

**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 read with Article 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

**S.C. F/R Application
No: 417/2005**

1. S.S.Senaweera,
142A, Kaldemulla Road,
Moratuwa.
2. K.W.G.Hubert Morayes
68-B-3 Parakum Mawatha,
Gampaha Road, Yakkala.
3. G.R.M.C.Kulathunga
67G, Wathumulla,
Udugampola.
4. S.P.H.Ranasinghe,
3/40, Weralugodawatta,
Wataddara,
Veyangoda.
5. R.N.K.M.J.seneviratne,
“Pubudu”,
Meewanapalana,
Horana.
6. J.A.Jayathilaka,
Pahala Walahapitiya,
Naththandiya.

Petitioners

Vs

1. Vocational Training Authority
Of Sri Lanka
354/2, Elvitigala Mawatha,
Narahenpita,
Colombo 05.
2. Lionel Pinto
Chairman,
Vocational Training Authority
Of Sri Lanka,
354/2, Elvitigala Mawatha,
Colombo 05.
3. Secretary,
Ministry of Skills Development
Vocational & Technical Education,
354/2, Elvitigala Mawatha,
Narahenpita,
Colombo 05.
4. H.K.Jayantha de Silva,
Vocational Training Authority,
District Office,
Moneragala.
5. H.W.R.P.Wijsekera,
Vocational Training Authority,
District Office,
Panawella,
Kahawatte.
6. A.Galappaththi,
Vocational Training Authority,
District Office,
Hambanthota

7. C.A.D.I.Kolonne,
Training division,
Vocational Training Authority,
354/2, Elvitigala Mawatha,
Narahenpita,
Colombo 05.
8. W.H.Chandradasa,
Vocational Training Authority,
District Office,
Talalla, Matara.
9. P.M.Perera,
Vocational Training Authority,
District Office,
Nuwarawewa Road,
Anuradhapura.
10. A.K.Arachchige ,
DVTC Ambegoda,
Bandarawela.
11. W.G.Wijerathna,
DVTC Inamaluwa,
Dambulla.
12. T.D.S.Sangadasa,
VTC Thalgaswala,
Nigagama,
Galle.
13. Hon.Attorney-General,
Attorney General's Department,
Colombo 12.

Respondents

Before : J.A.N.De Silva CJ,
S.I.Imam J,
R.K.S.Suresh Chandra J

Course: S.N.Wijithsingh for Petitioners
Uditha Egalahewa for the 1st to 12th Respondents
Rajitha Perera SC for Attorney General

Argued on 2nd July 2010.

Written Submissions tendered on

For Petitioners : 4th August 2010

For Respondents: 11th August 2010

Decided on :

R. K. S. Suresh Chandra J.

The Petitioners in their application dated 13th October 2005 citing the 1st to 10th Respondents alleging a violation of their fundamental rights have stated in their petition that the 1st Petitioner had been appointed as a Training Manager by the Vocational Training Authority with effect from 17th May 1999, that the 2nd, 3rd, 5th and 6th Petitioners joined the Labour Department as Instructors of Vocational Training and that after the coming into operation of Act No.12 of 1995 they were absorbed to the Vocational Training Authority and were functioning as Training Managers, that the 4th Petitioner had been appointed as a Training Manager by the vocational Training Authority with effect from 1st August 2000. They filed an amended petition on 7th November 2005 citing the 1st to 13th Respondents by adding the 10th, 11th and 12th Respondents as parties. They stated that their next promotion was for the post of Senior Training Managers and then to the post of Assistant Directors.

The Petitioners stated further that no one had been promoted to the position of Assistant Director or other positions for several years from the time that they had been appointed as Training Managers. The 2nd Petitioner and the 5th and 6th Respondents had faced an interview for the post of Assistant Directors in 1999 but were not promoted as they had not qualified to be so appointed. .

When the employees of the Authority had become aware of steps being taken by the Authority to promote certain employees to higher positions without adopting due procedures , 54 employees had sent a letter of protest on 6th September 05(P7)to the Chairman of the 1st Respondent Authority regarding the prospective promotions. Thereafter on 14th September 2005, they had become aware of a Report (P7A) regarding Political Victimization which had recommended that the 4th, 5th,6th, 7th and 8th Respondent be promoted as Assistant Directors whereas to the knowledge of the Petitioners there was no political victimization as alleged. The Petitioners also stated in their petition that they were unaware of a Political Victimization Committee looking into matters relating to the Respondent Authority. Subsequently the said 4th, 5th and 6th Respondents had assumed duties as Assistant Directors by letter dated 29th September 2005 and the 9th, 10th, 11th and 12th Respondents had assumed duties after 3rd October 2005 according to the averments in the amended petition of the Petitioners. The Petitioners alleged that the said promotions of the said Respondents violated their fundamental rights guaranteed under Article 12(1) of the Constitution. The Petitioners also stated that the names of the 9th, 10th, 11th and 12th Respondents were not included in the political victimization report but had been appointed as Assistant Directors. Leave had been granted in terms of Article 12(1) of the Constitution when the application of the Petitioners was supported.

The Respondents in their objections have stated that the 4th,5th,6th 7th and 8th Respondents had made complaints to the Political Victimization Committee and consequent to recommendations made by the said Committee regarding which adequate publicity had been given and that the Cabinet had approved the said recommendations and in effecting the said appointments , seniority, experience and educational qualifications had been taken into account. The 4th, 5th and 6th Respondents had assumed duties by letters dated 29th September 2005 after Cabinet had approved the said appointments, and the 9th,10th,11th and 12th Respondents had been appointed as Assistant Directors on 3rd October 2005 by a Board decision of the Authority. All these Respondents had prior to their being appointed as Assistant Directors been either covering up duties or acting as Assistant Directors. The Respondents have taken up the following objections regarding the maintainability of the application of the Petitioners:

- a. That the application of the Petitioners has been filed out of time
- b. That the necessary parties have not been brought in by the Petitioners in that they have not made the Political Victimization Committee and the Cabinet of Ministers parties to the application.

It has also been brought to the notice of Court by the Respondents that the 1st Petitioner had gone overseas without obtaining leave and had been served with a vacation of post notice, the 2nd Petitioner had already retired having reached the age of 60 years, the 4th Petitioner had retired having reached the age of 59 years and that the 3rd Petitioner had been promoted as Senior Training Manager with effect from 1.1.2008 and that the 5th and 6th Petitioners continue to be Training Managers.

The Petitioners have filed their application on 13th of October 2005 on the basis that they became aware of the appointments of the relevant Respondents on or about the 14th of September 2005. On a perusal of the documents filed by the Petitioners it would seem that they have filed as P7A the report of the Political Victimization Report which the Petitioners state that they were made aware of in September 2005 which would indicate that they were aware of the steps that were being taken by the Vocational Training Authority regarding the promotions of its officers. Further it is hard to accept their assertion that they were not aware of the Political Victimization Committee. Though there is a doubt as to the exact date that the Petitioners became aware of the promotion of the relevant Respondents, giving them the benefit of doubt, It would be seen that the application when first made on 13th October 2005 was made within time when considering the position that the Petitioners were made aware of the said promotions on or about the 14th of September 2005, but according to the averments in the amended petition the Petitioners had been aware of the appointment of the 10th, 11th and 12th by the 3rd of October 2005, therefore the application of the Petitioners against the 10th, 11th and 12th Respondents would be out of time as the amended petition bringing in these three Respondents had been filed on 9th November 2005.

The other objection taken up by the Respondents regarding the failure of the petitioners to make the necessary respondents is much more serious in nature. The Petitioners in their application appear to have surmised that the promotions had been made consequent to the recommendations of the Political Victimization Committee and that thereafter the Cabinet had approved same when they sought in prayer (d) of the petition to quash the decision to promote the relevant Respondents based on a Cabinet decision. Prayer (d) states as follows:

(d) Quash any decision given by the officers of the Ministry of Skills Development “Vocational and Technical education or by Cabinet of Ministers in relation to the said appointment.

A party coming into Court must decide as to who should be made necessary parties to such application and it is not for a party to surmise what objections would be taken up by the opposing party and then decide to add parties to the application when it becomes necessary. Further an Applicant cannot take up the position that it would add as parties those persons whom the Court considers necessary as has been stated in the petition of the Petitioners. There may be instances where such a recourse may be allowed which is not fatal for the maintenance of the application. But when it comes to a situation where the proper and necessary parties have to be brought in at the time of filing the application is a mandatory requirement, reserving a right to add parties would not be sufficient and would amount to a fatal defect in the maintaining of such an application. The decision cited on behalf of the Petitioners, *Jayanetti v Land Reform Commission* 1984(2) SLR 172 would therefore have no application in the present instance.

In the present instance, the promotions that are complained of have been made after a recommendation had been made by the Political Victimization Committee and after obtaining Cabinet approval. In such a situation the Political Victimization Committee and the Cabinet of Ministers would be necessary parties to the application at the time of filing the application.

Failure to cite the Cabinet of Ministers as a necessary party at the time of filing an application has been held to be a fatal defect in several judgments of this Court. In

Dr. K. D. G. Wimalaratne v The Secretary to the Ministry of Public Administration S.C.Application 654/95 decided on 09/06/1997 the Petitioners application failed as they had failed to make the Cabinet of Ministers as parties to the application.

In *H. A. S. Hettiarachchi v Secretary of Public Administration and Home Affairs* S.C.Application 780/1999 decided on 25/01/2001 the failure to make the Cabinet of Ministers as Respondents was held to be a fatal irregularity resulting in the rejection of the petition.

Following the *cursus curiae* of this Court, therefore in the present instance since the Petitioners have failed to bring in the Cabinet of Ministers as Respondents at the time of filing their application, such factor is a fatal defect in the application and necessarily the objection raised by the Respondents has to be upheld.

The Petitioners submitted that the Cabinet of Ministers and the Political Victimization Committee had no authority regarding the appointments and promotions of the

Vocational Training Authority. This submission would necessitate the making of the Political Victimization Committee and the Cabinet of Ministers as parties to the application of the Petitioners. Since the Petitioners have failed to do so and since it is a fatal defect as stated above the said submission has no application.

In the above circumstances the application of the Petitioners is dismissed. There will be no costs.

Judge of the Supreme Court

J.A.N.de Silva C.J.,

I agree.

Chief Justice

S.I.Imam J.,

I agree.

Judge of the Supreme Court