

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

Ceylon Bank Employees Union,
No.24, Temple Road,
Colombo 10.
Petitioner

CASE NO: CA/WRIT/116/2017

Vs.

1. National Savings Bank,
Savings House,
No.255, Galle Road,
Colombo 03.
and 205 others
Respondents

Before: Mahinda Samayawardhena, J.
Arjuna Obeyesekere, J.

Counsel: Kuvera De Zoysa, P.C., with Ameen Maharooof
for the Petitioner.
Pasindu Silva for the 1st-7th and 157th-206th
Respondents.
P.B. Herath for the 151st-155th Respondents.

Supported on: 09.09.2020

Decided on: 23.09.2020

Mahinda Samayawardhena, J.

The 157th Respondent, the then Prime Minister, submitted a Cabinet Memorandum P11 seeking the approval of the Cabinet of Ministers to examine complaints relating to political victimisation from those who had been employed or who were in employment in the Government Service or Government-owned Public Corporations and Banks, and to provide appropriate reliefs to such persons. Upon consideration of the said Cabinet Memorandum, the Cabinet of Ministers granted approval by P12. Accordingly, a Political Victimisation Committee was appointed and its recommendations were placed before the Cabinet of Ministers. The Cabinet of Ministers approved the same and directed the Cabinet decision thereon to be implemented on or before 18.05.2016 – *vide* P9 and the covering letter to P9 marked X tendered with the written submissions of the 1st-206th Respondents.

The Petitioner, Ceylon Bank Employees' Union, which had entered into a Collective Agreement with the 1st Respondent, National Savings Bank, to safeguard the rights of the employees of the said Bank, filed this application on 28.03.2017 seeking to quash by a writ of certiorari the aforesaid Cabinet decision (which is not before the Court), whereby reliefs were granted to 148 employees of the Bank (9th-156th Respondents) upon the recommendations of the Political Victimisation Committee, as well as the communication of the said Cabinet decision by P9.

The Petitioner does not say the Cabinet of Ministers had no authority to appoint a Political Victimisation Committee to grant

reliefs to employees who were in fact politically victimised. What the Petitioner says is that the employees to whom reliefs were granted were not in fact politically victimised but were interdicted, not promoted, dismissed from service etc. on merits and in terms of the Service Minutes and Schemes of Recruitment of the Bank. The Petitioner tenders a list of 140 employees by P10, whose names are apparently included in P9, to say that those employees were not politically victimised. Needless to say, this a question of fact the writ Court cannot undertake to resolve.

The Petitioner says no reasons have been adduced in P9 for granting reliefs to the employees stated therein. To ascertain this fact, the Petitioner has not made the members of the Political Victimisation Committee parties to this application. In my view, they are necessary parties. Without giving a hearing to the said members, this Court cannot set aside their recommendations to the Cabinet of Ministers. It is these recommendations which were converted to a Cabinet decision and communicated by P9 to the Bank.

The Petitioner strenuously stresses that any relief granted to employees of the Bank shall be in terms of the Bank's Service Minutes and Schemes of Recruitment. The Petitioner refers to the Prime Minister's observation contained in P14 in this regard.

It is noteworthy that the Bank did not blindly implement the Cabinet decision conveyed by P9. The Board of Directors of the Bank considered P9 and decided to grant reliefs only to 100 of the 148 employees mentioned in the Cabinet decision. To those

100 employees also, the Board of Directors did not give full effect to the Cabinet decision. The Board of Directors took a policy decision to grant only one promotion and give effect to it from the date of the Cabinet decision. This the Bank did, I believe, in harmony with its Service Minutes and Schemes of Recruitment.

As the Bank did not fully implement the Cabinet decision, 46 employees went before the Supreme Court alleging violation of their fundamental rights in case No. SC/FR/154/2016. During the pendency of the instant writ application, the Supreme Court refused leave to proceed and dismissed the said fundamental rights application. The Supreme Court further observed that the Bank is at liberty to implement the recommendations arrived at by the Bank, upon considering the recommendations of the Political Victimisation Committee and the Appeal Committee, in respect of the 46 employees. This means, the Supreme Court did not find the recommendations of the Political Victimisation Committee to be illegal or improper, but allowed the Bank to consider them, subject to taking its own final decision. The matter shall end here.

I refuse to issue notice on the Respondents. The application of the Petitioner is dismissed but without costs.

Judge of the Court of Appeal

Arjuna Obeyesekere, J.

I agree.

Judge of the Court of Appeal