

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

In the matter of an application under Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

1. Talpe Merenchige Eeasha Nanayakkara,  
No.139/7A, Akuregoda Road,  
Pelawatta, Battaramulla.

**Petitioner**

**SC FR Application 365/2012**

**Vs,**

1. Sathya Hettige, Chairman

**1A. Darmasena Dissanayaka, Chairman**

2. Kanthi Wijetunga Member

**2A. A. Salam Abdul Waid, Member**

3. S.C. Mannapperuma, Member

**3A. D. Shirantha Wijayatilaka, Member**

4. Ananda Seneviratne, Member

**4A. Prathap Ramanujam, Member**

5. N.H. Pathirana, Member

**5A. V. Jegarasasingam, Member**

6. S. Thillai Nadarajah, Member

**6A. Santi Nihal Seneviratne, Member**

7. Sunil S. Sirisena, Member

**7A. S. Ranugge, Member**

8. A. Mohamed Nahiya Member

**8A. D.L. Mendis, Member**

9. I.M. Zoysa GUnsekara, Member

**9A. Sarath Jayathilaka, Member**

10. T.M.L.C. Senaratne, Secretary

**1<sup>st</sup> to 10<sup>th</sup> Respondents all of:**  
**The Public Service Commission,**  
**No. 177, Nawala Road,**  
**Narahenpita, Colombo 05**

11. M.I.M. Rafeek,  
Secretary to the Ministry of Tourism and  
Sports, No. 09, Pilip Gunawardena Mawatha,  
Colombo 07

**Also:**

The Acting Director General of the Department of  
Wildlife Conservation, No. 811/A, Jayanthipura  
Road, Battaramulla.

**11A.** R.M. D.B. Meegasmulla,  
Secretary,  
Ministry of Sustainable Development and Wildlife,  
9<sup>th</sup> Floor, Sethsiripaya (Old Building),  
Battaramulla.

**11B.** Dr. Sumith Pilapitiya,  
Director General of Wildlife Conservation,  
No. 811/A, Jayanthipura Road,  
Battaramulla.

**12.** The Secretary,  
The Ministry of Public Administration,  
Independence Square, Colombo 07.

**13.** Director Establishments,  
The Ministry of Public Administration,  
Independence Square, Colombo 07.

**14.** Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**Before:**     **Sisira J.De. Abrew J**  
                  **Vijith K. Malalgoda PC J**  
                  **Murdu N.B. Fernando PC J**

**Counsel:**     Faiz Musthapha PC with Shantha Jayawardena and Chamara Nanayakkarawasam  
                  for the Petitioners  
                  S. Barre SSC, for the Attorney General

Argued on: 22.06.2018

**Judgment on: 06.09.2018**

**Vijith K. Malalgoda PC J**

Petitioners in the fundamental rights applications SC/FR/364/2012 and SC/FR/365/2012 have come before the Supreme Court alleging violations under Article 12 (1) of the Constitution. Since the grievance complained by both the Petitioners, and the relief claimed are similar in nature, all parties to SC/FR/364/2012 agreed to abide by the decision in SC/FR/365/2012.

The Petitioner in SC/FR/365/2012 being a Bachelor of Science Degree holder (in Botany, Zoology and Chemistry) from the University of Peradeniya in 1983 had responded to an

advertisement published in the "Daily News", newspaper (P-3) of 08.12.1984 by the Project Coordinator of Mahaweli Environment Project of the Ministry of State and applied to the post of "Training Officer" in the said project. Consequent to an interview process the Petitioner was selected to the above post, "Training Officer" of the Mahaweli Environment Project.

According to P-5, the letter of appointment, the said post in the Mahaweli Environment Project under the Department of Wildlife Conservation, was permanent but non-pensionable post, subject to a trial period of three years with effect from the date of appointment, i.e. 15.02.1985.

As submitted by the Petitioner, few other graduates were also appointed to the following positions at the same project during this period.

- a) Ecologist (2 posts)
- b) Park Planner
- c) Rural Sociologist
- d) Training Officer (2 posts including the Petitioner)

The Mahaweli Environment Project was a project commenced in the year 1982, funded by USAID and the Petitioner being an employee of the said project was offered two months training in the United States of America on Park Management. The said project came to an end on 30<sup>th</sup> September 1991 and prior to that, the then Minister of Lands Irrigation and Mahaweli Development, under whose purview the said project and the Department of Wildlife Conservation was placed at the time, submitted a Cabinet memorandum dated 14.05.1991, seeking approval of the Cabinet of Ministers to absorb all the categories of employees recruited for the Mahaweli Environment Project in to the Department of Wildlife Conservation (P-6).

The Cabinet of Ministers, who met on 12.06.1991, had made the following order with regard to the said Cabinet Paper.

“A memorandum by the Minister of Lands, Irrigation and Mahaweli Development dated 14.05.1991 on Absorption of staff of the Mahaweli Environment Project in to the Department of Wildlife Conservation was considered and the proposal in the memorandum were approved”

With the said Cabinet Approval, the Ministry of Lands, Irrigation and Mahaweli Development had taken prompt steps to absorb the employees of the Mahaweli Environment Project including the Petitioner to the Department of Wildlife Conservation. Accordingly the Petitioner was issued with a letter of appointment dated 18.09.1991 absorbing her to the post of Assistant Director in the Department of Wildlife Conservation (P-8).

The said appointment of the Petitioner as well as the appointments of few others including the Petitioner in FR/ Application 364/2014 was challenged before the Supreme Court in FR/ Application 148/1991.

Their lordships of the Supreme Court by their order dated 23.02.1994 held that the appointment of the 2<sup>nd</sup> to the 7<sup>th</sup> Respondents to the six new posts of Assistant Director in the Department of Wildlife Conservation is in violation of the provisions enshrined in Article 12 of the Constitution, and the appointments of the 2<sup>nd</sup> to the 7<sup>th</sup> Respondents as Assistant Directors in the Department of Wildlife Conservation were accordingly set aside.

Subsequent to the above decision by the Supreme Court, by letter dated 11.01.1995 the 11<sup>th</sup> Respondent had informed the Petitioner of removing her from the post of Assistant Director.

However by letter dated 17.02.1995 Secretary to the Ministry of Public Administration, Parliamentary Affairs' and Plantation informed the 11<sup>th</sup> Respondent, that the 3 officers referred to in the said letter (including the Petitioners in 164 and 165 /2014) be permitted to remain in the same positions they held prior to their absorption as Assistant Director, but for the Department to take appropriate steps to change the scheme of recruitment in order to absorb them in to the cadre, as other officers in the project were absorbed in to the Department (P-15).

As revealed before us the Petitioner was issued with a letter of appointment from the Mahaweli Environment Project when she was first recruited as the Training Officer on 30<sup>th</sup> January 1985 (P-5). When the Cabinet of Ministers approved the absorption of the employees of the said project, the Petitioner was once again issued with a letter of appointment, appointing her to the Post of Assistant Director of the Department of the Wildlife Conservation (P-8), which was quashed by the Supreme Court by the order dated 23. 02.1994.

By letter dated 22.02.1995 the 11<sup>th</sup> Respondent had informed the Petitioner of the decision to retain the Petitioner on the same conditions referred to in the letter dated 30<sup>th</sup> January 1985 as approved by the Secretary to the Ministry of the Public Administration, Home Affairs' and Plantations (P-16) but the said letter cannot be considered as a letter of appointment issued to the Petitioner. As referred to above in this judgment, the Secretary to the Ministry of the Public Administration, Home Affairs' and Plantations by his letter 17.02.1995 had further instructed the 11<sup>th</sup> Respondent take steps to absorb the Petitioner to the Department of Wildlife Conservation as approved by the Cabinet decision, by amending the scheme of recruitment of the Department Cadre.

As revealed before us, the main grievance of the Petitioner complained before this court has arisen as a result of the 11<sup>th</sup> Respondent's failure to implement the said order within a reasonable time. According to the Petitioner, in spite of several letters sent to various authorities, no steps were taken by the 11<sup>th</sup> Respondent to issue a letter of appointment to the Petitioner until the Petitioner went before the Court of Appeal in a Writ Application seeking the said relief in June 2007. When the said Writ Application was pending before the Court of Appeal, the Secretary to the Public Service Commission (the 10<sup>th</sup> Respondent) by his letter dated 19<sup>th</sup> June 2012 absorbed the Petitioner to the post of Education and Training Officer of the Department of Wildlife Conservation with effect from 05. 04. 1996.

Since the Petitioner could not proceed with the Writ Application thereafter, she withdrew the said application but decided to file the present application before the Supreme Court alleging violation under Article 12 (1) of the Constitution for the reason that,

- a) By the said letter of appointment issued on 19<sup>th</sup> June 2012 the Petitioner was once again absorbed in to the post she was first recruited in the year 1985.
- b) Even though the said absorption was to effect from 1996, the promotional aspect of the said post has not been taken in to consideration, when the said letter of appointment was issued.
- c) The Petitioner was placed on a further period of 3 years on probation by the said letter.
- d) By the year 2000 the Petitioner was receiving a salary higher than of an Assistant Director in the Department of Wildlife Conservation and therefore the salary entitlement of the Petitioner would be reduced by the new letter of appointment.

This would result the Petitioner,

- i. To be placed on a lower salary scale
- ii. Return the salary already drawn (or recover by the state)
- iii. To be kept at a lower scale for the purpose of the Pension
- iv. As a result the Petitioner would draw a lessor pension after serving almost 33 years to the state

When considering the material already discussed above, it appears that there is a long delay in issuing letter of appointment to the Petitioner or in other words the Petitioner had worked in the Department of Wildlife Conservation for nearly 17 years without a letter of appointment being issued to her.

As revealed from P-15, the Secretary to the Ministry of the Public Administration, Home Affairs' and Plantations has given specific instructions to the 11<sup>th</sup> Respondent,

- i. To permit the Petitioner to remain in the same position referred to in her first letter of appointment dated 30.01.1985.
- ii. To take steps to absorb the Petitioner to the permanent cadre of the Department of wildlife Conservation as did with the other staff of the project, by giving effect to the Cabinet decision and amending the scheme of recruitment

But, the said instruction had not been carried out for 17 years, until the matter was raised before the Court of Appeal by the Petitioner. Even though the Respondents failed to give any proper answer for the above delay, some observations were made to the effect that, the interference by the Petitioner at various levels, too had caused a delay in resolving this issue.

But, I cannot agree with the above submission of the Respondents since it is the legitimate expectation of the Petitioner to receive a letter of appointment for a specific post and to look at the promotional aspects based on the position offered by the said letter of appointment. When considering P-15, it appears to me that, even the Secretary to the Ministry of the Public Administration, Home Affairs' and Plantations, had shared the same view when he was writing the said letter by directing the 11<sup>th</sup> Respondent to take steps to amend the scheme of Recruitment when taking steps to absorb the Petitioner.

The Respondents have failed to submit any material, to establish any steps taken by the 11<sup>th</sup> Respondent to implement the said directive given in P-15 and as revealed before us, by P-25 a decision has been taken to appoint the Petitioner to the same post she was first recruited in 1985, without amending the scheme of recruitment with effect from a date in 1996 subject to another 3 years' probation period.

As further observed by me, in P-15 a clear reference had been made to the requirement of giving effect to the Cabinet decision, and as referred by me in this judgment, the Cabinet of Ministers by its decision dated 12.06.1991, had approved the memorandum dated 14.05.1991 on absorption of staff of the Mahaweli Environment Project in to the Department of Wildlife Conservation, had given the Petitioner a legitimate expectation of appointing her to a permanent post in the said Department. When considering the Cabinet decision referred to above and the contents in letter P-15, I observe that, by failing to implement the said Cabinet decision and the direction given in P-15 the 11<sup>th</sup> Respondent had clearly infringed the equal protection guaranteed under the Article 12 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka.

I further observe that the 10<sup>th</sup> Respondent too had acted in violation of the rights guaranteed under article 12 (1) of Constitution when he issued the letter of appointment on 19.06.2012 after 17 years, for the absorption of the Petitioner to the same post the Petitioner was first appointed in the year 1985 without considering any amendments to the scheme of recruitment in the cadre of the Department of Wildlife Conservation.

Even though I have declared that the above Respondents have infringed the Petitioner's fundamental rights guaranteed under article 12 (1) of the Constitution, I am not inclined to grant any relief as prayed by the Petitioner in paragraph (c) (d) (e) (f) or (g) to the prayer to the Petition in the absence of any provisions in the scheme of recruitment of the Department of Wildlife Conservation with regard to the post of Assistant Director and/or Deputy Director.

However when considering the grievances complained by the Petitioner I make order directing the Respondents including the 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> Respondents to,

- a) Allow the Petitioner to draw the same salary as she was drawing as at 2012 with earned increments and/or any other salary increments to which the Petitioner entitled thereafter, based on the salary she drew as at 19<sup>th</sup> June 2012 by any other Government/Public Administration circular
- b) Allow the Petitioner to retire based on the last salary she drew according to (a) above
- c) Petitioner's pension rights to be considered on the last drawn salary referred to in (b) above
- d) The probation period referred to in the letter of appointment dated 19<sup>th</sup> June 2012 should be considered not from the above date but from 05.04.1996

I further make order, directing the state to pay a sum of Rs. 2 million as compensation to the Petitioner and a further sum of Rs. 200,000/- as cost for this case.

As agreed by all parties the Petitioner to the Fundamental Rights Application 364/12 is also entitled to the above relief, which is granted to the petitioner in the present application.

Application allowed.

**Judge of the Supreme Court**

**Sisira J.De. Abrew J**

**I agree,**

**Judge of the Supreme Court**

**Murdu N.B. Fernando PC J**

**I agree,**

**Judge of the Supreme Court**