

Article 12C(1). **ශ්‍රී ලංකා මානව හිමිකම් කොමිෂන් සභාව**
இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

මගේ අංකය }
எனது இல. }
My No. }

ඔබේ අංකය }
உமது இல. }
Your No. }

දිනය } 28/02/2018
திகதி }
Date }

B.V.D. Sanjana Dilrukshi,
No. 13, Wickramasinha place,
Kaluthara South

Complainant

Complaint Number: **HRC/4040/13**

vs.

1. Chairman
Urban Council,
Kaluthara
2. Secretary
Urban Council,
Kaluthara
3. Commissioner of Local
Government of the Western
Province,
Department of Local Government
(Western Province)
No. 2, Cambridge Terrace,
Colombo 07
4. Assistant Commissioner of Local
Government- Kalutara District
Secretariat Building, 2nd Floor,
Kalutara

Respondents

A. THE COMPLAINT

1. The Complainant is a library peon who applied for the position of library assistant on 28.06.2013. The Complainant was selected for the said position but her position was not

ප්‍රධාන කාර්යාලය பிரதான அலுவலகம் Head Office	14, අර්. ඒ. ඊ මෙල් මාවත, කොළඹ - 04. 14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04. 14, R. A. De Mel Mawatha, Colombo - 04.	සභාවේ தவிசாளர் Chairperson	011-2505451	ෆැක්ස් தொலைநகல் Fax	011-2505541/74	විද්‍යුත් තැපෑල மின்னஞ்சல் e-mail	1 sechrc@sltnet.lk
දුරකථන தொலைபேசி Telephone	94 -11- 2505580/81/82	ලේකම් செயலாளர் Secretary	011-2505521	හූණිත தூரித அழைப்பு Hotline	011-2505575 1996	වෙබ් இணையம் Web	www.hrsl.lk

confirmed by the 1st Respondent.

2. The 1st Respondent has instructed to halt appointing anyone for the position of the library assistant.
3. The Complainant states that she was unfairly treated as she was prevented from being appointed to the position that she was selected subsequent to an interview.

B. RELEVANT FACTS

4. The Complainant joined as a library peon on 26.12. 2001. After 12 years of service, she was promoted to the position of library peon - grade II. The Complainant applied for the position of Library assistant according to the gazette dated 28.06.2013. She was subsequently called for an interview on 12.09.2013. There were four internal candidates who appeared for the interview
5. The interview panel consists of three members, including the 2nd Respondent. The Complainant was selected as the most suitable candidate for the position of Library Assistant. The interview panel was of the view that even though there were external candidates, according to the Gazette notice internal candidates were taken into consideration.
6. The interview panel has evaluated the four internal candidates in the following manner.
 - T.Nirmali: Candidate was a health labourer who did not have any knowledge relating to library work.
 - Sharmala Chamari Piyarathna: Candidate's fixed position was a health labourer who had not obtained Grade II status.
 - Sanjani Dilrukshi (the Complainant): Fixed position was a Library labourer. During her entire service period, even after she obtained Grade II status, she served as a library labourer. The candidate had comprehensive knowledge and experience relating to library work.
 - Shamali Nita Jayathilake: Fixed position was a health labourer. She did not demonstrate to the interview panel that she had any prior experience in library work.
7. The interview panel proceeded to select the Complainant as the most suitable candidate. In giving reasons for their selection, the interview panel has stated that the Complainant possessed the necessary qualifications and knowledge relating to library work that is needed to discharge the functions of a library assistant effectively. The interview panel thereafter submitted their recommendation of the selected candidate to be approved by the 1st Respondent.
8. Meanwhile, on 17.09.2013 M.K.N. Fathima Ilma, who was an external candidate, has appealed to the 1st Respondent stating that she was not selected to the library assistant's

position.

9. The 1st Respondent has then rejected the recommendation by the interview panel and instructed the 2nd Respondent to suspend recruiting anyone for the position of library assistant. The 2nd Respondent has replied stating that as the appointing authority the 2nd Respondent should appoint those who were selected through a duly conducted interview and that the Secretary will not take responsibility for any delay caused by the postponement.
10. On 23.09.2013 the 1st Respondent has written to the 2nd Respondent stating that there are several complaints against the interview that was conducted in an irregular manner. The 1st Respondent has requested for a report including the recommendations of the interview panel. Accordingly, the 2nd Respondent has produced a report on 27.09.2013 including the interview panel's recommendations.
11. However, the 1st Respondent has re-issued another notice stating not to appoint anyone to the position of Library Assistant- Grade II without his approval.
12. The 2nd Respondent received two appeals dated 25.09.2013 and 21.10.2013 by two internal candidates. Thereafter, the 2nd Respondent referred this matter to the 3rd Respondent to decide on how they should proceed with the position which was temporarily suspended by the 1st Respondent.
13. The 3rd Respondent has stated in a letter dated 26.12.2013 that until the scheme of recruitment for appointment of Library Assistants has been approved, the current recruitment procedure should be followed when recruiting a suitable candidate. The 3rd Respondent has also issued another letter on 08.01.2014 stating that preference should be given to internal candidates and as the appointing authority, the 2nd Respondent is authorized to recruit a suitable candidate. However, the Chief Administrative Assistant has instructed the 2nd Respondent not to appoint a candidate until approval is obtained from the 1st Respondent.
14. On 03.12.2014 the 4th Respondent issued a letter to the 2nd Respondent to temporarily suspend recruiting anyone to the position of Assistant Librarian, until a new scheme of recruitment is adopted. Accordingly, a fresh interview is to be conducted under the new scheme of recruitment.

C. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION

15. The 1st Respondent has issued submissions to the Commission on 10.09.2014 stating the following reasons as to why the interview for the position of Library Assistant was not conducted following a proper procedure.
 - i. Seniority, experience, efficiency and educational qualifications were not considered

ii. There were other candidates who were better qualified than the Complainant, Sanjana Dilrukshi.

16. At the inquiry held on 15.09.2014 the 2nd Respondent has confirmed that according to the Respondent's reports the Complainant was the most qualified candidate for the position of Library Assistant. The 2nd Respondent has accepted that the Appointing Authority is the Secretary and the 1st Respondent could not make decisions pertaining to the appointments to the Urban Council. The Commission recorded thereafter that it will conclude this matter.
17. On 23.12.2015 the 2nd Respondent has stated that a written recommendation has not been obtained as yet. However, the 2nd Respondent was of the view following the instructions of the 4th Respondent that they will be conducting a fresh interview when a new scheme of recruitment is approved.
18. At the inquiry held on 17.03.2016 the 4th Respondent has stated that even though the interview was conducted to recruit Library Assistants of Grade II for the Kaluthara Urban Council, the position should be a Grade III position.

D. OBSERVATIONS


19. The 1st Respondent stopped the Complainant from being appointed as a Library Assistant. The 2nd Respondent as the Appointing Authority has stated that the 1st Respondent cannot make such a decision. Therefore, the actions of the 1st Respondent are *ultra vires*.
20. Even though the 1st Respondent has stated that there were more qualified candidates, it is unclear as to why the selection process and the reasons given by the interview panel were disregarded. From the internal candidates, the Complainant was the only candidate who had experience in library work while the other candidates were health officers. Fathima Ilma, who said that she had library experience, was an external candidate. Moreover, the interview panel had provided reasons for their selection.
21. Currently, the 3rd and 4th Respondents have instructed to suspend appointing a library assistant as a new scheme of recruitment is to be adopted. It is submitted that when a new scheme of recruitment is adopted the Complainant would have to be subject to a new interview panel. Furthermore, the Complainant may not be selected as she belongs to Grade II while the position for library assistant is for Grade III officers.
22. For the aforementioned reasons it can be concluded that the Respondents have violated Article 12(1) of the Constitution of Sri Lanka.

E. RECOMMENDATION

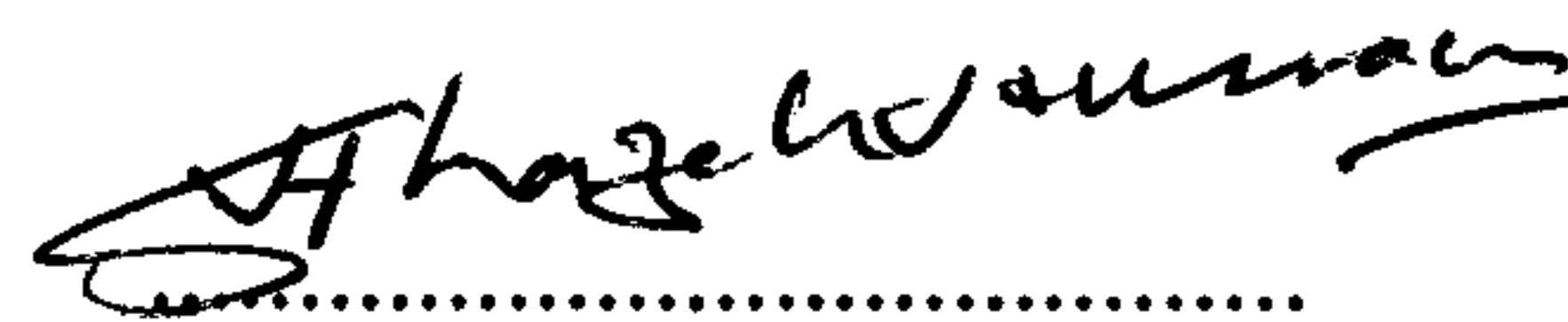
23. On the finding of a violation of Article 12 (1) of the Constitution, the Commission makes the following recommendations:

- A) In terms of Section 15(3) (c) of the HRC Act, the Commission hereby recommends the 1st Respondent to appoint the complainant to the post of library assistant as per the old scheme of recruitment, back dating her appointment to the date that she should have been recruited.

- B) 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

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


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Ghazali Hussain
Commissioner
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