

DAYARATNE AND OTHERS
v.
NATIONAL SAVINGS BANK AND OTHERS

SUPREME COURT
FERNANDO, J.,
GUNASEKERA, J. AND
YAPA, J.
SC NO. 452/2001 (FR)
MAY 28 AND JUNE 19, 2002

Fundamental Rights – Promotion to executive grades in the Bank – Time bar under Article 16 – Scheme of recruitment – Unlawful application of the Scheme – Article 12 (1) of the Constitution.

The petitioners who applied for promotion to the executive grade in the respondent Bank were not selected. 41 candidates were promoted. The petitioners complained, *inter alia*, that 18 of them were junior to the petitioners and sought a quashing of the promotions of the said 18. They also alleged that the scheme of recruitment and the allocation of marks on different criteria for selection as well as the conduct of the interview devoting only two or three minutes per candidate vitiated the selections. The respondents sought to justify the selection and preferred a preliminary objection that the application was time-barred.

Held:

- (1) Time began to run against the petitioners only when the 41 promotions were announced on 07. 08. 2001. Hence, the application filed on 30. 08. 2001 was within time.
- (2) The scheme of promotion was not arbitrary and unreasonable.
- (3) The interview and selection process was seriously flawed in that :
 - (a) The original interview mark sheets indicating the assessment of each member of the Interview Board were not produced without good reason but only two undated mark sheets signed by the 3rd to 5th respondents (members of the Interview Board).

- (b) The interview schedule did not show the existence of one "Atapattu R. C. M." for whom marks had been given in the mark sheet produced to the Court. This was a serious discrepancy.
- (c) There was no satisfactory explanation as to how the original entries were processed to produce the final mark sheets. The likelihood of error and manipulation has not been excluded.
- (d) The allocation of marks for qualifications was irrational and arbitrary; and the candidates were interviewed on an average of 10 minutes per candidate.
- (e) There was inadequate time to assess the candidates in respect of all seven criteria and to arrive at a common mark in respect of each criterion.

Cases referred to :

1. *Ranatunga v. Jayawardena* – 1 FRD 77.
2. *Jayawardena v. AG* – 1 FRD 175.
3. *Swissray Medical AG v. Fernando* – SC 51/94 SCM 25. 07. 94.
4. *Hewavitharana v. Chandrawathie* – (1951) 53 NLR 169.
5. *Selvam v. Kuddipillai* – (1954) 55 NLR 426.
6. *Rajakaruna v. De Silva* – (1977) 2 SRI LR 209.
7. *De Silva v. Secretary, Ministry of Health* – SC 378/99 SCM 18. 03. 2002.

APPLICATION for relief for infringement of fundamental rights.

Dr. Jayampathy Wickremaratne, PC with *A. Panditharatne* for petitioner.

Harsha Fernando, State Counsel for 1st, 2nd and 6th respondents.

Gomin Dayasiri with *Ms. M. Jinadasa* for 3rd to 5th respondents.

J. C. Weliamuna for the 12th, 16th, 19th, 20th, 21st, 23rd, 25th, 27th, 30th, 31st, 41st and 42nd respondents.

September 05, 2002

FERNANDO, J.

The ten petitioners are officers of the National Savings Bank the 1st⁰¹ respondent, and are presently in Grade III, Class III, which is the highest of the supervisory grades. They complain that their fundamental rights under Article 12 (1) were infringed by the 1st to 5th respondents, by reason of the failure to promote them to Grade III, Class II, which is the lowest of the executive grades.

By a circular dated 20. 02. 1996 (as amended on 19. 03. 96), officers who had been recruited or promoted to Grade IV during the period 1980 to 1988, and "who have completed five years' service in Grade IV", were summoned for interview for promotion to Grade III, Class III (Grade III-III), and about 170 officers including the ten¹⁰ petitioners were promoted with effect from 01. 01 1996. In the meantime by another circular dated 19. 03. 1996 officers promoted to Grade IV on 01. 01. 1992, although they had not completed five years service in Grade IV, were also called for interview, and about 60 officers were promoted to Grade III-III with effect from October or November, 1996. The 20th and 25th respondents were promoted to Grade III-III on 01. 12. 1999. The 23rd and 46th respondents were promoted, by letters dated 10. 07. 2000, with effect from 10. 12. 1993 and 01. 01. 1996 respectively, but subject to the condition that their seniority²⁰ would be reckoned from 01. 04. 2000.

By a circular dated 12. 02. 2001, the 2nd respondent, the General Manager of the Bank, announced new schemes of promotion for all seven grades of clerical, supervisory and executive employees. The scheme of promotion from Grade III-III to Grade III, Class II (Grade III-II) was as follows :

Eligibility Requirements : Officers confirmed in Grade III-III with a minimum of one year's service in that Grade.

| Scheme of Evaluation : | Maximum Marks | |
|----------------------------------------------------------------------------------------------------------------------------------------|----------------------|----|
| (i) Performance Evaluation Reports for the last 3 years according to the rating given therein : | 20 marks | 30 |
| (ii) Service in Grade III-III (5 marks for each year) in excess of the minimum required for eligibility : | 30 marks | |
| (iii) Professional qualifications in Banking or in a specialized field (marks will be awarded only once in the career of an officer) : | 10 marks | |
| (iv) Interview for the assessment of suitability : | 40 marks | 40 |

By a notice dated 15. 02. 2001 applications were called for promotions to all seven Grades, the closing date being 08. 03. 2001. After that closing date, by a memorandum dated 16. 03. 2001 the 2nd respondent made certain changes in regard to two categories of promotions : promotions to Grade IV and to Grade III-III. By notice dated 19. 03. 2001 Bank employees were informed of those changes and that the closing date for applications had been extended to 02. 04. 2001. Those changes did not affect the scheme of promotions to Grade III-II, and hence there was no need for an extension of the closing date in respect of promotions to Grade III-II. Nevertheless, the respondents contend that the extension did apply to those promotions as well. 50

Interviews for promotion to Grade III-II were held on eight days between 12th and 28th June, 2001.

The interview panel consisted of the 3rd to 5th respondents, the 3rd respondent being the Chairman. The 3rd respondent produced eight interview schedules, one for each interview day. These schedules gave the names, places of work, and the scheduled times of interview, but contained no information whatever about the candidates' past performance, performance evaluations, employment history, qualifications or experience. Each schedule contained the names of about 25 candidates to be interviewed between 1.00 p.m. and 5.00 p.m. each day. The 3rd respondent stated that the interview panel decided that the 40 marks for interview should be allocated equally under four heads : leadership qualities, attitude, personality, and knowledge and management skills; but he did not explain on what basis they decided to award marks for the performance evaluation reports and for professional qualifications. ⁶⁰

On 07. 08. 2001, the 2nd respondent announced the names of 41 ⁷⁰ promotees (the 7th to 47th respondents), of whom 18 were junior to the petitioners.

SUBMISSIONS

The petitioners challenged the scheme of promotion on several grounds. They complained that the basis of allocation of the 40 interview marks had not been disclosed in advance; that since 20 marks had been allocated for performance evaluation reports, the allocation of a further 40 marks for assessment of suitability at the interview was excessive and amenable to abuse; that no marks had been allocated for the period of service in senior and/or supervisory ⁸⁰ grades; and that no recognition had been given for academic qualifications.

The petitioners also challenged the implementation of the scheme, alleging that the 23rd and 46th respondents did not have *actual* service of one year in Grade III-III; that qualifications had not been duly considered; and that the interviews lasted only for two or three minutes,

the only questions put being of a very personal nature, and not relevant to test their knowledge of banking or their suitability for promotion.

The respondents contended that the petitioners' challenge to the scheme published in February, 2001, and to the interview process which ended on 28. 06. 2001, was time-barred, because this application was filed on 30. 08. 2001 :

"The Supreme Court has consistently dismissed applications which have been filed out of time. *Ranatunga v. Jayawardena*, SC No. 27/79, SCM 30. 07. 79 – the Court held that Article 126 (2) applies both to infringements and threatened infringements. The time limit begins to run on the day the petitioner is aware of the threatened infringement. *Jayawardena v. AG* SC No. 4/91 SCM 06. 03. 81 – the Supreme Court held that the application has not been filed within one month of the apprehension of infringement of the petitioner's fundamental rights. *Rajakaruna v. de Silva*, [1997] 2 Sri LR 209 – the Court held that the application was out of time but heard the application as the petitioner was not represented by Counsel."

The respondents also urged that the petitioners had not protested either about the scheme or the interview process until long afterwards.

On behalf of the interview panel, only the 3rd respondent tendered an affidavit. In regard to the implementation of the scheme, the 3rd respondent submitted that the 23rd and 46th respondents "had completed one year's service in [Grade III, Class III] on 02. 04 2001", i.e. the extended closing date; that "due recognition has been given to the academic qualifications of the candidates and 10% of the total marks has been allocated for this purpose"; and that each candidate had been interviewed "for a minimum of 10 minutes". (Some of the promotees claimed that they had been interviewed for a minimum of ten to *fifteen* minutes). He did not explain the basis on which the

interview panel awarded marks for the performance evaluation reports and for professional qualifications. As for the allocation of interview marks, however, he gave a very detailed description :

“Under the category “Leadership” the candidates were questioned ¹²⁰ on the handling of responsibilities assigned to them over and above the regular duties allocated to them, such as signing powers, managerial duties, etc. For example the candidates were questioned as follows : “Have you been assigned any “A” Class signing powers during the last three years? What are the additional responsibilities undertaken by you during the last three years . . . ? Have you been assigned the duties of your superior officers when such officers were not available?” The candidates were also *tested* on whether they had played an initiative role in various duties and functions of the 1st respondent bank. ¹³⁰

Under the category, “Attitude” the panel *tested* the attitude of each candidate towards their work and the welfare of the 1st respondent bank. The candidates were queried on their work performance and were *tested* on their enthusiasm for the performance of their duties, their participation and contribution towards various important occasions, welfare projects of the 1st respondent bank . . .

Under the category “Personality” the panel evaluated the personality of the candidate, by observing his appearance, demeanour, the manner in which [he] presented himself for the ¹⁴⁰ interview and answered questions.

Under the category “Knowledge of Work and Managerial Skills” the candidates were tested on their knowledge about the various saving schemes . . . [of the 1st respondent] and about the vision and goals . . . and targets for the year ahead . . . candidates were also questioned and *tested* on their ideas and views concerning new and improved methods of carrying out various duties.” [*emphasis added*]

SCHEME OF PROMOTION

Although the basis of allocation of the 40 interview marks had not been disclosed in advance, in regard to promotions to the other grades the criteria stipulated in the circular of 12. 02. 2001 included leadership, attitude, communication skills, knowledge, management skills, communication skills, and personality. While it would have been better if the circular had specified the criteria and the marks in the case of promotions to Grade III-II as well, the allocation adopted by the interview panel was neither unreasonable nor unexpected. ¹⁵⁰

The allocation of 20 marks for performance evaluation reports was not inconsistent with the allocation of a further 40 marks for assessment of suitability at the interview. A review of the performance evaluation reports was necessary to assess whether *past* performance was satisfactory, while the interview was intended to assess suitability, i.e. the likelihood of satisfactory *future* performance. The quantum of marks allocated to those two criteria was not unreasonable, either individually or cumulatively. ¹⁶⁰

The petitioners' complaint that no marks had been allocated for the period of service in senior and/or supervisory grades is untenable. The 30 marks allocated for service in Grade III-III constituted a sufficient recognition of past service.

Finally, it is unnecessary to consider the allegation that no recognition had been given for academic qualifications, because the 3rd respondent asserted that academic qualifications were recognized. Whether they were satisfactorily recognized is another matter, which I will turn to later. ¹⁷⁰

I hold that the scheme of promotion was not arbitrary or unreasonable.

PRELIMINARY OBJECTION

The first limb of the respondents' preliminary objection is that after the lapse of one month the petitioners were not entitled to challenge the scheme of promotion. The 1st respondent was entitled, from time to time, and in the interests of the institution, to lay down the basis on which employees would be promoted, and that became part of the contract of employment. The scheme of promotion published on 12. 02. 2001 was directly and immediately applicable to the petitioners, and became part of the terms and conditions of their employment. If they did not consent to those terms and conditions, as being violative of their rights under Article 12, they should have complained to this Court within one month. They failed to do so. Instead, they acquiesced in those terms and conditions by applying for promotion without any protest. I, therefore, uphold the objection. 180

The second limb of the objection is that the interview process concluded on 28. 06. 2001; that the petitioners' allegations in respect of the allocation of marks at the interview related to that process; and that any complaint that that process was in violation of Article 12 should have been made within one month of 28. 06. 2001. That contention has two aspects : *either* that there was a completed infringement by 28. 06. 2001, and time ran from that date, *or* that by then an infringement was apprehended, which constituted an imminent infringement, to which too the time limit of one month applied. 180

I must now deal with the decisions cited by the respondents. The petitioner in *Ranatunga v. Jayawardena*,⁽¹⁾ alleged that his fundamental right was infringed by the "improper selection of a non-qualified candidate" for political reasons. That selection had been communicated to him in June, 1978. The objection was taken that "the fundamental right if any which the petitioner alleges was violated did not exist at the time of the alleged executive or administrative action". However, the petitioner's Counsel submitted that his allegation was that there had been a threatened infringement. The Court held that no such 200

fundamental right existed in June, 1978, and that even assuming that there was a threatened infringement which continued until 07. 09. 1978, the time of one month was applicable. The application, having been filed only in June, 1979, was therefore out of time. With respect, it seems to me that the petitioner's complaint was of an actual infringement in June, 1978, for which there was no remedy because Article 126 was not retrospective, and even if it was retrospective, the application was not filed within one month of 07. 09. 1978. 210

In *Jayawardena v. AG*⁽²⁾ the petitioner was the holder of a permit issued under the Crown Lands Ordinance. In June, 1980, he received several letters, to the effect that rent should not be accepted from him for the year 1980, that his permit should be cancelled for the reason that he had not paid rent for 1980, and that he should quit by 19. 07. 1980. In January, 1981, summons was served on him under the Recovery of State Lands Act, whereupon he filed an application under Article 126 alleging that he was being dispossessed to make room for a political favourite. The Court held that "On the question as to whether the authorities were about to infringe a fundamental right, it seems clear that he should have had that apprehension" in June, 1980, and that time began to run then. Here, too, the petitioner's complaint was of an actual infringement in June, 1980, and the application filed in January 1981, was out of time. 220

Both those decisions dealt with allegations, which if true, constituted actual infringements. In neither did the question of an "imminent" infringement really arise. Further, both decisions did not discuss when a possible (or an anticipated or apprehended) infringement becomes "imminent". I do not agree that the moment a person becomes aware of the possibility of an infringement he must rush to Court : because for an infringement to become "imminent" it must not only be very likely to occur, but must also be very likely to occur very soon (cf *Swissray Medical AG v. Fernando*.⁽³⁾) 230

In any event, those decisions do not suggest that the failure to seek relief in time in respect of an infringement at the stage that it is imminent bars an application for relief once the infringement actually takes place. In my view, an aggrieved person has the right to challenge an infringement not only when it is imminent but also after it has occurred. The failure to challenge an imminent infringement in time will never bar a subsequent actual infringement – just as an imminent threat to enjoyment of immovable property entitles the owner to *quia timet* proceedings to prevent the apprehended invasion of his rights, and an actual invasion of his rights entitles the owner to bring a vindicatory or a possessory action to redress the wrong (cf *Hewavitharana v. Chandrawathie*,⁽⁴⁾ and *Selvam v. Kuddipillai*.⁽⁵⁾ 240

In this case the infringement of the petitioners' rights occurred not when the interviews were concluded on 28. 06. 2001, nor even when the interview panel made its recommendations, but only when the 1st respondent acted upon those recommendations. The recommendations did not amount to an infringement, because the Board of Directors might have refused to accept them. Even assuming that they might have amounted to an imminent infringement, yet the respondents have not established when they were made – and the burden was on them as the party pleading the time-bar – and accordingly we do not know when time began to run. 250

Consequently, time began to run against the petitioners only when the names of the 41 promotees were announced on 07. 08. 2001. I hold that the complaint in respect of the implementation of the scheme was therefore within time. 260

There remains the decision in *Rajakaruna v. de Silva*⁽⁶⁾ where it was observed that although the petitioner may not have applied strictly within the prescribed time, the Court was "inclined to consider his case on merits as he was not represented by Counsel". If that principle is consistently applied, victims of fundamental rights violations will become entitled to file belated applications provided they do so in

person, waiving their right to legal representation; and Attorneys-at-Law will advise clients that otherwise time-barred claims may nevertheless be made in person. Article 126 provides that a petitioner "may *himself* or by an Attorney-at-Law on his behalf, within one month . . . apply to the Supreme Court". The time bar has thereby been made expressly applicable to a petitioner in person, and cannot be waived. In any event, those observations have no relevance to this application. 270

IMPLEMENTATION OF THE SCHEME

The 1st to 5th respondents did not produce the original interview mark sheets. What was produced as being the interview mark sheets were two sets of documents, signed by the 3rd to 5th respondents, but undated. One set contained the full details in respect of all seven criteria, including the breakdown of the 40 interview marks. The other set was identical, except that in regard to the interview marks it gave only the aggregate. In both, the names of the candidates had been arranged in order of merit, and it was therefore obvious that they had not been contemporaneously entered, and must have been prepared after all the interviews had been concluded. In the 3rd respondent's affidavit he did not explain how the members of the panel made and recorded their assessments as the interviews progressed each day. Were the marks for performance evaluation reports, service in Grade III-III, and qualifications given as each candidate was interviewed (or before or after)? Did each member make his own assessment as soon as each candidate was interviewed, and did the panel make a common assessment immediately thereafter? Or did each member record his own assessment, a common assessment being made at the end of the day? 280 290

In the written submissions filed on behalf of the 1st and 2nd respondents – after the oral hearing – it was submitted that the interview panel prepared a common mark sheet "which has been processed by computer", that the members have placed their signatures thereto, thus certifying to its veracity and authenticity; that "of course 300

the personal notes maintained by each individual member, if at all, have not been produced . . . [which] is not a fatal omission", and that it has been held that a common mark sheet is valid and does not *per se* amount to arbitrariness (citing *de Silva v. Secretary, Ministry of Health*⁽⁷⁾). Those submissions do not answer the questions raised in the preceding paragraph. The documents in which the original entries were made on each of those eight days by members, individually or collectively, have not been forthcoming. The respondents' plea that the mark sheet had been "processed" by computer does not explain ³¹⁰ whether the entries were made on to the computer directly as each interview ended (and if so by whom), or were entered later from one or more documents; and the likelihood of error and manipulation has not been excluded.

Accordingly, it became necessary for me to scrutinize the interview schedules and mark sheets closely. The interview schedules contained 200 names in all. Two names were repeated. That means, therefore, that 198 candidates had been called for interview. According to those schedule, interviews were scheduled from 1.00 p.m. to 5.00 p.m. each day. The time spent on interviews was thus 32 hours, which means ³²⁰ that, each interview took an *average* (and not a *minimum*) of ten minutes. However, the interview mark sheets contained 199 names, and on examination it turned out that the 86th candidate in order of merit was "Atapattu R. C. M.", whose name did not appear in the interview schedules. Did the interview panel interview a candidate who was not scheduled to be interviewed, or did they give marks to a candidate who was not interviewed? Or was it due to a computer error? The absence of the original mark sheets was therefore a serious shortcoming.

The last name of the interview mark sheets is that of a person ³³⁰ scheduled for interview on the 2nd day. He was given no marks under each head, which means that he did not turn up for the interview. However, that entry tends to prove that marks for performance evaluation reports, service in Grade III-III, and qualifications, were *not* given in advance, but at the interview.

The manner in which marks were allocated under the head of "professional qualifications" was not at all satisfactory. According to the scheme, marks were due only for *professional* qualifications "in banking or in a specialized field", and not for *academic* qualifications. While the petitioners were not entitled to challenge the scheme in respect of any omission to recognize *academic* qualifications, the 3rd respondent categorically stated that they were in fact recognized. The 20th and 25th respondents had qualifications, while the 23rd and 46th did not claim any. The following is a summary of the marks given to those four respondents and the ten petitioners :

| | | Marks |
|------------|----------------------------------------------------------------------------------------------------------------------------------|--------------|
| 25th Respt | Associate Member, Institute of Bankers (I.B.) and Certificate Course in use of Technology | 10 |
| 20th Respt | Intermediate Exam I.B. & Diploma in Credit Management | 10 |
| 23rd Respt | No qualifications disclosed | 05 |
| 46th Respt | No qualifications disclosed | 05 |
| 6th Pet | Intermediate I.B. & Bachelor's Degree in Development Studies | 05 |
| 2nd Pet | B.Sc. in Administration | 05 |
| 8th Pet | Intermediate I.B. & Diploma, Institute of Workers' Education; final year student following Bachelor's Degree in Labour Education | 00 |
| 4th Pet | Intermediate I.B. | 00 |

| | | Marks |
|----------|--------------------------------|--------------|
| 1st Pet | Bachelor's Degree in Economics | 00 |
| 3rd Pet | Bachelor of Arts | 00 |
| 5th Pet | Bachelor of Arts | 00 |
| 7th Pet | Bachelor of Arts | 00 |
| 9th Pet | Bachelor of Arts | 00 |
| 10th Pet | No qualifications disclosed | 00 |

If the 20th respondent deserved ten marks, the intermediate examination of the Institute of Bankers merited at least five marks;³⁷⁰ and there is no rational basis on which the 4th and 8th petitioners could have been denied any marks. If the 2nd petitioner deserved five marks, the 6th deserved more; and the 1st petitioner deserved some marks. If the 3rd respondent was truthful in claiming that due recognition had been given for academic qualifications, the 1st, 3rd, 5th, 7th and 9th petitioners deserved some marks – at least to differentiate them from candidates who had no qualifications. Why the 23rd and the 46th respondents were given five marks is a mystery. The mark sheets reveal also that candidates were given ten marks, five marks, or none. The allocation of marks for qualifications was³⁸⁰ irrational and arbitrary.

Those discrepancies suggest that the interview panel did not take the time to make a detailed study and comparison of the candidates' qualifications – although it was only a minority of candidates who appear to have had qualifications. The impact of those discrepancies must be considered in the light of the fact that the last 15 promotees (including the 23rd and the 46th respondents) obtained 56 to 54 marks, while the next 16 unsuccessful candidates (including six petitioners) scored 53 marks. If some of the promotees got two or

three marks less, and/or the next 16 unsuccessful candidates got just 390
one mark more, the picture would have been quite different. The
seven petitioners who were given no marks for qualifications (i.e. other
than the 10th) should reasonably have been given at least one or
two marks – enough to make a difference.

The petitioners have urged that the time spent on each interview
was insufficient. The respondents did not suggest that they were
provided with interview schedules containing particulars of the
candidates' past performance appraisals, employment history,
qualifications or experience. While the allocation of marks for service
in Grade III-III would have been quick, the allocation of marks for 400
performance on the basis of ratings received would have required
scrutiny of the performance evaluation reports. Qualifications would
have had to be reviewed and assessed. Assessment of "suitability"
would have required time – particularly, if the panel did probe "suitability"
in the exhaustive way they claim to have, including "testing" candidates.
Further, if they jointly allocated marks to each candidate for each
category, contemporaneously, some discussion and delay were
inevitable. It is therefore very probable that the average time of just
ten minutes available for each candidate was quite insufficient to 410
assess the candidates fairly and accurately – and that is confirmed
by the discrepancies in regard to marks for qualifications. The
respondents cited *De Silva v. Secretary, Ministry of Health* where four
candidates were interviewed for about thirty minutes each. It was in
that context that I observed that particularly where the number of
candidates to be interviewed is small, a joint evaluation of each
candidate, systematically and honestly done, may sometimes be more
useful than individual evaluations – because comments and discussion
would ensure better and more consistent evaluation. The evaluation
process in this case came nowhere near those standards.

I must mention also that the 23rd and the 46th respondents 420
received nine out of ten for each of the four heads assessed at the
interviews, while the 20th and 25th respondents received 33 out of

40. This was more than any other candidate. Each of the other 37 promotees had four or five years' service in Grade III-III, while those four respondents had approximately one year each. Having regard to the small margin, of one or two marks, between success and failure, it is highly probable that those assessments were made with undue haste.

Finally, the eligibility requirement was a minimum of one year's *service* in Grade III-III. The petitioners rightly contend that the 23rd and the 46th respondents did not have one year's *actual* service, and were therefore ineligible even to apply for promotion. ⁴³⁰

To sum up, the original interview mark sheets were not produced without good reason; there was a serious discrepancy as to the allocation of marks to candidate R. C. M. Atapattu; there was no satisfactory explanation as to how the original entries were processed to produce the final mark sheets; the allocation of marks for qualifications was irrational and arbitrary; there was inadequate time to assess the candidates in respect of all seven criteria and to arrive at a common mark in respect of each criterion; and the 23rd and 46th respondents ⁴⁴⁰ were ineligible.

I, therefore, hold that the interview and selection process were seriously flawed.

RELIEF

The petitioners have asked for a declararion that the scheme of promotion be declared null and void, and that the promotion of all the promotees be declared void. For the reasons stated above, I uphold the scheme.

In the alternative, the petitioners have prayed for the quashing, not of all, but only of the promotions of the 7th, 12th, 16th, 19th, ⁴⁵⁰

20th, 21st, 23rd, 25th, 27th, 40th, 41st, 42nd and 46th respondents – on the basis that they were all junior to the petitioners. While the entire process was flawed, I do not consider it just and equitable to quash the other promotions, as the petitioners had not sought that relief. The petitioners have also asked for an order directing the 1st respondent to promote them to Grade III-II. However, the circumstances do not justify such an order.

I, therefore, grant the petitioners a declaration that their fundamental rights under Article 12 (1) have been infringed by the 1st, 3rd, 4th and 5th respondents. The promotions of the 7th, 12th, 16th, 19th, 20th, 21st, 23rd, 25th, 27th, 40th, 41st, 42nd and 46th respondents are quashed. The 1st respondent will have a fresh interview and selection process, conducted by a different interview panel based on the same criteria, for the candidates who presented themselves for the June, 2001, interviews. That interview and selection process shall be concluded on or before 30. 11. 2002. The 1st respondent will pay each of the petitioners a sum of Rs. 40,000 as compensation and costs on or before 31. 10. 2002.

GUNASEKERA, J. – I agree.

YAPA, J. – I agree.

Relief granted.