

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

In the matter of an application for mandates in the nature of Writs of Certiorari and Mandamus under and in terms of article 140 of the Constitution.

Seekku Baduge Suranga
"Isuranga",
Kapugama East,
Tangalle Road,
Devinuwara.

Petitioner

CA (Writ) Application No: 380/2022

Vs

1. National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
2. Ms. Keasila Jayawardene
Chairperson,
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
- 2A. Dr. Harsha Cabral PC
Chairperson,
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
3. Mr. M.P.A.W Peiris
General Manager/ CEO
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
4. Mr. U.G.R. Ariyaratne
Ex-Officio Director
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
- 4A. Mr. S.R.W.M.R.P Sathkumara
Ex-Officio Director

National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3

5. Mr. H.K.D Lakshman Gamini
Director
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
6. Ms. M.A.P Muhandiram-
Secretary to the Board
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
7. Mr. Raveendran –
Senior Deputy General Manager/Member
Human Resource Committee
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
8. Ms. M.N.A Fernando
Deputy General Manager (Human Resource
Development) /Member
Human Resource Committee
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
9. Mr. T.H.S Athapattu
Deputy General Manager (Finance, Corporate
and MIS) /Member
Human Resource Committee
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
10. Ms. K.D Jayatilake
Deputy General Manager (Legal) /Manager
Human Resource Committee
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3

11. Ms. C.S. Jesudian-
Deputy General Manager (Credit and
International) /Manager
Human Resource Committee
National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
12. Mr. Jude Nilukshan
Director, National Savings Bank
Savings House, P.O Box No 1732
255, Galle Road, Colombo 3
13. Ms. S.H.A.S Kumari
No 4, Weera Puranappugama,
Katubedda
14. Mr. H.M.G.P.J Herath
No 49/2, Buthgamuwa Road,
Kalapaluwawa, Rajagiriya
15. Mr. D.M.C.P.B Dissanayake
No 716/3, Arachchihena Road
Madinagoda, Rajagiriya
16. Ms. H.R Karunamuni
Walaw Watta Road, Kuda Wskaduwa,
Waskaduwa
17. Mr. S. Sivasorupan
"Poompuhar" No 24, Sivapragasam Road,
Vannarpannai, Jaffna

Respondents

Before: **Dhammika Ganepola, J.**

Damith Thotawatte, J.

Counsel Saliya Pieris, P.C. with Thanuka Nandasiri and Pasindu Thilakarathna
for the Petitioner.
Yuresha Fernando, DSG with Mihiri de Alwis, SSC for the 1st – 12th
Respondents.

Argued 20-03-2025

Written submissions 09-05-2025 By the Petitioner
tendered on: 23-06-2025 By the 1st – 12th Respondents

Judgement Delivered
on: 16-07-2025

D. Thotawatte, J.

The Petitioner commenced his employment with the 1st Respondent Bank (hereinafter known as the Bank) on 1st November 2006 in the capacity of a Management Trainee and has continued to serve the said Bank to date without interruption.

From the date of assumption of duties, the Petitioner has steadily risen through the hierarchical structure of the Bank, receiving all the due promotions.

The Petitioner had registered for a Postgraduate Diploma in Business Administration/Master of Business Administration programme (hereinafter sometimes referred to as “PDBA/MBA programme”) at the University of Ruhuna in or about 2008. This programme consisted of two parts and the Petitioner had successfully completed the Post Graduate Diploma (PDBA), which constituted the first part of the said programme in 2013.

On 2nd of January 2017 Petitioner had been promoted to Executive Officer Grade I. The Petitioner had obtained the Executive Officer Grade I promotion according to the Scheme of Promotion in operation at that time, as stipulated in the General Manager's Circular No 615/2005 dated 25-07-2005.

The Petitioner having completed all coursework and the dissertation relating to the Master of Business Administration (MBA) Programme and had been awarded the MBA Degree on 26th May 2020.

On the 03rd November 2021, the 3rd Respondent had issued General Manager's Circular Letter No 1983 calling for application for promotions to the post of Assistant General Manager-Special Grade (Banking Stream) from officers who would be eligible under the Scheme of Promotion stipulated in the General Manager's Circular No 922/2017 dated 20th November 2017. The Petitioner being eligible under the stated criteria, had submitted his application for the post.

In terms of the Circular No 922/2017, the officers who were confirmed in Grade I with a minimum of 2 years' service as a Chief Manager were eligible to be promoted to the post of Assistant General Manager-Special Grade and the marks were to be allocated as per the scheme of promotion in the following manner.

- I. Performance Evaluation 40

- II. Education/ Professional Qualification 10
- III. Service 10
- IV. Adverse Reports/ Commendations (+/-) 5
- V. Interview 20
- VI. Case study presentation 15

Under the category of Education/ Professional Qualifications, Candidates who completed a degree of Masters and above, such as Ph.D /M.Phil /MA/M.SC/MBA or Equivalent were to be awarded marks in the following manner.

- a) Duration 02 or over 02 years- 10 Marks
- b) Duration 01 to less than 02 years - 05 Marks

On or about 31st May 2022, the 2nd Respondent issued Chairperson's Circular No. 01/2022, whereby it was notified that the 13th to 17th Respondents had been promoted to the post of Assistant General Manager – Special Grade. Although the Petitioner had duly participated in the interview process, he was not among those selected for promotion.

The Petitioner being aggrieved by the said decision not to promote him, had submitted an appeal to the 2nd Respondent. As no response was forthcoming the Petitioner had made a formal request for information regarding the interview which held for the promotion to the post of Assistant General Manager-Special Grade under the Right to information Act from the bank's information officer. Upon the receipt of reply the petitioner had found that he had not been allocated any marks for his Master of Business Administration (MBA) degree at the interview.

Subsequently, on 15th June 2022, the Petitioner had lodged a complaint with the Human Right Commission of Sri Lanka. In response a quarry by the Human Right commission, the 8th Respondent by his letter dated 15th August 2022 (annexed marked as P25) had informed the Human Right Commission that although the Petitioner had registered for a PDBA/MBA programme for the academic year 2009/2010 with the University of Ruhuna by the time interviews were held for the post of Executive Officer Grade I in 2016, he had only completed the PDBA, part of the said programme. In consideration of the PDBA the Petitioner had been allocated 05 marks which enabled the Petitioner to obtain the promotion to Grade I. According to the Scheme of Promotion applicable at that time, the full marks awarded to an educational or professional qualification cannot be considered for two promotions on two separate occasions, and as such, the Human Resource committee of the bank on 13th December 2021 had decided not to allocate any marks for the Petitioner for his MBA qualification submitted for the promotion to the post of Assistant General Manager-Special Grade.

Being aggrieved by the above decision, the Petitioner has filed this present Application seeking, *inter alia*, the following reliefs:

e) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision of one or more of the 1st to 12th Respondents not to allot marks to the Petitioner for the Degree of Master of Business Administration.

f) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the decision of one or more of the 1st to 12th Respondents refusing to promote the Petitioner to the post of Assistant General Manager - Special Grade

g) Grant and issue a mandate in the nature of a Writ of Certiorari quashing the appointments/promotions of one or more of the 13th to 17th Respondents to the post of Assistant General Manager - Special Grade

h) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 3rd and 7th to 11th Respondents to allot ten (10) marks to the Petitioner for the Degree of Master of Business Administration

i) Grant and issue a mandate in the nature of a Writ of Mandamus directing the 3rd to 6th and 12th Respondents to promote the Petitioner to the post of Assistant General Manager - Special Grade

The Petitioner contests the Respondents' position on two principal grounds:

1. That no marks were in fact awarded for the PDBA at the 2016 interview held for the post of Executive Officer Grade I and thus, the question of duplication does not arise.
2. Alternatively, even if marks were awarded for the PDBA, the MBA is a distinct qualification obtained subsequent to the Postgraduate Diploma and entitles him to additional marks.

The 1st contention of the Petitioner is based on the fact that the Scheme of Promotion under General Manager's Circular No. 615/2005 (under which the Petitioner was promoted to Executive Officer Grade I) only recognized specific degrees and professional qualifications for marks allocation. As the PDBA was not a qualification that was recognized under that Scheme of Promotion, the Respondents could not have considered his PDBA or allocated marks for that particular promotion.

However, according to the marking scheme, 05 marks could be allocated for "Any other professional qualification awarded by a recognized professional body", and as such, it cannot be refuted that the interview board considered the PDBA under this category. The Petitioner has not produced any independent evidence to support that no marks were awarded for the PDBA in 2016 other than expressing a doubt. Furthermore, the Petitioner concedes in his own pleadings that five marks could have been awarded for the PDBA at the 2016 interview.

In this regard, the burden lies upon the Petitioner to establish, with cogent evidence, that he did not receive marks for the Postgraduate Diploma at the 2016 interview. Mere conjecture or an adverse inference from the Respondents' alleged failure to produce documents relevant to 2016 interview, cannot be substitute for substantive proof, particularly in the context of a discretionary remedy such as certiorari or mandamus.

The 2nd contention of the Petitioner is based on the ground that, although obtained in pursuance of and as parts of a single programme conducted by the University of Ruhuna, the PDBA and the MBA are two distinctly different qualifications and should be treated as such.

The Petitioner in support of his averment in paragraph 05 of the petition, has annexed to the petition a Letter dated 07th April 2014 issued by the coordinator of the PDBA/MBA programme (marked as P3). Although the Respondents in their objections have denied the Petitioner's averments in paragraph 05, they had not rejected or disputed the authenticity of the letter marked **P3** which can be considered independently of the averment in paragraph 05 of the petition.

The letter **P3** gives a clear view as to how the PDBA/MBA programme has been structured and also supports the assertion of the Petitioner that he had to study additional subjects and also had to write a dissertation in order to obtain the higher qualification (MBA).

The principal issue for determination in this matter is whether the successful completion of the PDBA/MBA programme conducted by the University of Ruhuna constitutes a single qualification or two distinct qualifications within the meaning and application of the Scheme of Promotion set out in General Manager's Circular No. 615/2005.

The decision of the Human Resource Committee of the Respondent Bank (annexed to the statement of objections marked 1R11) is reproduced below.

"The committee discussed the matter and declined the request of Mr S. B. Suranga.

He had been granted five marks for the Postgraduate Diploma in Business Administration for his Grade 1 promotion. Hence, Mr Suranga cannot be allocated 5 marks for the completion of the MBA, since a particular qualification cannot be split into two and consider for two promotions".

It appears from the wording "... completion of the MBA", the Human Resource Committee has considered the MBA to be the substantive qualification and the PDBA to be an intermediate position. If it is the view of the Human Resource Committee that **no marks can be given for the completion of the MBA**, it would stand to reason that previous marks had been given for a partially completed MBA. There is no provision under the terms of the Scheme of Promotion for marks to be awarded for an incomplete qualification. .

The Human Resource Committee in the minutes of the meeting held on the 13th December 2021 has not stated the basis on which the PDBA and MBA are considered to be one qualification. In the statement of objections and in the written submissions, Respondents take up the position that the MBA is merely a continuation of the PDBA and not a separate qualification. It appears that the Respondents at present consider PDBA to be the substantive qualification and the MBA a mere extension of the PDBA not worthy of being considered a separate qualification.

Although not mentioned specifically, the foundation for the above reasoning appears to be the fact that both qualifications were obtained in pursuance of a single programme. There would have been some substance to this argument if the MBA had been awarded merely upon passage of time after obtaining the PDBA. However, it is established that not only the Petitioner had to study fresh subjects, he had to also submit a research-based dissertation which would make the MBA a separate and additional qualification.

Further, upon the above reasoning of the respondents are to be followed it would appear that if the Petitioner has done his PDBA and MBA separately in pursuance of two separate programmes, the Respondents would have had no reservation about granting the petitioner marks for both qualifications.

On the above grounds, it appears that the reasoning behind the Respondents' decision that under the terms of the applicable Scheme of Promotion, PDBA and the MBA have to be considered as a single qualification is fundamentally flawed and has no logical basis.

Further, the impugned Clause 1(b)(ii) of the Scheme of Promotion stipulated in General Manager's Circular No 615/2005 under the heading of Educational / Professional qualifications state that marks will be awarded only once in the career of an officer. The clause only refers to qualifications and not the programme or the course of study that resulted in the qualifications. It appears that in arriving at the impugned decision, the respondents appear to have considered matters irrelevant to the Scheme of Promotion.

In ***Dona Marian Sandya Kumari Kodduruarachchi vs W. Dharmadasa and others***¹ the Ministry of Education's refusal to approve an appointment as Principal, based on applying new qualification standards introduced retrospectively was held to be unreasonable and irrational.

In "Dona Marin Sandya" His Lordship Gooneratne J has stated: -

"It is settled principle today, however, that judicial review for unreasonableness is not restricted to situations in which a public authority purports to make a decision which is not in accordance with the terms of the powers conferred on it and that, even if a decision on the face of it falls

¹C.A. Writ No. 343/2009 CA Minutes 30-05-2013

within the letter of these powers, it can still be successfully impugned if it is shown to be unreasonable, in the relevant sense."

In *Colonel U.R. Abeyratne Vs. Lt. Gen. N.U.M.M.W. Senanayake and others*² His Lordship Justice Obeyskera has stated:-

"Unreasonableness" in the *Wednesbury*³ sense, or "irrationality" as Lord Diplock redefined in the *GCHQ* case⁴, were traditionally presented as unusual grounds of judicial review which recognised that a decision may be within the so called 'four corners of the law', but may still be unacceptable due to the existence of something overwhelmingly "unreasonable".

Even though in the instant case, the Respondents had the power and the discretion to decide whether or not to award marks for the MBA qualification, that discretion should have been properly and reasonably applied.

The *Wednesbury*⁵ case created the foundational test for unreasonableness in judicial review. It set a very high threshold, making it difficult to establish unreasonableness unless the decision was perverse or absurd.

Lord Greene MR in the above case laid down the classic test of "Wednesbury unreasonableness" as the criteria for judicial review.

1. Whether the authority misdirected itself in law.
2. Failed to take relevant considerations into account.
3. Took into account irrelevant considerations.

In applying the above test to the instant case;

1. The Respondents misdirected themselves as to the provisions of the circular by considering the programme instead of the qualifications.
2. The Respondents failed to consider that the Petitioner had to study three additional fresh subjects and had to write a research-based dissertation in order to qualify for the MBA.
3. The Respondents appear to have unduly considered the time taken for the Petitioner to complete his MBA.

The essence of this criterion of unreasonableness is contained in Lord Greene's observation that "there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

² CA Writ No. 239/2017

³ *Associated Provincial Picture Houses Ltd. V Wednesbury Corporation* [1948 (1) KB 223]

⁴ *Council of Civil Service Unions V Minister for the Civil Service* 1985 AC 374 (HL)

⁵ *supra*

When considering the stipulations in the scheme of promotion, it is difficult to understand the logical basis on which the Respondents concluded the PDBA and the MBA to be so connected as to form parts of a single qualification. Therefore, the Respondents' decision not to award marks for the Petitioner's MBA is unreasonable in the *Wednesbury* sense, and this unreasonable exercise of discretion clearly warrants intervention through judicial review.

'Irrationality' is the second of the three grounds for judicial review identified by Lord Diplock in the seminal case *Civil Service Unions v Minister for the Civil Service*⁶. In that case, Lord Diplock characterised the ground as "a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it." Irrationality, as described in the above case⁷, has also found recognition in Sri Lankan jurisprudence and is often used interchangeably with *Wednesbury* unreasonableness⁸.

Further in "Colonel U.R. Abeyratne" His Lordship Justice Obeyesekere has mentioned with approval, the test adopted for judicial intervention in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council*⁹ which describes the relevant test as "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt."

In the Absence of rational basis and proper consideration, the decision of not to allocate marks for the Petitioner's MBA so unreasonable that no reasonable authority acting with due appreciation of facts and circumstances would have taken such a decision. Therefore, I am of the view that the Respondents' decision not to allocate marks for MBA degree is liable to be quashed by writs of Certiorari. As the MBA degree is considered as a separate qualification, the Petitioner is entitled to receive the full marks due for this qualification under the scheme of promotion.

When considering the request of the Petitioner for an issuance of a Writ of Mandamus directing the 3rd to 6th and 12th Respondents to promote the Petitioner to the post of Assistant General Manager there is a consistent line of judicial authorities establishing that in order to consider issuance of a writ of Mandamus there should be a public duty on the part of the respondents.

His Lordship Justice Rajakaruna in *Ven. K. Wacheeswara Thero and Others V Dharmasena Dissanayaka and Others*¹⁰ Has stated;

" M. P. Jain and S. N. Jain (in 'Principles of Administrative Law', 9th Edition (2022), LexisNexis, at p.2440) observe that "Mandamus means a command; Mandamus is used to enforce the

⁶supra

⁷supra

⁸supra

⁹BC [1977] AC 1014

¹⁰CA/WRIT/45/2019 CAM 30.03.2023

performance of public duties by public authorities; The essence of mandamus is that it is a command by the court ordering the performance of a public legal duty. Mandamus is a command issued by a court to an authority directing it to perform a public duty belonging to its office; Mandamus is issued to enforce performance of public duties by authorities of all kinds; Mandamus is available against any public authority including administrative and local bodies." It is further observed that a Mandamus can be issued to any kind of authority in respect of any type of function-administrative, legislative, quasi-judicial, judicial and only when (a) a legal duty is imposed on the authority in question and it does not perform the same; and (b) the petitioner has a legal right to compel performance of this duty.

It is observed that in order to issue a writ of Mandamus, the court must be satisfied of the existence of a public duty owed and an existing legal right in the petitioner to have it performed. Therefore, it will not be available conditionally or for the performance of merely moral duties. The court must take cognisance of the distinction of a duty and a privilege or discretion as a Mandamus exists only where a duty lies".

His Lordship Justice Rajakaruna has further stated that "Duties arising out of orders or directives, regulations and circulars have however been enforceable by a writ of Mandamus, despite the lack of statutory duty or flavour, so long as it attracts the feature of a public duty and/or a statutory right."

Under the circumstances, this court is of the view that the MBA degree obtained by the Petitioner is a distinct and separate qualification from the previously obtained PDPA and the Petitioner consequently is entitled to full marks due to this qualification under the Scheme of Promotion stipulated in the General Manager's Circular No 922/2017. Accordingly, this Court issues a writ of Certiorari under prayer (e) quashing the decision of the Respondents not to allocate marks for the relevant MBA degree and a writ of mandamus under prayer (h) directing the 3rd Respondent to award the Petitioner the 10 marks due for his MBA degree.

The 2nd Respondent (as per amended caption) shall give effect to the judgement of this court by directing the 3rd and 8th Respondents to reconsider the promotion of the Petitioner to the post of Assistant General Manager under the Scheme of Promotion stipulated in the General Manager's Circular No 922/2017, taking into consideration additional marks allocated to the Petitioner. This Court makes no order with regard to costs.

Judge of the Court of Appeal

Dhammika Ganepola, J.

I agree

Judge of the Court of Appeal