

In the Administrative Appeals Tribunal

Appeal No : **AAT/87/2024 (PSC)**

Ishan Rathnapala

Appellant

Vs

The Public Service Commission (PSC)
Respondent

G.D.S. de Silva
H.A.P. Hewawasam
S.M.H.Ahmed (Discharged)
P.A.P.A.W. de Silva
H.N.Opatha (Discharged)
N.M. Kahavita (Discharged)
K.V. Indika
Eroma Nanayakkara
Himali Champika Jayanetti

Added Respondents

Before : **Justice K. T. Chitrasiri (Chairman)**
J. J. Rathnasiri (Member)
S. Nandasekaran (Member)

Date : **05.05.2026**

Representation of parties

Mr.S.Gnanaraj with Ms.Sakuni Weeraratne Attorneys-at-Law for the appellant

Ms.R.S..D.N.Rambukkamage Assistant Secretary for the Public Service Commission.

Dr.Awanthi Perera, Deputy Solicitor General is present representing the Hon. Attorney General.

Mr.Viran Corea PC with Ms.Nisala Fernando AAL appears for the 5th added Respondent.

Mr.Navin Marapane PC with Mr.U.Wickramaratne, Mr.Saumya Hettiarachchi Attorneys-at-Law appears for the 3rd added Respondent.

Mr.Senani Dayaratne AAL appears for 9th and 14th added Respondent.

ORDER

Justice K. T. Chitrasiri

Appellant Ishan Rathnapala filed this appeal dated 10.04.2024 seeking *inter alia* to set aside or rescind the decision dated 13.03.2024 of the Public Service Commission (PSC). The said decision is found in the document marked 'P9' filed with his petition of appeal. He also has sought to have a direction to the PSC placing him at the due rank/position of the order of seniority in the permanent cadre of the Senior State Counsel in the Department of the Attorney General. In the aforesaid decision dated 13.03.2024 of the PSC, it is mentioned that the effective date of the promotion as a Senior State Counsel (SSC) of the appellant is 17.11.2018. His request is to have him promoted with effect from 15.06.2018 and to place him at the correct place in the seniority list considering the previous decisions made by the PSC and also the seniority lists issued by the Hon. Attorney General pursuant to the recommendations made by the panel of interviewers that were conducted to promote State Counsel to the post of Senior State Counsel.

In the submissions filed, the appellant has stated that he was confirmed in the service as a State Counsel along with 22 other State Counsel on 15.06.2010. Having stated so, he has argued that the intention and purpose of such a decisions was to club together all those state counsel to form a common class of a single batch. In support of his contention, he has referred to the circular No.04/2012 dated 14.02.2012 issued by the Department of Attorney General. Appellant also has referred to a few decisions pronounced by the Supreme Court in support of his contention.

The position advanced by the Respondent PSC and the added Respondents is that the seniority of the officers concerned should be on the basis of their date of appointment to the Attorney General's Department. Hence, the contention of the Respondents is on the basis of the date of appointment of the officers concerned, to the Department and not the seniority lists issued & the position achieved at the interviews held for the promotions by the interview panels led by the Hon. Attorney General.

Accordingly, the issue in this appeal is to ascertain whether or not it is the date of the appointment as Temporarily Acting State Counsel or ; the seniority list issued by the Hon. Attorney General pursuant to assessing the merits of the officers. Therefore, the Tribunal is to decide whether or not the appellant is placed correctly in the seniority list referred to in the decision dated 13.03.2024 of the PSC (P9).

Briefly, the facts are as follows :

By the letter dated 09.06.2008, PSC has directed the Secretary, to the Ministry of Justice and Law Reforms to appoint 30 applicants to the post of Temporary Acting State Counsel with effect from 15.06.2008. The name of the appellant is not found in that list though he had attended the interview along with the others who joined the Department on the 15.06.2008. He had been placed at the 31st position in the order of merits, pursuant to the said structured interview. The appellant was not selected at the interview held to appoint Temporary Acting State Counsel. Accordingly, 30 applicants had been appointed as Temporary Acting State Counsel with effect from 15.06.2008 and the appellant was not selected since he was placed at the 31st position.

Subsequently, Ms. L.S. Perera one of the appointees had tendered her resignation. In order to fill her vacancy, the Hon. Attorney General had decided to appoint the next applicant in the selected list who is the appellant, in order to avoid holding another interview. Accordingly, the appellant was appointed as a Temporarily Acting State Counsel with effect from 17.11.2008. Therefore, the fact remains that the appellant was not in the service in the Department of the Attorney General during the period between 15.06.2008 to 17.11.2008.

Consequently, 23 officers were taken into the permanent cadre with effect from 15.06.2010 from among the 30 officers appointed. Appellant also is one of the officers who were made permanent along with the other 22 officers though he was appointed to the Department 5 months later than the others. At the time they were made permanent, the appellant was placed over some of the officers who were appointed before him, having considered the recommendations of a structured interview.

The PSC has subsequently informed the Secretary to the President by his letter dated 21.09.2014 stating that it is erroneous to place the appellant, above the officers who were appointed on 15.06.2008. Accordingly, PSC has directed to place the appellant in the seniority list below the officer by the name of H.A.P. Hewawasam.

At this stage, it is to be noted that there was no approved Scheme of Recruitment (SOR) during this period and the present SOR was introduced with effect from 02.09.2014 only. Rules governing the appointments of Senior State Counsel are filed and marked as AG 3 by the Attorney General. The same is also marked as Annex 1 to the submissions dated 26.08.2024 filed by the PSC.

Accordingly, to become a Senior State Counsel, it is necessary to have the following qualifications:

1. The services of the State Counsel should have been confirmed.
2. Complete 10 years active and satisfactory service and also should have earned 10 salary increments in that post.
3. 10 years satisfactory or higher-level performance prior to the date of appointment.
4. Should not have been punished for disciplinary offences referred to in the PSC Circular No.1/2020.
5. Should have been obtained the other official language proficiency.

In terms of clause 10.1.2 in the SOR, appointment as a Senior State Counsel is made upon evaluating the qualifications and the performance of the officers.

However, as mentioned before, the issue at hand is to determine whether ;

- i. it is the initial date of appointment that should be considered in determining the seniority or
- ii. the matters referred to in Clause 10.1 in the SOR or
- iii. both of those could be taken into consideration

when appointments are made to the post of Senior State Counsel.

At this stage, it is necessary to note that the PSC by letter dated 23.10.2018 has informed the Secretary to the Ministry of Justice with a copy to the Hon. Attorney General stating that the date of appointment shall be the date on which those officers were originally appointed as the Acting State Counsel. The said direction is as follows:

“ලේකම්

අධිකරණ හා බන්ධනාගාර ප්‍රතිසංස්කරණ අමාත්‍යාංශය

තාවකාලික වැඩබලන රජයේ අධිනීතිඥවරුන් ස්ථිර කාරය මණ්ඩලයට පත්කිරීම

උක්ත කරුණ සම්බන්ධව සලකා බැලූ රාජ්‍ය සේවා කොමිෂන් සභාව විසින් පහත තීරණ ගෙන ඇති බව එහි නියමය පරිදි කාරුණිකව දන්වමි.

ඉහත සඳහන් ලිපිය විසින් ඔබ විසින් නිදේශීය කරන ලද පහත නම් සඳහන් රජයේ අධිනීතිඥ නිලධාරීන්ගේ නව පත්වීම් දිනය තාවකාලික වැඩබලන රජයේ අධිනීතිඥ තනතුරට පත්කරන ලද දිනය සේ සලකා හිඟ වැටුප් රහිතව පෙරදානම් කිරීමට ”

It is important to note that the said letter is dated 23.10.2018. Accordingly, the instructions of the PSC were to antedate the date of appointment as the date on which they were first appointed as the Temporary Acting State Counsel. Hon. Attorney General has acted accordingly, having accepted the recommendations given in that letter. Appellant should have been aware of the said decision that was made as far back as in the year 2018. Accordingly, the 10-year period of service necessary to appoint the appellant to the post of Senior State Counsel as required in the SOR, commences only on 17.11.2008 whilst the remaining 29 officers' date of commencement of their career falls on the 15th June 2008.

Having considered all the material, the Tribunal is inclined to follow the rules referred to in the SOR rather than the Seniority List issued by the Hon. Attorney General. Otherwise, it will amount to violate the provisions of the SOR.

More importantly, in the event the relief is granted as sought by the appellant then the appellant having less period of service will become senior to the added Respondents. In other words, some of the Respondents will become junior to the appellant in the Seniority List, though the appellant had joined the service five months later than them.

Furthermore, the appellant, having accepted the said position referred in the aforesaid letter dated 23.08.2018 sent by the PSC with a copy to the Attorney General has not made any objection to the said recommendations until he filed this appeal on 10.04.2024. Therefore, the appellant is estopped from claiming seniority over the added respondents when he has acted accepting the date of commencement of the services at the Department of the Attorney General, particularly when calculating the 10-year period of service necessary for him to be appointed to the post of Senior State Counsel.

At this stage, it is also important to note that in the submissions dated 21.03.2025 filed on behalf of the Hon. Attorney General, it is stated that it may not be possible to amend the appellant's date of appointment to the post of SSC to be made effective on 15.06.2018 instead of 17.11.2018, as that would be contrary to paragraph 10.1.1 of the SOR as well as Item 02.1 of the Notice calling for applications to appoint the officers to the post of Senior State Counsel.

I have also considered the decisions referred to in the submissions filed on behalf of the appellant in support of his contention.

The matters pertaining to ***“Ramupillai v. Festus Perera, Minister of Public Administration and Others (1991) 1Sri L.R.11”*** are on the question of admissions to educational institutions and to the public service. In that decision Court has discussed the sources of the applicants when the appointments are made to the Public Service.

In the case of ***“Rienzie Perera v. University Grants Commission (1978-79-80) 1Sri LR”***, the issue was to make a distinction between the officers joined the public service from different sources. In the case at hand is to determine the seniority of the officers who have joined the Attorney General’s Department and there is no issue as to the officers who have joined the Department from different sources.

Therefore, it is our view that the decisions referred to in the submissions filed on behalf of the appellant are not relevant to the issue at hand.

In view of the reasons set out before, we are not inclined to interfere with the impugned decision dated 13.03.2024 of the PSC. The seniority list found in the document marked P9 shall stand as it is. Accordingly, Tribunal decides to dismiss this appeal.

Appeal is dismissed.

I agree.

Justice K.T. Chitrasiri
(Chairman)

I agree.

J.J. Rathnasiri
Member

S. Nandasekaran
Member

NDS