

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

In the matter of an Application for orders in the nature of Writs of Certiorari and Mandamus under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

**CA (Writ) Application No. 220/2020**

R.M.M.P. Rajapakse,  
No. 196/5, Borella Road,  
Depanama, Pannipitiya.

**PETITIONER**

Vs.

1. The Public Service Commission.
2. Dharmasena Dissanayake,  
Chairman,  
Public Service Commission.
3. Professor Hussain Ismail.
4. Ms. S. Karunarathna.
5. Pradeep Ramanujam.
6. V. Jegarajasingam.
7. G.S.A. de Silva.
8. S. Ranugge.
9. D.L. Mendis.
10. S. Jayathilaka.

3<sup>rd</sup> – 10<sup>th</sup> Respondents are Members of  
the Public Service Commission

11. M.A.B. Daya Senarathna,  
Secretary, Public Service Commission.

1<sup>st</sup> – 11<sup>th</sup> Respondents at  
All of Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

12. Hon. Justice N.E. Dissanayake,  
Chairman,  
Administrative Appeals Tribunal.

13. A. Gnanathasan,  
Member,  
Administrative Appeals Tribunal.

14. G.P. Abeykeerthi  
Member,  
Administrative Appeals Tribunal.

12<sup>th</sup> – 14<sup>th</sup> Respondents at  
No. 35, Silva Lane, Dharmapala Place,  
Rajagiriya.

15. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

### **RESPONDENTS**

**Before:** Arjuna Obeyesekere, J / President of the Court of Appeal  
Mayadunne Corea, J

**Counsel:** P.K. Prince Perera for the Petitioner

**Supported on:** 08<sup>th</sup> February 2021

**Written submissions:** Tendered by the Petitioner on 17<sup>th</sup> February 2021

**Decided on:** 25<sup>th</sup> February 2021

**Arjuna Obeyesekere, J., P/CA**

In this application, the Petitioner is seeking a Writ of Certiorari to quash the decision of the Administrative Appeals Tribunal (AAT) by which the AAT held that it had no jurisdiction to inquire into the appeal of the Petitioner, as the decision of the Public Service Commission (PSC) had been taken prior to the establishment of the AAT in 2002.

The facts of this matter very briefly are as follows.

The Petitioner had joined the Department of Agriculture as a Food Production Overseer on 1<sup>st</sup> November 1960. He had thereafter received the following promotions:

- (a) Class II of the Agricultural Service on 1<sup>st</sup> October 1966;
- (b) Agricultural Instructor on 1<sup>st</sup> July 1969;
- (c) Grade II of the Middle Level Technical Service on 1<sup>st</sup> May 1978;
- (d) Grade I of the Middle Level Technical Service on 1<sup>st</sup> December 1985;
- (e) Special Grade of the Middle Level Technical Service on 1<sup>st</sup> July 1994.

The Petitioner states that a Service Minute for the Agriculture Service was introduced in September 1980. The said Service Minute, published in Extraordinary Gazette No. 107/10 dated 26<sup>th</sup> September 1980 provides that the entry point to the Agriculture Service shall be Class II Grade II.

In terms of the said Service Minute, officers in Grade I of the Middle Level Technical Service having a satisfactory period of service were eligible to be considered for promotion to Class II Grade II of the Agriculture Service. However, in the absence of sufficient officers from Grade I, officers from Grade II of the Middle Level Technical Service with not less than four years of service were also eligible to be considered for promotion to Class II Grade II.

Interviews to select officers to Class II Grade II had been held in 1980, 1982, 1984, 1985 and 1989. The Petitioner, having been appointed to Grade II of the Middle Level Technical Service in 1978 was not eligible to be called for the interview in 1980,

as he did not have four years of service in Grade II of the Middle Level Technical Service. The Petitioner however states that others who had periods of service similar to the Petitioner and who were therefore similarly placed as the Petitioner were granted their promotions in 1980/1981 to Grade II Class II of the Agriculture Service.

The Petitioner had been called for the interview in 1982, but he had not been selected. In 1984, eligibility had been restricted to those in Grade I of the Middle Level Technical Service, and the Petitioner had not been called for the interview as the Petitioner was not in Grade I at that time. The Petitioner had been called for the interview in 1989, but he had not been successful at the interview.

In 1990, the entry requirement to Class II Grade II of the Agriculture Service had been amended from an interview to a written examination. The Petitioner had sat for the examination in 1991 and 1994, but he had not been successful. Thus, all attempts by the Petitioner to enter Class II Grade II of the Agriculture Service have been unsuccessful. The Petitioner had retired from Public Service on 30<sup>th</sup> June 1999.

Aggrieved by the fact that he did not receive his promotion to Class II Grade II in 1980, the Petitioner had sought administrative and legal relief from many fora.

It is admitted that the Petitioner filed SC (FR) Application No. 84/96 in the Supreme Court. Although a copy of the petition filed by the Petitioner has not been tendered, the following order made by Mark Fernando, J sheds light on the nature of the grievance of the Petitioner:

*“The Petitioner’s complaint relates to the refusal of a promotion in 1981. That was the subject matter of SC 844/92, which was dismissed on 31<sup>st</sup> May 1993. Counsel for the Petitioner also relies on a recommendation for promotion made on 4<sup>th</sup> September 1995. He concedes however, that there were at that time, no vacancies. In any event his complaint to the Honourable Chief Justice was in July of the following year, and is out of time. Leave to proceed is refused.”*

The reference in the above Order to a letter dated 4<sup>th</sup> September 1995 is a letter written by the Acting Director General of Agriculture to the Secretary, Ministry of Agriculture recommending that the promotion of 13 officers who had failed to pass

the interview and/or examination be considered, similar to what had been done with officers attached to the Irrigation Department and the Land Development Department.

What is important however from the above Order of the Supreme Court is the fact that the Petitioner had challenged his non-promotion before the apex Court of this Country, not once but twice, and that he had been unsuccessful on both occasions.

It is also admitted that the Petitioner has gone before a Political Victimisation Committee in 1995 and 1996, the Human Rights Commission and the Public Petitions Committee of Parliament. The Petitioner has also complained to HE the President. The response of the Secretary, Ministry of Agriculture dated 19<sup>th</sup> September 2011 sets out extensively the multitude of letters that the Petitioner had sent, the several inquiries that had been conducted and the conclusion reached over and over again that the Petitioner has not been deprived of a promotion unfairly.

What is most relevant to this application however is the fact that the Petitioner has made constant representations to the PSC.

In paragraph 9 of his appeal to the AAT, the Petitioner has stated that, *'I made an appeal to the PSC through the Head of Department, by my letter dated 22<sup>nd</sup> December 1993, pointing out the injustices done to me and requesting to grant my due promotion. I did not get a reply to my appeal. Later by PSC letter dated 16<sup>th</sup> January 1996 I came to know that my appeal had not been forwarded to the PSC. A copy of the said PSC letter is annexed marked A7 and pleaded as part of this appeal. A7 was a reply to an appeal I made to the PSC by my letter dated 18<sup>th</sup> July 1995.'*

The aforementioned letter of the Public Service Commission dated 16<sup>th</sup> January 1996 reads as follows:

“ඔබගේ 1995 නොවැම්බර් මස 07 දිනැති ලිපිය හා බැඳේ

02. එම ලිපියේ සඳහන් කර ඇති 1993 දෙසැම්බර් මස 22 දිනැති ලිපියක් මෙම කාර්යාලය වෙත ලැබී නොමැත. ඉන්පසු 1994 සැප්තැම්බර් මස 30 දිනැතිව ලැබී ඇති අභියාචනයට පිළිතුරක් 1995 ජූලි මස 18 දිනැති ලිපියෙන් ඔබ වෙත එවා ඇති බව කාරුණිකව දන්වමි.”

Thus, it is clear that even though the PSC did not receive the Petitioner's initial appeal dated 22<sup>nd</sup> December 1993, the PSC did receive the second appeal of the Petitioner. More importantly, **the PSC has made a decision in 1995** with regard to the said appeal relating to the promotion of the Petitioner to Class II Grade II. The decision of the PSC has been conveyed to the Petitioner by letter dated 16<sup>th</sup> January 1996. Thus, by January 1996, the Petitioner was fully aware that his appeal relating to his promotion had been turned down by the PSC.

Although the Petitioner was informed by letter dated 16<sup>th</sup> January 1996 that his appeal had been rejected, the Petitioner had submitted an appeal to the PSC on 20<sup>th</sup> April 2000, and had been afforded an oral hearing by the PSC. The Petitioner had once again made representations to the PSC by his letter dated 15<sup>th</sup> March 2002, which too had been rejected. In response to the Petitioner's letter dated 23<sup>rd</sup> March 2012, the PSC by its letter dated 12<sup>th</sup> March 2014 had informed the Petitioner as follows:

“02. උක්ත අභියාචනය මගින් ඉදිරිපත් කර ඇති කාරණය සම්බන්ධව රාජ්‍ය සේවා කොමිෂන් සභාව මගින් සමාංක හා 1995.07.18 දිනැතිව තීරණයක් ලබා දී ඇති බව නිරීක්ෂණය වන බැවින් මේ සම්බන්ධයෙන් නැවත සලකා බැලිය නොහැකි බව කාරුණික දැනුම් දෙමි. ”

In spite of having been told that a decision had been taken on his promotion, the Petitioner had kept badgering the PSC by making one representation after another.

During the period 2014 – 2016, the Petitioner had submitted several letters to the PSC, seeking that he be promoted to Class II Grade II of the Agriculture Service. The PSC had thereafter shown what I would refer to as *administrative indulgence* and called for a report from the Ministry of Agriculture.

By letter dated 13<sup>th</sup> August 2016, the Public Service Commission (PSC) had informed the Petitioner as follows:

“02. ඔබගේ අභියාචනාවල සඳහන් කරුණු ද, ඊට අදාළව කෘෂිකර්ම අධ්‍යක්ෂ ජනරාල්ගේ නිර්දේශ සහිතව කෘෂිකර්ම අමාත්‍යාංශ ලේකම් විසින් ඉදිරිපත් කරන ලද 2012.08.28, 2014.12.22 දිනැති නිරීක්ෂණ වාර්තාවල සඳහන් කරුණු, අදාළ සේවා ව්‍යවස්ථා, බඳවා ගැනීමේ පටිපාටි ද ඇතුළුව මේ සම්බන්ධයෙන් වූ සියලු ලියවිලි පිළිබඳව සලකා බැලූ රාජ්‍ය සේවා

කොමන් සභාව, 1980 වර්ෂයේ සිට ක්‍රියාත්මක වන පරිදි කෘෂිකර්ම සේවයේ 11 වන පන්තියේ 11 ශේණියට උසස් කිරීම සඳහා ඔබ විසින් අවශ්‍ය සුදුසුකම් සම්පූර්ණ කර නොමැති බවත්, ඔබ විසින් අභියාචනයෙහි සඳහන් කර ඇති කරුණු එකී උසස්වීම ලබා දීමට ප්‍රමාණවත් හා පිළිගත හැකි හේතු වශයෙන් නොපෙනෙන බවත්, නිරීක්ෂණය කරන ලදුව ඔබගේ ඉහත අභියාචනා නිෂ්ප්‍රභ කිරීමට තීරණය කර ඇති බව එම කොමන් සභාවේ නියමය පරිදි කාරුණිකව දන්වා සිටම.”

Dissatisfied by the above decision, the Petitioner had filed an appeal with the AAT, seeking that he be promoted to Class II Grade II of the Agriculture Service from 1980.

Having afforded the Petitioner a hearing, the AAT, by its Order dated 11<sup>th</sup> February 2020 had held as follows:

- a) The complaint of the Petitioner is that he had not been granted his promotion to Class II Grade II of the Agriculture Service in 1980;
- b) The appeal submitted by the Petitioner to the PSC had been rejected by letter dated 18<sup>th</sup> July 1995;
- c) The jurisdiction of the AAT is limited to hearing appeals arising from decisions of the PSC made after 25<sup>th</sup> March 2002;
- d) As the PSC had made its decision in 1995, the AAT does not have the jurisdiction to entertain the appeal of the Petitioner.

Aggrieved by the above decision, the Petitioner has filed this application, seeking *inter alia* the following relief:

- a) A Writ of Certiorari to quash the above Order of the AAT;
- b) A Writ of Mandamus directing the AAT and the PSC to promote the Petitioner to Class II of Grade II of the Agriculture Service from 1980.

The issue that I must consider in this application is whether the decision of the PSC contained in letter dated 13<sup>th</sup> August 2016 is a decision taken by the PSC for the first time in 2016, or whether it's a reiteration of a decision taken by the PSC prior to the formation of the AAT.

Article 59 of the Constitution, which was introduced by the 17<sup>th</sup> Amendment to the Constitution, reads as follows:

- “(1) There shall be an Administrative Appeals Tribunal appointed by the Judicial Service Commission.*
- (2) The Administrative Appeals Tribunal shall have the power to alter, vary or rescind any order or decision made by the Commission.<sup>1</sup>*
- (3) The constitution, powers and procedure of such Tribunal, including the time limits for the preferring of appeals, shall be provided for by law.”*

The Administrative Appeals Tribunal Act No. 4 of 2002 (the AAT Act) was enacted *inter alia* to provide for the constitution of the AAT. Section 3 of the Act provides as follows:

*“The Tribunal shall have the power to hear and determine any appeal preferred to it from any order or decision made by:*

- (a) the Public Service Commission in the exercise of its powers under Chapter IX of the Constitution;*
- (b) the National Police Commission in the exercise of its powers under Chapter XVIII A of the Constitution.”*

The AAT Act has not been enacted with retrospective effect, and therefore its provisions do not extend to orders or decisions of the PSC made prior to the AAT Act coming into operation.

It is clear from the above narration of facts that the Petitioner, being of the view that he is entitled to be promoted to Class II Grade II of the Agriculture Service from 1980, has agitated his non-promotion before the Supreme Court, as well as before several administrative bodies. It is admitted that the Petitioner submitted an appeal to the PSC in 1993. The Petitioner has claimed that he did not receive a response to his appeal. This is clearly not so. By its letter dated 16<sup>th</sup> January 1996, the receipt of

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<sup>1</sup> Reference to the Commission is to the Public Service Commission and the National Police Commission.

which has been admitted by the Petitioner, he was informed that his appeal had been rejected. In my view, the jurisdiction of the PSC in respect of the promotion of the Petitioner ended when the PSC conveyed its decision by its Order dated 18<sup>th</sup> July 1995, and reiterated its decision by its letter dated 16<sup>th</sup> January 1996.

Having sought relief from other administrative bodies, the Petitioner came back to the PSC in April 2000, only to be informed that his appeal has been rejected. His request for a re-consideration in 2012 had also been rejected on the basis that a decision has already been taken. The Petitioner persisted with the PSC and managed to elicit the aforementioned reply from the PSC in August 2016, which he is now seeking to use as the platform to launch a fresh challenge to his non-promotion to Class II Grade II in 1980.

In **Council of Civil Service Unions vs Minister for the Civil Service**,<sup>2</sup> Lord Diplock identified 'illegality', 'irrationality' and 'procedural impropriety' as being the grounds upon which administrative action is subject to control by judicial review.

The Petitioner's complaint to this Court is that the AAT acted illegally, when it arrived at its conclusion that it has no jurisdiction to hear the appeal of the Petitioner. Lord Diplock has described '*illegality*' in the following manner.

*“By 'illegality' as a ground for judicial review I mean that the decision maker must understand correctly the law that regulates his decision making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided in the event of dispute, by those persons, the judges, by whom the judicial power of the state is exercisable.”*

Having considered the provisions of Section 3 of the AAT Act, it is clear that the AAT has been vested with the power to hear an appeal made against *any order or decision* of the PSC.

It is in the above legal and factual background that I must consider whether the said letter dated 13<sup>th</sup> August 2016 sent by the PSC contains a decision of the PSC. I have carefully examined the said letter, which to my mind demonstrates the

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<sup>2</sup> [1985] AC 374.

*administrative indulgence* shown by the PSC to resolve the concerns of the Petitioner and reassure him that he has not been deprived of a promotion. I am of the view that the said letter:

- (a) Is certainly not a reflection of the exercise of the appellate powers of the PSC that can give rise to an appeal to the AAT;
- (b) Does not contain an order or a decision made by the PSC.
- (c) Re-conveys to the Petitioner the fact that he is not eligible to be promoted to Class II Grade II of the Agriculture Service.

To hold otherwise will definitely encourage litigants to abuse the legal process, as is apparent from the facts of this case, where public servants can continuously make representations to the PSC and thereby have several bites at the *legal cherry*. There must be finality in the decision making process. I agree with the AAT that its jurisdiction is limited to orders and decisions of the PSC made after the establishment of the AAT in 2002 and that, as the decision of the PSC with regard to the promotion of the Petitioner has been made in 1995, the AAT does not have the jurisdiction to hear and determine the appeal of the Petitioner. I therefore do not see any illegality in the decision of the AAT.

In the above circumstances, I do not see any legal basis to issue formal notice of this application on the Respondents. This application is accordingly dismissed. I have desisted from ordering costs in view of the age of the Petitioner.

**President of the Court of Appeal**

**Mayadunne Corea, J**

I agree

**Judge of the Court of Appeal**