

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

S.C (FR) No. 880/2009

In the matter of an Application under
Article 17 read with Article 126 of the
Constitution

Chief Inspector C.V. Weerasena
No. 8A,
87, Jayawadana Gama
Battaramulla.

PETITIONER

Vs.

1. Officer-In-Charge/Personnel
2nd Floor
New Secretariat Building
Colombo 1.
2. Deputy Inspector General/Personnel
Range Police Headquarters,
Colombo 1.
3. The Inspector General of Police
Police Headquarters,
Colombo 1.
4. Secretary,
Ministry of Defence,
Colombo 1.
5. Hon. Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE: Priyantha Jayawardena P.C., J.
Anil Gooneratne J. &
Nalin Perera J.

COUNSEL: J. C. Weliamuna P.C. with Pulasthi Hewamanne
for the Petitioner

Ms. Barrie S.S.C for the Respondents

ARGUED ON: 14.11.2017

DECIDED ON: 08.12.2017

GOONERATNE J.

It is the position of the Petitioner that he has 25 years' service and is a Chief Inspector of Police, in the Sri Lanka Police. Petitioner initially joined the service as a Reserved Sub-Inspector of Police in 1991, in the Technical Service. He was promoted as Inspector (Technical Service) on 01.09.1998, and as Chief Inspector (Technical Service) on 01.08.2002. Respondents take up the position that in the reserve service the Petitioner was not engaged in regular police functions but was employed in the Motor Mechanical Division, or the Works Unit. The Supreme Court on 25.03.2010 granted Leave to Proceed under Article 12(1) of the Constitution. The main relief sought is in terms of sub-paragraph (e) of the prayer to the petition and it reads thus:

- (e) Direct the 1st to the 4th Respondents to entertain the application for the Petitioner for promotion to the rank of ASP and call for interviews forthwith and/or promote the Petitioner to the rank of ASP on the same date as those who would be promoted in terms of the document marked P10 read with P12.

The Petitioner was later on absorbed into the permanent cadre of the police force in or about 2006. (P1a & 3R6) It is urged that the petitioner was harassed as stated in paragraph 6 of the petition (vide P3 (a) to P9). As such in that backdrop the Petitioner complains that an application form to apply to the rank Assistant Superintendent of Police was not given to him (2009). Application was called by internal notice marked P10. Petitioner as pleaded was refused promotion as an A.S.P in the year 2008 for the reason that he lacks seniority. (Vide P15 (b)). The Petitioner argue that the failure to give the Petitioner an application form to apply for the post of A.S.P and subsequent failure to promote the Petitioner and promoting officers junior to him is a violation of the Petitioner's fundamental rights. Petitioner claims that he has a legitimate expectations to be nominated and appointed as an Assistant Superintendent of Police.

Respondents argue that the Petitioner whilst being in the reserve service, was not engaged in regular police activities but employed as a Motor Mechanic – Work Unit. By Cabinet decision of 01.02.2006 the Reserve Police

Force was absorbed into the Regular Force but such absorption did not extend to officers of the Special categories, had been absorbed separately, on the Cabinet Decision of 28.06.2006. The officers of the Special Category was initially absorbed not to the regular force but specialised category of work. However the Cabinet Decision of 06.07.2006, all officers in the Special Categories were given the option of joining the regular cadre, subject to fulfilling the necessary prerequisites. Such decision was communicated to all specialised categories. However the Petitioner erroneously submitted his name for absorption though not entitled to do so. Inadvertently, Petitioner was issued a letter of absorption due to an administrative lapse but remained in the correct list in the computer system. (name reflects in the system)

Thereafter Petitioner due to his own negligence failed to submit an application. Thus the Petitioner was not entitled to apply for a post in the regular force. The Petitioner was therefore, subsequently absorbed into the special category in the regular force. As such he cannot complain that he was victimised by the Police Department in the manner learned President's Counsel submitted to us.

I agree with the submissions of learned Senior State Counsel that the Petitioner was not entitled to be promoted as A.S.P in the regular service (subsequent to his failure to apply to be included in the regular service). No

doubt there was an administrative lapse. In *Mohideen Vs. Jayatilleke – SC Appeal 118A/2009* S.C. Minute 01.04.2013. where legal boundaries have been traversed the courts must exercise their powers after careful consideration of the legality in fearlessly exercising a check and balance on arbitrary or capricious exercise of their power within the parameters of the law. The above dicta could be utilised not only by the Petitioner's party but more particularly by the Respondents in the context of the case in hand. In these circumstances I do not think that the Petitioner could entertain a legitimate expectation. Even if he had an 'expectation' he cannot in my view entertain a legitimate expectation.

In view of the facts submitted by either side, it is for the Petitioner to obtain necessary clarification. If he thinks the other way about, whom should the authorities blame?

The failure on the part of the Petitioner to protect his own rights cannot give rise to an action in court. Administrative lapse cannot be used to support a legitimate expectation. This court is not inclined to grant prayer (e) of the prayer to the Petition. It is the National Police Commission that should look into this matter,

This is a fit case to consider the decision in, *Dalpat Abasaheb Solunke Vs. B S Mahajan AIR 1990 SC 435*.

It will thus appear that apart from the fact that the High Court has rolled the cases of the two appointees in one, though their appointments are not assailable on the same grounds, the

Court has also found it necessary to sit in appeal over the decision of the Selection Committee and to embark upon deciding the relative merits of the candidates. It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the Candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the Constitution of the Committee or its procedure vitiating the selection, or proved mala fides affection the selection etc. It is not disputed that in the present case the University had constituted the Committee in due compliance with the relevant statutes. The Committee consisted of experts and it selected the candidates after going through all the relevant material before it. In sitting in appeal over the selection so made and in setting it aside on the ground of the so called comparative merits of the candidates as assessed by the Court, the High Court went wrong and exceeded its jurisdiction.

The Police Department must decide as to what should be done. In the case the court will not interfere. If the Petitioner has the requisite qualifications and satisfied the criteria for selection the authorities concerned could consider the case of the Petitioner. As such I proceed to dismiss this application.

Application dismissed without costs.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena P.C. J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera J.

I agree.

JUDGE OF THE SUPREME COURT

