

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

In the matter of an application made
under Article 17 read with Article 126 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.

SC/FR No.364/2014

01. A.A. Asoka Ananda,
Chilaw Plantations Limited,
165, Puttalam Road, Chilaw.
02. M.G.C. Dias,
Chilaw Plantations Limited,
Divulapitiya Area Estates,
Katukenda No.3 Estate, Badalgama.
03. D.M.G. Dissanayake,
Chilaw Plantations Limited,
Bingiriya Area Estates,
Kiniyama Estate, Weerapokuna.
04. W.K. Pradeep,
Chilaw Plantations Limited,
165, Puttalam Road, Chilaw

Petitioners

Vs.

01. Chilaw Plantations Limited,
165, Puttalam Road, Chilaw.

02. Gamini Rajakarune,
Chairman,
Chilaw Plantations Limited,
165, Puttalam Road, Chilaw;
And Secretary to the Ministry of
Coconut Development and Janatha
Estate Development

03. Panduka Jayasinghe,
Former Executive Chairman,
Chilaw Plantations Limited,
No.27, 1st Lane, Rampart Road,
Ethulkotte.

04. A.M. Chandrapala,
Executive Director,
Chilaw Plantations Limited,
165/1A, Dutugamunu Street,
Kohuwala.

05. O.P.P. Pathiranage,
Working Director,
Chilaw Plantations Limited,
CDA Building, Ground Floor,
No.11, Duke Street, Colombo 01.

06. Mrs.Priyangani Liyanage
Member of Board of Directors,
Chilaw Plantations Limited & Treasury
Representative, PED, Treasury, Colombo 01.
07. Chandra Fernando,
Member of Board of Directors,
Chilaw Plantations Limited,
No.3, Shrubbery Gardens,Colombo 04.
08. K.B. Ratnayake,
Member of Board of Directors,
Chilaw Plantations Limited,
No.22, Dikyaya, Buththla.
09. R.R.M. Amerathunga,
Member of Board of Directors,
Chilaw Plantations Limited,
No.7/44, School Lane,
Gangodawila, Nugegoda.
10. I.M.R. Widanagama,
Member of Board of Directors,
Chilaw Plantations Limited,
“Tharindu”, Buddiyagama, Weeraketiya.

11. B. Hettiarachchi,
“Nishadi”, Bauddhaloka Mawatha,
Gampaha.
12. The Attorney General
The Attorney General’s Department,
Colombo 12.

Respondents

13. Ravindra Herath
(Chairman,
Chilaw Plantations Limited)
No.87, Gettuwana Road, Kurunegala.
14. K.G. Ananda Pushpakumara,
(Working Director and Member of
Board of Directors,
Chilaw Plantations Limited)
“Pushpawila”, Ambawa, Kuliypitiya.
15. D.M.L. Bandaranayake
(Member of Board of Directors,
Chilaw Plantations Limited)
Additional Secretary,
Ministry of Plantation Industries,
11th Floor, Sethsiripaya, Stage II,
Battaramulla.

16. H.M.N.C. Herath,
(Member of Board of Directors,
Chilaw Plantations Limited)
Ediwenne Watta, Welpalle(North West)
17. M.R.V.R. Meepura,
(Member of Board of Directors/
Treasury Representative, Chilaw
Plantations Limited)
Department of Public Enterprises(PED)
General Treasury, Colombo 01.
18. Victor Kumara Charels Herath,
(Chairman,
Chilaw Plantations Limited)
No.87, Gettuwana Road, Kurunegala.
19. Jude Perera,
(Chairman,
Chilaw Plantations Limited)
No.87, Gettuwana Road, Kurunegala.
20. H.G.Samarasinghe
21. Aruni S.Ranasinghe
22. Keerthi Pathirange
23. Nalinda Kasun Rajasinghe
24. Ajantha Moonamalle
25. W.W.A.N.T.A. Fernando
26. I.S.J.P. Gunawardena

(20th to 26th all of, Member of the
Board of Directors, Chilaw Plantations
Limited)
165, Puttalam Road, Chilaw.

Added Respondents

Before : Jayantha Jayasuriya, PC. CJ.
A.H.M.D. Nawaz, J
Arjuna Obeyesekere, J.

Counsel : Manohara De Silva, PC with Hirosha
Munasinghe and Senal Kariyawasam for the
Petitioner.
Shantha Jayawardena with Chamara
Nanayakkara for the 11th Respondent.
Ms. Ganga Wakishta Arachchi, DSG for all the
Respondents except the 11th Respondent.

Written submissions : 09.08. 2019 and 21.05.2024 by Petitioner
22.01.2020 by 1st and 12th Respondents
03.05.2024 by 1st to 12th Respondents and 19th to
26th Added Respondents.
08.10.2021 and 16.05.2024 by 11th Respondent

Argued on : 25.03.2024

Decided on : 08.08.2024

Jayantha Jayasuriya, PC. CJ.

Four petitioners have invoked the jurisdiction of this Court under Article 126 of the Constitution. They allege that the Right to Equality guaranteed by Article 12(1) of the Constitution was violated due to the wrongful conduct of the first to the tenth respondents. The first respondent is Chilaw Plantations Limited and second to the tenth respondents are the chairman and members of the board of directors of the first respondent company.

Petitioners contend that they submitted applications for the post of Assistant General Manager – (Plantations) of the first respondent company but were not called for the interview. They further contend that their right to equality guaranteed under Article 12(1) was infringed due to the fact that the eleventh respondent had been appointed to the said position after being called for an interview having denied an equal opportunity for the petitioners to present themselves at the structured interview. They further contend that they possessed all basic qualifications as opposed to the eleventh respondent who lacked minimum qualifications as set out in the advertisement calling for applications. It is their contention that through this process the eleventh respondent was accorded with preferential treatment and the conduct of the respondents lacked reasonableness and lawfulness and thereby breached the rule of law. Petitioners further contended that they were denied procedural fairness. However, the learned President's Counsel for the petitioners at the outset submitted that he would not be pursuing the case of the fourth petitioner as the said petitioner did not possess required experience by the time the applications were closed.

The first respondent together with the respondents who are members of the Board of Directors and others holding positions in the first respondent company deny that the impugned process breached any rights guaranteed to the petitioners. They further contend that the petitioners were not called for the interview as they failed to satisfy

that they possessed the minimum qualifications to be considered for the position that was advertised. It was reasonable for the respondents to have short listed the applicants for the structured interview and the decision not to call the petitioners for the interview was neither arbitrary nor unlawful. They contend that the whole process was lawful and was in accordance with the procedure stipulated in the applicable scheme of recruitment. They further contended that the eleventh respondent and the other person who were called for the structured interview did possess minimum qualifications and the eleventh respondent obtained highest marks at the interview. Hence, the petitioner's challenge on the appointment of the eleventh respondent to the post of Assistant General Manager – (Plantations) at the first respondent company should fail. The eleventh respondent contend that he possessed all necessary qualifications to be appointed the Assistant General Manager – (Plantations) at the first respondent company, hence, the case of the petitioners lacks merit and their case should fail. It is also pertinent to note that all respondents submitted that the fact that the other person who was called for the interview but not selected for the post has not challenged the appointment of the eleventh respondent stands testimony to the lawfulness of the whole process that ended with the appointment of the eleventh respondent.

According to the advertisement produced marked P12, the minimum qualifications for an internal candidate for the post concerned are Diploma in Agriculture/Plantation Management/ Commerce from a recognised institute with minimum twelve years managerial level experience with good communication skills in Sinhala and English and good skills in interpersonal relations. With the assistance of extensive material submitted in these proceedings by all parties and submissions of counsel, I will first proceed to consider whether the eleventh respondent possessed required minimum qualifications to be appointed as Assistant General Manager – Plantations of the Chilaw Plantations Limited. It is common ground that the eleventh respondent

possessed the required minimum academic qualification. However, petitioners contend that the material revealed in the application the eleventh respondent submitted, fails to satisfy that he had twelve years managerial level experience. Eleventh respondent as well as the other respondents dispute this contention.

In this regard it is pertinent to note that the closing date for the applications as advertised was 03rd April 2014. Therefore, any applicant should have commenced holding a suitable position at least by 02nd April 2002 and should have been continuing to hold by 03rd April 2014 if he is to satisfy the requirement of holding a managerial level experience of twelve years.

On behalf of the petitioners, it was further contended that the first to the tenth respondents rushed through the impugned appointment to avoid the direction of the Commissioner of Elections on restrictions regarding new appointments due to the scheduled presidential election. It is pertinent to observe that the gazette notification calling for nominations had been published on 21st November 2014 and on 22nd November 2014 the Commissioner of Elections had issued the direction on appointments and transfers during the election period. Respondents contended that the impugned appointment was made after completing the entire process and did not breach the direction of the commissioner of elections. All material available to this Court including the Audit report dated 11th August 2014 that is attached to the letter marked P 15 and the notice of the elections department dated 22nd November 2014 marked P28 stand testimony to the fact that the impugned appointment has been made after completing the process including the internal audit carried out by the Ministry and prior to the restrictions imposed due to the presidential election. The eleventh respondent was appointed to the post of “Assistant General Manager (plantations) of the first respondent company with effect from 18th November 2014. (vide R9 letter of third respondent dated 17th November 2014)

Petitioners in their pleadings before this Court contend that the eleventh respondent had only eleven years of managerial experience by the closing date of the applications and did not satisfy the twelve-year requirement. Respondents dispute this assertion. On behalf of the petitioners, Court's attention was drawn to the documents produced marked R8 (application submitted by the eleventh respondent). They contended that the eleventh respondent had been employed at the first respondent company in the capacity of Estate Superintendent with effect from 01st April 2003. Hence, he had only eleven years of managerial level experience at the time of submitting the application.

It is pertinent to note that the eleventh respondent had been employed at the first respondent company and had been performing managerial level duties for a period of eleven years continuously. Furthermore, as per the curriculum vitae he had submitted reflects that he had gained additional four years of managerial level experience at Cashew Corporation while he was serving as Factory Manager / Training Officer at the factory situated at Makevita from 1st December 1998 to 20th December 2002.

However, petitioners contend that the eleventh respondent lacks twelve years of managerial experience. Their contention revolves on the experience the eleventh respondent gained while serving at the Cashew Corporation. The eleventh respondent along with his affidavit dated 01st August 2016 produced a service certificate dated 30th May 2014 issued by the General Manager of the Sri Lanka Cashew Corporation (11R15). According to the said certificate the eleventh respondent has been promoted as the officer in charge of the Nedagamuwa Cashew Processing Centre on 01st December 1998. The author of this certificate classifies this position as "a junior executive position" and confirms that during the period of service the eleventh respondent has been able to "*gain experience at managerial level in plantation management, cashew processing and value addition techniques*". In contrast, the third

petitioner by his affidavit dated 12th October 2016, while vehemently denying the contention of the eleventh respondent demands strict proof. Furthermore, he has attached a document to substantiate the petitioner's claim that the eleventh respondent did not acquire managerial experience at Cashew Corporation. The last-mentioned document is produced marked P59.

Prima facie, the document P59 has been signed by the same person who has signed the document 11R15 - the service certificate of the eleventh respondent dated 30th May 2014 – and is dated 08th May 2014. In this document P59, it is said that “*all these positions held by him (reference to the eleventh respondent) are Non-Executive level positions and equal to Management Assistant (Technical) Grade – MA 2-1 Grade I and Grade II*”. This is the sole basis on which the petitioners are challenging the qualifications of the eleventh respondent.

The learned counsel for the eleventh respondent as well as the learned Deputy Solicitor-General strenuously contested the veracity of the document P59. In support of their contention learned counsel drew the attention of the Court to several features reflected in this contested document. Firstly, even though, the letter is addressed to the Chairman / CEO of the first respondent company – the third respondent – and makes reference to a letter dated 30th April 2014, there is no “your number” given in the questioned document. More importantly learned counsel drew the attention of the Court to the last sentence of the letter namely, “*I have gathered these information from reliable sources confidentially as his personal file could not be located*”. They submit that the sentence referred to above itself raises serious doubts on the authorship and the content of this letter. The same author in the service certificate (11R 15) issued three weeks thereafter (on 30th May 2014) to the eleventh respondent on his request where he certified that the eleventh respondent did in fact gain “managerial level” experience does not claim that the personal file of the eleventh

respondent is not available. To the contrary, the “My No” of 11R 15 – “ක/සප/1/පුලි/516 – II” stands proof of the availability of the personal file of the eleventh respondent with the relevant authorities and the certification was in accordance with the material available in the personal file. In their submission “පුලි” connotes “පුද්ගලික ලිපිගොනුව” (personal file). Furthermore, they contended that the third petitioner who took the liberty to produce letter P59 bears the responsibility to aver as to the manner in which the said letter came into his possession. Letter P59 which is addressed to the third respondent bears the endorsement “Strictly Private & Confidential”. Furthermore, there is no record with the first respondent company to prove the receipt of such letter or dispatching of the purported letter of the third respondent dated 30th April 2014. Absence of any record relating to both these documents at the first respondent company further aggravates the concerns raised on the veracity of document P59 tendered by the third petitioner in support of their claim. The stark silence of the petitioners on the manner in which they gained access to this document taken together with the salient features of the said letter that raises grave doubts on its veracity, raises the question whether the petitioners have withheld necessary facts from this Court and / or deliberately presented material of which serious doubts exist on its veracity to influence and mislead the Court to hold in favour of their contention or presented such material with the knowledge that the court would be misled.

Be that as it may, it is also pertinent to observe that a service certificate dated 01st October 1993 issued by the Chairman, Sri Lanka Cashew Corporation certifies that the eleventh respondent *“has acquired considerable experience in managing plantations while working at the Head Office of the Sri Lanka Cashew Corporation”*.

When all these matters are taken into account and considered together, I am of the view that the contention of the petitioners that the eleventh respondent did not possess

necessary minimum qualifications to be appointed to the post of Assistant General Manager (Plantations) at the first respondent company is devoid of merit. Furthermore, in my view the decision to call the eleventh respondent for the interview is rational and lawful.

Now I will proceed to consider the submission of the learned President's Counsel for the petitioners that the failure to call first to the third petitioners for the interview denied procedural fairness to them and hence the Right to Equality guaranteed to them under Article 12(1) was infringed.

This Court in **Palihawadana v Attorney-General and Others** [1978-79-80] 1 SLR 65 whilst examining the process where Members of Parliament were given the discretion to distribute applications to register for employment among one thousand persons of their choice who satisfy minimum requirements observed that ;

“Article 12 nullifies sophisticated as well as simple-minded modes of discrimination. The Job Bank Scheme enables the M.P to confer a privilege upon the one thousand persons arbitrarily selected by him from a large class of persons, all of whom stand in the same relation to the privilege granted, and between whom and the person not so favoured, no reasonable distinction or substantial difference can be found justifying the inclusion of one and the exclusion of the other from such privilege...” [at p 77]

and held that the part of the scheme that conferred power on the M.P to select the one thousand persons to whom the application forms would be distributed *“destroys or makes illusory the Fundamental Right guaranteed by Article 12”*.

It is common ground that all parties concerned (first to the third petitioners and the eleventh respondent) submitted the applications in response to the advertisement as

internal candidates. It is also undisputed that in calculating the required managerial level experience of twelve years, their services in institutions other than the first respondent company are also considered.

Therefore, an opportunity to explain the type of work that they performed in other institutions at the structured interview would give them the benefit to present all material to demonstrate their eligibility. In my view, even though, the scheme of recruitment provides for short listing of applicants who would be called for the structured interview, the denial of such an opportunity to an applicant who could satisfy, *prima facie*, that he possesses such work experience to present himself for the structured interview would deprive him a fair opportunity to compete with another person of similar standing. Such deprivation would lead to a breach of the Right to Equality guaranteed under Article 12(1).

The thirteenth respondent tendered to this Court the applications and other material the four petitioners and the eleventh respondent submitted in response to the advertisement calling for applications for the post of assistant general manager (plantations). According to the thirteenth respondent, the four petitioners were not called for the interview as they failed to satisfy that they possessed one of the minimum qualifications, mainly twelve years of managerial level experience at the time the applications were called.

According to the thirteenth respondent the first petitioner had been employed at the first respondent company. In 1984 the first petitioner had joined the first respondent company as an office trainee and had thereafter held posts of clerk, data operator and analyst / programmer till 1st November 2008. On 1st November 2008 he had been appointed to the post of Manager Estates and has continued to hold that position at the time the application was submitted. Therefore, on behalf of the respondents it is

contended that the first petitioner did not satisfy the requirement of twelve years managerial level experience.

However, the first petitioner disputes this position and contends that the experience he gained in the capacity of analyst / programmer should also be counted for the period of experience in managerial level. It is on this basis he claims that the decision not to call him for the interview was irrational and arbitrary.

He further contends that if he was called for the interview, he would have got the opportunity to explain why this period of service as analyst / programmer also should be counted in his favour. In considering these competing claims of the parties it is pertinent to note that the first respondent company is the best person to assess the nature of experience the petitioner gained while performing duties in different capacities during the total period of service from 1984. Examination of the application, curriculum vitae and other certificates the first petitioner submitted in response to the advertisement (R2 and P12A(i)) does not reveal the basis on which the first petitioner could claim gaining managerial experience while serving as analyst / programmer.

Furthermore, a communication he addressed to the Managing Director of the first respondent company on 9th September 2002, sheds light to the nature of work that the first petitioner performed in this capacity and the difficulty he encounters in fulfilling his ambition of becoming a manager of the first respondent company. In his words it is said that “...*the Computer Division, being a separate division, has a limited scope of work and thus the opportunities are very rare in the said division to go up to the managerial level. As such, I appeal to your good self to promote / re-designate me to a suitable position which arrangement would paves the way for me to fulfil my ambition of becoming a Manager of Chilaw Plantations Limited...*” (R9). There is no material to suggest that the status of the first petitioner within the first respondent

company changed until he was appointed Manager Estates on 01st November 2008.

In my view, these facts as discussed above stand in support of the contention that the first petitioner did not possess the twelve years managerial experience, when he submitted the application in March 2014. Therefore, I am of the view that the first petitioner fails to establish a violation of his right to equality guaranteed under Article 12(1) of the Constitution.

It is common ground that the second petitioner having joined the first respondent company in December 2004 as an Estate Superintendent has resigned after seven months of service in July 2005. Thereafter he had rejoined the first respondent company in July 2008 in the same capacity and has been continuing to serve at the time he submitted the application. Therefore, altogether he has had six years and three months of managerial level experience at the first respondent company, when he submitted the application. The thirteenth respondent contends that the second petitioner did not submit any proof of employment through which he gained managerial level experience, other than the aforesaid period of six years and three months. He contends the second petitioner was therefore not shortlisted to call for the interview.

However, the resume the second petitioner submitted along with the letter dated 24th March 2014 [R5, P12A(ii)] reveal that he commenced his career as a trainee Estate Assistant Superintendent in July 1994 and after one year he had commenced functioning as an Estate Assistant Superintendent in March 1995. He had functioned in this capacity for four years before he was appointed an Estate Senior Assistant Superintendent in May 1999 in which capacity he had functioned until he joined the first respondent company in December 2004. Therefore, even if one leaves aside the period of four years during which he had functioned as Estate Assistant Superintendent, he had served for a total period of eleven years and nine months as an

Estate Senior Assistant Superintendent and an Estate Superintendent. Furthermore, he has served in the managerial capacity in the Agri Machinery Department of a business establishment for a period of one year after leaving the first respondent company in July 2005. In this regard, it is also pertinent to note that the advertisement calling for applications for the relevant post specifies the required experience as “minimum twelve years managerial level experience”. Therefore, the second petitioner’s career as revealed in the *resume* he submitted to the first respondent company itself provides sufficient material which could have been further verified at the structured interview that was to be held prior to the final selection of the suitable candidate. Even if the first respondent company reserved the right to short-list the application, it was irrational and arbitrary to have not called the second petitioner for the structured interview on the sole basis that he did not possess the required twelve years of managerial level experience. The requirement on the applicants was to submit certified copies of certificates and testimonials together with the *curriculum vitae* that contains “*relevant information in detail*”. In my view the “*resume*” the second petitioner submitted contains sufficient details in relation to his work experience which casts a burden on the selectors to further probe and examine whether the work experience he gained at establishments other than the first respondent company satisfies the minimum qualification required for the post he applied for. Failure to engage in such process is arbitrary and irrational.

The third petitioner had joined the first respondent company in 1996 as a Divisional Superintendent and in 1997 he had been appointed an acting Area Superintendent. In the following year, on 01st January 1998, he had been appointed an Estate Superintendent and had continued to serve in that capacity until he was interdicted on 1st November 2004. Thereafter he has been reinstated in the same position on 05th April 2010 and has been in continued service at the first respondent company at the time he submitted the application. Therefore, he has completed approximately eleven

years (ten years and ten months) of service as Estate Superintendent at the first respondent company. Furthermore, the thirteenth respondent has admitted that the third petitioner submitted a letter of employment from Pelawatta Sugar where he has served as a Superintendent for a period of one year. Examination of the “Bio Data” this petitioner submitted with the application reveal that he has joined Kurunegala Plantations in the capacity of a manager in 2005 and has worked at the Head Office till 15th February 2007. The thirteenth respondent does not say whether they considered this period of two years where the petitioner has worked at Pelawatta Sugar and Kurunegala Plantations in favour of this petitioner. However, the thirteenth respondent confirms that the period of two years and nine months the petitioner has served as a Purchasing Manager for a road construction project was not considered as it had no connection with the agricultural or plantation industry. The thirteenth respondent does not explain as to the reason for not considering the two year period where the petitioner has served at Pelawatta Sugar and Kurunegala Plantations. If this two year period is counted in favour of the petitioner there is no basis not to call the third petitioner for the interview. According to the thirteenth respondent this petitioner was not shortlisted on the sole basis that he did not possess the minimum period of experience at managerial level. The stark silence the thirteenth respondent maintains in relation to the period of two years as discussed hereinbefore reflects, that the decision not to call this petitioner has been reached without due consideration to all necessary facts. Therefore, it is reasonable to infer that this decision is based on irrelevant grounds or there had been a failure to consider relevant facts. Such decision is arbitrary and irrational.

In view of my findings on the decisions relating to the second and the third petitioners as enumerated hereinbefore, I am of the view that the right to equality of these two petitioners as guaranteed by Article 12(1) of the Constitution has been infringed. Impugned decisions had been reached by one or several of the second to the tenth

respondents while they were performing their duties and discharging their responsibilities for and on behalf of the first respondent company. It is common ground that the first respondent company is a government owned company established under the Companies Act No 17 of 1982. It has been established in accordance with the provisions of the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act No 23 of 1987. Full shares and the golden shareholder status of this company are allotted to the Treasury, on behalf of the State. The petitioners are therefore entitled to receive relief granted by this Court under Article 126(4) of the Constitution.

Two main reliefs the petitioners seek from this Court are;

- (i) A declaration that their rights enshrined under Article 12(1) have been infringed, and
- (ii) Cancellation of the appointment of 11th respondent as the “Assistant General Manager” and or a declaration that the appointment of eleventh respondent as the Assistant General Manager is arbitrary and therefore null and void.

In view of the findings that I have reached hereinbefore, I declare that the Right to equality of the second and third petitioners as guaranteed under Article 12(1) of the Constitution had been infringed due to the acts of one or more of the second to the tenth respondents who were performing duties and responsibilities in the course of their employment at the 1st respondent company.

In view of my findings that the eleventh respondent did in fact possess necessary minimum qualifications to be appointed to the post of Assistant General Manager at the first respondent company, I am of the view that the cancellation of the

appointment after a period of ten years would cause prejudice to the eleventh respondent to whom no fault could be attributed. Therefore, I am not inclined to make any order affecting the appointment of the eleventh respondent and the continuation of his tenure of office. Nonetheless, taking into account the fact that the second and the third petitioners had been arbitrarily deprived the opportunity to compete with the eleventh respondent at the structured interview, I am of the view that it is just and equitable to award damages to the second and the third petitioners and costs in addition to the declaration of the violation of their rights. Accordingly, the first respondent is ordered to pay Rupees one hundred thousand and costs of litigation in the Supreme Court to each of the second and third petitioners.

Chief Justice

A.H.M.D. Nawaz, J.
I agree

Judge of the Supreme Court

Arjuna Obeyesekere, J.
I agree

Judge of the Supreme Court