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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

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திகதி } 29-01-2018
Date }

HRCSL Application Case No:
HRC/372/13

W.M.A. Wijenayake, 30, A, Veegoda,
Bemmulla

Petitioner/s

Vs.

1. Zonal Director of Education, Zonal Education Office, Minuwangoda
2. Western Provincial Education Director, Provincial Department of Education – Western Province, 76, Ananda Coomaraswamy Mawatha, Colombo 07

Respondent/s

Context

The Petitioner, a teacher who had been issued a Vacation of Post (VOP) notice earlier and who had been reinstated later complains of several administrative anomalies.

The Petition

The Petitioner made the following allegations.

- A) That he passed a competitive exam to be promoted as a Teaching Instructor, and is qualified to receive the post, but the authorities denied his opportunity.
- B) That although leave had been applied for the past few years, 362 days of salary had been deducted from the salary.
- C) That approved foreign leave allowances have not been paid.
- D) That he was selected to receive Teacher Tribute awards, but was not given his entitled certificate.
- E) That a commemoration plaque which was to be built in his name was removed.
- F) That salary increments for the past years had been denied.
- G) That he was interdicted in 2004 when he had already requested leave.

Respondent's Reply

The 1st Respondent through written submissions dated 2013.02.28 stated the following.

නො 14, පාර්.ජී.ද. මාර්ග මාවත, කොළඹ 08.
இல. 14, ஆர்.ஜி.டி. மெல் மாளிகை தெரு - 08

ප්‍රධාන කාර්යාලය பிரதான அலுவலகம் Head Office	165, කිංසි පාර, කොළඹ - 08. 165, கிளசி வீதி, கொழும்பு - 08. 165, Kynsey Road, Colombo - 08.	සභාපති தவிசாளர் Chairman	011-2696470	ෆැක්ස් தொலைநகல் Fax	011-2694924	විද්‍යුත් තැපෑල மின்னஞ்சல் e-mail	sechrc@sltnet.lk
දුරකථන தொலைபேசி Telephone	94 - 11 - 2694925, 2685980, 2685981	ලේකම් செயலாளர் Secretary	011-2689558	ශ්‍රී ලංකා தூரத் அழைப்பு Hotline	011-2689064, 1996	වෙබ් இணையம் Web	www.hrcsl.lk

- A) That since the Petitioner was reinstated in 2011, the period for which he was not in service cannot be considered for salary increments.

The 2nd Respondent through written submissions dated 2013.03.01 stated the following.

- A) That for the allegation about the promotion, an interview was held to select candidates who had passed the aptitude test. The Petitioner had also appeared for the interview.
- B) That the Petitioner had obtained 21.5 marks for the interview (2.5 for interview and 19 for demonstration).
- C) That the cut off mark to select the candidates was 40 and since Petitioner's mark was well below that he had not been selected.
- D) That since all vacancies for the posts were not filled in the first round, candidates who had scored 30 to 39 also had been given appointments. Petitioner had not been selected even during this round.

Observations

I. Observations on the submissions based on evidence and relevant Law

- A) Except for the first allegation regarding the promotion, following observations are made regarding all the other allegations.
- B) There had been a recommendation already given to the Petitioner by the Commission regarding the same allegations before where a settlement had been arrived at. The Petitioner conceded this. Petitioner seems to be complaining against the settlement given. But most importantly, all those allegations seem to be time barred. The events concerning the allegations have occurred at least 10 years back and they are no longer detrimental or relevant to the Petitioner's current state of affairs. Moreover, these complaints have been heard by the Commission in a previous occasion. The dates of the said events are as follows.
- a. Foreign leave approval – 2000.02.21
 - b. No pay leave reimbursement – 2002.03.28
 - c. Teacher Tribute awards ceremony – 2001.11.27
 - d. VOP – 2005.01.17
- C) Therefore, the above allegations are to be put apart due to the time bar.
- D) However, the first allegation seems to hold some ground. It is observed as per his submissions, that the Petitioner had been an enthusiastic sports teacher, writing many books on sports, introducing many new sports to Sri Lanka etc. He has also obtained several Diplomas related to sports education and have even obtained several foreign trainings.
- E) He had been given 2.5 for interview performance and 19 for the demonstration. The question to be solved is whether these marks allocations are fair.
- F) Firstly, the demonstration had been allocated a total of 50 marks for which, the Petitioner had obtained 19 marks. This seems to be a subjective allocation by the interview panel where the

Petitioner seems to have performed reasonably in comparison to other candidates. Therefore, there this mark cannot be contested.

- G) Secondly, the issue is with the 2.5 that had been allocated for the interview performance. Being a structured interview carrying marks for certificates produced, the said mark seems to be a bit unreasonably considering the Petitioner's aforesaid background. He had obtained 3 recognized diplomas and 6 foreign training certificates. His experience as a teacher and a trainer in several sports also need to be considered. 2.5 marks – an extremely lower mark - seem to be not reflecting the achievements of the Petitioner reasonably.
- H) Importantly the Petitioner lacks only about 8.5 marks to attain the threshold of 30 marks in order to be selected for the post. Therefore, highlighting this circumstance, it seems that fairness had not been meted out for the Petitioner for the interview performance. And there exists considerable doubt as to whether any personal prejudices had affected this poor marks allocation at the interview.
- I) Therefore, irrespective of all previous shortcomings of the Petitioner, the interview should have been carried out fairly and the Petitioner would have been treated only on merit. Hence, some form of arbitrariness is observed in the way how marks were allocated for the Petitioner during the interview, which has effectively violated his rights.

Conclusion

I. Basis for the conclusion

As per the observations and the applicability of the relevant laws above, we make the following recommendations:

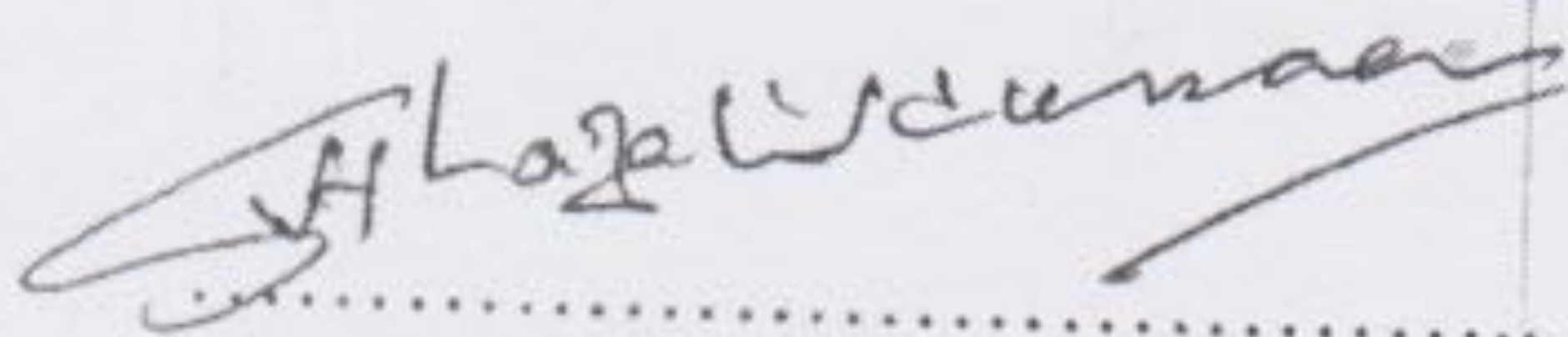
- A) The marks allocation for the Petitioner during the interview for the concerned promotion to the post of Teaching Instructor has been concluded arbitrary and unreasonable. Therefore, it is hereby concluded that the 1st Respondent **has violated** the Fundamental Rights of the Petitioner guaranteed by Article 12 (1) of the Constitution.

II. Recommendation

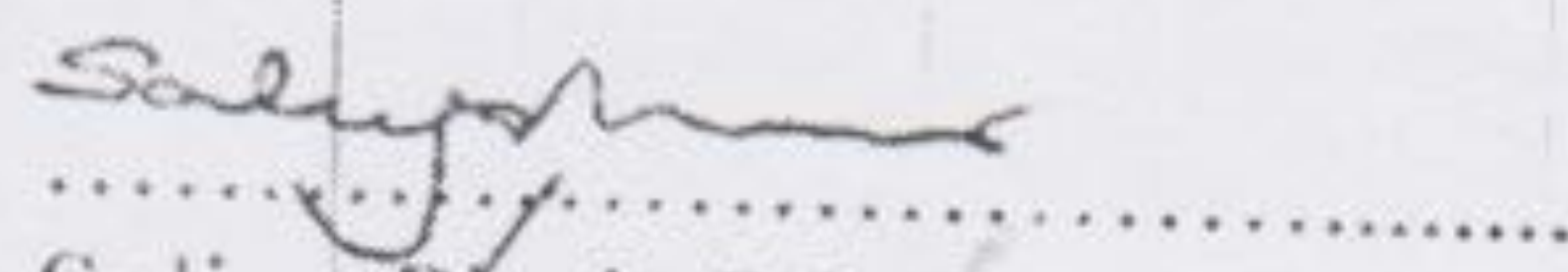
In the above circumstances:

- A) The Commission recommends the 1st Respondents to hold a fresh interview for the Petitioner to the post of Teaching Instructor in terms of the provisions in section 15 (4) of the HRC Act.

Further, the Commission hereby directs the Respondents to report to the Commission the implementation of this recommendation, **within three months, hereof.**



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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka



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Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka