

**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC 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.

Dr. (Mrs.) Elizabeth Manel  
Dassanayake  
No. 25/10, Thalpathpitiya Road,  
Nugegoda.

**Petitioner**

**S.C.FR. Application No. 267/2010**

**Vs.**

1. K.E. Karunathilake  
Secretary to the Ministry of Agricultural  
Development and Agrarian Services,  
No. 80/5, Govijana Mandiraya,  
Rajamalwatta Abvenue, Battaramulla.
- 1A. B. Wijyaratne  
Secretary to the Ministry of Agriculture,  
Ministry of Agriculture,  
No. 80/5, Govijana Mandiraya,  
Rajamalwatta Abvenue, Battaramulla.
2. Dr. (Mrs) Jinadari De Zoysa  
Director General,  
Department of Agriculture,  
Peradeniya.
- 2A. K.N. Mankotte,  
Director General,  
Department of Agriculture,  
Peradeniya.
- 2B. Dr. R. Wijekoon  
Director General,  
Department of Agriculture,  
Peradeniya.

3. Prof. Buddhi Marabe  
Department of Crop Science,  
Faculty of Agriculture,  
University of Peradeniya.
4. A. Coorey,  
Secretary,  
Public Service Commission,  
No. 172, Nawala Road,  
Narahenpita, Colombo 05.
- 4A. T.M.L.C. Senaratne  
Secretary,  
Public Service Commission,  
No. 172, Nawala Road,  
Narahenpita, Colombo 05.
- 4B. H.M.G. Senevirathne  
Secretary,  
Public Service Commission,  
No. 172, Nawala Road,  
Narahenpita, Colombo 05.
5. K.B. Wahundeniya  
Acting Director, Horticulture,  
Crop Research & Development Institute,  
Gannoruwa.
6. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

### **Respondents**

7. Vidyajothi Dr. Dayasiri Fernando,
- 7A. Justice Sathya Hettige PC, Chairman
- 7B. Dharmasena Dissanayaka, Chairman
8. S.C. Mannapperuma, Member
- 8A. A. Salam Abdul Waid, Member
9. Ananda Seneviratne, Member

9A. D. Shirantha Wijayatilaka, Member

10. N.H. Pathirana, Member

10A. Prathap Ramanujam, Member

11. Palitha M. Kumarasinghe, Member

11A. Kanthi Wijetunge, Member

11B. V. Jegarasasingam, Member

12. Sirimavo A. Wijeratne, Member

12A. Sunil S. Sirisena, Member

12B. Santi Nihal Seneviratne, Member

13. T. Nadaraja, Member

13A. S. Ranugge, Member

14. A. Mohamed Nahiya, Member

14A. D.L. Mendis, Member

15. M.D.W. Ariyawansa, Member

15A. I.M. Zoysa Gunasekara, Member

15B. Sarath Jayathilaka, Member

7<sup>th</sup> to 15B of Public Service Commission, No.  
177, Nawala Road, Narahenpita, Colombo  
05.

### **Added Respondents**

\* \* \* \* \*

**BEFORE** : **Eva Wanasundera, PC., J.**  
**Sisira J.de Abrew, J. &**  
**Upaly Abeyrathne, J.**

**COUNSEL** : J.C. Weliamuna with Pasindu Silva for the Petitioner.  
Yuresha de Silva SSC. for the Respondents except 5<sup>th</sup>  
Respondent.

**ARGUED ON** : **20.11.2015**

**DECIDED ON** : **09.02.2016**

\* \* \* \* \*

**Eva Wanasundera, PC., J.**

In this application the Petitioner was granted Leave to Proceed on 04.11.2010 under Article 12(1) of the Constitution.

The facts pertinent to this application are as follows:- The Petitioner and the 5<sup>th</sup> Respondent applied for the post of “Director- Horticulture, Crop Research and Development Institute, Gannoruwa”, when they were working for the Department of Agriculture. Both of them had by then worked for the said Department for a long time. They were qualified to apply for the said post when it was advertised. Advertisement was dated 19.08.2009 and is marked and produced before this Court as Pg. (a) . The attachments referred to in the advertisement are marked as P9(b) and P9 (c). The contents of P9(b) is under the heading “Selection Criteria for Director, Additional Director”. The contents of P9(c) is under the heading, “Upper Middle Level (Deputy Director) Posts- List of the names of the posts considered”.

The Petitioner as well as the 5<sup>th</sup> Respondent, among others applied for the Director Post and interviews were held on 13.11.2009. The letter that invited the applicants to come for the interviews dated 28.10.2009 requested the applicants to submit a “self-assessment marks sheet”. The Applicants calculate the said marks by themselves according to the selection criteria contained in P9(b) and P9(c) and submit the same.

The interview panel consisted of 3 persons, namely 1<sup>st</sup> to 3<sup>rd</sup> Respondents. On 13.11.2009 this panel firstly conducted interviews for the Post of “Director- Extension and Training Centre- Peradeniya”, and thereafter conducted the interviews for the Post of “Director- Horticulture, Crop Research and Development Institute, Gannoruwa”, on the same day, which is the subject matter of this application before this Court.

By a letter dated 01.02.2010 sent by the 2<sup>nd</sup> Respondent to the Petitioner, she was informed that the “interview conducted on 13.11.2009” was cancelled as per the instructions in a letter dated 25.01.2010 issued by the 1<sup>st</sup> Respondent. But the other

interview held on the same day regarding “Director- Extension and Training Centre- Peradeniya”, had not been cancelled. The reason for this cancellation of the interview, as per the 1<sup>st</sup> Respondent is that the marking scheme **was ambiguous** but it was a **marking scheme approved by the Public Service Commission** and the said marking scheme was **adopted on the same day for the other Director post which interview was not cancelled.**

I observe from the documents filed by parties before this Court that the 5<sup>th</sup> Respondent had complained to the authorities that he believes that his experience as a “Unit Head” (අංශ ප්‍රධානී) was not considered at the interview and that it is a matter which should have been considered. After cancelling the interview by letter dated 01.02.2010 as aforementioned, by letter dated 05.02.2010 marked as P23, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had ordered the relevant heads of the institutes to submit a managerial unit list of their respective institutes **in order to amend the present list of management units** which are reflected in the approved scheme of Recruitment of the Public Service Commission.

I observe that the Document R5G which was the 5<sup>th</sup> Respondent’s self assessment sheet at page 2 under “Category E- Heading, Managerial Experience”, he has calculated 26.75 marks for having worked as “Unit Head” for 8years 11 months and 4 days. The Petitioner, on the other hand, whilst putting down in her self assessment sheet marked as P12, the fact that she had also worked as “Unit Head” for 16 years 11 months and 21days, **had not attributed any marks for herself for that and placed zero marks under that fact solely because attributing marks for Unit Head was not in conformity with the marking scheme** contained in the annexures to the advertisement which was the basis for applying for the contested post , namely documents P9(b) and P9(c). If she had added marks for having worked as Unit Head like the 5<sup>th</sup> Respondent did, she would have enhanced her self assessment marks by about double of 26.75 because she had worked in Unit Head position for a period as double the time the 5<sup>th</sup> Respondent had worked, i.e. 16years.

In this case the contested subject is only the marks coming under the “Category E

Management Experience in the Provincial Council or in the Department of Agriculture". The 2<sup>nd</sup> Respondent has filed the marks sheet at the interview as 2R1, in which the marks given to the Petitioner and the 5<sup>th</sup> Respondent can be seen. Under this category, the marks for the Petitioner is 32 and the marks for the 5<sup>th</sup> Respondent is 43.

The marks in the self assessment sheet of the 5<sup>th</sup> Respondent being 44.25 as revealed by R5G is approximately the same mark as 43 given to him by the interview panel. The marks in the self assessment sheet of the Petitioner is 40.33 as revealed by P12 but the interview panel had given her only **32 marks. It is 8.33 marks less than the self assessment.** If marks were given to her under Unit Head, her marks would have got elevated to 85 { 32 +53( 26.75 x 2) = 85}. Then, the 5<sup>th</sup> Respondent would have got 265.5, according to 2R1 {174 +43+33.5+5+10 =265.5} and the Petitioner would have got 298 marks, according to 2R1, {162.5+85+35.5+5+10 = 298}. Then the Petitioner would have been the person who gets the higher mark and she would have become the Director. This calculation done by me, however, is on the wrong basis going against the marking scheme approved by the Public Service Commission but going according to the marking scheme that the 5<sup>th</sup> Respondent claimed was right and the interview panel has gone along with him and wrongly granted marks to the 5<sup>th</sup> Respondent.

Let me do the calculation on the correct basis going along with the marking scheme approved by the Public Service Commission. The Interview panel gave the Petitioner 32 marks which could not have included any marks under Unit Head because it is less than what the Petitioner had assessed for herself giving zero marks for Unit Head as she assessed the same on the PSC approved marking scheme. The Interview Panel gave the 5<sup>th</sup> Respondent 43 marks which was almost the same as the self assessment of his, in which he gave himself 26.75 marks for having worked as Unit Head. According to the marking scheme approved by the PSC, the 5<sup>th</sup> Respondent could not have given himself these marks. So he should have assessed himself for 43 – 26.75 marks, i.e.16.25 marks only. Therefore, his proper marks according to the PSC approved marking scheme should have been 16.25. Then, the total proper marks which the interview panel should have given the 5<sup>th</sup> Respondent, is 238.75. {174+16.25+33.5+5+10 =238.75}. The Petitioner actually got 245 marks,

{162.5+32+35.5+5+10 = 245} from the Interview panel. Then also, the Petitioner would have been the person who gets the higher mark and she would have become the Director.

As demonstrated above, according to the proper marking scheme approved by the PSC or according to the wrong way of calculating by giving marks for the number of years of work experience as a Unit Head, either way, the Petitioner gets the higher marks and therefore without any doubt, the Petitioner should have been given the Director post.

The Petitioner complained about this injustice to the Auditor General, to the President of this country, and even to the first Respondent. Some of the letters are marked as P24(a), P25 and P26. The Petitioner had complained to the Commission to Investigate Allegations of Bribery and Corruption by P22(a). In spite of the Petitioner's letters to all the authorities the Petitioner came to know that at the Directorate meeting held on 17.03.2010 presided by the 2<sup>nd</sup> Respondent, it was decided to appoint a committee to prepare a list in order to amend the Managerial Unit List of the Department of Agriculture. It was done so, the Petitioner complained, to give more marks to the 5<sup>th</sup> Respondent who had agitated to include Unit Heads as a Managerial Unit in the list in the PSC approved marking scheme under which applications were called for the Director post.

Petitioner came to court at this juncture before the appointment of the 5<sup>th</sup> Respondent to the post of Director but this Court did not grant her interim relief as prayed for. It is clear that the Petitioner should have been the one with the highest total marks. She should have been appointed as "Director- Horticulture, Crop Research and Development Institute, Gannoruwa" at the end of the interview held on 13.11.2009.

After this Application was filed by the Petitioner, the 5<sup>th</sup> Respondent had been appointed as "Acting Director- Horticulture, Crop Research and Development Institute, Gannoruwa", by the authorities and in some documents I observe that even though the appointment was an acting appointment, he had used his seal as Director thus holding out as proper Director, whereas he was only acting in that post. Later on

the Petitioner allegedly being so very disappointed had retired early. As at present we know that the Petitioner and the 5<sup>th</sup> Respondent both have retired.

I observe from the many documents filed by the parties that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents have acted wrongly in not having given the right concern to the matters relevant even when pointed out by the Petitioner in numerous ways. She had not been treated equal before the law. She is entitled to the equal protection of the law. I observe Article 12(1) has been infringed. I hold that there is an infringement of Art. 12(1) of the Constitution by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

In the circumstances I direct that the Petitioner be promoted to the Post of “Director- Horticulture, Crop Research and Development Institute, Gannoruwa” w.e.f. 14.11.2009,( on which day the appointments were given to the other Director post for which interviews were held on the same day under the same marking scheme as advertised and which interview was not cancelled, i.e. the post of “Director- Extension and Training Centre- Peradeniya” ) and I further direct that, all other benefits arising from that appointment be granted to the Petitioner accordingly.

In addition I grant the Petitioner compensation of Rs.600,000/- to be paid by the Ministry of Agricultural Development and Agrarian Services for the infringement of Article 12(1) of the Constitution. Application is allowed with costs.

**Judge of the Supreme Court**

**Sisira J.de Abrew, J.**

I agree

**Judge of the Supreme Court**

**Upaly Abeyrathne, J.**

I agree

**Judge of the Supreme Court**

