

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

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. Dharmakeerthi Ranathungage
Gamini Senadheera, Hathpokuna,
Polpitigama.
2. Madduma Patabendige Vidura,
No. 15, Dharmaraja Mawatha,
Issadeen Town, Matara.
3. Wanigasinghe Arachchige Ajith
Senarathne, “Wasana, Araliya
Mawatha, Puwakdandawa, Beliatta.
4. Kuttu Pathira Amila Indrajith
Pathirana, Heenmulla,
Dharga Town
5. Abdul Asis Badar Niza,
4/82, Aluth Ala Road,
Pinarawa, Badulla.
6. Pannipitiya Arachchige Sunil,
422, Government Servants Scheme,
New Town, Polonnaruwa.
7. Konara Mudiyanselage Karunaratne,
Panwewa, Balalla.
8. Mestiyage Don Badra Namali
Gunatileke, 338/1, Bopatta Road,
Gothatuwa, Angoda.
9. Aluthge Dona Padma Priyanthi,
346/A, Kuruppuhena, Malamulla,\
Panadura.

10. Heiyanthuduwage Suneetha Ratnayake, 199, Koswatta, Kalapaluwawa Road, Thalangama North.
11. Serasingha Mudiyanselage Janaka Kumara Serasingha, Pugalla Road, Kalugamuwa, Kurunegala.
12. Gamaralage Champika, 34, Meegastenna, Yatiyantota.
13. Agra Nanda Kumara Walawage, No. 8A, Sarasavi Garden, Nawala Road, Nugegoda.
14. Hiruwalage Chandrawathi Menike, 218, Polagena Mawatha, Rendapola, Dodangoda.
15. Kurukulasuriya Tharanga Fernando, 127/12, Linton Estate, Palathota, Kalutara South.
16. Danansuriya Arachchilage Kamal Dammika Kumara, 596A, Iriyagolla Road, Pahathgama, Hanwella.
17. Wickremasinghe Arachchige Saliya Wijaya Wickremasinghe, 108/2, Old Road, Pannipitiya.
18. Ansley Anuruddha Liyanage, 246/2, Kendaliyaddapaluwa, Ganemulla.
19. Halahapperumage Wimal Jayasiri Fonseka, 109/E, Bopitiya, Pamunugama.
20. Aparekkage Siril Ananda Perera, 281/6, 6th Lane, Pamunuwa Road, Maharagama.

21. Warakagoda Withanage Kokila Devi,
Sriyani, 158, New Road, Palathota,
Kalutara South.
22. Maduwe Gurusingha Anuradha
Nishamani Silva, 126/2, Kitulawila
Road, Kiriwaththuduwa.
23. Nalini Sunil Shantha, 257, Morawatta,
Ruwanwella.
24. Munasinghe Arachchige Nirmala
Geethanjalee, 11/5, Arliya Uyana,
Depanama, Pannipitiya.

Petitioners

S.C.F.R. Application 620/10

Vs.

1. Commissioner General of Labour,
Labour Secretariat, P.O. Box 575,
Colombo 5.
2. Labour Commissioner(Administration),
Labour Secretariat, Narahenpita,
Colombo 5.
3. Secretary, Ministry of Labour Relations
and Productivity Promotions, Labour
Secretariat, Narahenpita, Colombo 5.
4. The Hon. Attorney-General,
Attorney General's Department,
Colombo 12.

Respondents

BEFORE : Sripavan. J.,
Ekanayake, J.
Dep. P.C., J.

COUNSEL : M.U.M. Ali Sabry, P.C., with Kasun Premarathna and Lasantha Thiranagama for the Petitioners.

Rajiv Goonetillake, S.S.C. For the 1st - 4th Respondents.

ARGUED ON : 27.02.2013

WRITTEN SUBMISSIONS

FILED : By the Petitioner on 15.03.2013
By the Respondent on 27.03.2013

DECIDED ON : 07.05.2013

SRIPAVAN, J.

The Petitioners are presently holding the post of Labour Officer, Grade II in the Department of Labour with effect from 01.07.2010. The Petitioners state that this application relates to the relevant date of the appointment given to them as Labour Officers, Grade II wherein they contend that the said appointments shall be backdated with retrospective effect from 18.02.2008. Thus, the scope of this application as pointed out by the Petitioners is whether the impugned date of appointment, namely, 01.07.2010 be ante-dated to 18.02.2008. In fact, in Paragraph (d) of the prayer to the Petition dated 10.11.2010 the Petitioners seek an order to have their appointments backdated to 01.02.2008 with a two year grace period to complete the Efficiency Bar Examinations.

Leave to proceed was granted by this Court on 24.01.2012 for the alleged violation of Article 12(1) of the Constitution, even though the

Petitioners contended that their appointments made in terms of the Gazette Notification 1473 dated 24.11.2006 violated Articles 12(1) and 14(1) of the Constitution.

In terms of the aforesaid Gazette Notification, applications for the post of Labour Officer, Grade II was called by the 1st Respondent to fill 50% of the vacancies by Limited Competitive Examination and the balance 50% by way of an Open Competitive Examination. The Petitioners contended that successful candidates under the Open Competitive Examination were appointed to the post of Labour Officer, Grade II with effect from 18.02.2008, whereas the Petitioners who were selected based on the Limited Competitive Examination were appointed to the same post with effect from 01.07.2010.

The First Respondent in his objections, *inter alia*, has taken up the position that antedating the appointments of the Petitioners are not possible for the following reasons:-

- a. the candidates who sat for the Limited Competitive Examination are not similarly circumstanced with the candidates who sat for the Open Competitive Examination.
- b. the appointment of the initial set of selected candidates under the Limited Competitive Examination were delayed in view of a stay order granted in S.C.F.R. Application 462/08 filed by some of the non-selected candidates.

- c. that Rule 31 of the Procedural Rule, issued by the Public Service Commission and published in the Gazette (Extra-Ordinary) No. 1589/30 dated 20.02.2009 does not provide for antedating of appointments.

The modes of Examination as set out in the Gazette Notification 1473 dated 24.11.2006 is as follows:-

(a) *Open Competitive Examination*

- (I) *Aptitude Question Paper 100 Marks- 1 hour)*

(This is a Question Paper designed to test the knowledge in Language and Numerals. Logical capacity and ability in decision making 50 Objective type questions will be included in it.)

- (a) *Essay and Precis Question Paper (100 Marks)*

(This will be a Question Paper of 3 hours designed to test the knowledge of the candidates in current news, and important local and foreign political economic and social changes and knowledge on Labour Organisations and the Labour Charter)

(b) *Limited Competitive Examination*

- (I) *Aptitude Question Paper (100 Marks)*

(Question Paper of the type mentioned under 1 of (a) above.

- (II) *Question paper on Labour Laws (100 marks)*

(This is a 3 hour question paper designed to test the knowledge on Labour Laws based on the following Acts)

- 1. *The Wages Boards Ordinance No. 27 of 1941.*

2. *The Shops and Office Act (Regularization of Employment and Remuneration) No. 19 of 1954.*
3. *The Industrial Disputes Act No. 41 of 1950.*
4. *The Employees' Provident Fund Act, No. 15 of 1958.*
5. *The Termination of Employment (Special Provisions) Act, No. 45 of 1971.*
6. *The Payment of Gratuities Act, No. 12 of 1983. “*

The Educational and other qualifications as stipulated in the said Gazette Notification is as follows:-

Educational and other qualifications:-

Candidates who appear for the Examination should

- (I) *be of excellent character and physically sound*
- (ii) *be Citizens of Sri Lanka*
- (iii) ***Qualifications for Open Competitive Examination***
 - (a) *A degree from a recognized University; OR*
 - (b) *Professional Qualifications to be engaged in legal profession.*
- (iv) ***Qualifications for the Limited Competitive Examination***
 - (a) *Confirmed in Government Service or in the Local Government Service or in the Clerical and Allied grade or Government Management Assistant Service who has completed 10 years' Service on or prior to the closing date of applications; OR*
 - (b) *Confirmed in Government Service or in the Local Government Service or Allied Grade or Government Management Assistant Service who has completed 5*

years' service on or prior to the closing date and possesses a degree from a recognized University.

Article 12(1) of the Constitution which deals with right to equality reads thus :

“All persons are equal before the law and are entitled to the equal protection of the law.”

The right to equality means that among equals, the law should be equal and should be equally administered, thereby the like should be treated alike. Accordingly, the crux of the matter in issue is whether the candidates selected through the Open Competitive Examination were similarly circumstanced as that of the candidates selected based on the Limited Competitive Examination.

Admittedly, the educational qualifications required for the Open Competitive Examination is different from that of the Limited Competitive Examination. Although the candidates under the Open and Limited Competitive Examinations sat for the common IQ Test Paper, the candidates under the Open Competitive Examination sat for General Knowledge Paper whereas the candidates under the Limited Competitive Stream sat for the Labour Law Paper. Thus, the Scheme of Recruitment is different to each other. I therefore hold that candidates under the Open Competitive Examination and the candidates under the Limited Competitive Examination are not clubbed

together for purposes of appointment to the post of Labour Officer, Grade II.

Learned Counsel for the Petitioners relied on the case of *Ramupillai Vs. Festus Perera, Minister of Public Administration, Provincial Councils & Home Affairs* (1991) 1S.L.R. p.11 and argued that the State is free to decide upon the sources from which either admission to educational institutions or recruitments to the Public Service are to be made. Accordingly, Counsel submitted that the State could take into consideration the overall needs and matters of national interest and policy.

In Ramupillai's case, the issue of clubbing together arose in the promotion of Customs Officers. Whilst holding that promotions based upon ethnic quotas would be violative of the right to equality. Ranasinghe, C.J. At page 26 made the following observations:

“A consideration of the facts and circumstances of the two decisions of this Court, referred to above, and the principles laid down in the Indian cases, referred therein, and also in the case of State of Kerala vs. Thomas (supra) it is clear : that the State is free to decide upon the sources from which either admissions to educational institutions or recruitments to the Public Service are to be made that for such purpose the State could take into consideration the over-all needs and matters of national interest and policy: that once such selections are made those taken in from such sources are integrated into one common class: that thereafter such appointees are “clubbed” together into a

common stream of service and cannot thereafter be treated differently for purposes of promotion by referring to the consideration that they were recruited from different sources: that their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequal once again: that there should be no further classification amongst them, except upon certain acceptable criteria such as educational qualifications.” (emphasis added)

Accordingly, State is free to decide the sources from which recruitments to the Public Service are to be made. The sources could be recruitment based on Open Competitive Examination as well as the Limited Competitive Examination. Once selections are made, they cannot thereafter be treated differently for purposes of their future promotions; that their genetic blemishes disappear once they are integrated into a common class known as Labour Officer, Grade II.

The other case, namely, *Perera vs. University Grants Commission*, F R D Vol. I, page 103 relied on by the learned Counsel for the Petitioners has no application to the case in hand. In *Perera's* case, two sets of students having followed two different syllabi for the Advanced Level Examination were to be considered for placement in the Universities. However, the present application does not affect the number of vacancies as the Scheme of Recruitment is very clear that 50% of the vacancies be filled by the Open Competitive Examination and the balance by the Limited Competitive Examination. While the two

Examinations did not affect the number of vacancies, both were different in nature and conducted at two different time periods, except the I.Q. Test Paper.

It is also observed that Clause 1:9 of Chapter II of the Establishments Code provides that the effective date of appointment or promotion is the date specified in the letter of appointment or the date on which the Officer first assumes the duties in his new post whichever is later, subject to Clause 1:10.

Clause 1:11 further provides that ante-dating will not in any case be allowed, if the substantive appointment is made on the results of a competitive examination. Rule 31 of the Procedural Rules of the Public Service Commission mandates that no appointment for whatever reason, shall be ante-dated.

Learned Counsel for the Petitioners conceded that the Labour Law Examination Paper consisted questions outside the scope of the Scheme envisaged by the Gazette, resulting in a re-examination being held to candidates under the Limited Competitive Stream. The re-examination for the Limited Competitive candidates was held on 12th August 2007. In view of certain fundamental rights applications filed by the candidates who sat the Limited Competitive Examination, the selection process came to a halt. The Supreme Court Applications were concluded on 03.11.2009, and a re-interview of some of the candidates was held between 21st and 23rd of April 2010. The results were released

thereafter and the Petitioners were appointed to the post of Labour Officer Grade II with effect from 01.07.2010.

I do not therefore see any irregularities or arbitrariness in the selection process. The vacancies have been filled in terms of the Scheme of Recruitment published in the Gazette. For the reasons stated, I hold that the Petitioners who sat for the Limited Competitive Examination cannot be clubbed together with those who sat for the Open Competitive Examination. However, once appointments are made to the post of Labour Officer Grade II, their genetic blemishes disappear and all those who have been integrated into the said Grade be treated equally. The Petitioners have not been successful in establishing that their fundamental right guaranteed in terms of Article 12(1) of the Constitution had been violated. This application is accordingly dismissed.

I make no order as to costs.

JUDGE OF THE SUPREME COURT.

EKANAYAKE, J.

I agree.

JUDGE OF THE SUPREME COURT.

DEP, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT.

