

**IN THE COURT OF APPEAL OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application for mandate in
the nature of Writ of *Certiorari* under and in
terms of Article 140 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 425 / 2014

1. The Land Reform Commission
Hector Kobbekaduwa Mawatha,
Colombo 7.

PETITIONER

Vs

1. Udula Indrani Dodangoda
Keppetipola Mawatha,
Paragoda Road,
Bulathsinhala
2. Sugathadasa Kariyawasam,
No.28, Abeyratne Mawatha,
Boralessgamuwa.
3. Minister of Labour Relations and Manpower
Ministry of Labour Relations and Manpower,
The Labour Secretariat,
Kirula Road,
Colombo 5.

4. The Commissioner of Labour,
The Labour Secretariat,
Kirula Road,
Colombo 05.

5. The Registrar of the Industrial Court
Industrial Court,
The Labour Secretariat,
Kirula Road,
Colombo 05.

6. The Commissioner General of Labour
The Labour Secretariat,
Kirula Road,
Colombo 05.

RESPONDENTS

Before : Dhammika Ganepola, J.
Adithya Patabendige, J.

Counsel : Dr. Sunil Coorey with Sudharshani Coorey for the Petitioner.
R.M. Upali A. Ratnayake for the 1st Respondent.
Dilantha Sampath, S.C. for the 3rd to 5th Respondents.

Argued on : 23.10.2025.

Written Submissions

Tendered on : 09.10.2019 by the Petitioner.
26.07.2019 by the 1st Respondent.

Decided on : 14.01.2026.

Adithya Patabendige, J.

The Petitioner, the Land Reform Commission (hereinafter referred to as the Commission), has filed this application seeking, *inter alia*, a mandate in the nature of a writ of certiorari to quash the award of the 2nd Respondent, the Arbitrator, dated 30th September 2013, which was published in the Government Gazette No. 1837/5 dated 18th November 2013, marked **P10** and **P11**, respectively.

The facts giving rise to the instant application may be summarized as follows.

The 1st Respondent, Ms. Udula Indrani Dodangoda, joined the Commission as a **Clerk – Grade VII** with effect from 01st June 1995. She complained that she had not been appropriately promoted in accordance with the applicable schemes of promotion. In particular, she alleged that she had been denied promotion to the posts of Staff Assistant Grade V and Assistant Director Grade IV, despite being eligible.

Consequent upon this grievance, the 1st Respondent complained to the Colombo South Labour Office marked **P24**. The Assistant Commissioner of Labour made observations in her favour marked **P25**. Thereafter, the 3rd Respondent, the Minister of Labour Relations and Manpower, referred this matter for Arbitration in terms of Section 4(1) of the Industrial Disputes Act and appointed the 2nd Respondent as the Arbitrator, marked **P2**.

As per the document marked **P3**, the Commissioner of Labour referred the following matters as being in dispute between the Petitioner and the 1st Respondent:

- 1) Whether any injustice was caused to Miss Udula Indrani Dodangoda, who was in the service of the Land Reform Commission as a Clerk Grade VII, due to the non-granting of promotions for which she had applied at the time of recruitment to the posts of Staff Assistant Grade V and Assistant Director Grade IV in the years 2000 and 2001 and if so, to what relief she is entitled and,
- 2) Whether any injustice was caused to Miss Udula Indrani Dodangoda due to the non-granting of promotions for which she had applied at the time of recruitment to the posts of Staff Assistant Grade V and Assistant Director Grade IV in the years 2007, and if so, to what relief she is entitled:
- 3) Whether any injustice was caused to Miss Udula Indrani Dodangoda, who was appointed to a permanent post of Clerk Grade VII of the Land Reform Commission

with effect from 01st June 1995, owing to the delay in granting her grade promotions until the year 2008, and if so, whether such delay is justified and to what relief she is entitled.

According to the document marked **PX**, the 1st Respondent and the witnesses, Mr. Janaka Nishantha Bandara and Ms. Manel Chandrasekera, gave evidence before the Arbitrator.

Upon conclusion of the inquiry, both parties tendered written submissions. Having considered the evidence and submissions, the Arbitrator made his award in favour of the 1st Respondent, as reflected in **P10** and **P11**. By the said award, the Arbitrator recommended, *inter alia*, that the 1st Respondent be placed in Clerk Grade VI with effect from 01st June 1997; in Staff Assistant Grade V with effect from 01st June 2000; in Assistant Director Grade IV with effect from 01st June 2002; that she be placed in the relevant salary scales; and that all arrears be paid. The award further stated that, subject to recruitment procedures and availability of vacancies, she shall be considered for the post of Director after three years.

The Petitioner repudiated the said award by notice under Section 20(1) of the Industrial Disputes Act, which was published in Gazette Extraordinary No. 1854/7 dated 17th March 2014, marked **P13**. Thereafter, the Petitioner filed the present writ application before this Court on 08th December 2014, which was subsequently amended on 4th January 2024.

In the meantime, the Assistant Commissioner of Labour instituted criminal proceedings against the Petitioner under Section 43(1) of the Industrial Disputes Act in case No. D/8834/5/14 before the Magistrate's Court of Colombo on 02nd April 2014. After the trial, the Petitioner was convicted.

The Petitioner challenges the validity of the arbitral award on the following grounds.

- that the award is bad in law,
- that there are errors of fact apparent on the face of the record,
- that the Arbitrator acted *ultra vires*, and
- that the award is contrary to Section 33(1)(a) of the Industrial Disputes Act.

The 1st Respondent raised several preliminary objections, including laches, suppression and misrepresentation of material facts, lack of clean hands, absence of legal right, and misjoinder and non-joinder of parties.

While this application was pending before this Court, the Petitioner, by written communication, expressed its willingness to implement the award, except insofar as it related to the promotion of the 1st Respondent to the post of Director. As the parties failed to reach an agreement, the instant application was argued and fixed for judgment.

The arbitral award was made on 30th September 2013 and published in the Government Gazette on 18th November 2013. However, the Petitioner filed this writ application only on 8th December 2014, nearly fifteen months after the award. The Petitioner failed to provide any plausible or satisfactory explanation for this delay.

In the case of *Biso Menika v Cyril de Alwis and Others (1982) 1 SLR 368* at pages 377 and 378, Justice Sharvananda held that, “*a writ of certiorari is issued at the discretion of the Court. It cannot be held to be a Writ of right or one issued as a matter of course. But exercise of this discretion by Court is governed by certain well-accepted principles. The Court is bound to issue a Writ at the instance of a party aggrieved by the order of an inferior tribunal except in cases where he has disentitled himself to the discretionary relief by reason of his own conduct, like submitting to jurisdiction, laches, undue delay or waiver....*”

The proposition that the application for Writ must be sought as soon as injury is caused is merely an application of the equitable doctrine that delay defeats equity and the longer the injured person sleeps over his rights without any reasonable excuse the chances of his success in a writ application dwindle and the Court may reject a Writ application on the ground of unexplained delay.

An application for a Writ of Certiorari should be filed within a reasonable time from the date of the Order which the applicant seeks to have quashed....”

Similarly, in *Ceylon Petroleum Corporation and Others v D.D Kaluarachchi and others SC Appeal No.43/2013, decided on 19/06/2019, Justice Murdu Fernando* observed that;

“Thus, on the face of the record four years had lapsed prior to the respondents seeking the discretionary remedy of a writ and no good and a valid reason have been given by the respondents in the petition filed in the Court of Appeal pertaining to same. In the written submissions filed before this Court the respondents make an attempt to give reasons for its delay but such belated reasons given before this Court cannot be considered as good and valid reasons to justify delay in seeking a review of an administrative decision. Reasons should have been given when the application was filed in the Court of Appeal and not now.”

In the present case, the Petitioner has not justified the delay of fifteen months. Accordingly, this application for judicial review is liable to be dismissed on the ground of laches alone, without proceeding to the merits.

Be that as it may, I shall nevertheless proceed to consider the facts of the case.

It is common ground that the 1st Respondent was recruited as a Clerk – Grade VII with effect from 01st June 1995. She became eligible for promotion to Clerk – Grade VI upon completion of two years of service. However, she was promoted to Grade VI only on 14th September 2007.

In the year 2000, applications were called to recruit officers to the post of Staff Assistant Grade V, for which the 1st Respondent applied. The document marked **R7**, produced by the Petitioner, indicates that internal candidates were required to have two years of experience in Grade VI. According to the circular dated 31st December 2004, marked **X** produced by the 1st Respondent, the required qualification for the post of Staff Assistant Grade V was three years of experience in Grade VI and Grade VII. On either basis, the 1st Respondent satisfied the eligibility criteria. On the same footing, she was also eligible for promotion to the post of Assistant Director Grade IV.

It is abundantly clear that, without any justifiable reason, the promotion of the 1st Respondent to Clerk – Grade VI was delayed until 2007. According to **P14**, the immediate head of the institution stated that the work performance and attendance of the 1st Respondent were satisfactory and she was recommended for the post of Staff Assistant Grade V. Further, the witness, Ms. Manel Chandrasekera, who testified before the Arbitrator on behalf of the Petitioner, admitted that the 1st Respondent acquired the requisite qualifications for the post of Staff Assistant Grade V.

Having regard to the foregoing, it is apparent from the document marked **PX** that the Arbitrator arrived at a correct conclusion upon a proper analysis of the evidence placed before him.

In any event, the findings of the Arbitrator do not disclose any illegality, irrationality, or procedural impropriety warranting interference in the exercise of writ jurisdiction of this Court.

The Arbitrator observed in his award that the Petitioner's procrastination in submitting the documents caused serious prejudice to the 1st Respondent. Similarly, the learned Magistrate

in the criminal proceedings also commented adversely on the Petitioner's conduct, observing that its attitude was primarily aimed at preventing the enforcement of the arbitral award.

According to the document marked **P14**, the 1st Respondent joined the Commission at the age of thirty-seven in 1995. It is not difficult to assume that the 1st Respondent retired in 2018 at the age of sixty. The 1st Respondent sought the assistance of the Labour Department to get her promotions at least from 2007. The Petitioner, being a statutorily established Commission, has a bounden public duty to discharge its statutory functions and to look after its employees. The Petitioner also bears a public duty to act fairly and responsibly, including in matters relating to the career progression and promotional entitlements of its own employees.

Upon considering the comments made by the Arbitrator and the learned Magistrate, it is regrettable to state that there is a serious doubt about the Petitioner's conduct regarding the well-being of its own employees, especially the 1st Respondent.

For the foregoing reasons, I dismiss the application of the Petitioner. Considering the hardships caused to the 1st Respondent from 2007, and the conduct of the Petitioner, the Petitioner is directed to pay a sum of Rs. 150,000.00 as costs to the 1st Respondent.

JUDGE OF THE COURT OF APPEAL

Dharmika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL