

IN THE SUPREME COURT OF DEMOCRATIC REPUBLIC SOCIALIST OF SRI LANKA

In the matter of an application under Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC APPLICATION (FR) 524/2008

Dr. P.W.S.M. Samarasinghe,
No. 6, Sarasavi Mawatha,
Department of Agriculture Quarters,
Peradeniya.

PETITIONER

-Vs-

Justice Priyantha Perera,
Former Chairman,
Public Service Commission,
No. 1777, Nawala Road, Narahenpita,
Colombo 5.
And Others

RESPONDENTS

BEFORE : Hon. Saleem Marsoof, PC., J,
Hon. Sathya Hettige, PC., J, and
Hon. Priyasath Dep, PC., J.

COUNSEL : Dr. Jayampathi Wickremeratne, PC., with Pubuduni
Wickremeratne for the Petitioner.

Rajiv Goonathilake, SSC., for the 1st to 12th and 16th
Respondents.

Faisz Musthapha, PC., with Faisza Marker, for the 13th
Respondent.

Manohara de Silva, PC., with A. Wijesundera for the 15th
Respondent.

Argued On : 11.2.2014

Written Submission On : 25.2.2014

Decide On : 26.3.2014

SALEEM MARSOOF, PC., J.

The Petitioner was an officer of the Sri Lanka Agriculture Service and is attached to the Department of Agriculture, Peradeniya, and on the date of her application to this Court filed in terms of Articles 17 and 126 of the Constitution, served as the Deputy Director (Potato Development) at the Seed and Planting Material Development Centre (SPMDC) of that Department. The Petitioner sought to challenge by his application the appointment of the 15th Respondent, who had been promoted from the post of Deputy Director (Agricultural Enterprise Development and Information Service) to the post of Director of the Seed and Planting Material Development Centre (SPMDC) on 3rd November 2008 in the Agriculture Department. Both the Petitioner and the 15th Respondent have since retired, and are no more in service.

The Petitioner has stated in her petition filed in this Court that the decision of the 1st to 14th Respondents or anyone or more of them to appoint the 15th Respondent to the said post violated her fundamental rights to equality enshrined in Article 12(1) of the Constitution, and prayed for a declaration that the said appointment of the Petitioner is null and void, and by way of further relief, prayed that she be appointed to the post of Director of Seed and Planting Material Development Centre (SPMDC) of the Department of Agriculture (Director SPMDC) with effect from 3rd November 2008, which was the date of the impugned appointment of the 15th Respondent, or to appoint the Petitioner to the said post with effect from the 1st of November 2006, from which time she had been appointed to cover the duties of the said post until the permanent vacancy was filled.

Learned President's Counsel for the Petitioner has submitted at the hearing of this application that since the Petitioner has already retired when she was at the maximum of her salary scale, even if she is successful in her application in this Court and is notionally appointed to the post of Director SPMDC, her quantum of pension benefits would not be enhanced, as the salary last drawn by the Petitioner was the same as what was last drawn by the 15th Respondent in the post of Director SPMDC. Since the learned President's Counsel for the Petitioner himself has stated that the Petitioner would not get any monetary advantage, the only matter that keeps her hopes alive would be the possibility of her being allowed to take away her official vehicle that she used at the time of her retirement. Thus it would be seen that the Petitioner's application is more or less academic, except for the question as to whether she could retain her official vehicle.

However, since the learned President's Counsel for the Petitioner wished to pursue his application, and the case was fully argued before us, I would endeavour to decide the matter on its merits, albeit briefly. The only question argued before us was whether the 15th Respondent had been unduly favoured as against and to the detriment of the Petitioner at the interview held to select a suitable person for appointment as Director SPMDC on 17th April 2008.

The 12th Respondent has made available to Court a certified copy of the marks awarded to each candidate at the interview, and it would appear that the Petitioner had obtained a total of 193.4 marks and was ranked third, and these marks were 60.85 marks less than what was awarded to the 15th Respondent who obtained 254.25 marks and was ranked first. It is also relevant to note that one W.M. Jayasena obtained 234.5 marks and was ranked second, with another candidate who faced the interview, being ranked fourth with 188.1 marks.

Hence, even if the Petitioner succeed in showing that the Petitioner has been favoured, as against her, she cannot still succeed in this application unless it is shown that W.M. Jayasena, who has been ranked second has also been similarly discriminated, but the petition filed by the Petitioner in this case, or the counter affidavit of the Petitioner does not contain any such allegation. In this context, it is also significant that the 15th Respondent was senior to the Petitioner in class I of the Sri Lanka Agriculture Service, to which class the Petitioner was appointed with effect from 1st October 1997 while the 15th Respondent was appointed to the same class only with effect from 1st October 1996.

The only material submission made by the President's Counsel for the Petitioner at the hearing which was contested by the learned President's Counsel for the 13th Respondent as well as learned President's Counsel for the 15th Respondent and the learned Senior State Counsel who appeared for the 1st to 12th and 16th Respondents, is that the interview panel had misdirected itself in awarding marks for direct relevant experience to the relevant post. Learned President's Counsel for the Petitioner has submitted that the Petitioner had more direct relevant experience in the field relevant to the post of Director SPMDC than the 15th Respondent. In particular, he contended that the Petitioner was not awarded any marks for the following posts she held in the Department as noted below:

- (1) Research Officer at the Agriculture Research Institute Mahalluppallama from 16th March 1976 to 31st December 1985, for which the Petitioner has claimed 59.5 marks,
- (2) Research Office in charge of the Agronomy Division from 29th September 1989 to 20th October 1998 for which the Petitioner has claimed 54 marks, and
- (3) Research Officer at the SPMDC from 29th October 1998 to 27th September 1999, for which the Petitioner has claimed 6 marks.

These marks would, if awarded to the Petitioner as claimed, would add up to 119.5 additional marks, which would be more than enough for the Petitioner to be ranked first at the interview.

However, learned Counsel for the various Respondents have all relied on the marking scheme annexed to the Petitioner's own petition marked P6, which explains how marks should be awarded at an interview. The criteria in contention in this case is that of direct relevant experience *applicable to the post in question, that is the post of Director of the Seed and Planting Material Development Centre (SPMDC)*, which is found in the marking scheme P6 annexed to the Petition. I quote below the relevant criteria:-

"Posts in SPMDC – Farm Planning and Management, Seed & Planting Material Production in Government Farms and Contract Seed Production Experience."

The emphasis in the aforesaid criteria is to production, as opposed to mere research, and in my considered opinion, the process of "farm planning and management", "seed and planting material production" and "contract seed production experience", altogether exclude research related work. Of course, research experience may be counted as direct relevant experience if the post in contention was a research job, but the post to which the 15th Respondent was in the field of production.

The posts with respect to which the Petitioner claims she would be entitled to marks under the category of direct relevant experience are all research positions, and they would not count even as indirect relevant experience. Even if these positions were entitled for marks under the latter category, since only 3 marks are awarded for each year of service as opposed to 6 marks that may be awarded for direct relevant experience, the Petitioner would only get 59.75 marks for the years of service claimed in Agriculture Research Institute, the Agronomy Division and at the SPMDC, which would be insufficient to bridge the gap between the 15th Respondent and the Petitioner, which according to the marks awarded at the interview was 60.85 marks.

Conclusion

In all these circumstances, and for the foregoing reasons, I hold that the Petitioner has failed to discharge the burden placed on her by law to succeed in this application, and accordingly the application of the Petitioner is dismissed, but in all the circumstances without costs.

JUDGE OF THE SUPREME COURT

Sathya Hettige, PC. J,

I agree.

JUDGE OF THE SUPREME COURT

Priyasath Dep, PC. J

I agree.

JUDGE OF THE SUPREME COURT