

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

S.C. (FR) Application No. 394/2008

In the matter of an Application under
Article 126 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

Oenone Saummiya Amalasontha
Gunewardena
No. 285/12, Hokandara South
Hokandara

PETITIONER

Vs.

1. Sri Lankan Airlines Limited
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 1.
2. Dr. P. B. Jayasundera
Chairman
Sri Lanka Airlines Limited,
Level 22, East Tower,
World Trade Centre,
Echelon Square.
Colombo 1.
- 2A. Ajith Dias
Chairman
Sri Lankan Airlines Limited
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 1.

3. Manoj Gunewardena
Chief Executive Officer,
Sri Lankan Airlines Limited,
Level 22, East Tower,
World Trade Centre,
Echelon Square.
Colombo 1.
- 3A. Rakhitha Jayawardena
Chief Executive Officer,
Sri Lankan Airlines Limited
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 1.
4. Capt/ Milinda Ratnayake
Sri Lankan Airlines Limited
Level 22, East Tower,
World Trade Centre,
Echelon Square,
Colombo 1.
5. Hon. Attorney General
Attorney General's Department,
Colombo 1.

RESPONDENTS

BEFORE:

B. P. Aluwihare P.C., J.
Sisira J. de Abrew J. &
Anil Gooneratne J.

COUNSEL:

M. A. Sumanthiran with Ermizo Tegal
Instructed by S. Sunderalingam and Balendra
For the Petitioner

Romesh de Silva P.C., with Sugath Caldera
For the 1st and 3rd Respondents

Anura Meddegoda with T. Nanayakkara
Instructed by Varners for the 2nd Respondent

Palitha Kumarasinghe P.C., with Chinthaka Mendis
For the 4th Respondent

Indika Demuni de Silva P.C., A.S.G. for the 5th Respondent

WRITTEN SUBMISSIONS TENDERED ON:

11.03.2009 – By the Petitioner
07.05.2009 – By the 2nd Respondent
11.05.2009 – By the 1st & 3rd Respondents

ARGUED ON: 14.12.2016

DECIDED ON: 15.02.2017

GOONERATNE J.

The Petitioner by her petition to this court states she is one of the pioneers of the 1st Respondent Company (Sri Lankan Airlines Limited) and inter alia states that the Petitioner was promoted to the management level in 1984 and Senior Manager Level in 1992. Petition filed of record gives details and positions held by the Petitioner during her tenure of office. It is also pleaded that at one point of time Petitioner was the largest shareholder of the 1st Respondent Company from among its employees. Petitioner describes, in her petition several wrongs caused to her by her superiors and to certain discriminatory acts.

Her main complaint is her non selection to the post of Head of Service Delivery for which she applied and faced an interview before an interview panel, and the selection of the 4th Respondent to the said post.

On a perusal of the entire petition, I find that very many paragraphs in same refer to mismanagement and lapses of the 4th Respondent, and further complains that the interview was not properly held and that the 4th Respondent is not a fit and proper person to be appointed as Head of Service Delivery. Qualifications required for the said post are contained in paragraph 24 of the petition. In paragraph 27 it is pleaded that format of the interview as communicated by the Human Resources Division was a 20 minute presentation followed by an interview. Special reference is made for a separate interview before the Chairman of the 1st Respondent for all candidates in the afternoon of the day of the interview. Presentation and interview would be for one hour as intimated by the Human Resources Division. The interview with the Chairman (2nd Respondent) was to be half an hour duration.

Petitioner complains that upon entering the room where the interview was held the 2nd Respondent had informed her that both the presentation and interview would have to be completed within 20 minutes. As a result of this sudden and unexpected change, the Petitioner was forced to skip certain slides in her presentation which was prepared for a 20 minutes time

allocation. Petitioner further complains that during the interview no questions had been asked by the 3rd Respondent or the Chief Financial Officer (as pleaded). The 2nd Respondent asked only a few questions and one question put to her by the Head of Human Resources. It is also the position of the petitioner that the 2nd and 3rd Respondents showed complete disinterest and a desire to complete the interview hastily. The other allegation was that the 2nd and 3rd Respondents had already decided that the Petitioner would not be appointed even prior to the commencement of the interview. A copy of the extract of the Annual Report for 2008 (P18) is produced and it is pleaded that the Chief Executive Officer and the Management Team had been already appointed, though the Management Agreement with Emirates expired on 30th March 2008.

The learned counsel for the Petitioner argued that the interview process was flawed. He referred to document R13 (appraisal of interview) and more particularly to documents 13(a) and 13(b) which are unsigned documents. His position as regards 13(c) was that subjective grades are given and the entirety was subjective. The learned counsel also invited court to documents P13A to P13C which demonstrate unprofessional conduct of the 4th Respondent. It was his position that his client had been discriminated and the interview had not been held properly for the reasons stated above.

The learned President's Counsel for 1st and 3rd Respondents raised a question of time bar and inter alia submitted that all necessary parties are not before court, as only three members of the panel are made parties. Interview held on 04.08.2008 and the petition is dated 03.10.2008. It was further submitted by learned President's Counsel that appointment of the 4th Respondent is not a violation contemplated by law. In any event he submitted there is no allegation of corruption, mala fides and fraud on the part of the interview panel. It was a unanimous decision of the interview panel to select the 4th Respondent. He also submitted that the 4th Respondent was serving in an acting capacity in the same post prior to being appointed in a permanent capacity. The Learned President's Counsel drew the attention of this court to documents R13(a) to R13(f) and R13(g). At the interview the 2nd and 3rd Respondents and the Head of Human Resources were requested to and did make in writing summary of their observations. The Chief Finance Officer and the Executive Directors were requested to give their appraisal which they did independently.

The Learned Counsel for the 2nd Respondent whilst associating himself with the submissions of learned President's Counsel informed court that the 2nd Respondent held the post of Chairman in the 1st Respondent Company for a period of six months and submitted that the 1st Respondent followed and

adopted the accepted criteria for selection and there was nothing unfair in the selection process. The learned President's Counsel for the 4th Respondent also associated himself with the submissions of all other counsel for the Respondents and submitted that the 4th Respondent was a Pilot of Air Lanka and that a Pilot is a fit and competent person to hold the post in question and drew the attention of this court to all documents filed of record along with the affidavit of the 4th Respondent.

The learned counsel for the Petitioner informed this court on or about 30.06.2011 that his client would only pursue the remedy as per paragraph (b) of the prayer to the petition which deals with a declaration in terms of Article 12 of the Constitution. This court as far back as 08.10.2008 granted Leave to Proceed for an alleged violation of Article 12(1) of the Constitution. Since then hearing of this case had been postponed for various reasons and on applications of parties on either side. The Petitioner seeks to blame the interview panel and at the same time argue that the 4th Respondent who was the successful candidate is not a fit and proper person to be appointed to the post in question.

The Supreme Court is vested with wide powers to grant relief or make such decision or give directions as it may deem just and equitable in the circumstances. But the matter of relief is in the discretion of the court. The relief granted must be in accordance with law, principles of equity, justice and the

jurisdiction of the Supreme Court entitles the court to subject the exercise of legal rights to equitable consideration, that is, of a personal character arising between one individual and another which makes it unjust or inequitable, to insist on legal rights to exercise them in a particular way: *Per Lord Wilberforce in Ibrahim Vs. Westbourne Galleries Ltd. (1972) 2 AER 4490 at 500*. However equal protection of the law would not mean that any violation by the executive and or Administrative action fall within the equality provisions under Article 12 of the Constitution. As such the question of non-selection of the Petitioner and the allegation levelled against the interview panel should be correctly and properly established. This is the main point to be considered.

If an allegation is made against the interview panel all the members should have been made parties. It is unfortunate that all of them are not before court. Only three out of five are made parties. As such learned President's Counsel who raised this point correctly directed the attention of this court to this aspect. Necessary parties are not before court. On one hand it would be unfair to fault the interview panel in the absence of some of them. (members of the panel).

Learned Counsel for the Petitioner urged before this court that upon the Petitioner entering the room in which the presentation and interviews were held, the 2nd Respondent informed the Petitioner that both the

presentation and interview had to be completed within 20 minutes. This was a sudden an unexpected change and the Petitioner was forced to skip certain slides in her presentation, which was prepared by her earlier.

The other complaint is that no questions were put to her by the 3rd Respondent or the Chief Financial Officer. 2nd Respondent asked only a few questions. One question was asked by the Head of Human Resources. Further the attitude of the 2nd and 3rd Respondents was one of complete disinterest and a desire to conclude the interview hastily. In reply to above it is the position of the 4th Respondent that he and all others were told that the presentation and interview would last only for 20 minutes. If that be so this court cannot fault the panel. This seems to be the yard stick applicable for all the candidates. Was there a total denial of the time limit or less time allocated to the Petitioner or were others given more time for their presentation and interview? If it was so Petitioner would have had a genuine grievance. This court cannot blame the interview panel on this aspect and consider this sort of change to be a violation of a right, notwithstanding prior intimation of longer time. No, doubt limiting of time could have affected all the candidates to a point. The 4th Respondent managed to adapt to the time limit suggested by the interview panel but not the Petitioner in the manner she complains to this court. Further the 4th Respondent argues that it is part of the profession as a Manager to manage time and handle

a crisis situation. This seems to be an acceptable argument especially in the Airline field. I am unable to accept the views expressed by the Petitioner on this aspect.

The material made available to this court indicates that the five member panel followed and adopted a certain method to interview candidates. A careful analysis had been undertaken by three members of the panel and they had written down required notes. The other two gave their appraisals independently (paragraph 17 of the statement of objection of 1st & 3rd Respondents and it's corresponding affidavit).

I cannot fault the panel for doing so since it is a matter for the panel to adopt their own criteria. This court cannot expect the panel to ask certain number of questions to fathom the suitability of candidates.

The 4th Respondent was Acting Head of Service Delivery for a short period prior to being appointed as Head of Service Delivery. Both the Petitioner and the 4th Respondent seems to have had a long standing career in the 1st Respondent Company. The 4th Respondent may have had the edge over the Petitioner since he was an experienced Pilot with long years of service. Nevertheless final selection would have to be based on a proper interview. I cannot conclude that the above matters influenced the interview panel. There is no material in regard to above for this court to arrive at such a conclusion i.e

improper interview. Mere allegations and comments that he or she is better experience or qualified are best left for the interview panel unless a serious flaw in the interview process, could be detected.

Documents R13(a) to R13(g) indicates a careful comprehensive analysis by the panel. Mere allegation of it being not signed cannot be a ground to reject same. Affidavits of Pradeep, Padmeshwari Dahanayake (Head of Human Resources 1st Respondent) who was in the interview panel and that of the 3rd Respondent explain the method adopted to allocate marks as in paragraphs 17 to 19 of the affidavit.

The bare assertions contained in the petition and affidavit would not suffice. Material projected by the Petitioner does not directly substantiate these allegations. In any event allegations must be established by the Petitioner to the satisfaction of court. Even a wrong decision bona fide made on a question of fact cannot constitute a breach of fundamental right of equality in the eyes of the law – *Gunatilleke Vs. A.G and Sirimanna vs. A.G - S.C. Application No. 47/79 & 48/79* (Reported in Fundamental Rights decision of the Supreme Court Vol. I pg. 86). In the case in hand I do not think the interview panel came to a wrong decision.

That upon a consideration of all the material placed before court by either side, I am of the view that the Petitioner's fundamental rights are not violated by the Respondents. Therefore this application stand dismissed without costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

B.P. Aluwihare P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Sisira J. de Abrew J.

I agree.

JUDGE OF THE SUPREME COURT