

**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  
read along with Article 126 of the  
Constitution.*

**SC/FR APPLICATION 551/2012**

P.U.P.K. De Silva,  
No. 65, Railway Station Road,  
Balapitiya.

**PETITIONER**

**Vs**

1. Public Service Commission,  
No.177, Nawala Road,  
Narahenpita,  
Colombo 05.
2. Dayasiri Fernando,  
Chairman,  
2A. Dharmasena Dissanayaka,
3. Palitha M. Kumarasinghe, P.C.  
3A. Prof. Hussain Ismail,
4. Sirimavo A. Wijeratne,

4A. Dr. Prathap Ramanujam,

5. S.C. Mannapperuma,

5A. V. Jegarasasingham,

6. Ananda Seneviratne,

6A. S. Ranugge,

7. N.H. Pathirana,

7A. D. Laksiri Mendis,

8. S. Thillanandarajah,

8A. Sarath Jayathilaka,

9. M.D.W. Ariyawansa,

9A. Sudharma Karunarathna,

10. A. Mohamed Nahiya,

10A. A.G.S.A. De Silva PC,

(All of them of Public Service  
Commission, No.177, Nawala  
Road, Narahenpita, Colombo 5.)

11. L.C. Senaratne

11A. M.A.B. Daya Senerath,

Secretary,

Public Service Commission,

No. 177, Nawala Road,

Narahenpita, Colombo 05.

12. Southern Province Provincial  
Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat  
Office,  
Galle.

13. H.W. Wijerathne,  
13A. H.W. Wijerathna  
Chairman.

14. K.K.G.J.K. Siriwardena,  
14A. K.K.G.J.K. Siriwardena

15. D.W. Vitharana,  
15A. Daya Vitharana

16. Munidasa Halpandeniya,  
16A. D.K.S. Amarasiri,

17. Srimal Wijesekara,  
17(a) A.L.K Ariyaratna,  
All of them are Members of the  
Southern Province Provincial  
Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat  
Office,  
Galle.

18. S.D. Pandikorala,

18A. K.L Dayananda,  
Secretary,  
Southern Province Provincial  
Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat  
Office,  
Galle.

19. R.M.D.B. Meegasmulla,

19A. R.C. De Soyza,  
Chief Secretary,  
Southern Province Provincial  
Public Service Commission,  
S.S. Dahanayake Wm,  
Galle

20. H.K.R.J. Edirisinghe,

20A. A. Ranasinghe,  
Deputy Chief Secretary  
(Engineering Service),  
Southern Provincial Engineering  
Service Office, Fort, Galle.

21. Director – Engineering Services,  
Office of the Engineering Services  
Board,  
Independence Square,  
Colombo 7.

22. P.B. Abeykoon,

Ceased to hold office.

22.A. Mr. S. Hettiarachchi,  
Secretary,  
Ministry of Public Administration  
and Home Affairs,  
Colombo 7.

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

**RESPONDENTS**

**BEFORE** : JAYANTHA JAYASURIYA, PC, CJ.  
L.T.B. DEHIDENIYA, J. and  
S. THURAIRAJA, PC, J.

**COUNSEL** : S.N. Vijithsingh for the Petitioner.  
Suren Gnanaraj SSC for the AG.

**ARGUED ON** : 17<sup>th</sup> February 2020.

**WRITTEN SUBMISSIONS** : 1<sup>st</sup> and 23<sup>rd</sup> Respondents on 24<sup>th</sup> February 2020  
Petitioner on 20<sup>th</sup> February 2020.

**DECIDED ON** : 31<sup>st</sup> July 2020.

**S. THURAIRAJA, PC, J.**

P.U.P. Kumara De Silva (hereinafter sometimes referred to as the Petitioner) filed this Fundamental Rights application on the 19/09/2012 stating that his fundamental rights enshrined under Articles 12(1), 12(2), 14(1) (g) and 17 were violated by non – promotion and/or non – absorption and failure to give permanent appointment in the Sri Lanka Engineering Service Class II Grade II from the Sri Lanka Technical Services. Leave to proceed was granted by this Court for the alleged infringement of Article 12(1) of the Constitution.

According to the Petitioner's petition he joined as a Technical Officer (Electrical) Grade III of Middle Level Technical Service (MLTS) in the Local Government Service on the 01/10/1985. On the 07/03/1991 he was absorbed into the Provincial Public Service and posted to the Balapitiya Pradeshiya Sabha. During this period the Ceylon Electricity Board was privatized and the services of the Petitioner were terminated. Being aggrieved by this decision the Petitioner filed Fundamental Rights Application No. SC FR 144/92. A settlement was reached and Court directed that the Petitioner be reinstated with due seniority and back wages. He was then posted to the Municipal Council of Galle. In 1994 the Petitioner was absorbed into the Sri Lanka Technical Services (SLTS) from the Middle Level Technical Service in the Local Government. On the 24/08/1995 his services were made permanent with effect from 03/10/1985. On 12/03/1997 he was promoted as a Technical Officer (Electrical) Grade II. Thereafter in 1999 he was promoted to Grade II A. in December 1999 he was absorbed into SLTS Grade I and in 2002 he was promoted to the special grade.

The Sri Lanka Engineering Service (SLES) was governed by the Gazette Extraordinary dated 07/06/1988 and is a service distinct from the SLTS. Appointments to the SLES are vested in the 1<sup>st</sup> Respondent Public Service Commission. The cadre structure in the SLES is Class I, Class II Grade I and Class II Grade II (Recruitment

grade). An avenue of progress to the SLES for Class I and/or Special Class officers under the SLTS was created by the Engineering Service Circular No. 31 dated 5/8/1997 by the Ministry of Public Administration, Home Affairs and plantation industries at the time (P7). Thus it is evident that the only way for an Officer of the SLTS to be appointed to the SLES is through the aforementioned avenue of progress as set out in the Circular marked P7.

On the 9<sup>th</sup> of February 2006, while the Petitioner was performing his duties in the Southern Provincial Council, he was appointed as an acting engineer to cover up the position of electrical engineer. Since then he was writing to the authorities to make him permanent in the said position. The Petitioner claims that, as per Circular No. 31 dated 5/8/1997, he is entitled to be appointed as an Engineer Class II Grade II from 4/10/2000. Further he moves that the letter sent by the 20<sup>th</sup> Respondent dated 20/08/2012 (letter written by the Deputy Chief Secretary [Engineering] [Southern Province] to the accountant terminating allowances paid for cover up duties to the Petitioner from 06/08/2012) be quashed.

The 11<sup>th</sup> and 20<sup>th</sup> Respondents' filed objections and took up the following preliminary objections;

- a) The application is time barred.
- b) Necessary parties are not before the court.
- c) Prayer c of the petition is inaccurate and is contrary to the Supreme Court rules 44(1) (d)

When this matter was pending before this court both parties informed Court that they were willing to settle the matter. Finally on the 16<sup>th</sup> of May 2019 the Petitioner informed Court that if he is given the benefits attached to the cover – up duties, he is willing to withdraw the application.

When taking this matter into consideration I find it pertinent to first discuss the Petitioner's aforementioned acting appointment (*වැඩ බලන*) in February of

2006 from which the alleged Fundamental Rights infringement stems from. The Petitioner's main grievance is that he was not made permanent in the acting appointment. As evident from the above mentioned facts the Petitioner came to this Court in 2012, after a period of six years had lapsed since the acting appointment was made. I am of the view that the Petitioner accepted the acting appointment without any objection in 2006, as he himself was aware that he was not qualified to be appointed to the said post on a permanent basis. Even though the Petitioner may not have been qualified for the post, had he wanted to be made permanent in that position he could have taken the necessary steps to become qualified for that post as per Circular No. 31 dated 5/8/1997 (P7). The procedure set out in P7 is reproduced below for ease of reference.

*(3) The minimum qualifications and the conditions for promotion to Class II/II of the Sri Lanka Engineering Service for Officers of the Sri Lanka Technological Service (former MLTS) who are attached to Departments and Provincial Councils are as follows;*

- (i) An officer who has passed the 3<sup>rd</sup> examination conducted by the commissioner of examinations, with 15 years of total service, out of which a minimum of 5 years should be in CL 1 of the SLTS and/or CL II "A" of the former MLTS or*
- (ii) An officer who has passed the Senior Technical Examination conducted by the commissioner of Examinations, with a total of 15 years of service out of which a minimum period of 5 years should be in CL I of the SLTS and/or CL II "A" of the former MLTS Or*
- (iii) An officer in the special grade of the SLTS or CL 1 of the former MLTS with a total of 21 years of service and passed the 2<sup>nd</sup> examination for Technical officers conducted by the Commissioner of Examinations.*
- (iv) An officer in the special grade of the SLTS or CL1 of the former MLTS with a total of 21 years of service who has been recruited directly to the territorial Civil Engineering Organization or absorbed to the TCEO from other Government Departments as per the TCEO Minute and successfully completed the 2<sup>nd</sup>*



*common examination for Technical officers conducted by the Commissioner of examinations before the specified date (i.e. 31st December 1980)*

*(v) An officer in the SLTS/MLTS seeking Engineering grade promotion to civil group 3 of the Sri Lanka Engineering Service should have passed in Hydraulics and Irrigation subjects in any of the qualifying examination mentioned above, which he has successfully completed to become eligible for promotion to the Engineering grade in the SLES.*

The procedure in which an Officer in the Special Class of the SLTS can be promoted to the SLES is set out above. On perusing the material available before us it is evident that the Petitioner had not provided this court with any evidence pertaining to the fact that he had among the other requirements set for and passed the 2<sup>nd</sup> examination for Technical officers conducted by the Commissioner of examinations. Hence the Petitioner had no right to ask for his acting appointment to be made permanent as he had not fulfilled the mandatory requirements that are provided in the Circular marked P7. Furthermore the allowance, facilities and benefits provided to the Petitioner in the course of his acting appointment are not a right they are merely a privilege. And as such the Petitioner cannot make an application to this court under Fundamental Rights jurisdiction to obtain said benefits by claiming them to be a right.

I find it pertinent to discuss the time bar per Article 126 (2) of the Constitution as it relates to this application. Article 126(2) of the Constitution stipulates that an applicant should invoke the jurisdiction of this court within 30 days from the violation. Prior Judgments of this court have touched upon this principle.

In the case of ***Demuni Sriyani De Soyza and others v Dharmasena Dissanayake, Public Service Commission and others - SC/FR 206/2008*** (S.C.M – 9<sup>th</sup> December 2016) Hon. Justice Prasanna Jayawardena, PC stated as follows;

*“Article 126(2) of the constitution stipulates that, a person who alleges that any of his fundamental rights have been infringed or are about to be infringed by executive or administrative action may...within one month thereof...apply to this court by way of a petition praying for relief or redress in respect of such infringement. The consequence of this stipulation in Article 126(2) is that, a Petition which is filed after the expiry of a period of one month from the time the alleged infringement occurred, will be time barred and unmaintainable. This rule is so well known that it hardly needs to be stated here.*

*The rule that, an application under Article 126 which has not been filed within one month of the occurrence of the alleged infringement will make that application unmaintainable, has been enunciated time and again from the time this Court exercised the Fundamental Rights jurisdiction conferred upon it by the 1978 Constitution. Thus, in **Edirisuriya v Navaratnam (1985 1 SLR 100 at p.105 – 106)**, Ranasinghe J, as he then was, stated “this court has consistently proceeded on the basis that the time limit of one month set out in Article 126(2) of the Constitution is mandatory”*

In the case of **Lewla Thiththapajjalage Illangaratne v Kandy Municipal Council and Others (1995 BALJ Vol. VI Part 1)** Kulatunga J held as follows;

*“The result of the express stipulation of a one month time limit in Article 126(2) is that, this court has no jurisdiction to entertain an application which is filed out of time – ie: after the expiry of one month from the occurrence of the alleged infringement or imminent infringement which is complained of...**if it is clear that an application is out of time, the Court has no jurisdiction to entertain such application**”*

(Emphasis added)

I carefully considered the Petitioner’s application, giving special consideration to paragraph 5 and the prayers in the petition. Prayer C states as follows;

*“ (c) – Quash the letter dated 20/08/2012 (P11) issued by the 20<sup>th</sup> Respondent.”*

When I perused the document marked P11 it is the Gazette No.1726 dated 30/09/2011. Whereas P12 is the letter dated 20/08/2012 and written by the 20<sup>th</sup> Respondent. I presume that the Petitioner in actuality want to quash P12.

Prayers d, e and f in the petition are virtually praying to appoint the Petitioner to the SLES Class II Grade II from 04/10/2000 with back wages.

Taking into consideration the 1<sup>st</sup> preliminary objection raised by the Respondents namely, the time bar, I find that the Petitioner is relying on a Circular issued by the Secretary of Public Administration and Home Affairs dated 02/01/2009 calling for applications from officers who are in the SLTS to apply for the post of Sri Lanka Engineering Service Class II Grade II (Marked P9). The Petitioner after having failed to fulfill the requirements stipulated in “P9” made communications with some of the Respondents, from the date that he was appointed to cover up duties. There is no material submitted that he had fulfilled the requirements stipulated in the said circular marked P9 and the Petitioner had come to Court with unexplained undue delay seeking relief in 2012 based on the circular (P9) issued in 2009.

Prayer ‘C’ of the petition focuses on the letter dated 20/08/2020. It was by this letter that the decision to stop the payment of the acting allowance had been communicated to the Petitioner and the accountant. The Petitioner came to this Court on the 19/09/2012. Hence, prima facie it satisfies Article 126(2). The Petitioner claims that discontinuing his allowance paid during the acting appointment (cover up duties) is a violation of his Fundamental Rights.

According to P12 the date of the letter is 20/08/2012. However in order to obtain a proper perspective P12 should not be read in isolation, it should be read in conjunction with letters marked P5D, P5C, P5A and P5E. P12 references P5D (letter dated 04/04/2006). By P12, the payments authorized by letter P5D had been stopped. The payments approved of by P5D had been approved of in the year 2006,

consequent to a decision in P5C. By P5C the Petitioner had been specifically informed that the acting appointment would be effective until the vacancy is filled by a permanent appointee. Furthermore, when the Petitioner accepted the acting appointment in 2006 by P5E he was aware that the acting appointment was to be made until the post of Sri Lanka Engineering Service Class II Grade II (Electrical) in the Southern Provincial Council was filled. Hence I find that the grievance arising from P12 is linked to the appointment made to fill the vacancy of the said post. Therefore the date of the alleged infringement of the Petitioner's rights arising from the letter dated 20/08/2012 is the date of appointment of the new appointee and the one month period in relation to Article 126(2) of the Constitution should begin from that date.

When I perused P13 which is an appointment letter for P.U.P.K De Silva to be granted an acting appointment in SLES Class II Grade II (Electrical) dated 10/08/2012, I found that in paragraph No.2, it was revealed that an engineer who belonged to SLES Class II Grade II (Electrical) had transferred and reported for work on 08/08/2012. Hence the one month period began from the 8<sup>th</sup> of August 2012. Further the Petitioner did not reveal this fact to Court in his petition and affidavit and hence this amounts to a misrepresentation. This application was filed on 19/09/2012 which was after one month from the date of the alleged violation of his fundamental rights.

If the Petitioner sought the benefit of the principle that the time period in relation to Article 126(2) should start counting from the date he became aware of the act resulting in the alleged infringement as recognized by this Court in ***Demuni Sriyani De Soyza and others v Dharmasena Dissanayake, Public Service Commission and others (Supra)*** it is pertinent to note the following observations of this court;

*"where the time period of one month is to be computed not from the date of the occurrence of the alleged infringement but from the day the Petitioner becomes aware of the alleged infringement - in the decision cited*

by De Alwis J, namely, *SIRIWARDENE vs. RODRIGO, Ranasinghe J*, as he then was, held [at p.387] “Where however, a petitioner establishes that he became aware of such infringement, or the imminent infringement, not on the very day the act complained of was so committed, but only subsequently on a later date, then, in such a case, the said period of one month will be computed only from the date on which such petitioner did in fact become aware of such infringement and was in a position to take effective steps to come before this Court.”. This principle has been reiterated time and again.

*It should be added here that, if the facts and circumstances of an application make it clear that, a Petitioner, by the standards of a reasonable man, should have become aware of the alleged infringement by a particular date, the time limit of one month will commence from that date on which he should have become aware of the alleged infringement.”*

The case of ***Sri Lanka Nidahas Rubber Inspectors Union v R. B. Premadasa-SC/FR 109/2005*** (S.C.M – 25<sup>th</sup> September 2019) further reiterates the aforementioned principle. the burden is on the Petitioner to establish the date on which he became aware of the relevant act.

In ***Lewla Thiththapajjalage Illangaratne v Kandy Municipal Council and Others (Supra)*** Kulatunga J stated as follows;

*“Hence it would not suffice for the **petitioner to merely assert that he personally had no knowledge of the discriminatory act**, if on an objective assessment of the evidence, if the law were otherwise, and the Court is constrained to entertain applications which are out of time upon subjective considerations, the mandatory time limit would be rendered nugatory. It would also lead to the mischief that the petitioner will be given*

*a measure of discretion to select the time of coming before this Court, according to his convenience."*

(Emphasis added)

Thus it is apparent that a heavy burden lies on the Petitioner to establish this fact and a mere assertion does not suffice.

The Petitioner's silence on this fact fails to establish that he did not become aware of the new appointment on the 08/08/2012 even though the letter dated 10/08/2012 (P13) clearly establishes the fact that the new appointee had reported for duty on 08/08/2012. Thus it is reasonable to assume that a person would become aware of an appointment of a person who takes over the duties he had been performing at least on the day the new appointee reports for duty. Therefore I find that the Petitioner has failed to satisfy Article 126(2) even in relation to prayer C of the petition.

As discussed above, it is apparent that the Petitioner is seeking remedy under the circular dated 02/01/2009 (marked P9) in relation to prayers (d), (e), (f) but he filed this application on the 19<sup>th</sup> of September 2012. Hence, I find this claim to be time barred.

For the purpose of completeness, as it was discussed above in the Circular marked P7, the Petitioner was not automatically qualified to be appointed to the SLES Class II Grade II. There is no evidence before this Court that the Petitioner had fulfilled the requirements stipulated in P7

Further it is revealed that the newly appointed Electrical Engineer from the SLES had assumed duty which was covered up by the Petitioner on the 08/08/2012 but the Petitioner had come to courts on 19/09/2012. Consequently, I find this claim to also be time barred. Accordingly I find the Petitioner's application to be unmaintainable before this court under Article 126 of the Constitution. This results in the dismissal of this application.

Since the preliminary objection on time bar is upheld this court has no jurisdiction to hear the other issues raised by the Petitioner. Application Dismissed. We order no costs.

***Application dismissed.***

**JUDGE OF THE SUPREME COURT**

**JAYANTHA JAYASURIYA PC, CJ.**

I agree.

**CHIEF JUSTICE**

**L.T.B DEHIDENIYA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**