

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

Hewa Kulasuriyage Anura Nimal,
Inspector of Excise,
Excise Office,
Mahawa.
Petitioner

SC/FR/402/2013

Vs.

Commissioner General of Excise,
Sri Lanka Excise Department,
No. 28,
Staple Street,
Colombo 2.
1st Respondent

Chairman and Members of the
Public Service Commission,
No. 177,
Nawala Road,
Narahenpita.
2nd-10th Respondents

Attorney General,
Attorney General's Department,
Colombo 12.
11th Respondent

Before: Hon. Justice P. Padman Surasena
Hon. Justice Mahinda Samayawardhena
Hon. Justice K. Priyantha Fernando

Counsel: Manohara De Silva, P.C. with Sasiri Chandrasiri for the
Petitioner.

Yuresha De Silva, D.S.G. for the Respondents.

Argued on: 01.07.2024

Decided on: 09.10.2024

Samayawardhena, J.

The petitioner filed this fundamental rights application against the 1st respondent, the Commissioner General of Excise, and the 2nd to the 10th respondents, the Chairman and the Members of the Public Service Commission, seeking a declaration that his fundamental rights guaranteed under Article 12(1) of the Constitution have been violated by the decision contained in the document marked P22.

According to P5, the petitioner was promoted to the rank of Excise Sergeant Major, effective from 01.06.2000. Clause 10 of P5 required the petitioner to pass the Efficiency Bar examination before reaching the salary step of Rs. 69,120. However, P5 did not specify a deadline for passing the examination. As evidenced by P7, the petitioner had already been placed in the salary step of Rs. 70,680 prior to his promotion to Excise Sergeant Major. Therefore, Clause 10 of P5, which stipulated that the petitioner must pass the Efficiency Bar examination before reaching the salary step of Rs. 69,120, is meaningless.

The petitioner did not receive his salary increments for the rank of Excise Sergeant Major for the years 2001 and 2002. Upon inquiry, he was

informed that this was due to his failure to sit for the Efficiency Bar examination. By letter dated 17.12.2002 marked R3, the petitioner was notified that if he successfully sat for the Efficiency Bar examination within three years from his appointment to the rank of Excise Sergeant Major, he would be granted all the salary increments. His three-year period was to expire on 01.06.2003. It appears that no Efficiency Bar examination was held between 17.12.2002 and 01.06.2003. According to the objections and the written submissions filed by the respondents, during the relevant period, the Efficiency Bar examinations were held on 06.04.2001, 12.09.2002, 18.09.2003 and 04.11.2004. The petitioner sat for the examination held on 18.09.2003 (with the *viva voce* reportedly conducted on 02.10.2003, as evidenced by P8), but did not pass. He subsequently passed the Efficiency Bar examination held on 04.11.2004 and was granted all the salary increments for the years 2001 to 2005.

While holding the rank of Excise Sergeant Major, by notice marked P12, applications were called for the post of Excise Inspector. The qualifications were:

- (a) Must be an Excise Sergeant Major in service or an Excise Sergeant with not less than two years of satisfactory service in the said rank.
- (b) Excise Sergeants must have been awarded at least the Red 1 badge for satisfactory service.
- (c) Must have obtained all salary increments during the preceding five years (ඉල්ලුම් කරන දිනයේ සිට පූර්වාසන්න 05 අවුරුදු කාලය තුළදී සියලුම වැටුප් වර්ධක උපයාගෙන තිබිය යුතුය).
- (d) Must not be subject to any disciplinary action during the preceding five years except being issued a warning or reprimand.

When the petitioner applied for the post of Excise Inspector in 2006, he had admittedly earned all the salary increments for the preceding five years.

Since the petitioner met all the required qualifications, he applied for the post, sat for the limited competitive examination, and attended the interview. He successfully passed all stages. Consequently, by letter marked P13, he, along with 38 other officers, was appointed to cover duties in the rank of Excise Inspector effective from 01.01.2007. The petitioner, *inter alia*, underwent a training program, was issued a new identity card, and had his salary converted to the post of Excise Inspector. He was subsequently served with a formal letter of promotion to the post of Excise Inspector effective from 12.10.2006 issued by the Public Service Commission (as evidenced by P18A and P18B). He was later confirmed in the rank of Excise Inspector effective from 12.10.2006 by letter P19.

While discharging his duties as an Excise Inspector since 2006, the petitioner received letter P22 dated 19.11.2013. This letter, sent by the Commissioner General of Excise, informed the petitioner of a decision made by the Public Service Commission, arising out of a complaint lodged by another Excise Sergeant Major with the Human Rights Commission.

P22, which speaks for itself, reads as follows:

සුරාබදු පරීක්ෂක තනතුරට උසස්වීම සම්බන්ධවයි.

සීමිත තරඟ විභාගයේ ප්‍රතිඵල මත 2006.10.12 දින සිට සුරාබදු පරීක්ෂක තනතුරට උසස්වීම් ලබාදෙන ලෙස ඉල්ලා සුරාබදු සැරයන් මේජර් බර්ට් ජයවික්‍රම මහතා ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව වෙත පැමිණිල්ලක් ඉදිරිපත් කර ඇත.

02. එම කොමිෂන් සභාව විසින් පවත්වන ලද පරීක්ෂණයේදී 2006.10.12 දින සිට සුරාබදු පරීක්ෂක තනතුරට උසස්වීමක් ලබා ඇති ඔබ ද නියමිත පරිදි සුරාබදු සැරයන් මේජර් තනතුරෙහි කාර්යක්ෂමතා කඩඉම් විභාගය සමත් වී නොමැති බව අනාවරණය වීම නිසා මානව හිමිකම් කොමිෂන් සභාවෙන් ඔබගේ වැටුප නිවැරදි කරන ලෙස උපදෙස් ලබාදී ඇත.

03. එහෙත් එවකට ඔබගේ පත්වීම් බලධාරියා රාජ්‍ය සේවා කොමිෂන් සභාව බැවින් මේ සම්බන්ධයෙන් එම කොමිෂන් සභාවෙන් උපදෙස් විමසන ලදී.

04. ඒ අනුව රාජ්‍ය සේවා කොමිෂන් සභාවේ ලේකම්ගේ අංක පීඑස්සී/ඊඑස්ටී/03-05/23/2013 හා 2013.10.25 දිනැති ලිපිය මගින් ආයතන සංග්‍රහයේ II පරිච්ඡේදයේ 15 වගන්තියේ විධි විධාන අනුව යම් නිලධාරියෙකු සමත්විය යුතු කාර්යක්ෂමතා කඩඉම් විභාග නියමිත දිනට සමත් නොවුනහොත් සමත්වීමට වැඩිපුර ගතවූ කාලයට සමාන කාලයකින් ඔහුගේ වැටුප් වර්ධක විලම්භනය කළ යුතු බවත් දන්වා ඇත. එසේම ඔබ නියමිත දිනට කාර්යක්ෂමතා කඩඉම් විභාගය සමත් නොවීම මත 2003.06.01 දින සිට 2004.11.04 දින දක්වා වැටුප් වර්ධක විලම්භනය කළ යුතු බව දන්වා ඇත. එලෙස ඔබගේ වැටුප් වර්ධක විලම්භනය කිරීම හේතුවෙන් සුරාබදු පරීක්ෂක තනතුරට ඉල්ලුම් කිරීමේ එක් සුදුසුකමක් වන ඉල්ලුම් කරන දිනට පූර්වාසන්න වසර 05 ක වැටුප් වර්ධක සියල්ල උපයාගෙන නොතිබීම නිසා ඔබගේ සුරාබදු පරීක්ෂක පත්වීම අවලංගු විය යුතු බව එම කොමිෂන් සභාව විසින් දන්වා ඇති බව කාරුණිකව සඳහන් කරමි.

The letter from the Public Service Commission dated 25.10.2013, referred to in paragraph 4 of P22, was produced marked R7. This letter was neither addressed to nor copied to the petitioner. It was addressed to the Secretary to the Ministry of Finance and contained the following decisions made by the Public Service Commission.

I. ආයතන සංග්‍රහයේ II පරිච්ඡේදයේ 15 වගන්තියේ විධිවිධාන අනුව කිසියම් රජයේ නිලධාරියෙකු විසින් සමත් වියයුතු කාර්යක්ෂමතා කඩඉම් විභාග නියමිත දිනට සමත් නොවුන හොත් සමත් වීමට වැඩිපුර ගතවූ කාලයට සමාන කාලයකින් ඔහුගේ වැටුප් වර්ධක විලම්භනය කළ යුතු වේ.

එබැවින් සුරාබදු පරීක්ෂක එච්.කේ.ඒ.නිමල් මහතා විසින් අදාළ කාර්යක්ෂමතා කඩඉම් නියමිත දිනට සමත්නොවීම මත 2003.06.01 දින සිට 2004.11.04 දින දක්වා වැටුප් වර්ධක විලම්භනය කළ යුතු වුවද, සුරාබදු දෙපාර්තමේන්තුව විසින් එලෙස විලම්භනය නොකර වැරදි ආකාරයට ගෙවන ලද වැටුප් වර්ධක නැවත විලම්භනය විය යුතු බව.

II. එලෙස නිමල් මහතාගේ වැටුප් වර්ධක විලම්භනය කිරීම හේතුවෙන් සුරාබදු පරීක්ෂක තනතුරට ඉල්ලුම් කිරීමේ එක් සුදුසුකමක් වන ඉල්ලුම් කරන දිනට පූර්වාසන්න වසර 05 ක වැටුප් වර්ධක සියල්ල උපයා ගෙන නොතිබීම නිසාවෙන් ඔහුගේ සුරාබදු පරීක්ෂක තනතුරට කරන ලද උසස් වීම අවලංගු විය යුතු බව.

Section 15 of Chapter II of the Establishments Code, *inter alia*, states that if an officer “*does not pass the Efficiency Bar examination during the extension allowed, the increment that falls due after the expiry of that extension will be deferred by a period of time equal to the time in excess of the extension allowed to pass the Efficiency Bar Examination.*”

The petitioner was appointed to the post of Excise Inspector by the Public Service Commission with effect from 12.10.2006. He has served in that rank continuously until he unexpectedly received the letter marked P22. The petitioner was not given an opportunity to be heard prior to the decision in P22, either by the Commissioner General of Excise or by the Public Service Commission. Moreover, the decision was not communicated to the petitioner by the Public Service Commission—the decision maker and the appointing authority. The petitioner had a legitimate expectation of retiring as an Excise Inspector. The rules of natural justice have been blatantly violated. The requirement stated in P5 was “ඉල්ලුම් කරන දිනයේ සිට පූර්වාසන්න 05 අවුරුදු කාලය තුළදී සියලුම වැටුප් වර්ධක උපයාගෙන තිබිය යුතුය”, and there is no dispute that the petitioner had earned all the increments within five years preceding the date of his application for the post of Excise Inspector. The petitioner neither acted *mala fide* nor misled the officials.

Learned Deputy Solicitor General appearing for the respondents informed this Court that despite the decision in P22, the petitioner’s promotion to the post of Excise Inspector has not been cancelled to date, and the petitioner retired from service as an Excise Inspector.

I hold that the decision contained in P22 is arbitrary and manifestly unreasonable and in violation of Article 12(1) of the Constitution. The decision contained in P22 is quashed and the petitioner's application is allowed. Taking all the facts and circumstances into account, I make no order as to costs.

Judge of the Supreme Court

P. Padman Surasena, J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court