

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

In the matter of an application in terms of Article 126 of
the Constitution.

SC(FR) No. 175/2014

Mr. S.A. Janapriya Karunathilake
166/18, Kelaniyawatta,
Hakurukumbura,
Mirigama.

Petitioner

-Vs-

1. Hon. Maithripala Sirisena,
Minister of Health,
Suwasiripaya,
Ministry of Health,
No. 385, Rev. Baddegama Wimalasena Thero Mawatha,
Colombo-10.

- 1A. Hon. Rajitha Senarathna,
Minister of Health,
Suwasiripaya,
Ministry of Health,
No. 385, Rev. Baddegama Wimalasena Thero Mawatha,
Colombo-10.

2. Sudharma Karunaratne,
Secretary Ministry of Health,
Suwasiripaya
Ministry of Health,
No. 385, Rev. Baddegama Wimalasena Thero Mawatha,
Colombo-10.

- 2A. Anura Jayawickrama,
Secretary Ministry of Health,
Suwasiripaya
Ministry of Health,
No. 385, Rev. Baddegama Wimalasena Thero Mawatha,
Colombo-10.
- 2B. Janaka Sugathadasa
Secretary Ministry of Health,
Suwasiripaya
Ministry of Health,
No. 385, Rev. Baddegama Wimalasena Thero Mawatha,
Colombo-10.
3. Mr. J.M.I.K. Jayathilake,
The Deputy Director General of Biomedical Engineering
Services,
Division of Biomedical Engineering Services,
No.27, De Saram Place,
Colombo-10.
4. Dr. Y.D.N. Jayathilake,
Former Secretary to the Ministry of Health,
No.385, Rev. Baddegama Wimalasena Thero Mawatha,
Colombo-10.
Member of the Interview Panel
5. Dr. Siyabalagoda,
Deputy Director General (PHS II)
Suwasiripaya
Ministry of Health,
No. 385, Rev. Baddegama Wimalasena Thero Mawatha,
Colombo-10.
Member of the Interview Panel
6. Mr. R.D.A. Jayanthi
Director,
Engineering Service Board,
Ministry of Public Administration
7. Mr. S.S.L.Herath,
Director of Biomedical Engineering
Services,
Division of Biomedical Engineering Services,
No.27, De Saram Place,
Colombo-10.

8. Vidyajothi Dr. Dayasiri Fernando,
Former Chairman of the Public Services Commission,
No.117, Nawala Road,
Colombo-05.
 9. Mr. Palitha Kumarasinghe,
Member,
 10. Mr. Sirimavo A. Wijeratna,
Member.
 11. Mr. S.C. Mannapperuma,
Member.
 12. Mr. Ananda Senevirathna,
Member.
 13. Mr. P.H. Pathirana,
Member.
 14. Mr. Thilandarajah,
Member.
 15. Mr. M.D.W. Ariyawansa,
Member.
 16. Mr. Mohamed Nahiya,
Member.
- All former Members of the former Public
Service Commission.
17. Mr. Dharmasena Dissanayake
Chairman.
 18. Prof. Hussain Ismail
Member
 19. Dr. Shirantha Wijayatilake
Member
 20. Dr. Prathap Ramanujam
Member,
 21. Mrs. V. Jegarasasingam,
Member

22. Mr. Santhi Nihal Seneviratne,
Member.
23. Mr. S. Ranugge,
Member.
24. Mr. D.L. Mendis,
Member.
25. Mr. Sarath Jayathilake,
Member.

Members of the Present Public Service Commission

No.177, Nawala Road, Narahenpita
Colombo-05.

26. The Public Service Commission,
No.177, Nawala Road, Narahenpita
Colombo-05.
27. Hon. Attorney-General
Attorney-General's Department,
Colombo-12.

Respondents

Before: : **Sisira J de Abrew, J**
Priyantha Jayawardena, PC, J &
Nalin Perera, J

Counsel: : Ikram Mohamed PC with Roshan Hettiarachchi and Shihan
Wijayagunawardena for the Petitioner.

Parinda Ranasinghe S/DSG for the A.G

Argued &
Decided on: : 27.11.2017

Sisira J de Abrew, J

Heard both counsel in support of their respective cases. This is an application by the Petitioner for a declaration that his fundamental rights guaranteed under Article 12(1) of the Constitution have been violated. This Court by its order dated 29.09.2014 granted leave to proceed for the alleged violation of Article 12(1) of the Constitution. Petitioner alleges that he, on an advertisement published in P13, applied for the Post of Director Bio Medical Engineering Services Division in the Ministry of Health. He went for the interview but he was not selected. Petitioner further alleges that the 7th Respondent was selected for the said post.

Learned President's counsel appearing for the Petitioner contends that the marks given to the 7th Respondents are in appropriate. The Petitioner was given 15 marks for his post graduate qualification. The 7th Respondent was given 20 marks for his post graduate qualification. The Petitioner contends that allocation of the said 20 marks to the 7th Respondent is not correct.

The main question that must be decided in this case is whether allocation of 20 marks to the 7th Respondent by the Interview Board is correct or not. The 7th Respondent has been given 20 marks on the basis that he was having a MSc qualification in Medical Physics. The question that must be considered is whether the Medical physics is in the marking scheme in P13 and the job description in P13(a). P13 carries a statement that a candidate who is having a MSc qualification is entitled to 20 marks but the said 20 marks must come under the educational qualification in the relevant field. P13(a) is a document which gives the job description. When we consider the contents in P13(a), we find that the MSc in Medical Physics does not come under the job description.

When we examine P13, we find that the MSc in Medical Physics does not come under the relevant educational qualification too. The 3rd Respondent who was a member of the interview panel by a letter dated 12.02.2014 (P14) has included MSc in Medical Physics in the field of relevant qualification. But it is to be noted that this letter has been issued after the application for the Post of Director Bio Medical Engineering Services was closed. The application for the said post was closed on 07.02.2014. This is evident by document marked P13. The 3rd Respondent has brought MSc in Medical Physics into the field of relevant qualification only on 12.02.2014 by letter marked P14. Therefore it is clear that MSc in Medical Physics has been brought into the category of relevant qualification only after the application for the relevant post was closed. When we examine the aforementioned matters, we feel that the 3rd Respondent has impliedly admitted that the MSc in Medical Physics was not in the marking scheme set out in P13 and in the job description P13(a).

Therefore we feel that the P14 was introduced for the purpose of bringing MSc in Medical Physics into the field of relevant qualification and job description.

Since the MSc in Medical Physics was not in the marking scheme (P13) and in the job description in P13(a), we feel that the allocation of 20 marks to the 7th Respondent was illegal. We therefore hold that the 7th Respondent was not entitled to the 20 marks given by the members of the Interview panel on 07.03.2014. The fact that the 7th Respondent was given 20 marks for the MSc in Medical Physics is clearly found in the document marked 3R6. This document has been signed by the 3rd, 4th, 5th, 6th Respondents and another person called N.W.Ariyaratna. For the above reason, we hold that the allocation of said 20 marks to the 7th Respondent is illegal. Therefore the 7th Respondent could not have been selected for the Post of Director, Bio Medical Engineering Services Division in the Ministry of Health.

Learned S/DSG submitted that the necessary parties are not before Court. He based his objection on the basis that all members who signed 3R6 which is the mark sheet of the Interview panel are not before Court. That mark sheet has been signed by the 3rd, 4th, 5th, 6th Respondents and one N.W.Ariyaratna. N.W.Ariyaratna has not been brought before Court. Although the learned S/DSG takes up the said objection, he admits that the said objection has not been pleaded in his statement of objection. Learned President's Counsel submitted that at the time of filing the petition, the Petitioner was unaware of the names of all members of the Interview Board. In our view the Petitioner's case should not be dismissed on the said objection. When we consider the above matters, we hold that there is no merit in the objection raised by the learned S/DSG.

For the above reasons, we hold that the Petitioner's fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the 3rd, 4th, 5th and 6th Respondents. We earlier held that allocation of 20 marks by the interview panel to the 7th Respondent is illegal. For the aforementioned reasons, we hold that the appointment given to the 7th Respondent based on the marks given at the Interview Board is illegal. The 7th Respondent has been appointed to the Post of Director, Bio Medical Engineering Services by the document marked P19. We quash the said letter marked P19 and we declare that the appointment of the 7th Respondent to the Post of Director Bio Medical Engineering Services Division in the Ministry of Health is null and void.

The Interview Board has given 69 marks to the 7th Respondent. We have earlier held that allocation of 20 marks is illegal. Therefore the 7th Respondent is entitled only to 49 marks. The Interview Board has given 67 marks to the Petitioner. Therefore the Petitioner is entitled to be appointed to the Post of Director, Bio Medical Engineering Services Division in the Ministry of Health.

We direct the 26th Respondent (the Public Service Commission) to appoint the Petitioner to the Post of Director , Bio Medical Engineering Services Division in the Ministry of Health within 01 month from today. The Deputy Director General of Bio Medical Engineering Services (3rd Respondent) is directed to take necessary legal steps to implement this Judgment. The Registrar of this Court is directed to send certified copies of this Judgment to the 3rd Respondent and 17th to 26th Respondents.

Petition allowed.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena, PC, J

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera, J

I agree.

JUDGE OF THE SUPREME COURT

kpm/-