simply denying this assertion, did not adduce any evidence to the contrary.

In these circumstances, I am inclined to accept the version of the Petitioner more so as she was admittedly working in the Kandy Regional Office of the 1st Respondent at the relevant time. Hence the one month must start from 3rd June 2016.

This application was filed on 14th November, 2019. Nevertheless, the Petitioner had filed an application with the 16th Respondent on 9th June 2016. In terms of section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, where a complaint is made by an aggrieved party in terms of section 14 to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which

the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution.

The Court has interpreted this provision and the jurisprudence establishes the following principles:

- (a) The initial view was that mere production of a complaint made to the Human Rights Commission of Sri Lanka within one month of the alleged infringement is sufficient to get the benefit of the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 [**Romesh Coorey v Jayalath** (2008) 2 Sri.L.R. 43, **Alles v. Road Passenger Services Authority of the Western Province**, (S.C.F.R. 448/2009, S.C.M. 22.02.2013)].
- (b) However, the correct position is that a petitioner must show evidence that the Human Rights Commission of Sri Lanka has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate. [**Subasinghe v. Inspector General of Police**, SC (Spl) 16/1999, S.C.M. 11.09.2000; **Kariyawasam v. Southern Provincial Road Development Authority and 8 Others**, (2007) 2 Sri.L.R. 33; **Ranaweera and Others v. Sub-Inspector Wilson Siriwardene and Others** (2008) 1 Sri.L.R. 260; **K.H.G. Kithsiri v Faizer Musthapha**, (S.C.F.R. 362/2017, S.C.M. 10.01.2018); **Wanasinghe v. Kamal Paliskara and Others**, (S.C.F.R. 216/2014, S.C.M. 23.06.2021)].
- (c) A party cannot benefit from the provisions in section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 where the complaint to the Human Rights Commission is made one month after the alleged violation [**Alagaratnam Manoranjan v. G.A. Chandrasiri, Governor, Northern Province**, (S.C.F.R. 261/2013, S.C.M. 11.09.2014)]

(d) The provisions of section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 is not available to a petitioner who has made a complaint to the Human Rights Commission only to obtain an advantage by bringing his application within Article 126(2) of the Constitution [*K.H.G. Kithsiri v Faizer Musthapha*, (S.C.F.R. 362/2017, SCM 10.01.2018)]

In this case, the evidence establishes that the Petitioner made a complaint to the 16th Respondent on 9th June 2016 and that a recommendation was made on 16th September 2019 directing the 1st Respondent to grant the Petitioner her due promotion on or before 22nd October, 2019. As a result, the Petitioner is entitled to the benefit of subsection 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996.

Nevertheless, the 1st Respondent submitted that the application should have been filed within one month of the date on which the recommendation of the 16th Respondent was received by the Petitioner. This submission is simply untenable.

Where a party has made a complaint to the Human Rights Commission against an alleged infringement or imminent infringement within one month of the alleged infringement or imminent infringement and the Human Rights Commission has begun an inquiry, the time for the purposes of Article 126(2) of the Constitution stops running. The aggrieved party may then invoke the jurisdiction of this Court after one month from the deadline set by the Human Rights Commission for compliance with its recommendation.

Admittedly, the Petitioner received the recommendation of the 16th Respondent on 20th September, 2019. Nevertheless, the Human Rights Commission had given the 1st Respondent time until 22nd October, 2019 to implement the recommendation. There was no compulsion on the Petitioner to come before Court before the expiry of the time given to the 1st Respondent to implement the recommendation.

The 14th Respondent, General Manager of the 1st Respondent, by letter dated 17th October 2019 informed the 16th Respondent, with copy to the Petitioner, that the recommendation of the 16th Respondent cannot be implemented for the reasons mentioned. The Petitioner invoked the jurisdiction of this Court on 15th November, 2019, within one month of the date given to the 1st Respondent to implement the recommendation of the 16th Respondent and within one month of the intimation that the recommendation cannot be implemented, whichever is considered. Accordingly, I find that the Petitioner has invoked the jurisdiction of the Court within the prescribed period.

Interview Process

The affidavit of Mohammed Faum, then Acting Deputy Manager (Sales) of the 1st Respondent (P8) explains the contents of the discussion he had with the then Chairman of the 1st Respondent P. Dissanayake. This evidence supports the Petitioner's case that the interview procedure was flawed. The 11th Respondent was given the promotion as he was due to go on retirement. The 12th Respondent was given the promotion as she was making persistent requests for the promotion. This was made possible by giving both of them the full marks given for personality demonstrated at the interview. It is not common for a current employee to give evidence against the employer in support of a co-worker. I see no reason to doubt this evidence.

The 1st Respondent has failed to adduce any evidence to contrary. Neither the mark sheet nor the evidence of the interview panel was produced. Instead, the 1st Respondent has sought to establish that the service record of the Petitioner is unsatisfactory. Nevertheless, as correctly observed by the Human Rights Commission, the Petitioner has been awarded the full 15 marks for Service Evaluation. This is not possible without a satisfactory service record.

The 1st Respondent also filed several documents dated June 2016 and thereafter to try and establish misconduct on the part of the Petitioner. They are irrelevant to the matter before the Court as the interview was conducted on 24th March 2016. The Petitioner alleges that these documents were issued after she went to the Human Rights Commission in order to penalize her for doing so. There seems to be some truth in this allegation.

According to the findings of the Human Rights Commission, the Petitioner had obtained a total of 80 marks at the interview as follows:

Experience	-	30 marks (maximum 30)
Educational Qualifications	-	25 marks (maximum 30)
Service Record	-	15 marks (maximum 15)
Personality demonstrated at the interview	-	10 marks (maximum 25)

The 11th Respondent received a total of 85 marks and the 12th received a total of 84 marks. Both had ultimately received more marks than the Petitioner because of the marks they had obtained for personality demonstrated at the interview. The Petitioner obtained more marks for all the other categories than the 11th and 12th Respondents. This evidence corroborates the uncontradicted evidence of Mohammed Faum, then Acting Deputy Manager (Sales) of the 1st Respondent.

In this case, meritocracy had given way to kakistocracy. The decision to promote the 11th and 12th Respondents instead of the Petitioner has been taken on extraneous considerations and hence is arbitrary.

Accordingly, I declare that the 1st Respondent has infringed the fundamental rights guaranteed to the Petitioner in terms of Article 12(1) of the Constitution by failing to give her the due promotion.

In the exercise of the just and equitable jurisdiction conferred on Court in terms of Article 126(4) of the Constitution, I make the following directions:

- (a) The Petitioner should be promoted as Deputy Manager (Human Resources) with effect from the date on which the same promotion was granted to the 11th and 12th Respondents. If the 11th and 12th Respondents were promoted on two different dates, the promotion of the Petitioner should be made effective from the earliest date.
- (b) In the event that there are no cadre vacancies, the promotion of the Petitioner as Deputy Manager (Human Resources) should be made as being personal to her. There is no need for the 1st Respondent to obtain the approval of any other body to give effect to this direction of Court.
- (c) The Petitioner is entitled to all the back wages and other monetary and non-monetary emoluments which is made to Deputy Manager (Human Resources).
- (d) The Petitioner is entitled to all statutory dues from the date of her promotion as Deputy Manager (Human Resources).

The 1st Respondent shall in addition, pay Rs. 1,00,000/= as costs of this application to the Petitioner.

Judge of the Supreme Court

Murdu N. B. Fernando, PC, J.

I agree.

Judge of the Supreme Court

Kumuduni Wickremasinghe, J.

I agree.

Judge of the Supreme Court