

WAAS GUNAWARDENA  
v.  
PERERA AND ANOTHER

SUPREME COURT.  
G. P. S. DE SILVA, C.J.  
ANANDACOOMARASWAMY, J. AND  
DR. SHIRANI BANDARANAYAKE, J.  
S.C. APPEAL NO. 88/96.  
C.A. NO. 931/93.  
MARCH 06, 1997.

*Certiorari – Appointment outside cadre of Bank – Absence of Rules regulating procedure for appointment – Legitimate expectation.*

When the appointment made was one outside the normal cadre of the Bank and there are no rules regulating the procedure for such appointments, the petitioner challenging the appointment and claiming it as being more qualified and experienced cannot be said to have a legitimate expectation of being appointed to the post. There was no evidence that the Board of Directors abused its powers.

Certiorari cannot issue.

**Cases referred to:**

1. *Vidyodaya University v. Linus Silva* 66 NLR 505.
2. *Malloch v. Aberdeen Corporation* (1971) 1 W.L.R. 1578, 1596.

**APPEAL** from judgment of Court of Appeal.

*E. D. Wikramanayake with Anandi Cooray and U. Abdul Kajeem* for 2nd respondent-appellant.

*Ms. Marino Fernando* for 1st petitioner-respondent.

*K. C. Kamalabayson, A.S.G. with U. Egalahewa, S.C.* for respondent-respondents.

*Cur. adv. vult.*

March 31, 1997.

**G. P. S. DE SILVA, C. J.**

The 1st petitioner who was at that time the Assistant General Manager (Domestic Credit) of the 1st respondent (National Savings Bank) moved the Court of Appeal by way of an application for a writ of certiorari to quash the appointment of the 2nd respondent made by the 1st and 3rd to 6th and 8th to 10th respondents; and for a writ

of mandamus directing the respondents to make a fair and impartial appointment after due and sufficient inquiry. (The 2nd petitioner had earlier withdrawn from the proceedings). The 3rd respondent was the Chairman of the 1st respondent bank: the other respondents were members of the Board of Directors of the 1st respondent bank.

The 3rd respondent had recommended to the Board of Directors that the 2nd respondent be recruited to the 1st respondent bank in terms of section 77 of the National Savings Bank Act to a post designated "Deputy General Manager" outside the normal cadre of the bank. The recommendation was accepted by the Board of Directors and the 2nd respondent was appointed as Deputy General Manager with effect from 1st August, 1993. Prior to the impugned appointment, the 2nd respondent was a public officer and she had been seconded from the Ministry of Agriculture, Lands and Forestry to the 1st respondent bank as a consultant (Janasaviya Division) in August, 1992.

The 1st petitioner averred in his petition that the appointment of the 2nd respondent was "irregular and wrongful" inasmuch as the Board of Directors: (a) failed to advertise the post; (b) failed to notify the petitioner and other employees of the 1st respondent bank of the vacancy; (c) overlooked the fact that the 2nd respondent has absolutely no experience in banking. It was further averred that the petitioner was more qualified than the 2nd respondent both academically and by way of experience in banking, and the impugned appointment deprived him of his legitimate expectation of promotion in the bank where he had served since 1978.

The Court of Appeal took the view that in appointing the 2nd respondent to the post of Deputy General Manager, the Board "had not followed the normal practice of advertising the post and calling for applications from persons having the required qualifications ... There has *prima facie* been a procedural irregularity which makes the appointment of the 2nd respondent open to challenge before this court in the exercise of its writ jurisdiction. The procedural irregularity or procedural vices goes to the root of the appointment of the 2nd respondent to the relevant post. The Board has abused its powers in making the said appointment by not following the normal procedure and it has to be quashed." The Court of Appeal allowed the application for writ of Certiorari and Mandamus.

Against the judgment of the Court of Appeal, the 2nd respondent has now appealed to this Court. The gravamen of the 1st petitioner's complaint as set out in his petition (and referred to above) savours of a denial of equal protection, violative of Article 12(1) of the Constitution. The pith and substance of the petitioner's complaint is that the impugned appointment was arbitrary and discriminatory inasmuch as the normal practice of advertisement and calling for applications was not followed; the petitioner and other employees were not aware of the vacancy, and were deprived of the opportunity of applying for the post. It was further alleged that the required experience in banking was overlooked. On a scrutiny of the averments in the petition it appears to me that it does not articulate a ground for the issue of certiorari. Admittedly, the appointment made was one outside the normal cadre of the bank. We were not referred to any rule framed under the National Savings Bank Act which regulates the procedure for the appointment. The impugned appointment was not specifically created nor designated by the Statute, the post being one outside the normal cadre. It is very doubtful whether the petitioner could have had a "legitimate expectation" of being appointed to the post. There is no evidence to support the finding of the Court of Appeal that the Board of Directors has "abused its powers". I accordingly hold that there was no ground upon which the Court of Appeal could have issued a writ of certiorari to quash the appointment of the 2nd respondent-appellant.

In this view of the matter, it is unnecessary for me to consider in this appeal the submission of Mr. E. D. Wikremanayake counsel for the 2nd respondent-appellant, that this was a case of an ordinary contract between master and servant and therefore the Court of Appeal was not competent to grant certiorari to quash the appointment. (*University Council of the Vidyodaya University v. Linus Silva*<sup>(1)</sup>, See also *Malloch v. Aberdeen Corporation*<sup>(2)</sup>).

In the result, the appeal is allowed, and the judgment of the Court of Appeal is set aside. I make no order as to costs.

**ANANDACOOMARASWAMY, J.** – I agree.

**DR. SHIRANI BANDARANAYAKE, J.** – I agree.

*Appeal allowed.*