

**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.

V.M.P Buddhika Karunadasa of
No 86/1, Keselwatte, Spring Valley,
Badulla.

S.C.F.R. Application No. 337/2012

Petitioner

Vs.

1. D.K.M.K Dasanayake, Chairman
2. Rajaratnam Gnanasekaran, Member
3. Mohan Ratwatte, Member
4. A.A Salam, Member
5. D.C Dahanayake, Member
6. R.M.T.B Hathyaldeniya, Secretary

The 1st – 5th Respondents are the Chairman and the members and the 6th Respondent is the Secretary of the Uva Provincial Public Service Commission, 14/4, Peelipothagama Road, Pinarawa, Badulla.

7. The Governor, Uva Province,
The Governor's Office, Rajaweediya,
Badulla.
8. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Priyasath Dep PC, CJ
Priyantha Jayawardena PC, J
Upaly Abeyrathne, J

Counsel: J.C. Weliamuna, PC with Senura Abeyratne and Sulakshana Senanayake for the Petitioner

Rajiv Goonetilake SSC for the Attorney General

Argued on : 1st June, 2017

Decided on : 2nd August, 2017

Priyantha Jayawardena PC, J

The Petitioner was appointed as a Library Attendant on a temporary basis with effect from 15th July, 2000 by a letter of appointment dated 25th October, 2000 issued by the Secretary of the Ministry of Education, Health, Social Services, Cultural, Youth Affairs, Sports and Co-operative of Uva Provincial Council. The said letter of appointment stated that the appointment was on a temporary basis and that the Petitioner had no right to a permanent position in the Provincial Council or in the Central Government. Moreover, it stipulated that the Provincial Council could cancel the appointment when necessary. The Petitioner was attached to the Baddegama Maha Vidyalaya in Badulla.

The Petitioner was confirmed in the post of Library Attendant of Uva Province with effect from 1st July, 2005 by the letter dated 16th December, 2005 issued by the Secretary to the Ministry of Finance, Planning, Law & Order, Local Government, Divisional Administration, Education, Transport, Culture, Hindu Culture, Tourism and Estate Infrastructure Affairs of the Uva Provincial Council. The said letter stated that the Petitioner is on a three year Probationary period.

The Petitioner completed the Diploma in Library and Information Sciences of the University of Colombo and the Diploma was awarded in 2010.

By Circular dated 15th March 2011, the Uva Provincial Public Service Commission called for applications to fill vacancies for the post of Librarian Class III in the Uva Province. The Circular required applicants, *inter alia*, to have completed ten years of active service as a Library Assistant or Library Attendant and be confirmed in such posts.

The Petitioner forwarded his application dated 29th March, 2011 which was certified by the Zonal Director of Education of Badulla. A competitive examination was held for the recruitment for the post on 30th April, 2011 and the Petitioner passed the said examination obtaining the highest marks.

After an interview, the Petitioner was appointed to the post of Librarian Class III with effect from 2nd April, 2012 by the letter dated 29th March, 2012 issued by the Secretary of the Uva Provincial Public Service Commission. The Petitioner accepted the said appointment by his letter dated 2nd April 2012.

The Petitioner was attached to Soranathota Pradeshiya Sabha as its Librarian by the letter dated 23rd April, 2012 issued by the Commissioner of Uva Provincial Public Service. The Petitioner duly received his salary for three months.

The Secretary of the Uva Provincial Public Service Commission then sent a letter to the Petitioner, dated 6th June 2012, stating that the Petitioner's appointment as a Librarian Class III had been cancelled. However, the letter did not state reasons for cancelling the appointment.

Thereafter, the Petitioner informed the Governor of the Uva Province of his grievance by a letter dated 8th June, 2012 and sought the Governor's intervention to revoke the said cancellation. The Petitioner also made several attempts to discover the reason for the cancellation without avail.

The Petitioner further sought a release from the Department of Local Government to enable him to report to his previous work place by a letter dated 18th June, 2012. Accordingly, the said Secretary of the Uva Provincial Public Service Commission by his letter dated 21st June, 2012 to the Zonal Director of Education, Badulla directed him to reinstate the Petitioner in his previous work place. The Petitioner was thus reinstated by the letter of the Zonal Director of Education, Badulla dated 22nd June, 2012.

The Petitioner claimed that the decision to cancel his appointment was unfair, arbitrary, discriminatory, capricious and violated Article 12(1) of the Constitution.

Therefore, the Petitioner *inter alia* seeks:

- a) a declaration that the Fundamental Right of the Petitioner guaranteed under Article 12(1) was violated by one or more of the Respondents;
- b) a declaration that the decision taken by any one or more of the Respondents to cancel the appointment of the Petitioner to the post of Librarian Class III (document marked "P13") and all the consequential orders are null and void; and
- c) a direction upon one or more of the Respondents to restore the Petitioner in the above position (document marked "P10") with the same privileges.

The Respondents stated that the Petitioner was appointed to a temporary position in 2000 by the letter marked as "P1" to the Petition. By the letter dated 16th December, 2015 he was appointed in the post of School Library Attendant.

The Uva Provincial Public Service Commission called for applications to fill vacancies in the Post of Librarian Class III in the Uva Province by the Circular dated 15th March, 2011. The Circular required applicants for the said post *inter alia* to have completed an active service of ten years as a Library Assistant or Library Attendant and be confirmed in such posts.

After passing the limited competitive examination for the recruitment for the said post and an interview, the Petitioner was appointed as a Librarian Class III by the letter dated 29th March, 2012 with effect from 2nd April, 2012. Accordingly, he was transferred to the Department of Local Government of the Uva Province and was attached to the Soranathota Pradeshiya Sabha as its Librarian.

In the meantime, the Secretary of the Public Service Commission of the Uva Province had informed all the relevant officers by his letter dated 28th June, 2012 of the decision not to recruit

officers for the post of Librarian Class III of the Uva Provincial Public Service based on the results of the limited competitive examination as the employees who had passed the said examination did not meet the required qualifications.

The Respondents further submitted that in his application, the Petitioner had erroneously or falsely identified his post as Library Attendant when he was in fact, as per “P3”, the School Library Attendant. Further, the Petitioner had stated that he was appointed to the present post on 15th July 2000, when “P3” clearly states that his appointment was with effect from 1st July, 2005. Moreover, he had stated the date of confirmation in the present post as 1st July, 2005 which was the date of appointment to his present post that was subjected to a three year probationary period. Thus, the Petitioner had erroneously or falsely furnished wrong information in his application.

Since it transpired that the Petitioner did not have the required qualifications at the date of application, the appointment was cancelled by letter dated 31st May, 2012. Therefore, the appointment of the Petitioner was cancelled due to failure to meet the eligibility criteria for the post. As the Petitioner’s appointment was cancelled, he was asked to report to his previous place of work.

Therefore, the Respondents have not in any manner violated the rights of the Petitioner and that in the circumstances the Petitioner is not entitled to the reliefs prayed for.

Did the Petitioner possess the required qualifications when he applied for the post of Librarian Class III?

The issue in this Application is whether the Petitioner had fulfilled the required eligibility criteria as at the date of applying for the post of Librarian Class III i.e. whether he had served in the post of Library Attendant or Library Assistant as a confirmed employee for a period of ten years.

The Petitioner had been appointed as a casual library employee on a temporary basis with effect from 15th July, 2000 by the letter of appointment dated 25th October, 2000. The said letter of appointment stated that the Petitioner has no right to a permanent position in the Provincial Council or in the Central Government by virtue of his temporary appointment.

The Log Entry made by the Principal of the Baddegama Maha Vidyalaya in Badulla, marked “P2”, states that the Petitioner assumed duties on 22nd November, 2000 as a casual library employee.

Later, the Petitioner was appointed to the post of Library Attendant of Uva Province with effect from 1st July, 2005 by the letter dated 16th December, 2005. The said letter of appointment was subject to a three year Probationary period.

The title of the said letter states “Confirmation in the Post of Library Attendant”. However, the body of the letter clearly states that the Petitioner was appointed to the post of permanent School Library Attendant of the Uva Provincial Public Service subject to a probationary period of three years.

Upon consideration of the clauses in the said letter of appointment, it is clear that the letter merely appoints the Petitioner to the post of Library Attendant and cannot be considered a letter of confirmation.

Clause 2.2 of the Establishment Code defines a casual officer as follows:

“a person appointed as such, on a daily pay basis, for a short period, to a post approved as a casual post, or as a stop-gap measure to a temporary or permanent post pending the filling of the post on a temporary or a permanent basis.”

A casual employee is one who is engaged to do a particular type of work for a short period. A casual employee does not have the rights of a permanent employee.

I am also of the view that an employee working on a casual basis cannot be confirmed in his post, as a casual employee does not have a permanent post.

The Petitioner was appointed to the Provincial Public Service in 2005 as a Library Attendant which was the post that he was holding at the time of applying to the limited competitive examination for recruitment to Librarian Class III.

By the Circular dated 15th March, 2011, the Uva Provincial Public Service Commission called for applications to fill vacancies for the posts of Librarian Class III in the Uva Province. The said Circular required applicants for the post *inter alia* to have completed ten years of active service as a Library Assistant or Library Attendant and be confirmed in the same post.

The Petitioner had submitted an application for the post of Librarian Class III taking into consideration the number of years he served since 2000; notwithstanding the fact that he was appointed as a casual employee on a temporary basis by a letter dated 25th October, 2000, marked “P1”. Further, he stated in his application that he was appointed to the post of Library Attendant on 15th July, 2000 when in fact he was appointed to the said post on the 1st July, 2005 and that he was confirmed in the post of Library Attendant on 1st July, 2005 which is the date of appointment to the said post.

A casual employee cannot consider the period that he worked on a casual basis as active service. Therefore, as the Petitioner was in continuous active service of the Uva Provincial Public Service for only five years as at the date of applying for the said examination, he was not eligible as he did not meet the ten year active service requirement.

Moreover, Section 13 of the Gazette notification dated 31st December, 2010 clearly states that if it is revealed that any information furnished by a candidate is false, the candidate can be removed from the service at any time.

Further, in Section 7.0 of his application for the Librarian Class III, the Petitioner had certified that all the information furnished by him in the application was true and accurate and admitted his knowledge on the fact that if any information furnished by him was revealed to be false, he could be removed from the government service at any time.

In the circumstances, I am of the view that as the Petitioner did not possess the required number of years of service and the misrepresentation or false declaration of information furnished to obtain the appointment are sufficient grounds to cancel the appointment according to the terms of the letter of appointment.

At the time of the cancellation of the appointment given to the Petitioner by letter of appointment marked as “P10” he was working as a probationer. Thus, the employer is not bound to give reasons for the termination of the Petitioner’s services.

Thus, there is no violation of the Fundamental Right of the Petitioner guaranteed under Article 12(1) of the Constitution by the Respondents.

I order no costs.

Judge of the Supreme Court

Priyasath Dep PC, CJ

I agree

Chief Justice of the Supreme Court

Upaly Abeyrathne, J

I agree

Judge of the Supreme Court