

THIRANAGAMA
v.
MADIHAHEWA, COMMISSIONER-GENERAL OF LABOUR
AND OTHERS

SUPREME COURT
FERNANDO, J.
EDUSSURIYA, J., AND
WEERASURIYA, J.
SC (FR) APPLICATION No. 28/2002
27 SEPTEMBER, 2002.

Fundamental Rights – Appointment of Labour Officer on results of a Limited Competitive Examination – Reliance on irrational criteria in making appointments – Article 12(1) of the Constitution.

The petitioner was an Inspector of Internal Trade, Grade II, in the Public Service. He was permitted to sit a Limited Competitive Examination and interviewed for selection as a Labour Officer in 1999. He obtained 115 marks. Whilst the 10th, 11th and 12th respondents who also obtained 115 marks were appointed as Labour Officers, Class II, the petitioner was not given an appointment. 13th to 25th respondents who had scored lesser marks were also given appointments as Labour Officers, Class II. In 1994 also, one Wickremanayake and in 1997 one Wijesinghe who were Inspectors of Internal Trade had been appointed as Labour Officers on the results of a Limited Competitive Examination.

The petitioner had the qualifications stipulated by the scheme of recruitment in that he was a confirmed officer with 5 years of service and a graduate of a recognized university.

The Commissioner-General of Labour (the first respondent) urged that according to the scheme of recruitment applicable to the petitioner, he had to be an employee in the clerical or "allied grades" of the public service and that only Inspectors of Trade, Grade I were within the expression "allied grades", but not the petitioner who was a grade II officer. The evidence showed that in the Sinhala version of the scheme in 1994, 1997 and the current scheme which was used, the expression "allied grade" which appeared in the English version was not there. Instead the Sinhala version referred to parallel grade. (සමාන්තර ශ්‍රේණියක)

Held:

- (1) It was neither rational nor in accordance with the Sinhala version of the scheme to have taken the view that Inspectors of Trade, Grade II, were not employees in the clerical or "allied grades" in the Public Service and that the petitioner was not eligible for appointment as a Labour Officer.
- (2) The petitioner's rights under Article 12(1) of the Constitution had been infringed.

APPLICATION for relief for infringement of fundamental rights.

A.H.H. Perera for petitioner.

Nihal Jayawardena, Senior State Counsel for Attorney General.

February 11, 2003

EDUSSURIYA, J.

The Petitioner joined the Public Service as an Inspector of Internal Trade, Grade II on 15/11/1991 and at the dates relevant to this application held the same post.

The Petitioner states that pursuant to a notice published in Gazette No. 1144 dated 04/08/2002 (Document A) relating to a Competitive Examination to be held for the recruitment of Labour Officers he applied to sit the Limited Competitive Examination as he was qualified in terms of paragraph 3 (iv)(b) of the notice.

Although the 9th Respondent Commissioner-General of Examination at first rejected the Petitioner's application, on appeal the 9th Respondent permitted the Petitioner to sit the examination. The Petitioner then sat the Limited Competitive Examination on 21/01/2001, and that he was thereafter called for an interview is not disputed. However on 24/12/2001 he had come to know that he had not been selected for appointment although he had been ranked 84 with a score of 115 marks, although the 10th, 11th and 12th Respondents who were of equal rank with 115 marks had been appointed Labour Officers Class II.

The Petitioner complains that 13th to 25th Respondents who had scored lesser marks than he had, also received appointments as Labour Officers Class II. On inquiring (from the 1st Respondent) he had come to know that he had not been appointed as he was not an officer who fell within the meaning of the term Allied Grade as set out in Gazette Notification dated 04/08/2000.

The Petitioner states that in 1994 one K.P.A.S. Wickremanayake, and 1997 one D.L.J. Wijesinghe who were Inspectors in the Department of Internal Trade had been appointed Labour Officers on the results of the Limited Competitive Examination.

The 1st Respondent by his affidavit of 14/05/2002 has stated that only officers who were in confirmed permanent employment in the clerical or allied grades in the Public Service or the Provincial Public Service for a period of 10 years or more were qualified for

recruitment and that upon request by the Secretary to the Ministry of Labour, the Director of Establishment had clarified what was meant by Allied Services and also referred to Gazette Notification dated 12/03/1999 (1R 2(a)). However, the Gazette Notification calling for appointments in this instance required 5 years of service.

The 8th Respondent by his affidavit stated that in terms of the Gazette Notification of 12/03/1999, Grade I Inspectors of Internal Trade and Commerce were eligible but that the Petitioner being a Grade II Inspector was not eligible.

Therefore the position taken up by the 1st and 8th Respondents is that the Petitioner was not eligible to sit the Limited Competitive Examination according to the latest recruitment procedure. It is also the position of the 1st Respondent that K.P.A.S. Wickremanayake and D.L.J. Wijesinghe were appointed in accordance with the recruitment procedure that was in force at the time they were appointed Labour Officers and that the present recruitment was carried out in accordance with the new procedure introduced in 2000, and that according to that recruitment procedure 1R1 of 4/5/2000, the Petitioner was neither in the clerical service nor was he in an allied grade because only Inspectors of Internal Trade Grade I fell within the term "allied grades" and not Inspectors of Internal Trade Grade II.

Under paragraph 3 (iv)(b) candidates who completed 5 years of service in the Government Service or the Local Government Service in a Clerical or Allied Grade up to closing date of application and have been confirmed in service and possess a Degree from a recognized University are eligible to sit the Limited Competitive Examination. The Petitioner holds a Degree from the University of Colombo and has completed 5 years of service as an Inspector of Internal Trade and has been confirmed in service. The only question to be decided is whether he, an Inspector of Internal Trade belongs to a Grade which is Allied to the Clerical Service.

It must be mentioned at the very outset that paragraph 5 II (b) of the Sinhala Gazette of 4/8/2000 1R1 refers to those who are in Government Service or Local Government Service in a clerical or parallel grade, and not Allied Grade as set out in the English

Gazette of the same date. The Sinhala words used are “සමාන්තර ශ්‍රේණියක”

The English Gazette Notification of 02/04/1993 calling for appointments for posts of Labour Officers referred to “Government Clerical Service or Parallel Service” and not Allied Service. So that, although the words “Allied Service” are used in the English Gazette Notification in response to which the Petitioner applied, in the Sinhala Gazette Notification the words used were “සමාන්තර ශ්‍රේණියක” as did the Sinhala Gazette Notification of 02/04/1993 when Wickremanayake and Wijesinghe who were Grade II Inspectors of Internal Trade were recruited as Labour Officers.

Further, the Director of Establishment in his letter 1R2 of 3/1/2002 refers to Parallel Grades (සමාන්තර ශ්‍රේණි). Therefore Allied Grade must be understood to mean a Parallel Grade. Apart from stating in his affidavit that Wickremanayake and Wijesinghe who were Inspectors of Internal Trade as at the date of their recruitment as Labour Officers were recruited according to the procedure prevailing at that time, no other reasons have been given.

If an Inspector of Internal Trade Grade II fell within a grade parallel to Clerks, Typists, Stenographers, Book Keepers, Store Keepers, Shroffs and Interpreters in 1993 and 1997, I fail to see how it can be now said that an Inspector of Internal Trade drawing the same salary (and in this case a graduate confirmed in service and having 5 years of service) does not fall within that category or class of persons.

In this connection I may also refer to the Gazette Notification dated 25th May 2001 (Exhibit I filed with the Counter Affidavit of the Petitioner) calling for applications to Class II, Grade II of the Sri Lanka Administrative Service in the North-East Province, 25th August 2001 at a salary of Rs. 97,500-15X2700-Rs.138,000/- which is much higher than the salary scale of a Labour Officer to which post the Petitioner applied in this instance, sets out that Labour Officers as well as Inspectors of Internal Trade confirmed in service with 5 years of service and a degree from a recognized University are eligible to apply. So that an Inspector of Internal Trade was treated as being on par with a Labour Officer.

In the face of all this material I cannot see how the Respondents could even have sought to justify the position they have taken up.

In the circumstances, I hold that the Petitioner's fundamental right guaranteed under Article 12 (1) of the Constitution of this country has been violated and direct the Public Service Commission and 1st Respondent to appoint the Petitioner as a Labour Officer, Grade II in the Department of Labour on the same terms and conditions as those Public Officers who were appointed Labour Officers, Grade II with effect from 26th November 2001 with back wages, allowances in excess of what he received during the said period from 26th November 2001 and also direct the payment of compensation by the State and costs in a sum of Rs. 50,000 within three months of today.

FERNANDO, J. - I agree.

WEERASURIYA, J. - I agree.

Relief granted.