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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

Article 12 (1)

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எனது இல. }
My No. }

ඔබේ අංකය }
உமது இல. }
Your No. }

දිනය } 21-2-2018
திகதி }
Date }

1. Rohitha Kumara Liyanage
Agulugalle
Nawadagala

Complaint Number: HRC/1973/14

Complainant

vs.

1. Additional secretary
Ministry of Education
Isurupaya, Battaramulla
2. Commissioner of Buddhist Affairs
Department of Buddhist Affairs
Dahampaya, 135, Srinath Anagarika
Dharmapala mawatha,
Colombo 7
3. Director (Exams)
Ministry of Education
Maharagama

Respondents

A. THE COMPLAINT

1. The Complainant is a Sunday school teacher who appeared for the examination and interview for the selection of Buddhism Teaching Assistants.
2. According to the extract of the gazette notification calling for applications, all the applicants should have completed '5 years of continuous service as a Sunday school teacher by the 13.06.2013.'
3. The Complainant states that while he has not been selected as a Buddhism teacher, two other candidates who did not possess the minimum requirement of 5 years continuous service have received appointments.

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Head Office

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14, R. A. De Mel Mawatha, Colombo - 04.

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4. The Complainant asserts that those who do not possess equal qualifications to him have received higher points and have been appointed as Buddhism Teaching Assistants.

B. RELEVANT FACTS

5. The Complainant is a Sunday school teacher at Vidya Samadi Sunday school in Yatagala, Urugasmanhandiya. According to the extract of the gazette notification, an applicant must fulfil general requirements and educational requirements to be considered as a suitable candidate. The general requirements state *inter alia* that an applicant must be a Sri Lanka citizen; must be over 18 years of age and less than 45 years of age; must have completed 5 years of continuous service as a Sunday school teacher, and be in active service at the time of making the application.
6. According to the advertisement, there were 100 vacancies to be filled in the Galle district.
7. The Complainant received 12 points from the interview and 50 points from the written examination with a total of 62 points. Accordingly, the Complainant did not receive the necessary marks to be selected as a Buddhism teaching assistant.
8. The Complainant states that Peduruwa Yamuna Shanthi (Exam No.BTS 76109) was ranked No.1 on the selected list of candidates from the Galle District, while she did not fulfil the general requirement of 5 years continuous service. Similarly, Priyanga Lakshmi Thabrew (Exam No. BTS 73116) was ranked No.64 even though she did not meet the eligibility criteria.
9. The following evidence is submitted to prove that Yamuna Shanthi and Lakshmi Thabrew did not have 5 years continuous service as Sunday school teachers.

A. EXTRACTS FROM THE SUNDAY SCHOOL REGISTRY

The following registry extracts shows that there was a break in service of the following applicants:

1.1 Y. Shanthi

The registry extract for 2013 includes Y. Shanthi's name at the bottom, signifying that she was not in service during 2013. However, the Registry extract of Sri Abayatissa Sunday school includes Y. Shanthi's name for completing 3 years of service till 31.12.2011. Accordingly, Y. Shanthi was in service in 2012 but not in 2013.

1.2 Lakshmi Thabrew

The registry extracts of Siri Seelaratna Sunday school for 2013 states Lakshmi's name on the left side. The fact that Lakshmi's name has been include besides the main column signifies that she did not serve in 2012. Registry extracts for the year ending 31.12.2011 includes Lakshmi Thabrew's name listed as no.13. Accordingly, L.Thabrew was in service in 2012 but not in 2013.

B. CERTIFICATES OF SERVICE CONFIRMATIONS ISSUED BY THE DEPARTMENT OF BUDDHIST AFFAIRS

The following documents were issued by the Department of Buddhist affairs to be submitted for the interview for the selection of Buddhism Teaching Assistants:

2.1 Y. Shanthi

In her certificate, Column 9 shows that she did not serve as a Sunday school teacher in 2008 and 2013 while column 10 confirms that she does not have continuous service from 13.06.2008- 13.06.2013.

2.2 Lakshmi Thabrew

In her certificate, Column 9 depicts that she did not serve in 2013 while column 10 confirms that she did not have continuous service from 13.06.2008- 13.06.2013.

10. The Complainant asserts that Yamuna Shanthi ranked No.1 on the list and K.Priyanka Lakshmi Thabrew ranked at No.64 were selected while not fulfilling the basic requirements in the gazette notification. Accordingly, both candidates selected for the position of Buddhism Teaching Assistants did not fulfil the criteria of 5 years continuous service.
11. According to the certificate issued by the Department of Buddhist Affairs on 07.10.2013, the Complainant met the requirement of 5 years continuous service as a Sunday school teacher from 13.06.2008 to 13.06.2013.

C. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION

12. There were three inquiries held on the 26.03.2015, 04.08.2015 and 02.09.2015 at the Human Rights Commission Sri Lanka. The 1st Respondent, the Ministry of Education did not appear for any of the inquiries.
13. At the first inquiry held on 26.03.2015, the 2nd Respondent stated that 75 points were allocated to the written examination while 25 points were allocated to the interview. Accordingly, the Complainant received 12 points for the interview and obtained 50 points for the written examination.

The 1st Respondent sent a letter on 26.03.2015 stating that he was unable to attend the inquiry due to unavoidable circumstances.

On 22.04.2015, the 1st Respondent submitted certificates of service confirmations issued by the Department of Buddhist Affairs which were submitted at the interview for the selection of Buddhism teaching assistants.

14. A second inquiry was held on 04.08.2015. The Complainant and 2nd Respondent were present but the 1st Respondent did not appear. Subsequently, the 1st Respondent conveyed to the Commission on 04.08.2015 that summons were received on the day of the inquiry and

there was insufficient time for the 1st Respondent to appear for the inquiry.

15. The third inquiry was held on 02.10.2015. At the inquiry, the Complainant stated that while there were 100 vacancies in the Galle district, only 95 vacancies have been fulfilled. When questioned on the certificates of service confirmations issued by the Department of Buddhist Affairs, the 2nd Respondent stated that according to his knowledge when an Applicant does not meet the attendance criteria of continuous service, an applicant may submit a medical certificate or other relevant document to the interview panel.

The 1st Respondent has not provided reasons for non-appearance at the inquiry neither is there any recorded reasons as to why only 95 vacancies were filled in the Galle district.

D. APPLICABLE LAW AND OBSERVATIONS

16. The Complainant states that in similarly situated circumstances, the 1st and 2nd Respondents have selected candidates who did not meet the general requirements stipulated in the gazette advertisement calling for applicants.
17. The Complainant submitted his application based on the gazetted advertisement. The advertisement creates a legitimate expectation for an applicant that the general and educational requirements must be met in order to be selected as a successful candidate.
18. However, the registry extracts as well as the Department of Buddhist affairs certificates confirms that Y. Shanthi and L. Thabrew did not fulfil the minimum requirements of continuous service. Moreover, both candidates were not in active service in 2013, which further violates the gazette notice general requirement of being in active service at the time of making the application.
19. The general requirement of continuous service along with nationality and minimum age appears to be a prerequisite for a candidate to appear for the interview. Even though the certificates of service confirmations issued by the Department of Buddhist Affairs were produced at the interview, the 1st Respondent has not taken the non-fulfilment of general requirements into consideration. The fact that the 1st Respondent has circumvented the general requirements in the gazette notice without reasons makes his conduct *ultra vires*.
20. The 1st Respondent has not made submissions before the Commission while the 2nd Respondent asserts at the last inquiry held on 02.10.2015 that medical certificates are sometimes acceptable when there is no continuous service by an applicant. It is submitted that the acceptance of medical certificates by an interview panel is discretionary and such an exception has not been stipulated in the gazette notice.
21. After analysing the oral and written evidence, it is evident that the selected candidates were selected in an unlawful and discretionary manner.
22. Therefore, it is concluded that the Complainant's right to equality under Article 12(1) of the Constitution has been violated.

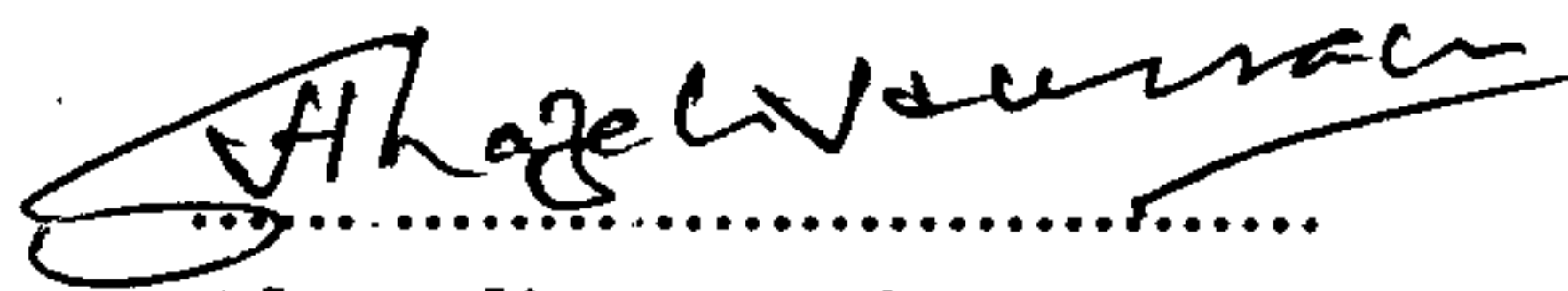
E. RECOMMENDATIONS

23. On the finding of a violation of Article 12 (1) of the Constitution, we make the following recommendations:

1. In categorical condemnation of the violation committed by the Respondent public bodies, the recommendation report of this case is hereby, sent to the Ministry of Education, Ministry of Buddha Sasana and Religious Affairs and the Director General of Buddhist Affairs in terms of the provisions in Section 15 (6) of the HRC Act.
2. In terms of the provisions in Section 15 (4) of the HRC Act, the Commission recommends the 1st Respondent to Conduct an inquiry as to the eligibility of candidates who were selected for the positions of Buddhism Teaching Assistants in 2014 while reconsidering the candidates who have been ranked lower but, have met the basic eligibility criteria stipulated in the gazette notification and to recruit them for the remaining 5 vacancies in 2014.
3. In terms of Section 15(7) of the HRC Act, the Commission hereby recommends the Respondents to report to the Commission regarding the actions taken to implement the recommendation within 3 months from the date of this recommendation.


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Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.


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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.

- Copy to -1. Secretary to the Ministry of Education
2. Secretary to the Ministry of Buddha Sasana and Religious Affairs
3. Director General of Buddhist Affairs