

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

***In the matter of an Application
under and in terms of Articles 17
and 126 of the Constitution.***

SC/FR APPLICATION 181/2016

1. M. Weerasinghe,
No. 1200/4, Rajamalwatta Road,
Battaramulla.

2. D.G.A Wijebandara,
No. 972A, Pannipitiya Road,
Thalangama South,
Battaramulla.

3. R.K.M Dayananda,
No. 25/7, Coranelis Mawatha,
Thalpathpitiya Road,
Nugegoda.

4. N.P.G. Karunathilaka,
No. 190, Whitewell Estate,
Paththalagedara,
Veyangoda.

PETITIONERS

Vs

1. P.S.M Charles,
Director – General of Customs,
Sri Lanka Customs Department,
No. 40, Main Street,
Colombo 11.
2. A. Senanayake,
Additional Director – General
(Human Resource Management)
Sri Lanka Customs Department,
No. 40, Main Street,
Colombo 11.
3. D. Dissanayake,
Chairman,
4. Prof. Hussain Ismail
5. V. Jegarajasingham,
6. Nihal Seneviratne,
7. Dr. Prathap Ramanujan,
8. S. Ranugge,
9. D.L. Mendis,
10. Sarath Jayathilaka,
11. D. Wijayatilleke,

(All members of the Public Service Commission of No. 177, Nawala Road, Narahenpita, Colombo 05.)

12. A. Kulatunga ,
Secretary,
Public Service Commission,
No. 177, Nawala Road,
Narahenpita, Colombo 05.

13. Secretary,
Ministry of Finance,
The Secretariat,
Colombo 01.

14. Director – General of
Establishments,
Ministry of Public Administration
and Home Affairs,
Independence Square,
Colombo 07.

15. M.M. Alwis,

16. A.J. Fernando,

17. B.C.L. Hewawitharana,

18. K.D.R. Perera,

19. W.M.T. Mahaulpatha,

20. U.K.A.S. Yapa,

21. A.N. Kurukulaarachchi,

22. R.P.D.R. Sandya,

All acting Superintendents of Customs and all c/o. the Additional Director – General (Human Resource Management), Sri Lanka Customs Department, No. 40, Main Street, Colombo 11.

23. Hon. Attorney – General,
Attorney – General’s Department,
Hultsdorp Street,
Colombo 12.

RESPONDENTS

BEFORE : L.T.B. DEHIDENIYA, J.
S. THURAIRAJA, PC, J. and
E.A.G.R AMARASEKARA, J.

COUNSEL : Nishantha Sirimanne with Uween Jayasingha for the Petitioners.
Ms. Sureka Ahmed, SC, for the 1st – 14th and 23rd Respondents.

ARGUED ON : 11th February 2020.

WRITTEN SUBMISSIONS : 1st – 14th and 23rd Respondents on 6th February 2020

Petitioners on 21st June 2017

DECIDED ON : 19th May 2020.

S. THURAIRAJA, PC, J.

The Petitioners were attached to Sri Lanka Customs. They were all appointed to the post of Assistant Superintendent – Grade II with effect from 1st April 1990 and were all promoted to the post of Deputy Superintendent with effect from 25/08/2010.

The next promotion available to the Petitioners is to the post of Superintendent of Customs. The Petitioners state that promotions to the said post are effected solely on the basis of seniority which is ascertained at an oral interview. The Petitioners state that this has been the practice that has consistently been followed by the Sri Lanka Customs when selecting officers for promotion to said post.

It is alleged that the authorities have promoted seventeen officers without following the proper procedure. Namely, there was no proper advertisement calling for applications and that there was no interview. Therefore their Fundamental Rights enshrined under Article 12(1) of the Constitution had been infringed upon.

Available facts reveal that the Sri Lanka Customs had sought approval from the Public Service Commission to fill the existing 15 vacancies. It was submitted that the calling for applications was displayed at the Human Resources Directorate of Sri Lanka Customs on 20/01/2016. Further, it was circulated through the Customs Union on which the Petitioners are members. The Petitioners deny seeing such an advertisement and receiving any information through the Customs Union. Officials of the said union also by letter dated 22/06/2016 (R5a) confirmed that the Petitioners

are their members and they were informed of the vacancies and the date and time of the interviews.

The above proves that the notice was properly displayed and communicated to the Petitioners.

The Counsel for Petitioners and Respondents submit that after filing this application the Petitioner and other Officers were promoted following the due process. Presently the grievance of the Petitioners is that their seniority be restored by back dating their appointments over and above the Officers who were promoted in June 2016.

I carefully perused the material before us. It appears that pursuant to Cabinet Decision No. 403/14/07.09/504/079 dated 11 July 2014, the Public Service Commission had amended the Scheme of Recruitment (SOR) applicable to Sri Lanka Customs from the original one. Accordingly, promotions to the post of Superintendent of Customs from that of Deputy Superintendent of Customs is granted on the basis of seniority. Officers serving as Deputy Superintendents of Customs, have to face a formal interview prior to such promotions being effected. The interviews are held by an interview Board approved by the Public Service Commission and at said interview the qualifications and other details of the candidates are verified. The interview is mainly to consider the seniority of the applicants.

The Petitioners are presently not challenging the interviews and promotions given in January 2016, their challenge is only on the appointment given to eight officers in June 2016. It is observed that the Public Service Commission had approved the promotion of fifteen people originally and another two thereafter. Subsequently, the Sri Lanka Customs by letter dated 27/05/2016 sought approval from the Public Service Commission through the Secretary to the Ministry of Finance to appoint eight officers from the list of officers who had faced interviews held on the 21st of January 2016. The Public Service Commission by letter dated 23/06/2016, granted approval

to make the appointments as suggested by the Sri Lanka Customs and accordingly the eight vacancies were filled according to seniority from the list of officers who had faced interviews on 21st January 2016. Therefore it was not necessary for the Sri Lanka Customs to re-advertise and re-interview when there was an approval from the Public Service Commission.

The Respondents submit that the fact that the Petitioners were not interested in applying or obtaining the promotions is evident from the conduct of the Petitioners. Despite promotions being given to Officers who were ranked below the Petitioners in the list of seniority in January 2016, the Petitioners made no complaint or appeal and only submitted a belated appeal in May 2016.

The Respondents reiterated the aforementioned fact by submitting that, it was further confirmed by the fact that this is not the first occasion where the 1st Petitioner failed to apply for promotion despite being eligible to apply. He failed to apply for the interview held on 24/04/2015, despite being eligible to be promoted according to the merit order of the seniority list applicable to the rank of Deputy Superintendent of Customs as at 24/04/2015 (1R13), the 1st Petitioner was ranked at No. 50. The officer ranked at No.51 in the list, applied for the promotion, attended the interview held on the aforesaid date and was promoted to the rank of Superintendent with effect from 14/10/2015. Hence it is evident that if the 1st Petitioner had applied for promotion and attended the interview, he would have been eligible to be promoted with effect from 14/10/2015

The Respondents submit that it is imperative that all officers seeking promotions to submit an application and be present at an interview. It is admitted fact that Petitioners have not submitted their applications for promotion. Therefore, they are not entitled to get any promotion, despite being eligible to be promoted based on the ranking in the seniority list.

In the case of ***Devasinghe v Jayaratne SC/FR 516/95 (S.C.M. dated 19/02/1997)*** Justice Shirani Bandaranayake, J stated as follows;

*"The question that has to be considered is whether the petitioners and the respondents were equals under the above mentioned circumstances. There is no doubt that equals will have to be treated equally without any discrimination. However, the equal protection of the law cannot be postulated among unequals; people who are differently circumstanced. **While the Respondents applied for the said post, the petitioners for reasons of their own, had decided not to apply. No one had denied the petitioners their right to apply for the advertised positions...**If the petitioners were interested in the said post the least they could have done was to have sent an application. Their decision not to apply for the post, clearly shows that they were, for some reason or other not interested in the post. **The decision not to send applications was not forced on them by anyone but was a self- imposed decision.** Since the petitioners failed to apply, I cannot see how we could treat the petitioners and respondents as persons who belong to the same class. The Petitioners and 8th – 11th respondents, in my opinion cannot be regarded as persons similarly circumstanced."*

(Emphasis added)

The Petitioners allege violation of their Fundamental right guaranteed under the constitution. Article 12(1) of the Constitution states that all persons are equal before the law and are entitled to the equal protection of the law. The non – promotion of the Petitioners occurred due to them not applying for the promotion. However I am of the view that in these circumstances there has not been a violation of their Fundamental Rights

Considering all material available before us, I find that all steps with regard to the promotion process have been correctly made with the approval of the Public

Service Commission which is the appointing authority. I find no reason to backdate the promotions of the Petitioners due to the fact that the non - promotion of the Petitioners in the first instance was not due to any fault of the Respondent but instead occurred due to their failure to apply for promotion at the relevant time. I am of the view that the Fundamental Rights of the Petitioners enshrined in the Constitution, particularly Article 12(1) has not been violated.

After careful consideration I dismiss the application with cost. I fix cost at Rs. 10,000/- on each of the Petitioners.

Application dismissed.

JUDGE OF THE SUPREME COURT

L.T.B. DEHIDENIYA, J.

I agree.

JUDGE OF THE SUPREME COURT

E.A.G.R AMARASEKARA, J.

I agree.

JUDGE OF THE SUPREME COURT