

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

S.C (FR) No.164/2015 with S.C (FR) No.276/2015

In the matter of an Application under
and in terms of Article 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka

S.C (FR) No.164/2015

1. P. H. Balasooriya of
52, Mile Post,
Kannattiya, Mihinthale.

And 31 others

PETITIONERS

Vs.

People's Bank
People's Bank Head Office
No. 75, Sir Chittampalam A. Gardiner
Mawatha, Colombo 02.

And 13 others

RESPONDENTS

S.C (FR) No. 276/2015

1. P.P.M. Wijewickrama
"Pramuditha",
Thalahagamwaduwa
Walasmulla.

And 39 others

PETITIONERS

Vs.

1. People's Bank
No. 75, Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.

And 3 others

RESPONDENTS

BEFORE:

Sisira J. de. Abrew J.
Upaly Abeyrathne J. &
Anil Gooneratne J.

COUNSEL:

Dr. S.F.A. Cooray with Pathum Bandara
for the Petitioners in S.C (FR) 164/2015

J.C. Weliamuna with Pasindu Silva and
Sulakshman Senanayake for the Petitioners in S.C (FR) 276/2015
Manohara de Silva PC with Hirosha Munasinghe
For the 1st – 13th Respondents in SC (FR) 164/2015
And 1st – 3rd Respondents in S.C (FR) 276/2015

Sanjay Rajarathnam P.C., A.S.G. with Rajitha Perera S.S.C
For the Attorney General in both cases

ARGUED ON:

10.01.2017

DECIDED ON:

03.03.2017

GOONERATNE J.

The above two Applications S.C (FR) 164/2015 and S.C (FR) 276/2015 which are similar in nature were taken up together for hearing. There are altogether 32 Petitioners in S.C (FR) 164/2015 and 40 Petitioners in the other application. Both sets of Petitioners seek almost the same relief. Petitioners applied for the post of Customer Service Assistants of the 1st Respondent Bank in response to a newspaper advertisement (P1). According to the advertisement P1, applicants need to (as presented in case No. 276/2015).

- (a) Sit for a qualifying examination to be conducted by the Department of Examinations and meet the stipulated standard. All candidates to reside in a relevant Grama Niladari Division at least for 5 years.
- (b) Successful candidates who meet the stipulated standard as above to be called for an interview, and those successful to undergo training period of 4 years covering on all aspects of banking.
- (c) Successful completion of the said period result in contractual/permanent appointment of the People's Bank.

I note the submissions of counsel who appeared in both applications. It was submitted on behalf of the Petitioners that they applied for the above post as in P1. The admission card required to sit for the examination is produced marked P2 (similar card received by Petitioner in 276/2015) on or about

June/July 2013, the Petitioners received their results (P3). By letter P4 of 13.08.2013 all Petitioners were informed that they would be eligible to be present for an interview, for the above post. Interview held on or about September 2013 and all Petitioners participated. Thereafter all Petitioners received letter of 13.11.2014 from the 1st Respondent Bank that they were selected for the post of Customer Service Assistant (P5). It is specifically pleaded that having received letter P5 all Petitioners had a legitimate expectation that they will be awarded a contract of employment for the post of 'Customer Service Assistant', at the People's Bank. It was also argued on behalf of the Petitioners that the communication as above is an indication of the continuation of the published advertisement marked P1 upon which the Petitioners were only to be given formal letters of appointments. It is pleaded that the 1st Respondent Bank was to proceed with the issuing of the letters of appointment to the Petitioners but were delayed due to an announcement on the previous Presidential Elections in or about November 2014. However, consequent to the end of elections in January 2015, the appointments should have been given to the above post since it was a result of the advertisement marked P1.

Due to delays and as the Petitioners did not receive any communication from February 2015 the Petitioners individually wrote to the Board of Directors of the 1st Respondent Bank, requesting to act on letter P5.

Petitioners have produced letter P7 in this regard. To their surprise on or about 12.04.2015 the 1st Respondent Bank by advertisement P7 once again called for applications for the post of "Customer Service Assistant". The hardship the Petitioners have to undergo due to their expectations on letter P5 are described in paragraph 16 of the petition. Eg. Petitioners employed had submitted their resignations. 1st and 2nd Petitioners who were required to sit for another competitive examination for some other post, did not sit for the examination.

It is also pleaded that some applicants who received similar letters informing that they have been selected have been given their letters of appointments from the 1st Respondent and further plead that failure of the People's Bank to issue the Petitioners letters of appointment is arbitrary, discriminatory and unlawful and amounts to a violations of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution. I also note that in the written submissions of the Petitioners in case No. 276/2015 it is stated that vacancies were filled by batches and the 1st batch of 510 was appointed with effect from 17.02.2014 and the 2nd batch of 323 appointed with effect from 06.05.2014, and the 3rd batch was selected at the time of filing of this application.

The position of the People's Bank is more-fully described in the affidavit of the 2nd Respondent to this application (Nos. 276/2015 and 164/2015). It is averred that the Bank had taken a policy decision to cancel the decision taken by its Board under Board paper 104/2015 to recruit 1000 customer Service Assistants at a meeting held on 24.11.2015. Accordingly the 1st Respondent Bank did not recruit any of the applicants who had applied for the post of Customer Service Assistants under advertisement marked P7. It is further averred that the decision was taken by the new administration of the 1st Respondent Bank upon change of policy to digitalise the bank and in that direction to strengthen the IT Department and to recruit a maximum of 500 personnel with IT related qualifications and place them at a suitable position to facilitate digitalization process. Internal letter 1R1 containing the decision is produced. It is pleaded that mere selection of an applicant does not necessarily result in an applicant having a legitimate expectation. Further it is pleaded that the policy decision is not selective or discriminatory. Once the bank is fully digitalized Customer Service Assistants will not be necessary.

In the counter affidavit of the Petitioner the 7th Petitioner giving details of candidates, pleads that over 800 were appointed under P1 as Customer Service Assistants. A list prepared by the Petitioner is produced P(9a) and P(9b) and a extract from official news magazine of the bank in April 2014 is

produced P10. Petitioner also provide more proof by producing further documents marked P11(a), P11(b) and P11(c) & P11(a) is a mark sheet of one Vindani issued by the Examinations Department (average marking 65.33) P11(b) is the letter of 23.01.2014 selecting Miss Vindani, sent by 1st Respondent's letter P1 (c) appointment letter of Miss Vindani.

I have also perused the petition of the several Petitioners in S.C. Application No. 164/2015. It is filed on the same footing as in S.C. Application No. 276/2015 for the same post and giving details of result sheets, letter calling for interview, selection letter etc. However more details are pleaded and makes the application prolix, but it is the same issue before court as in case No. 276/2015. In fact each Petitioner's details are pleaded in separate paragraphs of the petition. However the prayer to the petition as in sub paragraph (b) seeks to obtain a decision for an imminent infringement of fundamental rights of the several petitioners. I also note the journal entry of 20.01.2016 where certain Intervenient-Petitioners made an application to this court to intervene, but on 12.02.2016 Intervenient-Petitioners withdrew their application to intervene as they came to know that no appointments would be made by the bank and withdrawal was allowed by court.

The Supreme Court on 28.01.2016 granted Leave to Proceed for the alleged violation of Articles 12(1) and 14(1)(g) of the Constitution in both applications, I am inclined to accept the argument of the learned counsel for the Petitioners that once the process of selection was complete the Respondents should have proceeded with the formal appointments and in fact the bank is under a legal obligation to select and appoint the suitable candidates. The policy of the People's Bank as reflected in Board Paper 104/2015 taken on 24.11.2015 to cancel the decision to recruit 1000 Customer Service Assistants seems not to be applicable to the Petitioners as it intends to cancel recruitments made in 2015 (P7) and thereafter. Petitioners in both applications were selected by letter dated 13.11.2014 (P5) and surprisingly as observed by the Petitioners formalities were not followed after issuance of selection letters. There is a legal obligation to follow the formalities and make due appointments. The facts of the case discussed clearly demonstrate a legitimate expectation of all successful Petitioners in both applications. A somewhat similar situation arose in the case of *W.K.C Perera vs. Daya Edirisinghe and Others 1995 (1) SLR 148 M.D.H.* Fernando J. held

“whether the Rules and Examination Criteria have statutory force or not, the Rules and Examination Criteria, read with Article 12, confer a right on a duly qualified candidate to the award of the Degree, and a duty on the University to award such Degree without discrimination; and even where the University has reserved some

discretion, the exercise of that discretion would also be subject to Article 12, as well as the general principles governing the exercise of such discretions” – at pages 156 & 157.

Respondents no doubt seek to justify the non-appointment on the 1st Respondent Bank’s decision to digitalize the bank. Material furnished as an excuse by the bank as above is not supported with cogent reasons. On the other hand as a matter of law the change of policy should not defeat legitimate expectations as held in *Dayarathne and Others Vs. Minister of Health and Others* 1999(1) SLR 393

Per Amarasinghe J. at 394..

“when a change of policy is likely to frustrate the legitimate expectation of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatment, arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the executive”

Another point raised by learned counsel for the Petitioners is that failure to give reasons of the non-appointment of the Petitioners. The Petitioners had no communication from the 1st Respondent Bank, after letter P5 was sent to them which gave the expectation of being appointed as in P1. Once selected the next step in ordinary course and circumstances should follow. In fact only in the objections filed by the 1st to 3rd Respondents it is conveyed to

court of a policy decision, without the policy decision being placed before court. It was only an internal memo (1R1) that was made available to court. I also note that Petitioners were selected inclusive of qualifications on computer literacy, among other achievements. There are several cases in which court has held the necessity to give reasons under various circumstances. Giving reasons has become, increasingly an important protection of the law. *Karunadasa Vs. Unique Gem Stones Ltd. & Others 1997(1) SLR 256*. At pg. 264 it was stated that whether parties are entitled or not to be told of reasons for decision, if they are withheld, once judicial review commences the decision could be condemned as arbitrary or unreasonable. In *Suranganie Marapana Vs. Bank of Ceylon and Others 1997 (3) SLR 156* failure to give reasons was held to be arbitrary, capricious and unreasonable.

In another decided case right to equality was recognised. *Dr. Elizabeth Manel Dassanayake Vs. K.E. karunathilake SC/FR 267/2010; S.C. minute 09.02.1016* . In this case the Respondent arbitrarily stopped the appointment process to the post of Director Horticulture, Crop Research and Development Institute Gannoruwa and held right to equally guaranteed under Article 12(1) of the Constitution is violated.

As discussed above based on P1, nearly 800 candidates were already been appointed. Vide P11(a) & P11(c) and all those have passed the

same examination as the Petitioners. The Petitioners who were successful in the selection process are not considered for appointment. It is in a way discrimination and violation of Article 12(1) of the Constitution. Any other argument to support non-appointment of Petitioner cannot be accepted as the same post had been advertised in the year 2015 and 2016. What was the necessity to advertise again and again? I also observe that under the scheme candidates will be selected on a District basis for the training and should serve the District for at least 5 years. This would go beyond the period of training which is spelt out in P1 to be a period of 4 years on contract. The satisfactory performance of duties will lead them to permanent status (vide P11 (c)).

Upon a consideration of all matters placed before this court pertaining to both Applications (S.C (FR) 276/2015 and S.C (FR) 164/2015) I am of the view that the Petitioners rights are violated under Articles 12 (1) and 14 (1) (g) of the Constitution and entitled to relief, as follows:

In S.C (FR) 276/2015 relief granted as per sub paragraph (b) and (c) of the prayer to the petition. Further this court award compensation to all 40 Petitioners in a sum of Rs. 75,000/- each.

In S.C (FR) 164/2015 this court grants relief as per sub paragraph (b) and (c) of the prayer to the petition based on advertisement marked 'X' and letter marked P1 being letter dated 13.11.2014 sent by the People's Bank to

each Petitioner, on being selected. Advertisement 'X' and letter 'P1C' are identical to document P1 and letter P5 in S.C (FR) 276/2015 respectively. The Respondent Bank is directed to recruit the Petitioners in both applications as per letter P1, and P5 (similar letters issued in S.C 164/2015). Further court award compensation in a sum of Rs. 75,000/- to each Petitioner as above. These two applications are allowed with costs.

Application allowed.

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