

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

In the matter of an application under  
Chapter III of the Constitution of the  
Democratic Socialist Republic of Sri  
Lanka in terms of Article 17 read  
together with Article 126

Galgana Mesthrige Priyanthi Perera  
'Aluthgedara',  
Wilhara, Labbala

**PETITIONER**

Case No. **SC.FR 139/2016**

1. Rubber Research Institute
2. N. V. T. A. Weragoda,  
Chairman,  
Rubber Research Institute.
3. W. M. Gamini Seneviratne,  
Director,  
Rubber Research Institute.
4. A. H. Kularatne,  
Acting Deputy Director  
Administration,  
Rubber Research Institute

All of Rubber Research Institute,  
Telawala Road,  
Ratmalana.

5. Upali Marasinghe,  
Secretary to the Ministry of  
Plantation Industries

6. Hon. Naveen Dissanayake,  
Minister of Plantation Industries.  
Both of Sethsiripaya,  
1<sup>st</sup> Floor, 2<sup>nd</sup> Stage,  
Battaramulla.
7. Professor M. Thilakasiri,  
Sri Lanka Institute of Development  
Administration,  
No.28/10, Malalasekara Mawatha,  
Colombo 7.
8. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE:** Buwaneka Aluwihare, PC, J,  
H. N. J. Perera, J &  
L. T. B. Dehideniya, J.

**COUNSEL:** Harith De Mel for the Petitioner.  
N. Wigneswaran, SSC, for the Attorney-General.

**ARGUED ON:** 28<sup>th</sup> June, 2018

**DECIDED ON:** 14<sup>th</sup> March, 2019

ALUWIHARE, PC, J:

The Petitioner is an Experimental Officer of the Rubber Research Institute, coming under the purview of the 1<sup>st</sup> Respondent Board. Her complaint is that the Respondents, through an arbitrary scheme is preventing the Petitioner from presenting herself for an interview for the promotion as a Research Officer.

The Petitioner, at the time the present application was filed, had been employed at the Rubber Research Institute in the capacity of Experimental Officer for a period of 16 years. She had referred in her petition, to a plethora of qualifications she is possessed with and states that she is adequately qualified for the post of Research Officer of the Institute. Her qualifications are not disputed by anyone for the recruitment of the Post of Research Officer.

The recruitment for the post of Research Officer is carried out along a “Scheme of Recruitment and Promotion” recommended by the Chief Executive Officer of the Rubber Research Institute of Sri Lanka which had received the concurrence/approval of the Secretary of the line Ministry, as well as of the Director General, Department of Management Services. The approval dated 13.03.2011 is marked and produced as(P3), and dated 13.03.2011.

The said document clearly stipulates the procedure for recruiting Research Officers. Both external as well as internal candidates are eligible to apply, provided that they possess the requisite educational qualifications. As there is no dispute as to the requisite academic qualifications, it would not be necessary to refer to them here.

Once the applications are called through public advertisement in the print media, prospective candidates are required to sit for a written competitive examination. The candidates who secure marks 50% or above are required to face a structured interview and the appointments are made purely in the order of merit at the interview. One other relevant factor that needs to be referred to here is that, the number of recruits is to be

decided as per the cadre vacancies within the category. It is to be noted that there had been no challenge to the “Scheme of Recruitment and Promotion” (P3) up to this date.

#### Petitioner’s Position

Petitioner had joined the Rubber Research Institute under the “Graduate Scheme” entry to a non-cadre post of ‘Research and Development Assistant’ on 15<sup>th</sup> August, 2000 (P4).

In the year 2005, (eleven years before the recruitment that is challenged in the present case), two vacancies had arisen in the post of Research Officer. Three candidates had been successful at the examination, including the Petitioner; however, the other two candidates had filled the two vacancies. Although the Petitioner alleges arbitrary allocation of 25 marks to the external candidates as there had been no challenge to this alleged arbitrary allocation of marks, it would not be relevant to delve into such matters here as what is challenged in these proceedings is the recruitment carried out in the year 2016.

In the year 2009 another vacancy had arisen and two candidates had been successful including the Petitioner. At this point too, the other candidate, despite being of 57 years of age, had been selected to fill the vacancy at the interview.

The Petitioner faced a similar situation in 2011 where again, a candidate other than the Petitioner had been selected at the interview.

In 2012 two further vacancies had arisen and again the Petitioner had been successful at the written test. According to the Petitioner, she was informed that due to the fact that she had gone on no pay leave she was not selected.

Although the Respondents have denied some of the assertions made by the Petitioner, none of the instances referred to above had been challenged. The Petitioner, however, asserts that the instances referred to above are indicative of various irregularities committed by the officials in charge of the administration at the 1<sup>st</sup> Respondent's Institute.

The Petitioner states that she and another candidate were successful in the written test held in January 2015. The interviews however had not been held due to the non-adherence to the scheme of recruitment, and subsequently the 1<sup>st</sup> Respondent Board has taken steps to cancel both the written examination and the interviews. The 2<sup>nd</sup> Respondent, the Chairman of the 1<sup>st</sup> Respondent Board in his objections filed in these proceedings has stated that several external candidates and two internal candidates were successful at the written test but his predecessor, the then Chairman of the 1<sup>st</sup> Respondent Board, after considering the complaints made by internal candidates and on the instructions of the Secretary to the relevant line ministry (the 5<sup>th</sup> Respondent) had cancelled the interviews scheduled. As evidenced by "R8", the Secretary to the Ministry of Plantations by his letter dated 23.12.2015 had directed the Director of the Rubber Research Institute (5<sup>th</sup> Respondent) to call for fresh applications for the post of Research Officer and to conduct the examination through the Sri Lanka Institute of Development Administration (SLIDA) in accordance with the Scheme of Recruitment.

The Petitioner complains that the cancellation of the interviews after being successful at the examination had prejudiced her rights, as the process prevented her from presenting herself for an interview.

It must, however, be reiterated that the events referred to above have little or no direct bearing on the present application as none of the decisions complained of, had been challenged by the Petitioner at the appropriate moment.

Subsequent to these events, the Petitioner as well as a trade union has had a series of correspondence with several of the Respondents placing her grievances. (P10, P11 and P12).

In February 2016, a fresh written competitive examination was held to fill 16 vacancies for the post of Research Officer. According to the Petitioner, six of these vacancies are for Research Officers with a chemistry background and ten Research Officers of other backgrounds.

Although the Petitioner makes the allegation that the authorities of the Rubber Research Institute allowed late applicants also to sit the examination, the 2<sup>nd</sup> Respondent had categorically denied that permission was granted to apply for the posts advertised after the closure of the applications.

The Petitioner also asserts that the test that was held was different in content, in that unlike on the previous occasions where the knowledge of chemistry was tested, on this occasion it was Intelligence Quotient (IQ) test. The Petitioner alleges that the sudden change was predicated to provide advantage to the external candidates. She also states that the results of the competitive written tests were not displayed by SLIDA, contrary to their normal practice. The Petitioner states that the internal candidates were verbally informed that none of the internal candidates had been successful at the examination.

It is the assertion of the Petitioner that the collective conduct of the 1<sup>st</sup> to the 8<sup>th</sup> Respondents from 2013 onwards had been arbitrary in order to systematically discriminate the Petitioner as an internal candidate to be able to present herself for a promotion.

This Court granted the Petitioner leave to proceed on the alleged infringement of her fundamental rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution.

The Petitioner, however, as referred to earlier had not challenged any of the recruitment processes that took place before 2016.

Thus, the only issue before us is whether the process adopted to select candidates to fill the vacant positions of Research Officers to the Rubber Research Institute had infringed the fundamental rights of the Petitioner.

In the objections filed by the 2<sup>nd</sup> Respondent, he has explained the processes adopted by Rubber Research Institute before 2011. However, since the introduction of the Scheme of Recruitment in 2011, the Institute is required to adhere to the process stipulated therein, with regard to the recruitment of Research Officers. The said aspect is dealt under the “Scheme of Recruitment for Academic and Research” category [AR1] (P3a).

In terms of clause 5.4 of P3a the recruitment Procedure is stipulated as follows:

**5.4 Recruitment Procedure:**

Recruitment will be done after calling for applications through a public advertisement or a Newspaper advertisement and on the results of a written competitive examination and a structured interview conducted by the appointing authority.

**5.4.1 Written Competitive Examination:**

Subject for the examination is given below:

## Aptitude Test

This paper will be designed to test the aptitude of the candidate.

Candidates should secure at least 50% of the marks to pass the recruitment examination.

### 5.4.2 Interview:

Marks allocated for the interview are as follows:

• Relevant additional experience	~	30 Marks
• Relevant additional qualifications	~	30 Marks
• Other achievements	~	15 Marks
• Performance at the interview	~	25 Marks
		~~~~~
		100 Marks
		=====

Appointments will be made purely in the order of merit at the interview.

Although the Petitioner alleges that by January, 2016 there were 16 vacancies for Research Officers—6 officers with a chemistry background, and 11 of other backgrounds—the scheme of recruitment however, does not make such a differentiation. It only requires the prospective candidates to face an “Aptitude Test” and the only inference that the Court can draw is that all candidates have to sit for a common paper. Furthermore, the Scheme of Recruitment does not make a distinction between internal and external candidates.

In that context the Petitioner has failed to establish before this Court that she has been discriminated among the same class of people.

In the counter affidavit filed by the Petitioner it is stated that the decision to change the subject specific Test to an IQ Test was done arbitrarily. The prospective candidates as referred to earlier are required to sit an “Aptitude test” and there is no material before us to come to a finding that the paper the candidates faced in 2016 was not an aptitude test. The Petitioner also has averred that the Respondent’s own recruitment process is incapable of finding suitable persons to be appointed as Research Officers, which I feel is a policy matter best left to the 1<sup>st</sup> Respondent Institution.

At every turn the 1<sup>st</sup> Respondent-Institution had permitted the Petitioner to sit for the test and on each of the occasions where she had obtained the requisite marks was called for an interview. Nowhere has she alleged that the successful candidates were less suitable or not sufficiently qualified to be appointed as Research Officers.

On the last occasion she faced the examination she had been informed that she had failed to obtain the requisite marks. In the interest of justice and for the sake of transparency the 1<sup>st</sup> Respondent institution must take steps to have the results made public. However that alone is not sufficient to ground a complaint of infringement of Articles 12(1) and 14(1)(g) of the Constitution and the Petitioner has failed to establish unequal or discriminatory treatment in respect of the grievance complained of.

Accordingly, I hold that the alleged violation under Articles 12(1) and 14(1)(g) have not been established.

The application fails and is accordingly dismissed.

In the circumstances of the case, I make no order as to costs. All interim orders made in this case are hereby vacated.

*Application dismissed.*

**JUDGE OF THE SUPREME COURT**

Justice H. N. J. Perera

I agree

**CHIEF JUSTICE**

Justice L. T. B. Dehideniya

I agree

**JUDGE OF THE SUPREME COURT**