
SRI LANKA ADMINISTRATIVE SERVICE ASSOCIATION
vs.
KUMAR ABEYSINGHE AND OTHERS

COURT OF APPEAL.
SRISKANDARAJAH. J.
CA 1229/2003.
MAY 10, 2006.

Constitution-Article 52(2) - Article 55-17th Amendment - Appointment of Public Officers by the Public Service Commission - Does covering up duties come within the meaning of appointments?

The 4th respondent who was holding the post of Postmaster General (PMG) was appointed by the 1st respondent Secretary to the Ministry of Mass Communication to cover up duties in the post of Additional Secretary to the said Ministry.

The petitioner contends that prior to the 17th amendment to the Constitution, Additional Secretaries were appointed by the Cabinet of Ministers, but under the 17th Amendment the appointment of public officers, other than the Heads of Department is a matter for the Public Service Commission (PSC), and therefore the 1st respondent does not have the power to appoint the 4th respondent to cover up duties of the post of Additional Secretary.

HELD:

1. The 1st respondent under his supervisory powers over the relevant Ministry vested under Article 52(2) had made departmental arrangements for the 4th respondent who was the PMG to cover up duties of the post of Additional Secretary to the Ministry of Mass Communication.
2. As this is a departmental arrangement and it is not falling within the definition of appointment provided in the Establishment Code, the said letter of appointment to cover up duties issued by the 1st respondent is not *ultra vires* his powers.
3. Appointment is not defined in the Constitution but defined in the Establishment Code.

APPLICATION for a Writ of Certiorari.

Cases referred to :

1. *Abeywickrema vs. Pathirana* - 1986 1 Sri LR 120 at 142
2. *Powell vs. Cleland* -1948 1KB 262 at 273

Dr. Jayampathy Wickremaratne PC with *Pubuduni Wickremaratne* for petitioners

A. *Gnanathan* DSG for Respondent.

Cur.adv.vult.

June 27th, 2006.

SRIKANDARAJAH J.

The 1st Petitioner in this application is the Sri Lanka Administrative Service Association, the 2nd Petitioner is the President and the 3rd and 4th Petitioners are office bearers of the said association. The 4th Respondent who was holding the post of Postmaster General has been appointed by the 1st Respondent the Secretary to the Ministry of Mass Communication by his letter of 11.07.2003 (P2) to cover up duties in the post of Additional Secretary to the Ministry of Mass Communication.

The Petitioners submitted that prior to the 17th amendment to the Constitution, Additional Secretaries of Ministries were appointed by the Cabinet of Ministers. Under the 17th amendment, the appointment of public officers, other than Heads of Department is a matter for the Public Service Commission. Heads of Department are appointed by the Cabinet of Ministers after ascertaining the views of the Public Service Commission. The Petitioners contend that the power to make appointed to the post of Additional Secretary of the Ministry of Mass Communication is now vested with the Public Service Commission and therefore the 1st Respondent does not have the power to appoint the 4th Respondent to cover up duties of the post of Additional Secretary. The said appointment of the 4th Respondent contained in letter dated 11.07.2003 is arbitrary, illegal, null and void and it has to be quashed.

The Respondents contend that the appointment of the 4th Respondent to "cover up duties" does not come within the meaning of "appointment" in Article 55 of the Constitution. The word "appointment" is not defined in the Constitution. The Establishment Code in Chap 1.1 defines the appointment as follows : "Appointment" means the conferment of any paid

office in the Public Service, whether subject or not subject to subsequent confirmation, either as a first appointment of a person not already in the Public Service, or a subsequent appointment, or a promotion, or transfer involving an increase of salary or any change in status (e. g. the grant of temporary or permanent status to a casual officer, or permanent status to a temporary officer) in respect of a person in the Public Service.

The Respondents contend that the assignment of the 4th Respondent to "cover up duties" of the Additional Secretary of the Ministry of Mass Communication does not fall within the above definition since it does not involve any increase of salary or a change of status. In the absence of a definition to the word "appointment" in the constitution, the definition given to this word in the Establishment Code must be adopted to ascertain the meaning of the word "Appointment" in the context of Article 55 of the Constitution. In *Abeywickrema vs. Pathirana*⁽¹⁾ at 142 it was observed by *Sharvananda C. J.* (as he then was) that the Establishment Code has statutory force. In *Powell vs. Cleland*⁽²⁾ at 273 Evershed L. J. said, "It is a rule of interpretation of statutes that it is permissible to call in aid for the construction of words or phrases used in one Act, meanings given to them in an earlier Act *in pari materia*". The Respondent submitted that the appointment to cover up duties does not fall within the definition of "appointment" therefore the cover up duties does not fall within the purview of the Public Service Commission. The 1st Respondent acting in the exercise of the supervisory powers vested in him in terms of Article 52(2) of the Constitution directed the 4th Respondent to cover up the duties of the Additional Secretary.

Chapter II of the Establishment Code provides in 13:7 :

"No additional remuneration is payable unless an officer has been appointed by the appointing Authority to act in the post or to attend to the duties of a post. Any Departmental arrangements to cover up the duties of a vacant post will not entitle the officer covering up duties, to additional remuneration."

The above provision deals with three situations one is that of an "acting appointment" the second is to "attend to the duties" of a post, for these two situations the officers have to be appointed by the appointing authority but in the third situation *i.e.* to "cover up duties" no appointment is necessary by an appointing authority but it is only a departmental arrangement.

As the Post of Additional Secretary of the Ministry of Mass Communication fell vacant on 07.05.2003, the 4th Respondent who was

the most senior Class I officer of the Sri Lanka Administrative Service working in the Department falling within the purview of the Ministry of Mass Communication was appointed to "cover up duties" of the post of Additional Secretary of the said Ministry by the 1st Respondent. The 4th Respondent was covering up this duty in addition to his duties of Post Master General (1R1). This arrangement was made by the 1st Respondent acting in terms of Chapter II Section 13 of the Establishments Code. Subsequently the 1st Respondent made arrangements for the 4th Respondent to "cover up duties" of the Additional Secretary of the said Ministry on a full time basis by his letter dated 11.07.2003 to prevent administrative difficulties as there was a delay in making the appointment to the post of Additional Secretary. The salary scales of the post of Post Master General and the Additional Secretary of the Ministry of Mass Communication are the same and the 4th Respondent has not been paid any additional allowance. In view of this arrangement the 1st Respondent in the public interest and for the due administration and prompt and efficient discharge of the functions of the office of Postmaster General appointed Mr. K. A. S. Senadhira to cover up the duties of the post of Post Master General under the full supervision of the 1st Respondent until further orders.

The 1st Respondent under his supervisory powers over the relevant Ministry vested under Article 52(2) of the Constitution had made departmental arrangement for the 4th Respondent who was holding the Post of Postmaster General to cover up duties of the post of Additional Secretary to the Ministry of Mass Communication by his letter dated 11.07.2003 (P2). As this is a departmental arrangement and it is not falling within the definition of appointment provided in the Establishment Code, the said letter of appointment to cover up duties issued by the 1st Respondent is not *ultra vires* the powers of the 1st Respondent, as the 4th Respondent is the most senior Class I officer of the Sri Lanka Administrative Service other than the Secretary of the Ministry of Mass Communication serving in a department coming under the said Ministry, appointing him to cover up the duties of the post of Additional Secretary of the said Ministry cannot be considered as arbitrary or unreasonable. In these circumstances the Court is not inclined to quash the decision contained in the letter marked P2. Therefore this application is dismissed without costs.

Application dismissed.