

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

1. Kalu Arachchige Amila Duminda,  
No. 300, Yatiyana Watta Road,  
Yatiyana.
2. Muditha Mihipala Kumarage,  
Ukwatta, Thotahoda, Akmeemana.
3. Vindana Lasantha Jayakody,  
No. 213/4, Thalawathugoda Road,  
Mirihana, Kotte.
4. D.C.Gayan Sarinda, No. 443/A, Lake  
Road, Akuregoda, Thalangama South,  
Battaramulla.
5. Rathnayake Mudiyanseelage Sanka  
Dipsara Weerakoon, No. 147,  
Kumbukwewa, Maho.

**SC FR Application  
No. 389/2012**

6. Kamburugamuwe Loku Arachchige  
Chameera Sanjeewa, No. 220/2,  
Enderamulla, Wattala.
6. Gannoruwa Palagama Gedera Nayana  
Yasamali Dewasurendra, 'Yasamali',  
Ridigama, Kurunegala.
7. Don Kannangara Koralage Meadini  
Diana Kannangara, Polkotuwa,  
Ovitiyagala, Horana.
8. Nupe Hewage Thushanthim, No.  
158/1A/1, Rajasinghe Mawatha,  
Ihala Imbulgoda, Imbulgoda.
9. Harshani Shamila Samarasingha,  
'Jeewana', Uda Aparekka, Aparekka,  
Matara.

10. Balakumary Fernando (Kumaravelu),  
No. 82, College Street, Colombo 13.
11. Wattage Chamini Lasanthika Perera,  
No. 35/3, Bodhu Pedesa Road,  
Nunggamugoda, Kelaniya.
12. Samarakkody Dasanayakage Chamila  
Nilakshi Kumari, Kikolaya, Polgahawela.

**Petitioners**

Vs

1. Secretary, Ministry of Public  
Administration and Home Affairs,  
Independent Square, Colombo 7.

And 42 others

**Respondents**

**BEFORE**

**: S. EVA WANASUNDERA PCJ.,  
H. N. J. PERERA J. &  
PRASANNA JAYAWARDENA PCJ.**

**COUNSEL**

: Saliya Pieris PC with Thanuka  
Nandasiri for the Petitioners  
Shantha Jayawardena with Chamara  
Nanayakkarawasam for the 29<sup>th</sup> to  
43<sup>rd</sup> Respondents  
Ms. Indika Demuni de Silva PC, ASG,  
for the 1A, 2<sup>nd</sup> to 4<sup>th</sup>, 14<sup>th</sup>, 15 A to 27 J  
and 28<sup>th</sup> Respondents.

ARGUED ON : 15.02.2018.

DECIDED ON : 21.03.2018.

**S. EVA WANASUNDERA PCJ.**

The Petitioners in this Application were holding the post of Data Entry Operators/ Coding Clerks attached to the Department of Census and Statistics. They complain that their fundamental rights enshrined in Article 12(1) of the Constitution have been violated by the Respondents having failed to approve the Service Minute marked as P5 with the Petition.

I would like to put down the factual position of this matter, as I understand from the documents filed by both parties before this Court as contained in the Petition and the Objections of all parties, as follows:-

The Petitioners have filed the Petition dated 03.07.2012 against the 1<sup>st</sup> to 28<sup>th</sup> Respondents. On 30.08.2012, at the instance of the counsel for the Petitioners this Court had issued an **interim order** directing that “ no appointments should be made on the results of the examination which was to be held on 14.09.2012 to select persons for the post of Statistical Officer – Grade II.” However, when the examination was held as scheduled on 14.09.2012, the **29<sup>th</sup> to 43<sup>rd</sup>** Respondents being candidates who sat for the said examination and passed the same, **were aggrieved by the said interim order** granted by this Court and as such, sought to intervene into this Application and it was allowed.

The Petitioners were recruited on casual basis between the year 2000 and 2005 to the Department of Census and Statistics, for the purpose of conducting pre and post tasks for the population and housing census held in the year 2001. The entry qualification was to possess six passes at the G.C.E. ‘O’ Level Examination of which four should be credit passes obtained at not more than two sittings. They were named as Data Entry Operator/Coding Clerks. Later on, while they continued to work, they had made representations from time to time continuously, to be absorbed into the permanent cadre of the Department of Census and Statistics. By a decision of the Cabinet of Ministers dated 01.08.2005,

about 300 persons including the Petitioners were appointed to the post of **Data Entry Operator/Coding Clerks on a permanent basis.**

The 29<sup>th</sup> to 43<sup>rd</sup> Respondents were recruited under the Unemployed Graduate Training Scheme – 2004 and they were appointed to the Department of Census and Statistics as trainees. Later on, they were appointed to the newly created post of Statistical Assistant with effect from 01.11.2005 based on a policy decision of the cabinet of ministers.

The Petitioners are 13 in number and none of them except the 1<sup>st</sup> Petitioner, were graduates when the said Unemployed Graduate Training Scheme was implemented by the Government in the year 2004. Anyway, the Petitioners **were not recruited for training** at the Department of Census and Statistics under the said **2004 Unemployed Graduate Training Scheme.** The Petitioners were taken in as Data Entry Operators/Coding Clerks in the year 2001.

Moreover, by the time the unemployed graduates were appointed as Statistical Assistants, the Petitioners and the like were already working in the permanent cadre of the Department of Census and Statistics and confirmed in their posts after completing three years of probation and passing of two Efficiency Bar Examinations.

By the year 2006, the Department of Census and Statistics was requested by the Public Service Commission by Public Service Circular No. 06/2006 to restructure and re-categorize all posts and to update the relevant Schemes of Recruitment so as to fall in line with the provisions of the said Circular and the Guidelines issued by the Public Service Commission. This Circular was dated 25.04.2006. Thereafter, the Secretary to the Ministry of Finance and Planning had a discussion with Officers of the Department of Census and Statistics and other Trade Unions and it was decided to formulate new Schemes of Recruitment **for all posts** having regard to Public Administration Circular No. 06/2006.

As a result, a **draft Scheme** of Recruitment for the post of **Statistical Assistant** was **formulated** making provision therein for Data Entry Operators/Coding Clerks to apply for the same.

However, in view of the steps that were being taken by the Government, in the year 2008, to establish the **Sri Lanka Information and Communication Technology Service**, the aforementioned scheme of recruitment for the post of Statistical Assistant was **abandoned**.

Thereafter the Cabinet of Ministers took a policy decision to establish the Sri Lanka Information and Communication Technology Service and the relevant Service Minute was duly published in the Government Gazette No. 1631/20 dated 09.09.2009. It is filed by the Respondents marked 3R2 with the Affidavit of Objections by the 3<sup>rd</sup> Respondent, Director General of the Department of Census and Statistics. This Service Minute **provided for the absorption** of inter alia **Data Entry Operators/Coding Clerks** who possessed the required qualifications.

In the year 2010, the Petitioners along with many other Data Entry Operators/Coding Clerks **expressly consented to be absorbed** into the said **Sri Lanka Information and Communication Technology Service**. Their application forms to the Director General Combined Services of the Ministry of Public Administration have been marked as 3R3A to 3R3M which are the applications of all the 13 Petitioners. **All of them were absorbed** in the year 2013, **with effect from 01.07.2009**. Therefore, it can be concluded that “ all the Petitioners belong to the Sri Lanka Information and Communication Technology Service from 01.07.2009.” They cannot be taken as workers in the permanent cadre of the Department of Census and Statistics from 01.07.2009. They are governed by the said Service Minute and no other and they are subject to transfer to other Departments or Ministries.

I find that, the Data Entry Operators/Coding Clerks were **not any more belonging to the Department of Census and Statistics, with effect from 01.07.2009**.

The Department of Census and Statistics went a step further in the year 2011. They made Schemes of Recruitment for different posts and categories of workers within the Department and finalized them and submitted, according to the formal procedure, to the Ministry of Finance, Department of Management Services, Director General of Establishments, Salaries and Cadres Commission and the Public Service Commission. The Public Service Commission approved the Scheme of Recruitment for the post of **Statistical Officer** after suppressing the post of Statistical Assistant except in so far as who were already holding the said post.

The said approved scheme of recruitment to the post of Statistical Officer was marked as 3R8 dated 21.10.2011.

According to the said Scheme of Recruitment 3R8, steps were taken to fill 131 vacancies in the post of Statistical Officer Grade II under both the open and limited competitive streams. Vacancies under the 'open competitive stream' were duly advertised in the Gazette on 20.04.2012. The Petitioners also could have applied to this post under the 'open competitive stream' if they possessed the requisite qualifications including a degree from a recognized university.

The notice for recruitment under the 'limited competitive stream' was issued on 04.05.2012 inviting applications on or before 01.06.2012 from Statistical Assistants with 5 years of service in that post. Since the Petitioners were not within the Department of Census and Statistics they could not have applied under this category of 'limited competitive stream' and they had not applied anyway.

The open competitive examination for 65 vacancies out of the number of 131 vacancies to be filled, was held on 30.09.2012 and the limited competitive examination for recruitment of the rest of the vacancies was held on 15.09.2012. Even though the recruitment of 65 vacancies under the open category were duly filled after informing this court of the same, the other vacancies under **the limited category were not filled** during the last five years, **due to the interim relief granted** by this Court at the instance of the Petitioners five years ago.

The 29<sup>th</sup> to 43<sup>rd</sup> Respondents were governed by a different Scheme of Recruitment for Statistical Assistants whereas the Petitioners were governed by a Scheme of Recruitment for Data Entry Operator/Coding Clerks in the Sri Lanka Information and Communication Technology Service.

I find that the Petitioners have come to this Court by way of a Petition dated 3<sup>rd</sup> July, 2013. By this time, the Petitioners belonged to the Sri Lanka Information and Communication Technology Service and the 29<sup>th</sup> to 43<sup>rd</sup> Respondents belonged to the Statistical Assistants post in the Department of Census and Statistics. Due to the interim relief granted by this Court to be effective till the final determination of this Application, the 29<sup>th</sup> to 43<sup>rd</sup> Respondents have suffered for the last 5 years not being able to get their new posts as Statistical Officers Grade II after having served as Statistical Assistants for 5 years prior to sitting for the limited category

examination and having passed the same. Their plight seems to be quite unreasonable. On the other hand, even though the Application of the Petitioners certainly was going to affect the Statistical Assistants, the Petitioners have failed to make them parties to the Application before this Court. If they did not intervene, in fact, there would not have been any other way of placing their position before this Court.

The Petitioners' contention arises thus:

The Department of Census and Statistics decided to introduce a service minute for the Department and in a draft service minute it was proposed to "abolish the post of Statistical Assistant and the other graduates who are in the Data Entry Operators/Coding Clerks Service be absorbed as Statistical Officers of the Department." In the said draft Service Minute, it was also proposed that the employees who have been already absorbed to the Information Technology Service be absorbed as Statistical Officers disregarding the fact that they have been absorbed to the Information Technology Service. The said Draft was forwarded to the Union by a letter dated 26.01.2012 from the 3<sup>rd</sup> Respondent. The Petitioners allege that the said service minute had been prepared according to the specimen proposed by the Public Service Commission and that it was forwarded prior to being submitted for the approval of the 1<sup>st</sup> Respondent. The said Draft is marked as **P5A**.

While this matter was pending, the 3<sup>rd</sup> Respondent had decided to internally recruit employees to the Grade II Statistical Officers and the 1<sup>st</sup> Respondent had issued a letter dated 04.05.2012 inviting the applications from suitable candidates. The Petitioners complain that the said letter was not published either on the notice board in the head office or in the District Offices. They had come to know about the same when it was published in the Web Site of the Department. Then it was sought by the Petitioners that they be allowed to sit for the examination along with the Statistical Assistants for the limited category examination to be promoted to Statistical Officers. This was not allowed by the Respondents. Further to that decision, the position of the Respondents had been that establishment of a new service minute was not necessary.

The Petitioners submit that the failure to approve the Scheme of Recruitment by the Respondents, in respect of Statistical Assistants which would enable the Petitioners to be promoted to the post of Statistical Assistant initially and

thereafter obtain other promotions in the Department as suggested by P5A , is unreasonable, arbitrary, discriminatory and that it amounts to a breach of their legitimate expectation to be absorbed as Grade II Statistical Officers. They pray inter alia that the Respondents be directed to approve the draft service minute marked as P5A and that the Petitioners be absorbed as Grade II Statistical Officers.

I observe **that P5A is not a finalized Service Minute.** It is a draft sent for observations of the Unions of which the Petitioners are members. The document P5A is referred to them only to be considered as they were stakeholders. The Respondents had abandoned the proposal for such a service minute for good reasons. The main reason is that it was **found to be against the policy of the Government.** At the time P5A was sent to the Unions for observations, it had not been forwarded to the Public Service Commission for approval. It was pursuant to requests by Trade Unions and discussions which had commenced on the possibility of drafting a service minute for the Department of Census and Statistics. The Data Entry Operators/Coding Clerks had very much wanted to have them included in the said Service Minute by making provision for their promotions to the post of Statistical Officer. The Public Service Commission had informed the Secretary to the Ministry of Finance that a separated Service Minute was not required for the Department of Census and Statistics because Schemes of Recruitment had by then already been approved for all the posts in terms of Public Administration Circular No. 06/2006 which included a scheme of promotion as well.

Service Minutes to each and every Government Department cannot be separately done by the State. It would not be proper to have different service minutes each time a problem crops up to suit the members of the unions. The Public Service Commission has to approve the Service Minutes. Court is not able to direct the Public Service Commission to approve any particular Draft which suits any particular set of workers. After all , the Data Entry Operators/Coding Clerks were taken in to the Department on casual basis with the basic qualification of 6 passes with 4 credits at two sittings of the Ordinary Level Examination. Once they worked for three years they were confirmed. If they obtain a degree from a recognized university they also can be allowed to sit for the open competitive examination just like any other person and be appointed to the post of Statistical



Officer. Otherwise, if they are **within the Department** of Census and Statistics, and **had joined as**

**Statistical Assistants** and worked for 5 years in that post, it is only then that they can be recruited under the limited competitive stream.

The Petitioners **not being Statistical Assistants** are not allowed to enter the limited competitive stream. Then again, the Petitioners were at that time **not working within the Department**. They were in the posts of **the Sri Lanka Information and Communication Technology Service**. They were subject to promotions according to the Service Minute relating to them which was contained in the Gazette No. 1631/20 dated 09.09.2009 making provision for promotions in a three tiered promotional scheme which could take them up to Class I Grade I which falls within the Executive Grade under salary code SL 1-2006.

When the Petitioners were absorbed to the Sri Lanka Information and Communication Technology Service, they were placed on Class III Grade III and the salary scale was higher than that of the Data Entry Operators/Coding Clerks. I have taken into consideration that the Petitioners have got absorbed into this service on their own application and therefore, later on, cannot expect the Department of Census and Statistics to consider them as belonging to the limited competitive category.

Just because only a draft of a service minute (P5A) which was not permissible in law had been circulated among the stake holders, which served as a method of only calling for their observations, **such a document at the draft stage cannot be compelled to be made into a proper service minute against public policy** and cannot be taken as a promise granting any legitimate expectation.

I have already considered this Application on merits and I do not wish to look into the preliminary objection of time bar at this juncture.

This Court does not find any material to grant the reliefs prayed for by the Petitioners. I hold that there is no infringement of any fundamental rights of the Petitioners by any of the Respondents who were made parties to this Application.

This Application is dismissed. No Costs.

Judge of the Supreme Court

H.N.J.Perera  
I agree.

Judge of the Supreme Court

Prasanna S.Jayawardena  
I agree.

Judge of the Supreme Court