

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

S.C. FR No. 370/2011

In the matter of an Application under
and in terms of Article 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

1. Alawathupitiya Ratnayake
Mudiyanselage Tikiribanda,
No. 85, "Nishanthi", Kobbekaduwa,
Yahalatenna.
2. Ganiha Arachchilage Wijeratne
Marakkalamulla,
Dummalasooriya.

PETITIONERS

Vs.

- 1 (A) Abdul Majeed
Secretary,
Ministry of Muslim Religious Affairs &
Posts, Postal Services Headquarters,
D.R. Wijewardena Mawatha,
Colombo 10.
1. M.K.B. Dissanayake
Postmaster General
Postal Services Headquarters,
D.R. Wijewardena Mawatha,
Colombo 10.
- 2 (a) D.L.P. Rohana Abeyratne
Postmaster General
Postal Services Headquarters,
D.R. Wijewardena Mawatha,
Colombo 10.

- 3 (b) Dharmasena Dissanayake - Chairman
- 4 (b) A. Salam Abdul Waid - Member
- 5 (b) Ms. D. Shirantha Wijeyathilaka - Member
- 6(b) Dr. Pradeep Ramanugam - Member
- 7 (b) Mrs V. Jegarasasingham - Member
- 8(b) Santi Nihal Seneviratne - Member
- 9 (b) S. Ranugge - Member
- 10(b) D.C. Mendis - Member
- 11(b) Sarath Jayathilaka - Member

All of Public Service Commission
No. 177, Nawala Road,
Narahenpita,
Colombo 5.

12. Ashoka Mampitiya Arachchi
Deputy Postmaster General
Postal Headquarters
Colombo 1.
13. Mrs. Theshani J. Abeyratne
Deputy Director of Customs
Sri Lanka Customs
Colombo 1.
14. Mrs. K.C.H. Randeniya
Director, Policy Planning
Ministry of Postal Services,
310, D.R. Wijewardena Mawahta,
Colombo 10.

15. Mrs. M.D.S. Jayasumana
Assistant Director of Establishment
Ministry of Public Administration & Home
Affairs, Colombo 7.
16. K. Sunil Weerasekera
'Premawasa'
Baddegama
17. J.A. Kankanamge
Ganegama South
Baddegama.
18. Hon. Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE:

B.P. Aluwihare P.C., J.
Anil Gooneratne J. &
Prasanna S. Jayawardena P.C., J

COUNSEL:

Indra Ladduwahetti with Lilanthi de Silva
For Petitioners

J.C. Weliamuna with Pasindu Silva
For the 16th & 17th Respondents

Viraj Dayaratne D.S.G for the 1st – 15th & 18th Respondents

ARGUED ON:

21.11.2016

DECIDED ON:

19.01.2017

GOONERATNE J.

The two Petitioners, at all relevant times to this Fundamental Rights Application held the post of Regional Investigating, Officer and Chief Postmaster respectively in the Postal Department. It is pleaded that the two Petitioners applied for a post in the said department. (which is a promotional post) and is described in their petition as 'unified postal service Grade 'A' Group III Segment "A".' Interviews were held as pleaded in paragraph 11 of the petition. There were 18 vacancies (P1).

It is further pleaded in paragraph 12 of the petition that the Petitioners came to know that they had been promoted to the said grade on the recommendation of the Interview Board consisting of 12th to 15th Respondents. However main grievance of the two Petitioners were that the Interview Board after selection as above has again met on their own on 22.03.2011, purely for the purpose of promoting 16th & 17th Respondents who had not been selected as above for the 18 vacancies earlier. It is further stated in the petition that they came to know that there was an attempt to delete their names out of the earlier promotion list and accommodate the 16th & 17th Respondents.

Petitioners complain that the result of the interview was not made known or communicated. As such by P2 dated 08.08.2011, the Sri Lanka Postal Service Union requested for the result of the interview from the 1st Respondent.

Thereafter the Petitioners along with the Secretary of the Postal Service Union met the 1st Respondent on 17.08.2011 and inquired regarding the selection of candidates from the selection list prepared by the 12th to 15th Respondents for the above post. 1st Respondent then informed that the Petitioners had been selected for the 17th & 18th vacancies but their names were omitted by the 12th to 15th Respondents on 22.03.2011 and a new list had been made. In fact the 16th & 17th Respondents who were not selected in the first list had been included in the subsequent list prepared by the 12th to 15th Respondents on 22.11.2011. The 1st Respondent also informed that the 16th & 17th Respondents had also been issued letters of appointment. In this regard an affidavit marked P3 is submitted in support of above. The 1st Respondent also took steps to issue documents requested by the said union marked P4 to P8. P9 is a letter issued by the 1st Respondent and indicates that the said documents are issued. Petitioners plead in paragraph 22 of the petition that action of the 1st to 15th Respondents not to promote the Petitioners to the post for which they applied is arbitrary, capricious, unreasonable and illegal for the reasons set out in paragraph 22(a) to (k) of the petition. On 19.03.2012 this court granted Leave to Proceed for alleged violation of Article 12(1) of the Constitution.

Document P9 of course indicates that the 1st Respondent made available the required documents on request, made in this regard. Disclosure by

the 1st Respondent enabled the Petitioners to move court. The same interview panel had taken the liberty to alter the original selections list, and on their second attempt very unfortunately displaced the Petitioners being selected for the post they applied. It looks very unreasonable but this court needs to get to the truth of the matter to ascertain whether in fact there was a violation.

I have to ascertain the reasons for the interview panel to have met for the second time subsequent to selection of candidates. In this regard the position of the official Respondents need to be considered. The successor to the office of Postmaster General the 2nd Respondent has sworn an affidavit before this court, since the person named as 2nd Respondent was no longer holding office and the successor had sworn an affidavit. The main points as pleaded are as follows.

- (1) Power of appointment/promotion is vested with the Public Service Commission and not the interview panel. Petitioners were never promoted to the 'Unified Postal Service Group A Grade III Segment 'A'
- (2) It is emphasised that the Secretary to the Ministry of Posts had by letter of 21.02.2011 (2R2) requested to ascertain whether the interview panel had correctly given marks for "Performance Appraisals" of each candidate. The 16th Respondent had complained that marks for the above item had not been correctly assessed by the interview panel. As such the said Secretary had given a direction as pleaded to request the Interview Board to consider letter 2R1 and the appeal of the 16th Respondent, thereafter to submit the recommendation of the interview panel to him.

Accordingly the interview panel had met on 22.03.2011 for the said purpose (2R2).

(3) The 16th Respondent was involved in Trade Union activities and had been released on a full time basis as from 22.11.2000. He was an officer of the unified postal service and had been promoted on 18.10.2008 to the unified postal service Grade A, Group III Segment B. It is pleaded that at the time of the interview he was engaged in Trade Union activities and question arose as to how he had to be assessed on performance appraisal. The duties maintained in the appraisal forms were not the duties others in the same grade as the 16th Respondent had to perform. Uncertainty arose as to whether the 16th Respondent should be assessed by a Superior in the Colombo Head office as the 16th Respondent was full time Trade Union activist. As such Director Establishment had to be consulted, through the Secretary to the Ministry of Postal Services, by letter of 08.10.2010 (2R3) by the former Postmaster General. In response the Secretary, Ministry of Public Administration and Home Affairs by letter of November 2010 (2R4) gave directions to Secretary, Ministry of Postal Services as to the steps that need to be taken.

I find on a perusal of the relevant affidavit the interview panel in its first selection allocated marks for performance appraisal for only those who had supporting documents and obtained as performance as excellent, and not others who had not presented supporting documents. But as instructed above the interview panel who sat for the second time on 22.03.2011 revised the marks for performance appraisal even without supporting documents

provided performance as 'excellent', recommended by his superiors and interview panel gave 15 marks, for all.

According to the first selection by the interview panel, candidates were not given the full 15 marks unless he was able to support it with documents. On that basis only one candidate namely H.M.A.G. Thillekeratne (Serial No. 7) had been allocated 15 marks as he had been judged as excellent and also had supporting documents. This position was changed on 22.03.2011 by the interview panel as stated above and all those who had the remark as 'excellent' for performance appraisal were given 15 marks. Therefore revision of marks had taken place.

There is an annexure to the affidavit which is filed of record of the Postmaster General who had been holding the post at the relevant period. A chart marked and produced as 2R6 submitted with the affidavit demonstrate the position of allocating marks to each candidate and the variation that had taken place on the instructions of Secretary to the Ministry of Public Administration. The revision of marks resulted in the 1st Petitioner and the 2nd Petitioner who was within the selection list as Nos 17 and 18 being shifted to Nos 19 and 20, and the resulting position was that they were not finally selected. It is also observed that the marks allocated to the two Petitioners were not

changed, (serial Nos. 1 & 9 of 2R6) at the subsequent meeting of the interview panel.

In view of the matters stated above, it is necessary to consider the case of the two Petitioners and the 16th and 17th Respondents, as regards the revision of marks, due to directions given by the Secretary to Ministry of Public Administration. I note the following as pleaded in the affidavit of the Acting Postmaster General.

- (a) At the interview held on 28.9.2010, the 1st Petitioner (Mr. Tikiribanda) had been allocated a total of 15 marks for his 'Performance' for the two years that were considered for the promotions i.e; 10 marks for the year 2008 on the basis that the 'Performance' was 'above average' and 05 marks for the year 2009, on the basis that the 'Performance' was 'satisfactory'. He had obtained a total of 35 marks and was placed 18th according to the original list prepared by the Interview Board.
- (b) At the interview held on 28.09.2010, the 2nd Petitioner (Mr. Wijeratne) had been allocated a total of 10 marks for his 'Performance' for the two years that were considered for the promotions i.e; 05 marks for the year 2008 on the basis that the 'Performance' was 'satisfactory' and 05 marks for the year 2009 on the basis that the 'Performance' was 'satisfactory'. He had obtained a total of 36 marks and was placed 17th according to the original list prepared by the Interview Board.
- (c) The marks allocated to the Petitioners as aforesaid, did not change at the meeting held by the Interview Board on 22.03.2011,
- (d) At the interview held on 04.10.2010, the 16th Respondent (Mr. Weerasekera) had been allocated a total of 20 marks for his 'Performance'

for the two years that were considered for the promotions i.e; 10 marks for the year 2008 on the basis that the 'Performance' was 'above average' and 10 marks for the year 2009, on the basis that the 'Performance' was 'above average'. He had obtained a total of 34 marks and was jointly placed 19th according to the original list prepared by the Interview Board

(e) At the interview held on 21.10.2010, the 17th Respondent (Mr. Kankanamge) had been allocated a total of 15 marks for his 'Performance' for the two years that were considered for the promotions i.e; 10 marks for the year 2008 on the basis that the 'Performance' was 'above average' and 05 marks for the year 2009 on the basis that the 'Performance' was 'satisfactory'. He had obtained a total of 26 marks according to the original list prepared by the Interview Board.

(f) However, going by the advice obtained from the Director General of Establishments as aforesaid, the 16th Respondent had to be allocated 15 marks for each year (2008 and 2009) since his 'Performance' had to be considered as 'excellent' and as such the total marks obtained by him increased from 34 to 44.

(g) With regard to the 17th Respondent, it was found that there was a mistake in the allocation of marks to him for 'Performance' i.e; he had been given 10 marks for the year 2008 on the basis that his Performance was 'above average' when in fact it should have been 15 on the basis that that his Performance was 'excellent'. Further, it had also been found that his assessment for the year 2009 had also been 'excellent' although it had been taken mistakenly as 'satisfactory' and had to be allocated 15 marks instead of 05. Therefore, these mistakes had been corrected and the 17th Respondent has been allocated 30 marks for 'Performance' and his total marks had increased from 26 to 41.

It is also stated in the above affidavit that the Interview Board had to go through the marks allocated to all other candidates. The Board found discrepancies in the allocation of marks of K.A. Gamini Prasanna (serial No. 10), H.K. Kariyawasam (serial No. 12) and S.K. Meegama (serial No. 22). This position has been explained and demonstrated in detail in paragraph 14(i) to (l) of the above affidavit. The adjustment of marks are shown in the chart 2R6. It is also observed that the results of the interview panel are not made public. It is the Public Service Commission that ultimately make the appointments, having considered the results of the interview along with its recommendation. The Public Service Commission has approved the promotions in the manner stated above. Several appointment letters are issued by the Public Service Commission marked 2R7 (i) to (xviii).

The pleadings of the 16th and 17th Respondents stress on the point that the application of the Petitioners are time barred. It is also stated that the necessary parties are not before court. These Respondents are somewhat critical of the role of the 1st Respondent and blame the 1st Respondent for the issuance of documents P4 to P9, and that have acted in collusion with the Petitioners. It is further pleaded that both the 16th and 17th Respondents are entitled to be promoted in keeping with the scheme of promotion marked P2, to the post of Unified Postal Service Grade 'A' Group III Segment 'A'. The 16th

and 17th Respondents were promoted Segment 'B' of the above post on 18.10.2008 and had been appraised as Excellent for the years 2008 and 2009.

It is further clarified by the 16th and 17th Respondents that the authorities concerned sought advice from the Director, Establishment and Secretary, Ministry of Public Administration as to how persons involved in Trade Union activities should be assessed. It was clarified that it should act upon the appraisals which are already made. Documents 16 R5 provides material in this regard and appraisals for the year 2008 and 2009 were considered.

I have also considered the points suggested in the counter affidavit of the two Petitioners. Though it is emphasised that the 16th & 17th Respondents have acted in collusion with the 2nd Respondent and the 3rd to 15th Respondents to obtain promotions in the postal service, I cannot find sufficient material to support that contention. The mere statements and remarks made as regards collusions with official Respondents is not acceptable to this court unless supported with cogent reasons. It is not established nor can I come to the conclusion that the 16th & 17th Respondents were able to influence the official Respondents as the authority to explain matters of this nature would be the Director Establishment and the Secretary to the Ministry of Public Administration. The persons in authority in this case were well aware of the procedure to be adopted.

The Public Service Commission by letter dated 20.09.2011 and marked 2R7 (i) to 2R7 (xviii) has promoted the persons named therein. This court no doubt granted leave to proceed on 19.03.2012 and by that time the candidate concerned were all promoted. This court did not think it fit to grant any interim relief, at that point of time. The position of this case had been adequately dealt in documents 2R1 to 2R6. The method adopted is spelt out more particularly in 2R1 & 2R2. The marks given for performance appraisals are considered in 2R1. It inter alia states that since doubts arose on marks to be allocated to the 16th Respondent by the interview panel on performance appraisal clarification was sought. 16th Respondent was involved in union activities (full time). He was supervised by Galle Regional Superintendent and Deputy Post Master General (South). Therefore Director, Establishment had to be consulted. A change took place as advised by Director, Establishment and any candidate who had been remarked as 'excellent for performance appraisal was given full marks (15 marks). This directive was applicable across the board to all candidates and the interview panel had to comply with such directive. What sort of changes that took place are discussed above.

A Government Servant is employed on terms which are offered to him. His stay in the public service and promotions are all matters which are regulated by the authorities concerned. That would not mean that his basic

fundamental rights are to be surrendered. A public servant is generally guided by the Establishment Code which has a statutory flavour. There are circulars issued by the Government which need to be carefully considered. State can impose restrictions and regulations which are not arbitrary. Whatever regulations, must conform to maintain the best standard for the public service. In the case in hand the interview panel and the authorities concerned had to verify the marks allocated on account of performance appraisals. As such the Director, Establishment had to be consulted. The Director's views and directions had to prevail in the circumstances and necessary instructions were given by the Secretary, Ministry of Public Administration. I cannot see anything serious to interfere with such directions. As such this application stands dismissed without costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

B.P. Aluwihare P.C., J.

I agree

JUDGE OF THE SUPREME COURT

Prasanna S. Jayawardena P.C., J.

I agree

JUDGE OF THE SUPREME COURT

