

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 *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 0633/2024

Arthur C Clarke Institute for Modern
Technologies,
Katubedda,
Moratuwa.

PETITIONER

Vs.

1. Dilkusha De Silva,
19/1, Major Guneratne Mawatha,
Off Templers Road,
Mount Lavinia.

2. All Ceylon Commercial and Industrial
Workers Union,
No. 457,
Dr. Kolvin R De Silva Road,
Colombo 02.

3. Minister of Labour,
Ministry of Labour and Foreign
Employment,
Mehewara Piyasa, Colombo 05.

4. H. K. K. A. Jayasundara,
The Commissioner General of Labour,
Department of Labour,
Colombo 05.
5. Mr. S. Wirithamulla,
The Arbitrator,
Industrial Court,
9th Floor, Labour Secretariat,
Colombo 05.
6. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Shammil J. Perera PC with Chathuranga Bandara instructed by
Bandara Abeykoon for the Petitioner.
Prabashinee Jayasekara S.C for the 4th and 6th Respondents.

Argued on : 13.02.2026

Written Submission

Tendered on : 12.01.2026 by the Petitioner

Decided on : 03.03.2026

Adithya Patabendige, J.

The Petitioner, Arthur C Clarke Institute for Modern Technologies (hereinafter referred to as the Institute), is a corporate body that can sue or be sued in its name. The 1st Respondent was recruited by the Institute as a Secretary, Grade II, on 10th May 1988 and promoted to the post of Confidential Secretary with effect from 1st March 2006, as per the letter dated 20th March 2006, marked **P1**.

According to Circular No. 30 of the Department of Management Services, State-owned institutions were to be restructured, and the salaries of the employees were to be revised. As per the Petition dated 26th September 2024, after continuous discussions with the Department of Management Services, the classification of posts and the salary structure of the Institute marked **P5** were approved, and this was further clarified by a letter dated 14th January 2008 marked **P6**. Further, when implementing Circular No. 30, the Institute was instructed, *inter alia*, to follow the provisions of Chapter VII, especially Sections 4.3 to 4.5 of the Establishment Code, by the letter dated 28th January 2010, marked **P7**, which states as follows.

- 4:3 If on revision, the last salary drawn by an officer on the old scale falls between incremental steps of the new scale, he will be placed on the next higher step on the new scale.
- 4:4 If after revision, the last salary drawn by an officer corresponds to a salary step on the new salary scale, he should be placed on the next (higher) salary step.
- 4:5 If on revision, the last salary drawn by an officer is below the initial of the new scale he will be placed on the initial of the new scale.

According to the restructure of the Institute, the post of Confidential Secretary is classified in the **JM 1-2** category. However, to avoid any salary anomaly, the Department of Management Service specifically informs that the salary of the Confidential Secretary should be placed in the **MM 1-1-II** category as personal to the particular officer, and that, in the event of the officer's retirement or promotion, the above post should be ceased. The next step in the category **MM 1-1-II** is **MM 1-1-I**.

In 2014, the 1st Respondent requested promotion to **MM 1-1- I** under the Extraordinary Promotion Category, which allows promotion after completion of 6 years of service. The

Institute states that the said promotional criterion was abolished by the Cabinet, and the Public Service Commission issued a letter on the abolition of the criterion marked **P11**.

In 2017, the 1st Respondent again requested the said promotion after completing 10 years in the present grade. Therefore, the Institute sought advice from the Department of Management Services, which informed that there is no procedure to promote an officer who placed a position personal to the officer on 4th January 2018, marked **P12**. The 2nd Respondent, Union, on behalf of the 1st Respondent, lodged a complaint with the 4th Respondent, Labour Commissioner, and the 3rd Respondent, the subject Minister of Labour, referred this matter to the Arbitrator, the 5th Respondent, under Section 4(1) of the Industrial Disputes Act.

Upon inquiry, the 5th Respondent granted relief to the 1st Respondent and directed the Petitioner to place the 1st Respondent in category **MM 1-1-I**, effective 2012, as marked **P13A**. It was published in the Gazette Extraordinary dated 24th July 2024, marked **P14**.

The Institute, in its petition, states that the said arbitral award is illegal, unreasonable, *ultra vires*, and bad in law. Based on the foregoing, the institute seeks, *inter alia*, a mandate in the nature of a *writ of certiorari* to quash the awards embodied in **P13A** and **P14**.

It is to be noted that none of the Respondents filed objections. Although notices to the Respondents other than the 4th and 6th Respondents were issued several times, they failed to appear in the Court. However, when this application was taken up for argument, the learned State Counsel appearing for the 4th and 6th Respondents informed that she defends the arbitral award.

When the 1st Respondent was recruited to the Post of Confidential Secretary, the required qualification was passing six subjects, including English language, with three credit passes in the G.C.E. Ordinary Level Examination.

According to paragraphs 4 and 5 of the document marked **P7**, state that the positions marked with asterisks (**) should be personal to the existing officer concerned.

Attention is invited to paragraphs 4 and 5 of the said document, which state as follows.

04. * ලකුණින් පෙන්නා ඇති තනතුරු වලදී දැනට තනතුර දරන්නාට පමණක් පෞද්ගලික වන සේ අන්තර්ගත කාර්යවලිය සිදු කළ යුතුය. මෙම තනතුරු සඳහා නව බඳවා ගැනීම් සිදු නොකළ යුතුය. දැනට තනතුර දරන්නා වෙතත් තනතුරකට උසස් කිරීමෙන් හෝ විශ්‍රාම යාමෙන් පසු තනතුර අහෝසි වේ.

05. තනතුරක් උසස් ශ්‍රේණිගත කිරීමට නිර්දේශ කර ඇති විටදී, බඳවා ගැනීමේ පරිපාටි සහ උසස් වීමේ ක්රම සංශෝධනයෙන් පසුව අවශ්ය සුදුසුකම් මත දැනට තනතුර දරන්නා එම නව තනතුරට පත් කිරීමට/ උසස් කිරීමට සලකා බැලිය යුතුය. එසේ පත් කරනු නොලබන්නේ නම් එම නිලධාරියා දැනට සිටින තනතුර හා වැටුප් පරිමාණය ඔහුට පමණක් පෞද්ගලික වන සේ පවත්වා ගෙන යා යුතුය.

The Department of Management Service specifically instructed that promotions could be considered only on the basis of required qualifications (vide. **P7**).

However, the Department of Management Service subsequently issued instructions by letter dated 4th January 2018, marked **P12**, to the Petitioner regarding the request for the promotion of the 1st Respondent and informed the Petitioner that there is no procedure to promote an officer placed in a category personal to him.

For ease of reference, attention is drawn to the relevant paragraph in document **P12**.

02. නවීන තාක්ෂණය පිළිබඳ ආතර් සී ක්ලාක් ආයතනය විසින් යොමු කරන ලද ලිපියේ 01 වැනි ඡේදයේ සඳහන් රහස්‍ය ලේකම් තනතුරෙහි රාජකාරියේ නිරත වන නිලධාරීන් කළමනාකරණ සේවා චක්‍රලේඛ 30 අනුව සිදු කරන ලද ජරතිවිසුභගතකරණයේදී, **MM 1-1 (II ශ්‍රේණිය)** වැටුප් තලයේ පිහිටුවා වැටුප පුද්ගලික වන සේ ලබාදී ඇති බව නිරීක්ෂණය වේ. මෙලෙස පුද්ගලික වන සේ වැටුප් තලයේ හා තනතුරේ පිහිටුවීමේදී ශ්‍රේණිගත උසස්වීම් සඳහා [**MM 1-1 (I ශ්‍රේණිය)**] ක්රමවේදයක් ක්රියාත්මක නොවන අතර, එම තනතුර නිලධාරියාගේ ඉවත්වීමත් සමඟ අහෝසි වේ.

The above document was submitted in the Arbitration proceedings as annexure **J**.

The 1st Respondent retired from the institute. Until her retirement, she was paid a salary in the **MM 1-1-II** category.

It is not in dispute that at the time of her recruitment in 2006 as the Confidential Secretary, the 1st Respondent did not possess a G.C.E. (O/L) with three credit passes. The material placed before this Court indicates that she had obtained only two credit passes. Where a Scheme of Recruitment prescribes minimum qualifications in mandatory terms, such requirements are not matters of discretion but constitute a condition precedent to eligibility.

If the eligibility for placement in **MM 1-1 I** presupposes lawful recruitment and compliance with the minimum educational qualifications stipulated under the government scheme, a promotion in the absence of such eligibility would transcend the limits of the Arbitrator.

It is further evident that the 1st Respondent was placed on a salary scale personal to the holder following restructuring. An officer drawing a salary personal to the holder, and not absorbed into the approved cadre, cannot automatically claim structural progression unless the governing scheme expressly so provides.

Upon reviewing the arbitral award, it is abundantly clear that the Arbitrator reached certain findings based on assumptions rather than the available materials. In particular, considering the required qualifications of the 1st Respondent, he arrived at a speculative finding and states that there is no doubt that the 1st Respondent had obtained the required qualifications for the post of Confidential Secretary.

However, according to the materials before him, it is clear that the 1st Respondent did not possess the required qualifications when she was recruited as the Confidential Secretary.

As I mentioned earlier, the restructuring of cadre and the salary revision at the Institute were approved by the Department of Management Service. Therefore, the Institute has no authority to promote a person in disregard of Circular No. 30. When the Institute sought instructions, it was specifically informed that the promotion of the 1st Respondent is contrary to said circular.

While the Arbitrator may examine whether administrative discretion has been exercised fairly, he cannot compel structural absorption into a cadre post where such absorption is governed by approval of the Treasury or Department of Management Service. Granting a grade promotion without regard for the approved cadre would amount to altering the establishment arrangements.

It is also significant that the 1st Respondent admitted in evidence before the Arbitrator on 21st October 2019 that she had suffered no financial loss and that she continued to receive a salary in the **MM I- I II** category until her retirement on 19th May 2019. The Dispute, therefore, did not concern deprivation of wages or pecuniary entitlement but rather a claim to structural reclassification within the approved cadre. Therefore, the direction to place the 1st Respondent in the aforementioned category, notwithstanding the cessation of the personal to holder post upon retirement, amounts to exceeding the power of the Arbitrator.

Considering the foregoing, it is clear that the Arbitrator completely disregarded the major role played by the Department of Management Service and arrived at a conclusion beyond his powers.

Therefore, it is my considered view that the arbitrator's award is irrational and *ultra vires*, and that it is therefore liable to be quashed.

Hence, this Court is inclined to issue a *writ of certiorari* as prayed for in paragraph (b) of the prayer of the Petition.

This Court further issues a *writ of prohibition* restraining the 4th Respondent from taking any steps to enforce the arbitral awards marked **P13A** and **P14**.

I make no Order as to the costs of this Application.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL