

**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(2) of the Constitution.

Christobuge Chrishan Hilary Srikiith
Fernando.
No. 59, Puwakaramba Road,
Kadalana, Moratuwa.

Application No. SC/FR/498/2011

Petitioners

Vs.

1. National Water Supply and Drainage
Board (NWS &DB)
Head Office.
Galle Road, Ratmalana.
2. Mr. Karunasena Hettiarachchi,
Chairman,
National Water Supply and Drainage
Board (NWS &DB)
Head Office.
Galle Road, Ratmalana.
3. Mr. K.D.G. Gunaratne,
Vice Chairman
National Water Supply and Drainage
Board (NWS &DB)
Head Office.
Galle Road, Ratmalana.
4. Mr. N.P. Thibbutumunuwa,
Working Director,
National Water Supply and Drainage
Board (NWS &DB)
Head Office.
Galle Road, Ratmalana.
5. Dr. P.G. Maheepala
Director,
National Water Supply and Drainage
Board (NWS &DB)
Head Office.
Galle Road, Ratmalana.

6. Dr. Y.D.N. Jayatilaka
Director,
National Water Supply and Drainage
Board (NWS &DB)
Head Office.
Galle Road, Ratmalana.
7. A.K. Senevirathna
Director,
National Water Supply and Drainage
Board (NWS &DB)
Head Office.
Galle Road, Ratmalana.
8. Mr. K.L.L. Premanath,
General Manager
National Water Supply and Drainage
Board, P.O. Box 14, Mount Lavinia
9. Mr. G.S. Munasinghe,
Additional General Manager
(Cooperate Services)
National Water Supply and Drainage
Board, P.O. Box 14, Mount Lavinia.
10. Ms. C.V. Ethugala
Director(Development)
Ministry of Water Supply and Drainage,
No. 35, “Lakdiya Medura”,
New Parliament Road,
Pelawatta, Battaramulla.
11. Mr. A. Abeygunasekera
The Secretary,
Ministry of Water Supply and Drainage,
No. 35, “Lakdiya Medura”,
New Parliament Road,
Pelawatta, Battaramulla.
12. Hon. Attorney General,
Attorney General’s Department,
Colombo 12.

Respondents

Before : Priyasath Dep, PC. J
S.E. Wanasundera, PC. J &
B.P. Aluwihare, PC. J

Counsel : Razik Zarook, PC with Rohana Deshapriya and
Chanakya Liyanage for the Petitioner.

Rajive Gunatilleke,SSC for AG.

Argued on : 01.08.2014

Decided on : 25.03.2015

Priyasath Dep, PC, J

The Petitioner filed this fundamental rights application and obtained leave under article 12 and 14(g) of the Constitution. The Petitioner who is a civil engineer joined the National Water Supply and Drainage Board (hereinafter referred to as “Board”) and presently holding the post of Assistant General Manager (Ground Water).

The Petitioner had obtained a degree in Civil Engineering from the University of Moratuwa in the year 1987. He has also obtained a Masters degree in Public Management from the Sri Lanka Institute of Development Administration. In addition he has a Post Graduate Diploma from University of Norway.

The Petitioner states that advertisements were published in January 2007 for the post of Deputy General Manager (Commercial) of the Board and the scheme of recruitment was set out in the advertisement. As he had completed and fulfilled all necessary requirements he applied for the above post.

The Petitioner states that he was interviewed for the post of Deputy General Manager (Commercial) on 20th April 2011 and he obtained 91 marks and came first in order of merit. He states that though he obtained the highest marks steps were not taken to promote him to the said post.

The Petitioner states that the degree of Master of Public Management obtained from the Sri Lanka Institute of Development Administration is an equivalent to the qualification as set out in the scheme of recruitment for the above post.

The Petitioner as well as the 1st Respondent sought clarifications from Sri Lanka Institute of Development Administration as to whether Master of Public Administration is equivalent to the Master of Business Administration. Sri Lanka Institute of Development Administration confirmed that the Master of Public Administration degree is equivalent to Master of Business Administration.

The Petitioner states that the Board had re-advertised the post of Deputy General Manger (Commercial) by letter dated 7th October 2011 for internal applicants and published in the newspapers on 16th October 2011 for external candidates. The Petitioner submits that by not appointing him for the post and re-advertising the said post is violative of rights guaranteed under article 12 (1) and article 14(1)(g) of the Constitution.

The 8th Respondent K.L.L. Premanath, General Manager of the Board filed a statement of objections and refuted the allegation made against the Board. He states that the post graduate qualification required for the post was a Master of Business Management. The Petitioner possessed a degree in Public Management. He states that under the scheme of recruitment the required degree is Master of Business Management, which qualification the Petitioner does not have. Therefore, the Board re-advertised the post and called for applications.

According to the advertisement, required qualification and experience are:

“Membership of a recognized Institution of Business Administration with 15 years executive experience in a recognized marketing organization

Or

Post Graduate Degree in Business Administration with 13 years executive experience in a recognized marketing organization.”

The learned Counsel for the 1st Respondent (Board) in his submission stated that the Petitioner did not have the requisite qualification which is a degree in Master of Business Administration though he had an equivalent degree. He submits that the scheme of recruitment is specific that the qualification should be a Master of Business Administration and not ‘MBA or equivalent or similar qualification’.

The Scheme of Recruitment is specific as regards to the post graduate qualification. It does not refer to an equivalent or a similar qualification. In view of that fact there is a possibility that persons possessing a similar or an equivalent qualification did not apply for the post on the basis that they did not possess the requisite qualification and thereby not qualified to apply for the post advertised.

I accept the submissions made by the learned Senior State Counsel and I hold that the Board had taken a correct decision when it decided not to appoint the Petitioner to the Post of Deputy General Manager (Commercial) as the Petitioner did not have the requisite post graduate qualification.

I hold that there is no violation of the Petitioners fundamental rights guaranteed by the Constitution.

Application dismissed. No costs.

Judge of the Supreme Court.

Eva Wanasundera P.C., J.

I agree.

Judge of the Supreme Court

Buwenaka Aluvihare P.C., J.

I agree.

Judge of the Supreme Court