

IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

CA Writ: 1591/06

In the matter of an application
for mandates in the nature of
writ of mandamus and writ of
ceterari in terms of article 140 of
the Constitution of the
Democratic Socialist Republic of
Sri Lanka

Rathnasiri Herath
No.66, Bandawa
Polgahawela and 6 others

PETITIONERS

M E Lionel Fernando,
Co-Chairman,
National Salaries and Cadre Commission,
Room 2-G, BMICH, Baudhaloka
Mawatha,
Colombo 7 and 18 others

RESPONDENTS

Before:

W L R Silva J and A W A Salam J

Counsel:

Manohara de Silva PC with W D Weeraratna for petitioners
and Tilak Marapona PC and A Gnanadasan PC, ASG with
Nuwan Pieris for the respondent.

Argued on:

26.02.2009, 24.06.2009.

Written submissions tendered on:

26.11.2009

Decided on:

25.04.2011

A W A Salam,J.

The 1st to 7th petitioners were initially employed by the Department of Railway in the posts of Mechanical Fitter, Armature Winder, Welder, Diesel Fitter, Electric Fitter and Electrician respectively. They were absorbed into "Basic Technological Service" of the Railway Department in terms of the cabinet minutes published in Gazette (extraordinary) No 1072/15 dated 15/3/1999 (P4).

In terms of the said minute, 50% of the recruitments to the aforesaid service are filled from internal candidates and the balance from external candidates. As far as the internal candidates are concerned, they should have completed five years of satisfactory service in a new class II semi-skilled post in the Department of Railway and they are to be selected based on the results of the practical test and marks obtain on seniority. Upon recruitment both internal and external candidates are treated as equals.

The petitioners state that they possessed the requisite qualifications when they were recruited to the posts given in their letters of appointment marked P3A to P3G and that they have passed GCE (O/L) examination including language and mathematics. Further they claimed to have completed certain specialized full-time training courses, the details of which are set out in the petition. The petitioners asserted that the said specialized full-time training courses are directly relevant to the posts to which they were appointed.

The petitioners maintained in paragraph 12 of petition that in consequence of the 2006 budget proposals, the Government decided to implement a new salary structure with effect from 1 January 2006 and also decided to re-categorize and/or re-group the posts and/or services of the public service on the recommendation of the National Salaries and Cadre Commission. In this regard the Ministry of public Administration and Home Affairs issued a circular bearing No 6/2006 dated 25 April 2006.

In terms of circular No 6/2006 the Secretary to the National Salaries and Cadre Commission had addressed a letter to the Secretary, Ministry of Public Administration and Home Affairs with a copy to General Manager, Sri Lanka Railways

recommending salary groups for the Department of Railway placing them in the salary category with the code marked MN-1-2006 and they have now received letters (P9A to P9G) placing them under the category bearing MN-1.

The petitioners complain that in terms of the annexure 1-3 of P7 the salary code MN-1-2006 is applicable to "Management Assistants-Non-Technical-Segment 2" but the correct position is that they should be placed in MT-3-2006 which is the relevant salary code for "Management Assistants--Technical-Segment 2".

The petitioners have adverted us to the basic differences between "Management Assistant-Technical Segment 1 and Management Assistant-Non-Technical-Segment 2. As has been submitted by the petitioners Management Assistant-Non-Technical-Segment 2 has been defined as one who falls within the category of management assistant whose basic educational qualification in terms of the scheme of recruitment is a pass at the GCE O/L OR A/L examination and are not required to possess skills of any defined nature as entry qualification and on the other hand an employee whose technical/vocational training is of a duration above 24 months is brought under the category of Management - Assistant-Technical-Segment 1. In terms of circular 6/2006, the qualifications indicated in the definitions contained in annexure II are purely guidelines and any person who possesses these qualifications but not formally appointed to such post shall not be entitled to the respective salary scale.

The scheme of restructuring of public service salaries based on budget proposals of 2006 is *interalia* to put the proposals into effect in two tiers. Initially, the employee is selected to the category to which he belongs and then absorbed into it. The next step is to choose the correct corresponding salary scale which is done regard being had to the guidelines in annexure II. Salary scales so assigned have grades within the salary scale as has been set out in the schedule to the circular. A significant feature in the circular is that the qualifications indicated in the definitions contained in annexure II are purely guidelines and any person who possesses those qualifications but not formally appointed to such posts shall not be entitled to the respective salary scale.

In this background the petitioners whose functions are defined as "Primary unskilled/Semi-skilled, cannot demand a higher category of "Management Assistant-Technical (MA-T) on the basis of having obtained an industrial diploma. As has been submitted by the respondents selection of categories and salary scales in the new salary structure of public services in Sri Lanka is a combination of entry qualifications/scheme of recruitment, promotional procedures, nature of duties, simplicity, practicability and consistency. The example cited by the learned Deputy Solicitor General is that of the case of a State Counsel who obtains a Doctoral degree while holding the post of "State Counsel" and then claims the post of Deputy Solicitor General on the strength of his obtaining such a degree.

For reasons stated above, as the petitioners are not entitled as of right to claim a higher position and/or salary scale, I am of the view that the writ of certiorari and mandamus are not available to the petitioners. As such the application of the petitioners stand dismissed.

There shall be no costs.

Judge of the Court of Appeal

I agree

W LR Silva,J

~~Judge~~ of the Court Of Appeal

KLP/-