

THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF
SRI ANKA

In the matter of an application under article 17 and
126 of the constitution of the democratic socialist
republic of Sri Lanka.

S.C.F.R.No: 21/2015

1. D.K.Karandawela
No.211/1Ihalakaraghamuuna, Genemulla Road,
Kadawatha

2. U.S.Kariyawasam
No.43, Foster Cross Lane, Colombo.10

3. H.A.S.Perera
C21, Matha Road, Colombo.08

4. S.S.Wasanthasena
No. 64, Ketakalapitiya, Debaheera, Nittambuwa

5. A.T.D.De Silva
No.59, Koswatte Road, Nawala, Rajagiriya

6. J.A.S.Rajapakse
No.83/29/C/01 St' Katherine Waththa Road,
Hokandara East, Hokandara

7. C.D.K.Weeraman

No.385 1/1, Rajagiriya Road, Rajagiriya

8. R.P.Rajika

No.160/1/B, Dewala Road, Makola North, Makola

9. K.S.J.Shantha

No.16/3A,Chetnoll Road, Thumbagoda, Balangoda

PETITIONERS

Vs

1. Justice Sathya Hettige PC, Chairman
1A. Dharmasena Dissanayake, Chairman

2. S.C.Mannapperuma, Member
2A. A.Salam Abdul Waid, Member

3. Ananda Seneviratne, Member
3A. D.Shirantha Wijayatilaka, Member

4. N.H.Pathirana, Member
4A. Prathap Ramanujam, Member

5. Kanthi Wijetunge, Member
5A. V.Jegarasasingam, Member

6. Sunil S. Sirisena, Member
6A. Santi Nihal Seneviratne, Member

7. S.Thillanadarajah, Member

7A. S.Ranugge, Member

8. A. Mohamed Nahiya, Member

8A. D.L.Mendis, Member

9. I.M.Zoysa Gunasekara, Member

9A. Sarath Jayathilaka, Member

1st to 9th All of public service commission, No.177,
Nawala Road, Narahenpita, Colombo.05

10. T.M.L.C.Senaratne

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

10A. H.M.G.Senevirathne

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

11. U.Marasinghe

Secretary, Minsitry of Education, Isurupaya,
Battaramulla

12. Hon. Attorney General

RESPONDENTS

Before: Buwaneka Aluwihare, PC, J.
Priyantha Jayawardena, PC, J.
L.T.B.Dehideniya, J.

Counsel: J.C.Weliamuna, PC with Pasindu Silva for Petitioners.
Nirmalan Wigneshwaran, SSC for the Attorney General.

Argued on: 29.11.2018

Decided on: 18.02.2019

L.T.B.Dehideniya, J.

The Petitioners invoked the fundamental rights jurisdiction of this court challenging the failure of authorities to select them to Sri Lanka Education Administration Service (SLEAS) Class III. Petitioners have applied for the following cadre vacancies of SLEAS by the gazette notice bearing no: 1808 dated 26.04.2013.

- a) Open Competitive Examination- General Cadre
- b) Seniority & Merit – General Cadre
- c) Limited Competitive Examination- General Cadre & Special Cadre

The Petitioners state that, they sat for the Limited Competitive Examination on 24.11.2013 and the list of qualified candidates was displayed on the official website of the Ministry of Education and the names of the petitioners were not reflected therein. The Petitioners further state that they received the results of the aforementioned examination after the interviews were being held. The contention of the petitioners is that, they have not been called for the interviews for the aforesaid SLEAS vacancies due to the reason of obtaining less than 40 marks for one of the subjects at the examination which was considered as a pre requisite.

The Petitioners state that, 16 applicants who had scored less than 40 marks for one subject have been called for the interviews to be appointed under the special cadre of the Limited Competitive Examination and subsequently 21 persons, including the above 16 applicants with 5 additional individuals have been recruited and the criteria of selection was not disclosed to the public. The Petitioners state that they have made attempts to obtain the relevant information from the Ministry of Education but the attempts were of no avail.

The contention of the petitioners was that, the authorities have disregarded them in making the appointments to the SLEAS vacancies and they should have been given an opportunity to get selected. The Petitioners complain of

the failure of the respective authorities in being transparent, as there was no dissemination of information in relation to the individual marks obtained by the applicants at the interviews and still the authorities can appoint them to the SLEAS class III, as there are over 600 vacancies. The Petitioners' complaint is that the non- selection and non- appointment of the petitioners to the Sri Lanka Education Administration Service is arbitrary, irrational and unreasonable while in violation of the Fundamental Right guaranteed to them under the Article 12(1) of the Constitution.

The procedure which is to be followed, in making appointments to Class III, of the Sri Lanka Educational Administrative Service is depicted in the service minute of the Sri Lanka Educational Administrative Service, published in the Gazette Extraordinary bearing No: 1225/32 dated 1st March 2002. Clause 8 of the Gazette Notification specifies the fact that, 'Not more than 45% of the vacancies in class III of the service will be made by the Committee on the results of a Limited Competitive Examination'. Clause 10 states 'The method of application for the examination and fees required will be notified in the Gazette of the Democratic Socialist Republic of Sri Lanka'. The applications for the Limited Competitive Examination were called by the Gazette Notification 1808 dated 26th April 2013. According to the Gazette Notification 1808, subjects assigned to the Special cadre are 'English, Mathematics, Science, Art, Music (Eastern), Music (Western), Dancing, Physical Education, Agriculture, Commerce, Handicraft, Home Science, Special Education, Planning, Arabic, Information Technology and Piriven'.

The 1A respondent admits the appointment of 21 officers to the Sri Lanka Education Administrative Service Class III, with a reduced pass mark and the appointments were pertaining to the subjects Physical Education, Special Education, Dancing, Western Music, Eastern Music, and Art. The 1A respondent further states that there were insufficient candidates and the petitioners have not applied for the specific subjects. As per the contention of the 1A respondent, the insinuation made by the petitioners is disingenuous and misleading as the discussions were held prior to making the appointments. The 1A respondent states that, the names of the 21 appointees were not included in the list of names published on the website, as the 21 appointments were made after deliberation and to ensure that adequate number of officers are appointed to the specific subjects.

The 1A respondent further states that the procedure to make appointments to class III, of SLEAS is set out in the minute of the Sri Lanka Educational Administrative Service and published in the Gazette Extraordinary bearing No.1225/32 dated 01st March 2002. The 1A respondent states that, the issue which has arisen in this case is related to the decision to lower the pass mark to 35 for the special cadre subjects of Physical Education, Special Education, Dancing, Western Music, Eastern Music and Art and the decision of the Public Service Commission to lower the pass mark is due to a request of the Ministry of Education to that effect by letter dated 26th March 2014. The 1A respondent further states, The Public Service Commission is empowered by the Public Service Commission Procedural Rules published on Special

Gazette Notification bearing No.: 1589/30 dated 20th February 2009, to deviate from the rules, regulations and procedure laid down by the commission under exceptional circumstances subject to Article 12(1) of the Constitution. According to the 1A respondent, the Ministry of Education has sought the permission from the Public Service Commission to appoint 488 officers to the Sri Lanka Education Administrative Service by letter dated 05th March 2013. Further, by a letter dated 21st November 2013, the Ministry of Education has requested the permission to increase the number of officers to 558. The request made by the letter dated 21st November 2013 was approved by the Public Service Commission by the response letter dated 11th December 2013. The Ministry of Education was requested to submit a subject wise breakdown of the cadre vacancies under the limited stream, being 45% of the total vacancies by letter dated 12th February 2014 and 13th February 2014.

Public Service Commission has requested the Department of Examinations by letter dated 21st February 2014, to forward the result sheets of candidates, who obtained not less than 40% in any one subject in the order of merit in respect of the vacancies. In pursuance of the letter dated 21st February 2014, Department of Examinations submitted the results sheets. It is evident, the number of candidates who passed the examination were fewer than the number of vacancies allocated for the subjects Art, Eastern Music, Western Music, Dancing, Physical Education and Special Education, whereas in other subjects the number of candidates who passed the examination had exceeded the vacancies allocated. The 1A respondent further states that, the Public Service Commission has forwarded the results sheets of 203 applicants who

had scored high marks, to the Ministry of Education by the letter dated 24th February 2014, and the interviews were held on 20, 24, and 25 of March 2014.

The Ministry of Education by the letter dated 26th March 2014, has made a request to the Public Service Commission to reduce the cut off mark of the subjects; Art, Eastern Music, Western Music, Dancing, Physical Education and Special Education. As per the contention of the 1A respondent, the request was based in the interests of the exigencies of service, reasonable and in accordance with the law. By letter dated 07th April 2014, the Public Service Commission has approved the request of reducing the cut off mark, and requested the Ministry of Education to reduce the pass mark to 35% and submit the results sheets in the order of merit. The 1A respondent further clarifies, that the vacancies in respect of Physical Education and Special Education are 19 and 17 respectively and the subsequent increase of vacancies was due to the fact, that during the appointing process, the Public Service Commission did not approve all the recommendations of the ministry of education in respect of the said subjects and consequently a higher number of vacancies were to be approved by considering the number originally requested by the Ministry of Education.

The subjects which the petitioners have applied are different from that of, subjects which come under the reduced cut off mark. As the 1A respondent illustrates, the subjects which were applied by the Petitioners as General Cadre, Planning, Science, Mathematics, Information Technology, and Commerce. The 1A respondent states, that 1st, 6th 7th and 9th Petitioners would

not benefit from the cut off mark reduced to 35%, as they have obtained less than 35% for at least one subject. The aggregate of 3rd and 4th petitioners was less than the aggregate cut off marks for the subjects which were applied by them and they would not have benefited even if the individual subject wise cut off mark was reduced to 35%. The 1A respondent further clarifies the situation of 2nd, 5th and 8th petitioners. They have obtained more than the aggregate cut off mark for Information Technology, Mathematics, and General Cadre respectively but even if the pass mark is reduced to 35% across the board, there are other candidates who had obtained more than 40% marks in all the subjects and would not benefit the petitioners at any cost.

The 1st respondent states that, the Petitioners did not obtain more than 40% for each of the subjects which they have applied. The 1st respondent further states that, as there were insufficient number of candidates who have been qualified, the vacancies for the subjects of Art, Eastern Music, Western Music, Dancing, Physical Education and Special Education were filled by reducing the pass mark. The contention of the respondent is that, the appointments are based on the urgent need of SLEAS officers specializing the aforementioned subjects. In this instance, the Respondent affirms that Public Service Commission, as the appointing authority has an authority to deviate from rules and procedures hence granted approval to fill the vacancies of the subjects based on the pass mark 35%. This approval as the respondent states, is due to the urgent need of the service.

The Petitioners' complaint is that the Fundamental Right guaranteed to them by the Article 12(1) of the Constitution is violated. As Justice Sharvananda states 'Equal protection means the right to equal treatment, in similar circumstances'. Equal treatment is considered as an important principle that any nation can take its ideal.'(Fundamental Rights In Sri Lanka; Justice Sharvananda 1993 pg 81) In **Gulf Colorada, Co v. Ellis (1897)165 U.S.150**, it was stated, 'It must appear that not only that a classification has been made but also that it is one based upon some reasonable ground- some difference which bears a just and proper relation to the attempted classification'. (Fundamental Rights In Sri Lanka; Justice Sharvananda 1993 pg 85).Willis, Constitutional Law 1936, defines equal protection of the law as protection of equal laws. He states that, 'it merely requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and on liabilities imposed.'(Fundamental Rights In Sri Lanka; Justice Sharvananda 1993 pg 85 &86).

The petitioners have applied for the subjects which did not undergo a reduction of the cut off marks; General Cadre, Planning, Science, Mathematics, Information Technology, and Commerce. The subjects relevant to the lowered pass mark to 35%, were Physical Education, Special Education, Dancing, Western Music, Eastern Music and Art.It is evident, that the petitioners and 21 appointees are not similarly circumstanced. It is axiomatic, that the law forbids the unequal treatment between equals. There is no equality between the Petitioners and the appointees. Article 12 of the constitution accepts the reasonable classification. As justice Sharvananda states, 'what is forbidden by Article 12 is invidious or hostile discrimination which is

arbitrary, irrational and not reasonably related to a legitimate objective'. (Fundamental Rights In Sri Lanka; Justice Sharvananda 1993 pg. 92) The respondents' decision to lower the pass mark and make appointments was solely based upon the interests of the exigencies of service. It is reasonable and in accordance with the law.

By considering the circumstances, it is evident that no violation of the fundamental right guaranteed to the Petitioners under Article 12(1) of the Constitution had taken place.

Petition dismissed.

Judge of the Supreme Court

Buwaneka Aluwihare, PC, J.

I agree

Judge of the Supreme Court

Priyantha Jayawardena, PC, J.

I agree

Judge of the Supreme Court

