

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

In the matter of an Application under
and in terms of Articles 12(1) and
14(1)(g), read with Articles 17 and
126 of the Constitution.

Benthota Payagala Arachchilage
Chinthaka Premaruwan,
No.160/13, Maligagodalla Road,
Udumulla, Mulleriyawa.

Petitioner

S.C.(F.R.) Application No. 428/2016.

Vs.

1. Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
2. Mr. T. G. Jayasinghe,
Chairman & Managing Director,
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
- 2A. Chairman & Managing Director,
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
- 2B. Mr. Sumith Wijesinghe,
Chairman & Managing Director,
Ceylon Petroleum Corporation,

- No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
- 2C. Mr. M. Uvais Mohamed,
Chairman & Managing Director,
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
- 2D. Mr. Saliya Wickramasuriya,
Chairman,
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.

Added as 2D Respondent

3. Anjalee Kumaragamage,
Director,
Ministry of Petroleum Resources
Development,
No.80, Sir Ernest de Silva Mawatha,
Colombo 07.
4. W. M. K. R. B. Wickramasinghe,
Deputy General Manager
(Marketing),
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
5. W. D. L. C. Abeyagunawardene,
Manager (Marketing) (Covering up),
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.

- 5A. S. M.C.P. Samarakoon,
Manager (Marketing,
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
- Added as 5A Respondent**
06. S. W. Gamage,
Former Deputy General Manager
(HR) & Admin),
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
- 6A. Samantha Pushpalal Withana,
Deputy General Manager (HR &
Admin)
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
07. Samantha Pushpalal Withana,
Manager (Human Resource) and
Acting Deputy General Manager (HR
& Admin)
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
- 7A. V. P. Upananda,
Manager (Human Resource),
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.

08. U. H. M. Priyantha Dayarathne
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
09. L. B. Rajapaksha, (15666),
C/O, Area Supervisor (North
Western Province).
10. V. K. D. Deepal, (15687),
C/O, Area Supervisor,
(Sabaragamuwa Province)
11. D. P. S. Kumara, (13885),
C/O, Area Supervisor (North
Western Province).
12. J. Jegadeeswaran, (6549),
C/O, Area Supervisor (Northern
Province).
13. K. D.K. P. Nanayakkara, (12614),
C/O, Area Supervisor
(Uva Province).
14. Y. I. Subasinghe Arachchi, (12659),
C/O, Area Supervisor (Western
Province).
15. D. G. Rathnayaka, (12289),
C/O, Area Supervisor (North
Central Province).
16. W. M.R. P. K. Weerakoon, (15673),
C/O, Area Supervisor, (Central
Province).
17. S. Nimalsangar, (15133),
C/O, Area Supervisor (Eastern
Province).
18. K. A. D. G. C. Perera, (10829)
C/O, Area Supervisor (Western
Province).

19. S. M. B. G.B. Samaratunga, (15550),
C/O, Area Supervisor (North
Western Province).
20. A. M. I. R. B. Dikkapitiya,(12515),
C/O, Area Supervisor
(Uva Province).
21. H. M.L. Sagara, (8419),
C/O, Area Supervisor, (Southern
Province).
22. D. N. D. Weragala, (14320)
C/O, Area Supervisor (Western
Province).
23. S. P. Ranasinghe, (13332),
C/O, Area Supervisor
(Uva Province).
24. S. Suendran, (15150),
C/O, Area Supervisor (Northern
Province).
25. W.L.C.K. Liyanage, (14854)
C/O, Area Supervisor, (Central
Province).
9th to 25th Respondents all of
Ceylon Petroleum Corporation,
No. 609,
Dr. Danister de Silva Mawatha,
Colombo 09.
26. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

BEFORE : S. THURAIRAJA, PC, J.
ACHALA WENGAPPULI, J.
MAHINDA SAMAYAWARDHENA, J.

COUNSEL : Harsha Fernando, PC for the Petitioner.

Dr. Avanthi Perera DSG for the 1st to 8th and 26th
Respondents.

ARGUED ON : 25th June, 2024

DECIDED ON : 12th March, 2026

ACHALA WENGAPPULI, J.

The Petitioner filed his petition dated 28.11.2016 in the Registry of this Court on 29.11.2016, invoking the jurisdiction conferred on it under Articles 17 and 126(1) of the Constitution.

When the said petition was taken up on 16.12.2016 for consideration of granting of Leave to Proceed, learned Counsel for the Petitioner informed Court that he is unable to demonstrate before this Court of the manner in which the Petitioner was discriminated by the 1st Respondent Corporation by denying his due promotion, as he was unaware of the exact criterion that has been applied for the impugned selection process. The Court enquired from the learned Senior State Counsel of the prospect of producing the marks obtained by each of the candidates at the interview. At that stage, the learned Senior State Counsel, who represented the 1st to 8th and the 26th Respondents, moved for sufficient time to tender the relevant mark sheets, which would lay bare the Petitioner's performance during the interview *vis a vis* the successful candidates.

With the Court deciding to grant an opportunity for the 1st Respondent Corporation to tender the documentation related to allocation

of marks and the applicable selection criterion, the Petitioner indicated to Court of the need to amend his petition, in view of the new material being introduced by the 1st Respondent Corporation. The relevant Mark Sheets were tendered to Court by way of a Motion dated 22.12.2016 by the learned Senior State Counsel, along with the applicable selection criteria and the Marking Scheme for Recruitment and Promotion, which are applicable to the employees of the 1st Respondent Corporation, the Ceylon Petroleum Corporation.

The Petitioner thereupon filed an amended petition dated 06.02.2017 in the Registry on 08.02.2017 with notice to the Respondents. He also annexed a copy of the Mark Sheet to the said amended petition marked as "P8", and asserted that he would challenge its authenticity.

On 14.02.2017, when the matter was taken up for support for leave once more, learned Senior State Counsel objected to the acceptance of the amended petition. His objection was raised on the basis that the reliefs sought therein are out of time, in terms of Article 126(2) of the Constitution. The Petitioner conceded to that position and the Court was of the view that the petition of the Petitioner could not be permitted to support in the same form in which it was presented to Court.

Learned Counsel for the Petitioner thereupon informed Court that he does not seek relief prayed for in sub paragraph (i) of the amended petition dated 06.02.2017. In that relief, the Petitioner has sought to quash the interviews that had already been held and a direction of Court to hold it afresh. The Court has thereupon permitted the Petitioner to support his application. Having heard submissions of the parties, this Court has

decided to grant Leave to Proceed to the Petitioner, for the alleged violation of his fundamental rights, guaranteed under Article 12(1).

The Petitioner was recruited by the 1st Respondent Corporation by the appointment letter dated 11.10.1995 issued to him to the post of Clerk – Grade B-3 and was confirmed on 05.11.1998. He was thereafter promoted to Clerk – Grade B-2 on 15.06.2005. The Petitioner states that the post of ‘Clerk’ was discontinued by the 1st Respondent Corporation and it was re-designated as “*Management Assistant – Grade B-2*”. The Petitioner has completed 21 years of unblemished service at the 1st Respondent Corporation. The Petitioner is also a member of a Trade Union named “*Jathika Nidahas Sewaka Sangamaya*”.

The alleged violation of his fundamental rights occurred when he applied for the next promotion, which is described as the post of ‘Area Supervisor – Grade B-1’. When the 1st Respondent Corporation has advertised calling applications to fill the vacancies of said post, the Petitioner, who is said to have all the qualifications, as set out in the said advertisement, has presented his application.

He received a letter dated 16.12.2015 to be present at Sri Lanka Institute for Development Administration (SLIDA) along with an Admission Card directing him to sit for a written examination. However, no examination was held on 10.01.2016 as notified. The Petitioner was then informed by a letter dated 16.08.2016 to sit for an examination to be held at the Head Office of the 1st Respondent Corporation. The Petitioner accordingly sat the examination along with several other candidates. However, the 1st Respondent Corporation did not release the marks of that

examination to those candidates. The Petitioner is confident that he has scored the highest marks during the said written examination.

Thereafter, the Petitioner was directed by letter dated 23.09.2016, to be present for an interview. The 2nd to 8th Respondents were the members of the interview panel. During the interview, the Petitioner was questioned on his service record, any special activities and the period of service in the current grade. He was also questioned under the "*special activities*" category, and the Petitioner accordingly presented an inventory system which he has developed. According to the Petitioner, this inventory system enabled management of the 1st Respondent Corporation to properly inventories all 64 component parts of fuel dispensers (fuel pumps) that are brought into the workshop of the Corporation, for servicing and carrying out repairs. The Petitioner claims that his system was readily accepted and implemented by the management and was able to effectively prevent acts of theft of those parts or abuse of spare parts.

The Petitioner states that the members of the interview panel commended him for his industry in developing the said inventory and observed that no other person they had interviewed up to that point had introduced such a system. He further asserts that he should have been awarded 10 marks under the category "*Extra Qualifications and Extra-Curricular Activities*", whereas he was awarded none by the interview panel for that category. Having obtained a total of 45.5, with the said 10 marks added to his total to make 55.5, he would then have secured an opportunity for promotion. However, the Petitioner was surprised to learn that when the successful candidates were issued with appointment letters with a ceremony held on 26.10.2016, his name was not included. The 9th to

25th Respondents to the instant application are the successful candidates, who have been promoted since, to the post of Area Supervisor- Grade B-1.

It is in these circumstances, the Petitioner asserts that the allocation of marks to candidates during the interview was done arbitrarily, in order to give an undue advantage to some of the candidates. Therefore, the Petitioner claims that the 1st Respondent Corporation has failed to follow due process in conducting the interviews, as he was not made aware as to the applicable assessment criterion before he was called upon to be interviewed.

The 1st to 8th and the 26th Respondents denied the Petitioner's claim of infringement of fundamental rights and have resisted his claim to be appointed to the post of Area Supervisor - Grade B-1, on the basis of his failure to obtain a placement in the order of merit, which all the candidates who faced the interview were placed in.

The 7th Respondent, in his affidavit, asserted that the marking scheme applied to the candidates during the interview was made known to all prospective candidates, as indicative by the Petitioner's own document P3A. He further asserts that the inventory procedure the Petitioner claims to have developed (P7) is only a list of spare parts which he is required to check in anyway, as part of his official duties and therefore does not make him qualified to obtain additional marks, in terms of the said published marking scheme.

The Petitioner sought to challenge this claim in his counter affidavit and re-iterated his position that the 1st Respondent Corporation has readily accepted his proposal and decided to implement the same which is a fact.

He further claims that should have been considered in his favour by the interview panel.

When this matter was taken up for hearing on 31.10.2023, learned Counsel for the Petitioner contended before this Court that the Mark Sheet P8 is a fraudulently created document and therefore could not be accepted as a valid document in the eyes of law. Learned DSG, who represented the Respondent Corporation submitted that the said contention of the Petitioner was advanced only during the hearing and that too as a surprise move and accordingly wished to obtain specific instructions from the relevant Respondents, who interviewed the Petitioner, to counter that contention. She has further undertaken to file affidavits that describe the manner in which the document P8 was prepared. Hearing was adjourned to another date in order to facilitate this request made by the 1st Respondent Corporation.

On 22.11.2023, the affidavits of the 4th Respondent (Deputy General Manager- Marketing), the 5th Respondent (Deputy General Manager - Retail), the 7th Respondent (Deputy General Manager - Human Resources and Administration) and the 8th Respondent (Deputy Manager - Human Resources) were tendered before this Court by way of a Motion on behalf of the 1st Respondent Corporation.

The hearing of the application resumed on 25.06.2024. On that day the oral hearing of the learned Counsel was concluded and the parties were permitted to tender written submissions, a direction with which they have complied.

It is evident from the Petitioner's submissions that he has chosen to place heavy reliance on two primary factors, in support of his allegation of infringement of fundamental rights. First, he contends that he should have been awarded 10 marks under the heading "*Extra Qualifications and Extra Curricular Activities*" (9 marks in view of the certificates P10, P11, P12, P13 and P14. He also expected the panel to offer him one mark for the inventory system he has introduced). Second, the authenticity of the Mark Sheet P8, which the Petitioner claims to have been prepared prior to the interview and the explanation of the 6th Respondent indicates that the names of the successful candidates were inserted into P8 by "*re-typing the last page of the mark sheet.*"

The Petitioner's complaint that the examination results were not made available has no significant impact on his allegation, as it is obvious that he was successful in the written examination. This is because he was called for the interview, which in fact is the last step in the selection procedure. The document P3, as contended by the learned DSG, sets out the marks that are allocated under each head and under the heading "*Extra Qualifications and Extra Curricular Activities*" a candidate could have scored a maximum of 15 marks. In that document, under the heading "*Interview*" it is also indicated that a candidate could score a maximum of 20 marks.

Now I turn to consider his first complaint that he should have been awarded 10 marks under "*Extra Qualifications and Extra Curricular Activities*".

The certificates P10, P11, P12, P13 and P14 on which the Petitioner relies on in support of his claim of entitlement to 9 marks are as follows.

- P10 a “Certificate of Honour” issued by Sri Lanka Members of Bodybuilding, Fitness & Culture Association,
- P11 the Volleyball team of the *Damahana Maha Vidyalaya* (which the Petitioner is a member) , has won the first position from that school cluster in 1990,
- P12 the *Elle* team of the *Damahana Maha Vidyalaya* (which the Petitioner is a member) was the runner up in the tournament of *Balangoda Division Schools* in 1990,
- P13 the Petitioner was placed second in the long jump event in the interhouse sports meet of *Damahana Maha Vidyalaya* in the year 1985,
- P14 invitation to participate a training programme conducted to officers who are appointed to the associated grades of the clerical service of the Corporation.

Learned DSG invited our attention to the Marking Scheme tendered to this Court along with a Motion dated 22.12.2016, in compliance with its direction on the Respondents to do so, where the Board of Directors have approved the “*Criteria & Marking Scheme for Recruitment & Promotions*” by a board decision taken on 26.05.2015. The applications for the post of Area Supervisor - Grade B-1 were called on 18.09.2015 (P3A), after the said marking scheme was accordingly approved by the board and became applicable.

Perusal of the said marking scheme indicates that it applies to all employees of the 1st Respondent Corporation. In relation to the heading

“Extra Qualifications and Extra-Curricular Activities” under which the Petitioner claims that he should have been awarded 10 marks, the said marking scheme states under the heading *“Related Training & Extra-Curricular Activities”* that the 15 marks could be awarded under two categories. The Category I, dealt with *“Seminars/ Certificates/ Diplomas in the relevant filed of the position/ post or designation applied for”* while Category II dealt with the achievement of the candidate in sports.

The further description to Category I regarding *“Seminars/ Certificates/ Diplomas in the relevant filed of the position/ post or designation applied for”* as provided for in the said marking scheme in tabulated form is as follows;

Type of Course/ Training	Marks allocated
Seminars/Participation	01
Foundation	02
Certificate/ Professional Memberships	03
Diplomas	05

The said marking scheme also clarifies that a candidate, who possesses such qualifications, would be awarded marks only to *“one or more completed qualifications.”*

It is relevant to note at this stage that the Petitioner was awarded no marks by the interview panel under *“Extra Qualifications and Extra Curricular Activities”*. The Respondents claim that the Petitioner has failed

to produce any such certificates during the interview and therefore assert that it should not be considered by this Court at all.

The Respondent's said claim is supported by the third document that has been tendered along with the mark sheet and the selection criterion. The 1st Respondent Corporation has prepared a detailed document that sets out the qualifications of each of the 35 candidates who have been called for an interview. In that document titled "*Interview for the post of Area Supervisor*

- *Grade B-1*", under separate columns, the educational qualifications, service period, other qualifications are set out against the names of each of those 35 candidates for the benefit of the interviewing panel. This document was prepared on the basis of the applications submitted by each of the candidates and they were required to tender the originals of any supporting documents they wish to present to impress upon their suitability to the post. Out of 35 candidates, 17 of them, including the Petitioner, did not provide any supporting documents in relation to column "*Other qualifications*". Of the successful candidates only the 9th, 10th, 11th, 14th, 19th, 20th, 23rd and 24th Respondents have tendered their other qualifications whereas the candidates *Dharmakeerthi, Rathnayake, Hettiarachchi, Witharanage, Nanayakkara, Dharmawadena, Hapukotuwa, Nimal Shangar, Jaleeshan, Karunaratne, Sudantha, Ashanka and Sangeeth*, though tendered such qualifications, were not successful in securing a promotion.

This observation also supports the 1st Respondent Corporation's position that the selection criterion was made available prior to the interview as there are candidates who did tender such documents and are

successful in securing promotion while others who did not, but were successful.

Of the five certificates the Petitioner has relied on for his claim of entitlement to 9 marks, only P14 could be taken as a certificate that might have been considered under Category I. However, P14 is merely an invitation and, therefore does not provide any confirmation of his participation in that workshop. If that confirmation was presented before the panel, he could have scored one mark.

Certificate P10 to P13 refers to his sports activities. The marking Scheme sets out the different levels of recognition in the field of sports. That too has been tabulated in that scheme. The table that dealt with achievements of the candidates in the field of sports is as follows;

Achievement	For each
International Level achievement	05 Marks
National Level achievement	04 Marks
Provincial Level achievement	03 Marks
Achievement as CPC representative	03 Marks
District Level/Educational Divisional level/ Inter University/ Faculty level	02 Marks
School level achievements (sports meet)	01 Mark

Even if certificates P10 to P14 in fact were produced before the interview panel, it is doubtful whether they would make the Petitioner entitled to receive 9 marks, as it appears that they all confirm only of his

participation of team events and could not be taken as any individual achievement. The certificate P13 indicates that the Petitioner, who contested individually for the long jump event, achieved the second place in an interhouse sports meet of his school in the year 1985. If at all, that certificate would have made him entitled to just one mark, provided that certificate was presented before the interview panel. Thus, the zero marks allocated to the Petitioner under the heading "*Extra Qualifications and Extra-Curricular Activities*" is fully justified, particularly in the absence of any proof of such achievements.

Contrary to the Respondent's attempt made in the affidavit, in order to down play the recognition of the Petitioner's inventory template, the Assistant Manager (Sales, Maintenance and Repair), on 10.12.2015, when presented to his immediate superior, made an endorsement on it to the effect that it is an "*important suggestion*" and directed that it be implemented immediately (vide P7). However, the awarding of one mark, as expected by the Petitioner, on account of his contribution to the management of the work shop by developing the said inventory template could not be accepted, in view of the criteria and scheme of marks, as set out in the said marking scheme under the heading "*Extra Qualifications and Extra Curricula- Activities*".

With those findings, I now turn to consider the contention of the Petitioner presented on the mark sheet P8 challenging its authenticity.

In his application dated 16.11.2016, addressed to the Human Rights Commission of Sri Lanka, the Petitioner described the manner in which his fundamental rights were violated by the 1st Respondent Corporation. In

that application, the basis of the Petitioner's grievance is based on promoting others over him, who are below his rank and qualifications (vide P5). In addition, the Petitioner filed his original application alleging infringement of his fundamental rights repeating the same allegation and pointing out those who have been promoted over him.

It was already noted that the learned Counsel for the Petitioner himself conceded that he is unable to place any material before the Court substantiating the alleged discrimination complained of by his client in the petition. Thus, an amended petition was tendered after perusing the marking scheme, the table presented to the interviewing panel indicating the relevant information regarding the candidates and the final marking sheet with the list of successful applicants.

In that amended petition, the Petitioner sought to re-formulate his grievance by identifying two propositions by which he was denied of his due promotion. At the hearing of the amended petition, the primary factor on which the Petitioner has relied on for substantiating his alleged violation of fundamental rights is the authenticity of P8. Thus, it could be seen that the Petitioner himself was not clear in his mind as to how and why he did not receive the promotion he desperately wanted from the beginning of the instant process of litigation. Clearly, the manner of infringement has undergone a significant transformation since his application to the Human Rights Commission of Sri Lanka, eventually evolving into taking up the position that the Respondent Corporation produced a fabricated mark sheet and thereby made an attempt to justify the impugned decision taken by the 1st Respondent Corporation to promote only the 9th to 25th Respondents.

The main thrust of the Petitioner's argument as to the authenticity of the mark sheet P8 was focused on the fact that the marks entered therein are done manually whereas the names of the selected candidates appear in printed form in the same document. The learned Counsel invited our attention to the two dates printed on P8, where the selected candidates are mentioned indicating the date as 26.09.2016 whereas the interviews are held on 28.09.2016. The learned Counsel further submitted that it is therefore logical to infer that the names of those who were recommended to be promoted by the interview panel should have been identified only after the interview process concluded on 28.09.2016 and for that very reason, it is not possible to include those who are selected in printed form on the same page that contains a table, in which the marks to be awarded, were to be filled by hand.

Learned DSG in her submissions referred to the factual position as reflected in the affidavits, which she tendered to Court by way of a Motion. She also invited our attention to the 6th Respondent who testified to the actions of the subject officer, *K.W.M. Subadra Wejeratne*, who since retired from services of the 1st Respondent Corporation, of how the mark sheet P8 in the form it is presented to Court was prepared.

It is her submission that Ms. *Wijeratne* had prepared a format of the mark sheet with the aid of a computer on 26.09.2016 which she intended to be distributed among the members of the interview panel. In that format, there is a cage for each of the members to make any amendments or to insert any marks. Ms. *Wijeratne* would fill the columns of the mark sheets before the interview process, depending on the material available in the personal file of each of the candidates to assist the interview panel. After

interviewing each candidate, the panelists would enter marks depending upon their own assessment on each of the individuals either by adding or deducting the tentative marks indicated against each candidate in the said mark sheet prepared by Ms. *Wijeratne*. At the conclusion of the interviewing process, a composite document is prepared, taking into consideration the amendments to the original draft mark sheet and then at its very end, the names of the 17 selected candidates are typed and a printout is taken, enabling each of the panelists to place their respective signatures, confirming the selection process.

The Petitioner relied on the date 26.09.2016, as printed at the very end of document P8 and appearing immediately after the signatures of all the panellists, in order to support his contention that the document is a fabrication, just above the list of selected candidates as it states “ *[T]he interview panel recommended to promote following candidates to the post of Area Supervisor at Grade B -1 with effect from 28.09.2016.*”

Having carefully perused all pages of the impugned mark sheet P8, I am inclined to accept the learned DSG’s submission, that had been made based on the contents of the affidavit of the 6th Respondent.

The document P8 is a document formatted in tabular form and saved in a computer by a typist, identified as “*S/sn*”. P 8 contains separate columns indicating marks scored by each candidate under different headings, denoting educational qualifications, annual appraisal average, seniority, extra qualifications, during the interview and the total, to be inserted manually. The column to the extreme left of P8 contained a list of candidates. All these columns, where marks are to be entered, are filled in

by handwritten numbers, although the rest of the document is a printout of a formatted document. The marks obtained by each candidate at the interview are entered in the relevant column by hand and the total marks too are added and inserted by hand.

The questionable disparity in the dates occurs only at the end of the fourth page of P8, as if it has been prepared on 26.09.2016, although the interview was conducted on 28.09.2016.

The document P8 is titled as follows;

*“MARKING SCHEME
POST & GRADE: AREA SUPERVISOR, GRADE B-1
MARKETING FUNCTION
DATE: 28.09.2016”*

There can be no dispute over the date 28.09.2016 as the date of the interview. Then what is the date 26.09.2016 that appears at the very end of the document P8? The answer to that question could be found in the bottom of each of the four pages, where it reflects the date 26.09.2016, which is the date on which it was formatted. The table containing 35 names ends halfway in page 4 of P8. Then appears the signatures confirming the preparation and checking of that document. The printed section up to this point indicates the document is formatted in a particular font size.

Then appears the sentence *“[T]he interview panel recommended to promote following candidates to the post of Area Supervisor at Grade B -1 with effect from 28.09.2016”* and the list of 17 selected successful candidates are inserted. The designations of the members of the interview panel who placed their

signatures form the last line of page 4 of P8 and that page too ends with the date 26.09.2019. It is very evident that the bottom part of page 4, where names of the successful candidates appear, the printed letters are in a smaller font size compared with the top part. The reason is obvious. If the intention was to have one composite document containing the marks as well as the selected candidates, the names had to be reformatted to a smaller font size to fit into the bottom part of the page of P8. After the interviews, P8 was prepared, in view of the marks indicated in all the individual marksheets and inserting them in the designated cage.

After certifying and verifying the marks, the interview process reaches its final phase where the panel is expected to recommend to the board of directors of the 1st Respondent Corporation whom they select and recommend. That part appears in the bottom half of page 4 of P8. When that part is added to the end of the already saved format, it is obvious that the date 26.09.2016 and initials of the typist "S/sn" are pushed further down in the document. It is that document that has been taken as a printout forming a composite document and the marks are inserted in the appropriate cage by hand and the signatures are placed. This process, although not the best when considered in the aspect of transparency, is evident from the document itself, and in line with the explanation provided by its maker.

Thus, in my view it cannot be reasonably inferred that the document P8 is a fabrication made out by the Respondents to suit a particular pre-determined outcome.

Despite this finding, in view of the fact that the Petitioner is not entitled to the 10 marks, which he is short of the required level of marks to qualify for the promotion, the authenticity of P8 becomes only of a nominal relevance.

In the assessment of the Petitioner, it is he who has scored the most at the written examination and contributed the most to his employer by developing an inventory scheme readily adopted and implemented. It is evident that the Petitioner strongly believed that he fulfilled the requisite criterion by placing reliance on those factors, which in turn should ensure his promotion. However, the scheme of promotion, which has been adopted even prior to the calling of applications, indicates that the 1st Respondent Corporation expected a different set of qualifications from prospective candidates in order for them to be promoted to the post of Area Supervisor - Grade B -1.

The Petitioner unfortunately has failed to satisfy the 1st Respondent Corporation that he fulfilled the required criterion in terms of the advertisement. In examining the material presented before us, and for the reasons that are enumerated above in this judgment, I cannot disagree with the outcome of the interview, which the Petitioner now seeks to impugn in these proceedings.

Thus, in my view the Petitioner has failed to establish any of the multiple factors which he relied on in support of his evolving allegation infringement of his fundamental rights by an executive or administrative act of the 1st Respondent Corporation.

The petition of the petitioner is accordingly dismissed. I make no order of costs.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J.

I agree.

JUDGE OF THE SUPREME COURT