

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

In the matter of an application under Article 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.

Sandhya Ramani Vithana  
**Petitioner**

SC/FR 523/2009

Vs

1. Sri Lanka Ports Authority
2. RM Priyantha Banadarawickrama  
Chairman, Sri Lanka Ports Authority
3. Nalin Aponso, Deputy General Manager  
Communication and Public Relations  
Department, Sri Lanka Ports Authority
4. S Sunanda Gunasekara  
Communication and Public Relations  
Assistant,  
Sri Lanka Ports Authority
5. HSF Farzana Media Division Sri Lanka Ports  
Authority.
6. Hon. Attorney General

**Respondents**

Before : B P Aluwihare PC, J  
Sisira J De Abrew J  
Priyantha Jayawardene PC, J

Counsel : Saliya Pieris With Anjana Rathnasiri for the Petitioner.  
Yuresha Fernando SSC for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 6<sup>th</sup>  
Respondents  
4<sup>th</sup> and 5<sup>th</sup> Respondents were absent and unrepresented

Argued on : 15.10.2015

Written submission

Tendered on : By the Petitioners on 10.12.2014

By the 1<sup>st</sup> to 3<sup>rd</sup> Respondent on 19.12.2014

Decided on : 18.2.2016

**Sisira J De Abrew J.**

Notices have been sent by this court to the 1<sup>st</sup> to 6<sup>th</sup> Respondents on 24.7.2009, but the 4<sup>th</sup> and 5<sup>th</sup> Respondents have not responded to the said notices. The Petitioner is presently employed as a Special Grade clerk in the Finance Department of the 1<sup>st</sup> Respondent Authority. She states that she is an active member of the Jathika Sevaka Sangamaya and is a sectional organizer of the said Union.

The Petitioner received a letter from the Human Resources Department of the 1<sup>st</sup> Respondent Authority requesting her to be present on 30.3.2005 for an interview for the post of Communication and Media Assistant. The Petitioner who obtained 54 marks was placed 4<sup>th</sup> out of five applicants. The first two applicants who obtained 63 and 59 marks were recruited as Communication and Media Assistants. Later the 1<sup>st</sup> Respondent Authority obtained approval from the Ministry of Finance and Planning for recruitment of two more Communication and Media Assistants. VLD Jayasekara who was placed 3<sup>rd</sup> at the interview was appointed but the Petitioner was not appointed. This decision has been taken on the basis that one Communication and Media Assistant would be sufficient for the relevant Department. The 3<sup>rd</sup> Respondent, in his affidavit, states that he took the said decision in accordance with Rule 15 of the Manual of Administrative Procedure of the Sri Lanka Ports Authority [SLPA] which is marked as 3R2.

As the Petitioner was not recruited, she made a complaint to the Human Rights Commission of Sri Lanka complaining that failure to appoint her to the post of Communication and Media Assistant was a violation of her fundamental rights. The 1<sup>st</sup> Respondent Authority, by its letter dated 24.2.2006 (P6), gave an undertaking to the Human Rights Commission to the effect that the petitioner who is in the waiting list would be appointed when a vacancy arises for the post of Communication and Media Assistant.

However the 3<sup>rd</sup> Respondent who is the head of the Communication and Public Relations Department on 9.5.2008 again advertised the post of Communication and Media Assistant. The Petitioner submitted an application and she went for an interview on 27.5.2009. The Petitioner states that at the interview the 3<sup>rd</sup> Respondent questioned her as to why she complained to the Human Rights Commission. The 3<sup>rd</sup> Respondent informed her that this time too she would not be appointed and that she would be at liberty to complain once again to the Human Rights Commission. On 10<sup>th</sup> of June 2009, the 4<sup>th</sup> Respondent who was a labourer attached to the Media Division of the 1<sup>st</sup> Respondent Authority was appointed to the post of Communication and Media Assistant. The Petitioner states that the 4<sup>th</sup> Respondent was given special preference on the basis that he was already serving in the Media Division of the 1<sup>st</sup> Respondent Authority. She states that such special preference is irrational and as the 4<sup>th</sup> Respondent served in the Media Division as a labourer and not in a professional capacity. The Petitioner states that giving special preference is contrary to the scheme set out in P10. The Petitioner further states that that the 4<sup>th</sup> Respondent had been charge sheeted in January 2009 on the following charges.

1. Defying the advice and directions of the Senior Management.

2. Disturbing the duties of the security service of the 1<sup>st</sup> Respondent Authority.
3. Being in possession of a key of an office room which had not been officially obtained by him.
4. Behaving and acting in a manner violating the discipline of the Sri Lanka Ports Authority.

The 3<sup>rd</sup> Respondent, on the said charges had issued a letter of warning to the 4<sup>th</sup> Respondent after considering his explanation. The relevant documents had been produced marked as P11, P11A and P11B. The Petitioner states that in the light of the said documents the appointment of the 4<sup>th</sup> Respondent is unsuitable. The Petitioner states that she who has an unblemished record was not appointed whilst the 4<sup>th</sup> Respondent who had been issued a letter of warning was appointed to the post of Communication and Media Assistant. The Petitioner on the above grounds contends that her fundamental rights guaranteed by Article 12(1) and 12(2) of the Constitution have been violated by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. She inter alia moves to cancel the appointment of the 4<sup>th</sup> Respondent and to appoint her to the post of Communication and Media Assistant of the 1<sup>st</sup> Respondent Authority.

Learned SSC who appeared for 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 6<sup>th</sup> respondents however contended that the appointment of the 4<sup>th</sup> Respondent had been correctly done.

According to circular No.17-2002 produced as P10 (Allocation of marks at interviews- Non executive Grade), 45% marks should be allocated for the performance at the interview and 55% should be allocated for the performance at the written/professional examination. According to Note 1 of the said circular if

there were less than five candidates, they need not face the written/professional examination. The 3<sup>rd</sup> Respondent, in his affidavit, admits that there were less than five candidates. Therefore allocation of 55 marks set out in P10 cannot be granted and the maximum amount of marks that a candidate could have got at this occasion would be only 45 marks. According to P10 distribution of marks at the interview should be done as follows.

|                            |     |
|----------------------------|-----|
| Educational qualifications | 15% |
| Service                    | 10% |
| Experience                 | 10% |
| Commendations              | 5%  |
| Personality                | 5%  |
| Total                      | 45% |

As I pointed out earlier 55% (55 marks) cannot be allocated in the present case as there were less than five candidates. But the interview panel in the present case however deviated from the scheme set out in P10 and adopted its own method which is set out below.

|              |     |
|--------------|-----|
| Educational  | 15% |
| Service      | 10% |
| Experience   | 10% |
| Commendation | 5%  |
| Personality  | 5%  |

|                           |     |
|---------------------------|-----|
| Service in the Media Unit | 10% |
| Interview                 | 45% |
| Total                     | 100 |

Circular marked P10 clearly states 45 marks should be allocated at the interview as per the structure set out therein. In the said circular there is no room for allocation of 45 marks under the category of 'interview' nor is there any room to allocate 10 marks for service in the 'Media Unit'. Therefore the decision of the Interview Panel to allocate 10 marks under the category of 'Service in the Media Unit' and 45 marks under the category of 'Interview' is wrong and invalid. The interview panel has allocated 8 marks to the 4<sup>th</sup> Respondent under the category 'service in the media unit'. Circular marked P10 does not permit interview panel to allocate 8 marks under the category of 'service in the media unit (vide document marked 3R6). For the above reasons I hold that allocation of eight (8) marks to the 4<sup>th</sup> the Respondent by the interview panel is illegal and arbitrary. Therefore I hold that the 4<sup>th</sup> Respondent is not entitled to receive the said eight (8) marks.

The next question that must be decided is whether the 4<sup>th</sup> Respondent is entitled to receive ten (10) marks under the category of experience. The interview panel has given him ten marks under the under the category of experience (vide document marked 3R6). P10 permits ten (10) marks to be allocated under the category of 'Experience'. According to P10 this experience should be in the Field and Grade/Position or Division. The 4<sup>th</sup> Respondent had served as a labourer in the Media Unit. Learned Senior State Counsel, on the strength of P8, tried to contend that the 4<sup>th</sup> Respondent was entitled to marks under the category of

‘experience’ as he had worked in the Media Unit. But it has to be stated here that P8 is only a notice calling for applications from suitable candidates which cannot override the directions set out in P10. According to P10 in order for a candidate to receive marks under the category of ‘experience’ such candidate should have worked in the relevant field and grade/position or division. The 4<sup>th</sup> Respondent has worked in the Media Unit of the Ports Authority only as a labourer. In my view working as labourer in the Media Unit of the Ports Authority cannot be construed as experience in the relevant field and grade/position or division. Further the 4<sup>th</sup> Respondent has failed to produce any service certificate from his Supervising Officer or the head of the Department certifying the type of work that he performed as a labourer in the Media Unit. Considering all these matters, I hold that the 4<sup>th</sup> Respondent was not entitled to receive ten marks under the category of ‘experience.’ For the above reasons I hold that allocation of ten (10) marks to the 4<sup>th</sup> Respondent by the interview panel is illegal and arbitrary. I have earlier held that the 4<sup>th</sup> Respondent was not entitled to receive eight (8) marks under the category of ‘service’ in the Media Unit. Thus altogether the 4<sup>th</sup> Respondent is not entitled to eighteen (18) marks from the amount of marks given at the interview.

As I pointed out earlier the interview panel had decided to give forty five (45) marks under the category of interview (vide document marked 3R6). P10 does not permit the interview panel to allocate 45 marks under the category of ‘interview’. P10 only permits allocation of 45 marks as per structure set out therein. Then no candidate is entitled to receive marks under the category of interview. Therefore the petitioner is not entitled to receive 15 marks given to her under the category of ‘interview’ and the 4<sup>th</sup> Respondent too is not entitled to

receive 35 marks under the category of ‘interview’. The interview panel has given the following marks to the 4<sup>th</sup> Respondent (vide document marked 3R6).

|                           |          |
|---------------------------|----------|
| Education                 | 06 marks |
| Service                   | 04 marks |
| Experience                | 10 marks |
| Commendation              | 00 marks |
| Personality               | 04 marks |
| Service in the Media Unit | 08 marks |
| Interview                 | 35 marks |
| Total                     | 67 marks |

As I pointed out earlier the 4<sup>th</sup> Respondent was not entitled to receive ten (10) marks given under the category of ‘experience’, eight marks given under the category of ‘service in the Media Unit’ and thirty five (35) marks given under category of ‘interview’. Thus he is not entitled to receive 53 marks from the total of marks given to him. Thus the amount of marks that he is entitled to is fourteen (14) marks (67-53).

The interview panel has given the following marks to the petitioner (vide document marked 3R6).

|            |          |
|------------|----------|
| Education  | 06 marks |
| Service    | 10 marks |
| Experience | 02 marks |

|                           |          |
|---------------------------|----------|
| Commendation              | 02 marks |
| Personality               | 02 marks |
| Service in the Media Unit | 00 marks |
| Interview                 | 15 marks |
| Total                     | 37 marks |

No one has challenged the marks given to the petitioner under the categories of 'education', 'service', 'experience', 'commendation' and 'personality'. I have earlier held that the petitioner is not entitled to fifteen (15) marks under the category of 'interview'. Therefore the total amount of marks that she is entitled to receive is (37-15) 22 marks.

I have earlier pointed out that the 4<sup>th</sup> Respondent is entitled to receive only fourteen (14) marks. He has obtained the said fourteen (14) marks out of 45 marks. The petitioner is entitled to receive twenty two (22) marks. She has received the said twenty two (22) marks out of 45 marks. It is therefore clear that the 4<sup>th</sup> Respondent who is entitled to fourteen (14) marks has been appointed over and above the petitioner who is entitled to twenty two marks. At this stage it is relevant to consider certain judicial decisions.

In *Ratnadasa Vs Government Agent* [SC FR (Spl) No.66/96-SC Minutes of 16.12.1997- Reported in book titled 'Fundamental Rights and Constitution- II by RKW Goonesekere page 68] five persons were recommended by the District Registrar after a written competitive examination for the post of Registrar of Births and Marriages in order of merit. The person who was placed 4<sup>th</sup> was selected by the Registrar-General on the basis of experience in an acting capacity.

The person who was placed 3<sup>rd</sup> challenged the appointment of the person who was placed 4<sup>th</sup> in the list by way of a fundamental rights application. Bandaranayake J (with GPS De Silva CJ and Ananda Coomaraswamy J agreeing) held that the appointment of the person who was placed 4<sup>th</sup> in the list is invalid.

In *Leelananda Vs National Institute of Education* SC FR 266/93SC Minutes of 2.3.1994 [reported in book titled ‘Fundamental Rights and Constitution- II by RKW Goonesekere page 84] the petitioner who applied for the post of Director, Distance Education, was overlooked by an interview Board and another applicant (4<sup>th</sup> respondent) was appointed. For the petitioner it was contended that the 4<sup>th</sup> respondent was not eligible, that there was no ‘structured interview’, and a subjective assessment was made in favour of the 4<sup>th</sup> respondent who was not eligible without adequate supporting reasons. Fernando J (Goonewardena J and Wadugodapitiya J agreeing) held thus: “The appointment of the 4<sup>th</sup> respondent was plainly wrong. The appointment of an ineligible candidate, in preference to one or more qualified candidates, was in violation of Article 12(1) and must be quashed.”

Considering the above legal literature and the aforementioned reasons, I hold that the 1<sup>st</sup> and 3<sup>rd</sup> Respondents (the 3<sup>rd</sup> Respondent was the chairman of the interview panel) have violated the fundamental rights of the petitioner guaranteed by Article 12 (1) of the Constitution. For the above reasons, I hold that the appointment of the 4<sup>th</sup> Respondent to the post of Communication and Media Assistant of the 1<sup>st</sup> Respondent Authority is illegal, arbitrary and capricious and cannot be permitted to stand. I therefore quash the appointment of 4<sup>th</sup> Respondent who was appointed to the post of Communication and Media Assistant of the 1<sup>st</sup> Respondent Authority.

I direct the 1<sup>st</sup> and the 3<sup>rd</sup> Respondents to appoint the petitioner to the post of Communication and Media Assistant of the 1<sup>st</sup> Respondent Authority with effect from 15.6.2009 which is the date of appointment of the 4<sup>th</sup> Respondent to the post of Communication and Media Assistant of the 1<sup>st</sup> Respondent Authority which appointment I have quashed in this judgment. The present holder of the office of the Chairman of the Sri Lanka Ports Authority and the present holder of the office of Deputy General Manager Communication and Public Relations Department of the Sri Lanka Ports Authority and the 1<sup>st</sup> Respondent should take steps to implement this order within two months from the date of this order. The petitioner is entitled to receive 300,000/- as compensation from the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. I direct the 1<sup>st</sup> and 3<sup>rd</sup> Respondents to pay a total sum of Rs.300,000/- to the petitioner as compensation in equal shares.

Judge of the Supreme Court

**B P Aluwihare PC J**

I agree.

Judge of the Supreme Court

**Priyantha Jayawardene PC J**

I agree.

Judge of the Supreme Court

