

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

*In the matter of an application for the grant of Writs of Certiorari and Mandamus, under and in terms of Article 140 of the Constitution.*

CA (Writ) Application No. 311/2024

Landewatte Acharige Samanthi Chandra,  
No. 366/A, Galle Road, Hikkaduwa

**PETITIONER**

Vs.

1. Employees' Trust Fund Board
2. Mr. Rohana Abeyratne, Chairman
3. Mr. Leslie Devendra, Director
4. Mr. Jude Dinal Peiris, Director
5. Ms. K. S. Dayaratne, Director
6. Mr. W.M. Nurajith Singh, Director
7. Mr. S.F.H. Fernando, Director
8. Mr. K.G. Madushan Harindra, Director
9. Ms. K.A.P. de Silva, Director
10. Mr. M. Parthipan, Director
11. Mr. W.G.K. Ratnayake, Deputy General Manager  
(Member Services)
12. Deputy General Manager (Collection and Employer Relations)
13. Mr. Sampath Gunawardena, Deputy General Manager (Administration and Human Resources)
14. Mr. K.G.N. Ratnayake, Assistant General Manager  
(Administration and Human Resources)

1<sup>st</sup> to 14<sup>th</sup> Respondents of

Employees' Trust Fund Board,  
"Mehewara Piyasa", Kirula Road,  
Narahenpita,  
Colombo 05

15. K.G.P. Pushpakumara, Additional Director  
General, Department of National Budget,  
Ministry of Finance, Secretariat,  
Colombo 1.

16. S.A. Priyangi C. Wijeratne,  
Madawatta, Polommaruwa, Tangalle.

## **RESPONDENTS**

**Before:** Mayadunne Corea, J.  
Mahen Gopallawa, J.

**Counsel:** Saliya Peiris, PC with Sarinda Jayawardena for the Petitioner.

Medhaka Fernando, State Counsel for the 1<sup>st</sup> to 14<sup>th</sup> and 16<sup>th</sup> Respondents.

**Argued on:** 19.01.2026

**Written Submissions:** Petitioner on 13.02.2026.  
1<sup>st</sup> to 14<sup>th</sup> and 16<sup>th</sup> Respondents on 13.02.2026.

**Decided on:** 27.03.2026

**Mahen Gopallawa, J.**

### **Introduction**

In the instant application, the Petitioner, who is employed as an Enforcement Officer-Grade III at the Kalutara Regional Office of the 1<sup>st</sup> Respondent Employees' Trust Fund Board ("ETF Board"), has impugned appointment of the 16<sup>th</sup> Respondent to the post of Regional Manager of the Kalutara Division. Accordingly, the Petitioner has sought writs of *Certiorari* to quash the decision of the Interview Board to accept the incomplete application of the 16<sup>th</sup> Respondent and to recommend the promotion of the 16<sup>th</sup> Respondent and the decision of the 1<sup>st</sup> Respondent Board to grant approval for the promotion of the 16<sup>th</sup> Respondent and to place her in the position of Regional Manager of the Kalutara Division, as reflected in the Human Resources Circular Letter No. 2023/15 dated 17.08.2023 (P5(a)). The Petitioner has further sought a writ of *Mandamus* to direct the 1<sup>st</sup> to 10<sup>th</sup> Respondents to appoint her to the said position of Regional Manager of the Kalutara Division with effect from 15.08.2023.

The 1<sup>st</sup> to 14<sup>th</sup> and 16<sup>th</sup> Respondents (“the Respondents”) have filed a statement of objections on 03.10.2025 objecting to the grant of such reliefs sought by the Petitioner. Accordingly, the application was taken up for argument on 19.01.2026. Thereafter, the parties were granted the opportunity of filing post-hearing written submissions and both parties have filed the same on 13.02.2026.

### **Factual Background**

According to the petition, the Petitioner had been recruited to the ETF Board on casual basis with effect from 01.12.1994 and been confirmed in service with effect from 03.07.1995 as a General Service Assistant-Grade VI. She had been promoted to the post of Enforcement Officer-Grade III with effect from 09.01.2020 (P1(a)) and was serving at the Matara Regional Office.

The Petitioner claims that she was transferred to the Kalutara Regional Office on 11.01.2023 (P1(b)), with a representation made by one J.K.P. Ranjith Jayawardhana, who held the office of the 12<sup>th</sup> Respondent, that she will be given priority when appointment is made to the post of Regional Manager, Kalutara Division. However, upon a query made by Court, the learned President’s Counsel for the Petitioner conceded that there is no documentary proof to substantiate such claim.

Several vacancies in the ETF Board, including in the post of Regional Manager-Kalutara Division, had been advertised internally and applications called for by Circular No. 2023/01 dated 23.03.2023 (P4) published in the “intranet” and certain amendments had been made thereto by Circular dated 29.03.2023 (P4(a)). The eligibility criteria for the advertised posts, marking scheme for the interview and the specimen application form had been set out in the said Circulars.

The Petitioner had submitted an application for the post of Regional Manager-Kalutara Division in response to such advertisement on 26.03.2023 and a copy of her application has been annexed to the petition marked P7(a). The application submitted by the 16<sup>th</sup> Respondent has also been annexed to the petition marked P7(c).

The Petitioner states that she had attended the selection interview before an Interview Board on 23.05.2023. As per the interview marks sheet tendered by the Respondents with their objections (R3), it is evident that 07 candidates had been attended the said interview and had been considered for selection.

In paragraph 17(c) of the petition, the Petitioner has narrated an incident concerning the 16<sup>th</sup> Respondent on the date of the interview as follows;

*The Petitioner states that before she was called in for her interview, the 16<sup>th</sup> Respondent went in, and after a brief period came out of the interview room in tears. On enquiring, the Petitioner and others there were informed by the 16<sup>th</sup> Respondent that her application had been rejected by the interview panel due to being completed erroneously. The 16<sup>th</sup>*

*Respondent then left the premises and did not return on that day, and the Petitioner is aware that interviews for the relevant post were held only on that day;*

Therefore, the Petitioner has stated that she was shocked and dismayed to later learn that the 16<sup>th</sup> Respondent had been appointed to the post of Regional Manager-Kalutara Division. The Petitioner has disclosed that, prior to filing the instant application, she had submitted appeals in respect of the 16<sup>th</sup> Respondent's appointment to the 2<sup>nd</sup> Respondent, the Human Rights Commission, the Commissioner General of Labour and the Ombudsman.<sup>1</sup>

### **Grounds of Review and Analysis**

As reflected in the pleadings and the submissions made by learned President's Counsel, the Petitioner has sought to challenge the appointment of 16<sup>th</sup> Respondent and consequently the Petitioner's non-selection to the post of Regional Manager-Kalutara Division on 03 grounds; namely;

- a. that, the incomplete application submitted by the 16<sup>th</sup> Respondent should have been rejected;
- b. that, the 16<sup>th</sup> Respondent lacked the minimum eligibility criteria to be appointed to the said post; and
- c. that, the marking scheme had not been properly applied by the Interview Board in awarding marks at the selection interview to the detriment of the Petitioner and to the advantage of the 16<sup>th</sup> Respondent.

I intend to examine such grounds in detail, with recourse to the material presented and the positions taken up by the parties thereon.

#### **a. Incomplete Application of the 16<sup>th</sup> Respondent**

The Petitioner has pointed out that, in the application submitted by the 16<sup>th</sup> Respondent for the post of Regional Manager (P7(c)), the relevant Head of the Division of the 16<sup>th</sup> Respondent has failed to mention whether the service of the 16<sup>th</sup> Respondent is satisfactory or unsatisfactory and whether the 16<sup>th</sup> Respondent was being recommended for the promotion or not. Accordingly, the Petitioner contends that the 16<sup>th</sup> Respondent's application should have been rejected. Reference has also been made to the fact that the 16<sup>th</sup> Respondent herself had informed the Petitioner and the others who were present that her application had been rejected by the Interview Board. The Petitioner has further referred to the fact that such omission had been observed as an "infirmity" in the report of Deputy Commissioner of Labour (P10(b)).

Such position taken up by the Petitioner has been rejected by the Respondents. They contend that the requirement set out in the Circular calling for applications (P4) was that applications should be forwarded to the Administration and Human Resources Division via the relevant

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<sup>1</sup> Paragraphs 20-25 of the petition.

Head of the Division of the applicant, and, that, in so far as the 16<sup>th</sup> Respondent's application (P7(c)) was concerned, it had been signed, dated and forwarded by the Head of the Division of the 16<sup>th</sup> Respondent to the Manager (Administration and Human Resources) who had thereafter forwarded same to the Interview Board. The Respondents further submit that item 10 of the application form (P7(c)) also indicates that the Manager (Administration and Human Resources) has satisfied himself that the 16<sup>th</sup> Respondent has had a satisfactory service record for the preceding two years. Thus, they contend that the 16<sup>th</sup> Respondent's application had been submitted in accordance with the requirements set out in the Circular (P4), and, as such, it had been accepted.

The learned State Counsel for the Respondent further submitted that, in any event, since making endorsements and recommendations in the application form were functions assigned to the Head of Division, it would have been unfair to penalize an applicant who was otherwise eligible to be considered for the appointment, solely based on any failure on the part of the Head of Division.

Upon consideration of the respective positions taken up by the parties and upon a perusal of the 16<sup>th</sup> Respondent's application form P7(c) itself, I am satisfied that there is adequate compliance with the requirements of the Circular (P4), and, that, it would have been manifestly unjust if it had been rejected on the ground cited by the Petitioner.

**b. Eligibility of the 16<sup>th</sup> Respondent to be considered for appointment**

The Petitioner has taken up the position that, in terms of the applicable scheme of recruitment (P4) and the practice followed by the ETF Board, the 16<sup>th</sup> Respondent is disqualified from applying to the position of Regional Manager, as a Regional Manager (MM 1-3) is required to have ground level knowledge of the employers from whom ETF contributions are collected from in that region.<sup>2</sup> She has submitted that, whereas an Enforcement Officer necessarily has that experience of regular interactions with employers, the role of an Administration Officer concerns the internal administration of the ETF Board.<sup>3</sup> According to the Petitioner, such erroneous evaluation of the Petitioner has resulted in the legitimate expectation entertained by the Petitioner being defeated.<sup>4</sup>

In examining such issue, a convenient starting point would be to ascertain the eligibility criteria applicable for the post of Regional Manager, as per the applicable scheme of recruitment. It is common ground that such eligibility criteria are set out in page 27 of the scheme of recruitment marked P7(b) and has been reproduced in item 8 of the Circular (P4) and that they provide alternative eligibility criteria for internal and external applicants. For purposes of clarity, I reproduce herewith such eligibility criteria set out in the Circular (P4);

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<sup>2</sup> Paragraph 3.2.9 of the Petitioner's post-hearing written submissions and paragraphs 26-33 of the petition.

<sup>3</sup> Ibid.

<sup>4</sup> Paragraph 3.2.10 of the Petitioner's post-hearing written submissions.

**08. ප්‍රාදේශීය කළමනාකරු (කොළඹ, වවනියාව, කටතර හා අම්පාර) - (MM 1-3)**

අභ්‍යන්තර අයදුම්කරුවන් සඳහා	බාහිර අයදුම්කරුවන් සඳහා
<p>JM වැටුප් කාණ්ඩයේ අවම වශයෙන් වසර 05 ක අදාළ ක්ෂේත්‍රයේ සතුටුදායක සේවා කාලයක් සම්පූර්ණ කර තිබීම.</p> <p style="text-align: center;">හෝ</p> <p>බාහිර අයදුම්කරුවන් සඳහා වන සුදුසුකම් සපුරා තිබීම.</p>	<p>විශ්ව විද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව විසින් පිළිගත් විශ්ව විද්‍යාලයකින් කළමනාකරණවේදි/විද්‍යාවේදි (විද්‍යා විෂය ධාරාවන්) ශාස්ත්‍රවේදි/චාණිඡ්‍යවේදි/සමාජ විද්‍යාවේදි/විද්‍යාවේදි (රාජ්‍ය පරිපාලනය/ ව්‍යාපාර පරිපාලනය) යන ක්ෂේත්‍ර වලින් ප්‍රථම උපාධිය ලබා තිබීම සහ උපාධිය ලබා ගැනීමෙන් පසු අදාළ ක්ෂේත්‍රයේ වසරක සේවා පළපුරුද්දක් ලබා තිබිය යුතුය.</p>

It is also common ground that both the Petitioner and the 16<sup>th</sup> Respondent have applied for the post as external applicants.

In determining the nature of the one-year post-qualification experience required for an external applicant, the parties have taken up divergent positions. The Petitioner’s position is that the practice of the ETF Board has been to consider the nature of the work done by the applicant during the year immediately preceding the application to the position of Regional Manager. The Petitioner further contends that it is also a well-established practice of the ETF Board to consider the experience in the field of ‘enforcement’ in considering the requirement of satisfactory experience in the in the subject area relevant to the post of Regional Manager. The Petitioner has sought to rely on a report dated 21.04.2022 submitted by the ETF Board to the Ministry of Finance, in response to a complaint by an unsuccessful candidate marked P18(c). However, it is observed that such report, which does not relate to the instant round of promotions and does not appear to have been submitted by the interview board itself, does not unequivocally indicate that experience in the ‘enforcement’ field is solely considered or that experience in the “administration” field is irrelevant. Thus, I am not persuaded that the contents of such report can be accepted as evidence of a “well-established” practice.

The Respondents have taken up the position that the 16<sup>th</sup> Respondent has fully satisfied the academic qualifications and the post-qualification experience required to be considered for appointment to the post of Regional Manager, as reflected in the schedule of qualifications of applicants tendered with the statement of objections (R2).

In relation to the requisite post-qualification experience, the learned State Counsel submitted that the critical requirement was that the experience should be ‘relevant’ to the post of Regional Manager and not the nature of the work performed by the applicant in the preceding year. He further submitted that the job description of the post of Regional Manager clearly demonstrated that a Regional Manager was required to perform key functions of an administrative nature, and, as such experience in the field of ‘administration’ was a very relevant attribute in an applicant.

The said job description for the post of Regional Manager is set out in page 26 of the scheme of recruitment P7(b), which appears to be the identical document as the document marked "X" submitted by the Respondents with their motion dated 01.11.2024, and is as follows;

*Regional Manager -*

*He/she shall achieve the expected monthly targets. He is responsible for motivate [sic] and guide all the staff members to achieve the expected monthly targets. He must enforce the given action plan and monitor it. He should administrate and maintain discipline of the staff. He must prepare monthly progress reports, set effective inspection programmes for Enforcement Officers. Any other duties assigned by the management from time to time. (emphasis added)*

In relation to the 16<sup>th</sup> Respondent, the learned State Counsel pointed out that, she had been appointed to the post of Administrative Officer with effect from 01.08.2019 after serving as an Assistant Administrative Officer, as evidenced by the letter of appointment (R8), and, as such, 03 years 08 months' experience in such post. The learned State Counsel also submitted that the job description of an Assistant Administrative Officer (R12(b)) included assisting in the maintenance of discipline in the division and demonstrated that such officers were engaged in the performance of routine administrative and human resources. Thus, he contended that the experience that had been gained by the 16<sup>th</sup> Respondent in the posts of Assistant Administrative Officer and Administrative Officer could be considered as post-qualification experience relevant to the post of Regional Manager.

I am inclined to accept the position taken up by the Respondents on this issue especially considering the job description of the post of Regional Manager. The functions of such post appear to be more weighted towards management and administration and do not show any direct involvement in the conduct of enforcement functions. Hence, I am satisfied that, considering her post-qualification experience in administration, the 16<sup>th</sup> Respondent was entitled to be considered for appointment to the post of Regional Manager in terms of the scheme of recruitment for the said post. I further hold that the Petitioner has failed to establish the existence of a practice where preference was given to experience in the field of 'enforcement' in the ETF Board. In any event, it is trite law that appointments in public institutions have to be conducted strictly in accordance with established schemes of recruitment, which cannot be deviated from on the basis of any institutional practices outside such framework.

Since reference was made to the requirement of a minimum of 05 years' service in a post in JM category, it is observed that, as per the eligibility criteria set out in the Circular (P4), such requirement would only be applicable to internal applicants. In the instant case, it is not in dispute that the 16<sup>th</sup> Respondent, and the Petitioner as well, has applied under the external

applicants' category. As such, the salary code and grade are not relevant and cannot be considered in determining the 16<sup>th</sup> Respondent's eligibility for appointment.

c. Improper application of the Marking Scheme at the Selection Interview

According to the Petitioner, the Interview Board has not properly applied the marking scheme in awarding marks at the interview to the effect that the Petitioner has been denied marks that she was entitled to whilst the 16<sup>th</sup> Respondent had been awarded marks that she has not been entitled to.

Prior to examining the merits of this argument, it would be prudent to set out the marking scheme applicable for the interview. It is common ground that the applicable marking scheme is set out in the document marked R4/P4 (second document marked as P4). The said marking scheme is reproduced as follows;

**සේවා නියුක්තයන්ගේ භාර අරමුදල් මණ්ඩලය ජ්‍යෙෂ්ඨ කළමනාකරණ  
MM 1-3 තනතුරු සඳහා සම්මුඛ පරීක්ෂණයේදී ලකුණු ලබාදීම.**

	විෂයය	ලකුණු හිමිවන අයුරු.
01	<p><b>JM කාණ්ඩයේ අදාල අතිරේක පලපුරුද්ද (මූලික සුදුසුකම සඳහා නියමිත සේවා කාලය හැර)</b>                      අතිරේක එක් වසරකට ලකුණු 03 බැගින් උපරිමය 30                      (පූර්ව සේවා ආයතනවලින් නිකුත් කළ පිළිගත හැකි මට්ටමේ සේවා සහතික තිබිය යුතුය.)</p>	
02	<p><b>අදාල අතිරේක අධ්‍යාපන/වෘත්තීය සුදුසුකම් (උපරිම ලකුණු 30)</b></p> <p>(i) උපාධිය ප්‍රථම පංතියේ සාමාර්ථය සමග } පූර්ණ කාලීන හෝ අවු. 2 1/2                      දෙවන පෙල ඉහල පංතියේ සාමාර්ථය සමග } නොඅඩු අර්ධ කාලීන උපාධි                      දෙවන පෙල පහල පංතියේ සාමාර්ථය }                      සාමාන්‍ය සාමාර්ථය - පූර්ණ කාලීන හෝ අවු. 2 1/2 නොඅඩු අර්ධ කාලීන උපාධි                      තනතුරට සෘජුවම අදාල නොවන උපාධි සහ අවු. 2 ½ ට අඩු අර්ධ කාලීන උපාධි</p> <p>(ii) පශ්චාත් උපාධි (පර්යේෂණ නිබන්ධන සහිත) 10                      පශ්චාත් උපාධි (පර්යේෂණ නිබන්ධන රහිත) 07                      පශ්චාත් උපාධි ඩිප්ලෝමාව 05</p> <p>(iii) පිළිගත් ආයතනවල විවිධ මට්ටමේ සාමාර්ථය ලබා තිබීම                      (ACA, CIMA, CIPM.....) 02                      පළමු අදියර 04                      දෙවන අදියර 05                      තුන්වන අදියර 05                      පාඨමාලාව සම්පූර්ණ කර තිබීම 08</p>	

	<p>AAT පළමු අදියර දෙවන අදියර තුන්වන අදියර</p> <p>AAT සම්පූර්ණ කිරීම</p> <p>(iv) පිලිගත් ආයතනයක වසරක් හෝ ඊට වැඩි විෂයානුබද්ධ ඩිප්ලෝමා පිලිගත් ආයතනයක මාස 06 ක් හෝ ඊට වැඩි ඉංග්‍රීසි/දෙමළ/ පරිගණක ඩිප්ලෝමා මණ්ඩලයෙන් පැවැත්වූ/ යොමු කල පුහුණු වැඩමුළු සහතික පත්</p>	<p>01 02 04</p> <p>05</p> <p>03 02 0.5</p>
03	<p><b>අනෙකුත් කුසලතා/කාර්ය සාධනය (උපරිම ලකුණු 15)</b></p> <p>(i) අනෙකුත් කුසලතා (සභාපති /සාමාන්‍යාධිකාරී විසින් නිකුත් කළ සේවා ඇගයීම් ලිපි/ ප්‍රශංසා ලිපි) <b>(උපරිම ලකුණු 03)</b></p> <p>(ii) කාර්ය සාධනය (පොදු සමාජ සේවා කටයුතු / සංගම්වල නිලතල දැරීම) හා මණ්ඩලයේ ක්‍රීඩා සහතික (ජනසතු සේවා හා සමස්ථ ලංකා /වෙනත් සංගම් වල නිලතල දැරීම) <b>(උපරිම ලකුණු 04)</b></p> <p>(iii) අංශ ප්‍රධානී ඇගයීම (පැමිණීම හා නිවාඩු ගැනීම 02,කාර්ය සාධනය 02, අංශයේ පොදු කටයුතු සඳහා සහභාගීත්වය 02, සාමාන්‍ය හැසිරීම 02) <b>(උපරිම ලකුණු 08)</b></p>	<p>01 බැගින්</p> <p>01 බැගින්</p>
04	<p><b>සම්මුඛ පරීක්ෂණයේ දී දක්වන කුසලතාවය (උපරිම ලකුණු 25)</b></p> <p>(i) විෂයට අදාල ප්‍රායෝගික දැනුම/ භාවිතය <b>(ලකුණු 15)</b></p> <p>(ii) පිලිතුරුදීමේ විශ්වාසවන්තභාවය හා නිවැරදිභාවය <b>(ලකුණු 04)</b></p> <p>(iii) කරුණු ඉදිරිපත් කිරීමේ කෞෂල්‍ය හා හැකියාව <b>(ලකුණු 04)</b></p> <p>(iv) පෞර්ෂත්වය <b>(ලකුණු 02)</b></p>	

In order to contextualize the allegations made by the Petitioner in respect of the award of marks by the Interview Board, I also deem it necessary to set out the complete Marks Sheet of the interview, which has been tendered by the Respondents with their objections marked R3. The marks obtained by the respective applicants extracted from the said Marks Sheet is reproduced below;

S/N	EPF No.	Name	Relevant Additional Experience (30 Marks)	Relevant Additional Qualifications (30 Marks)	Other Achievements (15 marks)		Performance at the interview (25 marks)	Total	Rank	
					(7 marks)	Recommendation from HOD (8 marks)				
1	199	Mrs.D.M.D.C. Disanayake	00	18	00	08	12	38	-	
2	473	Mr.S.K.W.Rathnayake	Absent							
3	614	Mrs.L.A.S.Chandra	03	13	00	05.5	16	37.5	-	
4	636	Mrs.S.A.P.C.Wijerathne	06	13	01	08	20	48	1	
5	882	Mr.U.H.S.Ranjith	06	11.5	00	08	20	45.5	2	
6	1278	Mr.K.G.E.P. Premawardhana	00	15	01	08	20	44	-	
7	1344	Mr.K.M.R.Malinda	06	10.5	00	08	20	44.5	3	

The Petitioner contends that the errors in awarding marks to her and the 16<sup>th</sup> Respondent has occurred under the following criteria;

a. Relevant Additional Experience (category 1)

The Petitioner has stated that she had 02 years and 07 months experience as an Enforcement Officer in JM 1-1 category up to the date of her application and claims that she should have been awarded more than the 03 marks.<sup>5</sup>

The Respondents submit that the Petitioner has been awarded the correct marks strictly in accordance with the marking scheme. They have clarified that both the Petitioner and the 16<sup>th</sup> Respondent had applied as external applicants and, as such, the minimum service requirement was 01 year in the JM category. Thus, as per her letter of appointment (R7), the Petitioner had 01 year and 07 months additional experience in JM 1-1 category beyond the 01 year minimum period as at the closing date of applications (06.04.2023). The Respondents have submitted that 03 marks are awarded in terms of the marking scheme for each completed year of additional service and accordingly the Petitioner had been correctly awarded 03 marks in respect of her additional experience of 01 year and 07 months.

The Petitioner also claims that the 16<sup>th</sup> Respondent, who had received 06 marks for relevant additional experience should in fact have received no marks, since she had no experience as an enforcement officer.<sup>6</sup> Whilst the position taken up by the Petitioner regarding the relevance of 'enforcement' experience has been found to be untenable, the Respondents submit that, the Respondents have pointed out that the 16<sup>th</sup> Respondent had 02 years and 08 months additional experience in JM 1-1 category as at the closing date of applications, as per her letter of appointment (R8). Hence, they contend that the 16<sup>th</sup> Respondent had been correctly awarded 06 marks in respect of the period of such additional experience.

<sup>5</sup> Paragraph 35 of the petition.

<sup>6</sup> Paragraph 54 of the petition.

In addition, the Respondents have also responded to the allegation made in the Petitioner's counter-affidavit regarding the marks awarded to the applicants whose names appear 1<sup>st</sup> and 6<sup>th</sup> positions in the marks sheet (R3). The Petitioner has pointed out that such applicants have not been awarded any marks for relevant additional experience, despite them having 05 years and 04 months and 05 years of service respectively.<sup>7</sup> However, the Respondents submit that, unlike the Petitioner and the 16<sup>th</sup> Respondent, the aforementioned applicants have applied under the internal applicants category, in respect of which the minimum period of service for qualification was 05 years in JM category, as per the eligibility criteria set out in the Circular (P4). Since such officers had not completed 01 year of service beyond such qualifying period of service, no marks had been awarded for relevant additional experience.

b. Relevant Additional Qualifications (category 2(iv))

The Petitioner contends that whilst she had only been awarded 13 marks, she was entitled to and should have been awarded 19.5 marks for relevant additional qualifications under the above category.<sup>8</sup> Such additional marks have been claimed in respect of diplomas and training courses set out in paragraphs 39 of the petition.

The Respondents have rejected such contention and explained their position in paragraph 3 of their statement of objections. Accordingly, they have pointed that, as specifically indicated in the marking scheme (R4/P4) that each sub-category under item 2 was subject to a maximum mark ceiling, and, that all applicants were assessed at the interview on such basis.<sup>9</sup> It was pointed out that the Petitioner had been awarded the full 03 marks under the said sub-category for her Diploma in Psychological Counselling.

The Respondents have also pointed out that the 16<sup>th</sup> Respondent too had been awarded the full 03 marks under sub-category 2(iv) for her Diploma in Public Management. Similar to the Petitioner, the 16<sup>th</sup> Respondent too had received a total of 13 marks for relevant additional qualifications consisting of 10 marks for her postgraduate degree (Masters in Business Administration) and 03 marks for the aforementioned Diploma in Public Management. Thus, the Respondents maintain that the awarding of marks for relevant additional qualifications to the Petitioner and the 16<sup>th</sup> Respondent has been done correctly.

The learned State Counsel submitted that maintaining such ceilings in respect of categories and sub-categories of the marking scheme was essential in order to maintain the overall balance between such categories therein. He further submitted that, although applicants possessed several other educational and professional qualifications as reflected in the schedule of qualifications (R2), the ceilings in awarding marks was strictly and uniformly applied.

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<sup>7</sup> Paragraphs 7(g) and 18 of the Petitioner's counter-affidavit.

<sup>8</sup> Paragraphs 36-39 of the petition.

<sup>9</sup> Such position has also been confirmed by the ETF Board before at the Labour Department inquiry in the letter dated 08.02.2024 marked P18(b).

c. Other Achievements (categories 3(i), 3(ii) and 3(iii))

The Petitioner claims that she should have been awarded 03 marks out of a possible 07 marks under these sub-categories 3(i) and 3 (ii) in respect of the certificates referred to in paragraphs 42 and 43 of the petition. In respect of sub-category 3(iii), she alleges that, whilst all other applicants were awarded the full complement of 08 marks, she had arbitrarily only been awarded 5.5 marks.

The Respondents has defended the award of marks to the Petitioner under the said sub-categories. In respect of sub-category, the Respondents have submitted that only recommendation/appreciation letters issued by the Chairman or General Manager of the ETF Board could be considered in terms of the marking scheme for such sub-category (R4/P4), and as such, no marks could be awarded in respect of the commendation issued by the Registrar of the Baddegama Magistrate's Court (P20).<sup>10</sup>

In respect of sub-category 3(ii), the Respondents have taken up the position that no marks were awarded in respect of the Petitioner's certificate as a dhamma school teacher (P14(a)) and certificate of volunteer service (P14(b)) as such certificates did not "align with the qualifications and achievements required for senior management roles."<sup>11</sup> They have further explained that the Petitioner had not been awarded any marks for acting as the Vice Secretary of the Sri Lanka Nidahas Sewaka Sangamaya - ETF Board Branch (2006)(P14(c)) for the reason that only bearers of the positions of President, Secretary and Treasurer permanently had been awarded marks by the Interview Board.<sup>12</sup>

Regarding sub-category 3 (iii), the Respondents have submitted that the Petitioner was not awarded the full 08 marks as the Petitioner's performance as an Enforcement Officer in the Matara Regional Office had been reported to be unsatisfactory by the Assistant General Manager-Zone III by letter dated 29.11.2021 (R5).<sup>13</sup> It had been further recommended by letter dated 27.12.2021 (R6) that the Petitioner's salary increments for the year 2021 should be granted after a period of supervision due to her poor performance.<sup>14</sup>

d. Performance at the Interview (category 4)

For the sake of completeness and though the issue was not urged by the learned President's Counsel at the hearing of this application, it is observed that the Petitioner has alleged that she was not asked questions that adequately tested the criteria to be considered at the interview set out in the marking scheme in the petition,<sup>15</sup> However, neither has the Petitioner submitted any specific evidence on this issue nor has she urged this matter in any of the appeals preferred by her marked P8(a), P8(b), P8(c) or before the inquiry at the Labour Department. Thus, there is no basis for this Court to conclude that the marks awarded to her

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<sup>10</sup> Paragraphs 3(XXI) and 3(XXII) of the statement of objections.

<sup>11</sup> Paragraph 3 (XIX) of the statement of objections.

<sup>12</sup> Paragraph 3 (XX) of the statement of objections.

<sup>13</sup> Paragraph 3 (XXIII) of the statement of objections.

<sup>14</sup> Paragraph 3 (XXIV) of the statement of objections.

<sup>15</sup> Paragraphs 48-52 of the petition

for performance of the interview were incorrect or unfair. Furthermore, since the aggregate marks of the 16<sup>th</sup> Respondents are higher than the Petitioner even if the marks obtained by them for performance at the interview are discounted, such interview performance marks may not have had a material bearing upon the eventual decision to select the 16<sup>th</sup> Respondent.

Upon perusal of the interview marks sheet and upon consideration of the aforementioned positions taken up by the parties, I am unable to accept the Petitioner's contention that the Interview Board has not properly applied the marking scheme in awarding marks at the interview to the detriment of the Petitioner and in favour of the 16<sup>th</sup> Respondent. Therefore, I hold that the marks awarded to the Petitioner are accurate and that she is not entitled to further marks, as claimed by her.

I also observe that the Interview Board has acted in accordance with the marking scheme (R4/P4), and, in a reasonable manner, wherever an element of interpretation was required in applying certain sub-categories of such marking scheme, in awarding marks at the interview.

In fact, is a well-established principle that recruitments and promotions in the public service as well as in public corporations and statutory bodies, such as the 1<sup>st</sup> Respondent, have to be made in accordance with established Service Minutes or schemes of recruitment. In relation to the public service, such principle is expressly set out at present in Rule 32 of the Procedural Rules on Appointment, Promotion and Transfer of Public Officers published by the Public Service Commission on 14.12.2022 (PSC Rules 2022).<sup>16</sup> The said Rule 32 provides as follows;

*32. Every appointment to the public service other than on substitution or casual basis shall only be made in accordance with the approved Service Minute or the Scheme of Recruitment, as the case may be.*

Viewed in this context, the purported assurance said to have been given to the Petitioner that she will be accorded priority when filling the vacancy in the post of Regional Manager-Kalutara Division is contrary and violative of the aforementioned principle and is not one that can be taken cognizance of in accordance with the law.

It is further observed that the 16<sup>th</sup> Respondent has secured the highest marks at the interview with 48.0 marks, whilst the Petitioner has been placed 6<sup>th</sup> in the order of merit with 37.5 marks. Thus, the recommendation of the 16<sup>th</sup> Respondent for appointment has also been done by the Interview Board in accordance with the order of merit.

In such circumstances, I am of the view that the recommendation of the Interview Board and the consequent decision taken by the 1<sup>st</sup> Respondent ETF Board to appoint the 16<sup>th</sup> Respondent to the post of Regional Manager-Kalutara Division based on such recommendation have been made in accordance with the law and in a rational and reasonable manner.

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<sup>16</sup> Published in the Extraordinary Gazette No. 2310/29 dated 14.12.2022.

In effecting appointments and promotions in the public service, public corporations and statutory bodies pursuant to a competitive selection process, it is another well-established principle that the selection of candidates for such appointments and promotions will be based on the order of merit determined according to the applicable selection process. Any departure from such practice without any justifiable reasons renders such appointments or promotions liable to be set aside. Such principle has been enshrined in the PSC Rules 2022 in relation to the public service in Rule 87 in the following terms;

*87. Where the recruitment is made only on the results of a written examination and/or an interview awarding marks and/or any other test awarding marks, the appointments shall be made strictly in the order of merit of the aggregate marks obtained by the candidates at such written examination and/or interview awarding marks and/or other tests awarding marks.*

Such Rule has been extended to promotions as well by virtue of Rule 243 of the aforementioned PSC Rules.

The said principle has also been recognized and consistently given effect to by our Superior Courts. For instance, in ***Adam Bawa Issadeen v. Sudharma Karunaratne, Director General of Customs, and others***,<sup>17</sup> which was a fundamental rights application in which the Supreme Court granted redress to the Petitioner due to the failure on the part of the Respondents to follow give effect to the order of merit in making appointments. The Court observed as follows (per Priyantha Jayawardena, J.);

*In the instant application the candidates applied for vacancies for the post of Assistant Superintendents of Customs Class II. The vacancies were to be filled on the basis of merit. Applicants had to sit for a competitive exam and successful candidates were called for an interview. It is common ground that notwithstanding the fact that the Petitioner had been placed 7<sup>th</sup> in the order of merit at the examination held to recruit Assistant Superintendents of Customs Class II, he was not appointed to the said post along with the other candidates who were successful at the said examination, contrary to the provisions of the Establishment Code which requires the candidates to be appointed in order of merit. The marks of the interview were not published.*

*The plain meaning of "merit" is the quality of deserving well, excellence, or worth; it is derived from the Latin "mereri", meaning to earn, or to deserve. "Merit" must be considered in relation to the individual officer, as well as the requirements of the post to which he seeks appointment or promotion. In the instant application there were no grounds to deviate from the merit principle that can be justified for the non-appointment of the Petitioner to the post of Assistant Superintendent of Customs Class II.*

In the instant case, I am of the view that the aforementioned established practices have been adhered to by the 1<sup>st</sup> Respondent ETF Board in conducting the selection process and making the appointment to the post of Regional Manager-Kalutara Division. Therefore, I am unable to conclude that conduct of the 1<sup>st</sup> Respondent ETF Board in appointing the 16<sup>th</sup> Respondent

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<sup>17</sup> SCFR Application No. 248/2011, SC Minutes dated 16.12.2014

to the said post has either been illegal, irrational, unreasonable, arbitrary or capricious, as alleged by the Petitioner.

From the perspective of the 16<sup>th</sup> Respondent, being placed first in the order of merit makes her the most eligible candidate, and, in any event, more eligible than the Petitioner, to be appointed to the relevant post. Under such circumstances, I am also of the view that the Petitioner was not entitled to be appointed to the said post of Regional Manager-Kalutara Division or to assert any legitimate expectation of being appointed to the said post. In fact, if the Petitioner were to be appointed to the said post, not only would such an act be contrary to the scheme of recruitment and the law but would also be violative of the rights of the 16<sup>th</sup> Respondents and the other applicants who attended the selection interview were placed higher than her in the order of merit.

**Conclusions and Orders of Court**

For the reasons set out above, I hold that the Petitioner has failed to establish her entitlement to the reliefs prayed for in the petition. Accordingly, I proceed to dismiss the Petitioner's application. No costs.

*Application dismissed.*

**Judge of the Court of Appeal**

**Mayadunne Corea J.**

I agree.

**Judge of the Court of Appeal**