

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

In the matter of an application under Article  
126 of the Constitution.

SC FR 322/2011

1. Mrs. D.W.D.E. Randeniya  
No. 394, Old Road, Kottawa, Pannipitiya.
2. Mrs. Thushari Anuruddhika  
No. 475c, Samudra Mawatha  
Arangala, Hokandara (North).
3. Mr. B.A.T. Balasooriya  
53 K, Pahalagama, Gampaha.
4. Mrs. Nilanthi Perera  
127/1C, 9, Jayawardana Mawatha,  
Pahala Karagahamuna, Kadawatha.
5. Mrs. Rupika Kannangara  
C A 7/3, Ranpokunagama, Nittambuwa.
6. Mrs. Deepa Priyanthi de Alwis  
“Senani” Kalawana, Minuwangoda.
7. Chithrani Abeygunawardana  
No. 25, Suwarnapura, Horana.
8. Mrs. G.A. Chandrani,  
106, Nalluruwa, Panadura.
9. Mr. M.R.S. Bopage  
“Manel” Kahawathugoda, Ahangama.
10. Mr. Priyantha Wijegunasekera  
“Sahana” Samagi Mawatha, Godagama,  
Matara.
11. Mrs. Kamal Kanthi Weerathunga  
Kokmaduwa Niwasa, Paragahahena,  
Weralaliya, Welipitiya.
12. Mr. Ravindra Kumara Dias,  
Panetiyan, Weligama.
13. Mr. K.K.P. Padmasiri  
“Upali” Kithalagama East, Thihagoda.

14. Mr.T.H.J. Thilanath  
Kadagahawaththa, Eluwawala, Denipitiya.
15. Mr. E.L Bandularama  
“Akashi” Panamulla, Nihiluwa, Beliatta.
16. Mr. R.K. Wimalarathne  
“Sanudima” Pissubedda Walasmulla.
17. Mrs. P. Hema Malani  
179/A, Pallekanda, Walasmulla.
18. Mr. D.M. Gunawardana  
Waliwaththa, Yappannawa, Iwala, Bibile.
19. Mr. W.B.M.A. Wijekoon  
397, Hamparawa, Bandarawela.
20. Mrs. K.A.S. Seelarathna  
“Danushka” Puranwela, Udubadana,  
Keppetipola.
21. Mr. R.K. Mugunuwala  
“Sandamali”, Imbulgoda, Galapitamada.
22. Mr. D.K. Wanigathunga  
182/1, Uthuru Uduwa, Kuda Uduwa,  
Horana.
23. Mr. E.V.G. Epitakumbura  
Univercity Road, Pambahinne, Belihuloya.
24. Mrs. W.R.M.N.S. Wijekoon  
No. 31/10, Manel Mawatha, Kurunegala.
25. Mrs. R.D. Hemalatha  
Aluthhena, Pahamune, Narammala.
26. Mrs. M.M.S.R. Pushpakumari  
C/o. Anura Wijethunga  
Mawila Road, Weerahena, Naththandiya.
27. Mrs. D.M.G. Vijitha Padmawathi  
113, Arippu Road, Old City, Anuradhapura
28. Mr. R.P.P.Wimalasiri  
436/1, RA Ela, Palin Ela, Polonnaruwa.
29. Mr. R.M.P.G. Ranasinghe Bandara  
141/1, Yaya 6, Nawanagaraya, Medirigiriya.

30. Mr. W.J.G. Wijesinghe  
455, Yaya 4, Nawanagaraya, Medirigiriya.
31. Mr. Y.K.P. Tissa Nimal  
“Thilina” Bumalla, Rikillagaskada.
32. Mr. E.H. Priyantha Padmakumara  
488, Kongaspitiya, Ampitiya.
33. Mr. I.M.D.A.B. Rathwita  
Ihala Rathwita, Gokarella.
34. Mr. S.M.T. De Alwis  
446 Matale Road, Alawathuwala.

**Petitioners**

**Vs.**

1. Prof. Dayasiri Fernando,  
Chairman  
Public Service Commission.
- Added 1A. Hon. Justice Sathya Hettige PC  
Chairman  
Public Service Commission.
- Added 1B. Dharmasena Dissanayake  
Chairman  
Public Service Commission.
2. Palitha M. Kumarasinghe  
Member, Public Service Commission.
- Added 2A. Kanthi Wijethunga  
Member, Public Service Commission.
- Added 2B. Justice A.W.A. Salam  
Member, Public Service Commission.
- Added 2C. Proff. Hussain Ismail
3. Sirimavo Wijeratne  
Member, Public Service Commission.
- Added 3A. Sunil Sirisena  
Member, Public Service Commission.
- Added 3B. V. Jegarajasingam  
Member, Public Service Commission.

4. S.C. Mannapperuma  
Member, Public Service Commission.
- Added 4A. Nihal Seneviratne  
Member, Public Service Commission.
- Added 4B Mrs. Sudharma Karunaratne  
Member, Public Service Commission.
5. Ananda Seneviratne  
Member, Public Service Commission.
- Added 5A. Dr. Prathap Ramanujam  
Member, Public Service Commission.
6. N.M. Pathirana  
Member, Public Service Commission.
- Added 6A. S. Ranugge  
Member, Public Service Commission.
7. S. Thilanadarajah  
Member, Public Service Commission.
- Added 7A. D.L. Mendis  
Member, Public Service Commission.
8. N.D.W. Ariyawansa  
Member, Public Service Commission.
- Added 8A. Dr. I.N. Soysa Gunasekera  
Member, Public Service Commission.
- Added 8B Sarath Jayatilake  
Member, Public Service Commission.
9. Mohamed Nahiya  
Member, Public Service Commission.
- Added 9A. Dhara Wijethilake  
Member, Public Service Commission.
- Added 9B Mr. G.S.A. de Silva, PC.  
Member, Public Service Commission.
10. Mrs. T.M.L. Senarathne  
Secretary, Public Service Commission.

All of the Office of the  
Public Service Commission  
175, Nawala Road, Narahenpita  
Colombo 05.

11. Mr. M.W. Bandusena  
Secretary,  
Ministry of Productivity Promotion  
249, Stanley Tillakaratne Mawatha  
Nugegoda.
- Added 11A. Mr. Upali Marasinghe  
Secretary,  
Ministry of Productivity Promotion  
9<sup>th</sup> Floor Sethsiripaya, Battaramulla.
- Added 11B. Mr. Herath Yapa  
Secretary,  
Ministry of Productivity Promotion  
9<sup>th</sup> Floor Sethsiripaya, Battaramulla
12. Mr. P. Siriwardana  
Director General (Establishments)  
Ministry of Public Administration and  
Home Affairs, Independence Square,  
Colombo 07.
- Added 12A. Mr. W.,D. Somadasa  
Director General (Establishments)  
Ministry of Public Administration and  
Home Affairs, Independence Square,  
Colombo 07.
- Added 12B Chandana Kumarasinghe
13. Mr. Saliya Mathew  
Co-Chairman  
Salaries and Cadres Commission.
14. Mr. M.N. Junaid  
Co-Chairman  
Salaries and Cadres Commission.
15. Mr. Ariyapala de Silva, Member.
16. Mr. S.C. Mannapperuma, Member
17. Deshabandu M. Macky Hashim, Member
18. Prof. Carlo Fonseka, Member.

19. Mrs. Soma Kotakadeniya, Member.
  20. Dr. Gerry Jayawardana, Member.
  21. Dr. Loyed Fernando, Member.
  22. Mr. Leslie Devendra, Member.
  23. Mr. V. Kanagasabapathy, Member.
  24. Dr. Gunapala Wicremaratne, Member.
  25. Mr. B. Wijeratne  
Secretary,  
National Salaries and Cadres Commission  
Room No. 2 G 10, BMICH,, Colombo 07.
  26. Mr. P.B. Jayasundera  
Secretary to the Treasury,  
Ministry of Finance,  
Galle Face Secretariat, Colombo 01.
- Added 26A. Dr. R.H.S. Samarathunga  
Secretary to the Treasury,  
Ministry of Finance,  
Galle Face Secretariat, Colombo 01.
- Added 26B Mr. S.R. Attygalle  
Secretary to the Treasury,  
Ministry of Finance,  
Galle Face Secretariat, Colombo 01.
27. Mr.C.P.W. Gunathilaka  
Director General,  
Department of Manpower and Employment,  
(Ministry of Productivity Promotion)  
249, Stanley Tillakaratne Mawatha  
Nugegoda.
- Added 27A. Mr. K.D.N. Ranjith Asoka  
Director General,  
Department of Manpower and Employment,  
9<sup>th</sup> Floor Sethsiripaya, Battaramulla.

- Added 27B. H.G.G.K. Dharmasena  
Director General,  
Department of Manpower and Employment,  
9<sup>th</sup> Floor Sethsiripaya, Battaramulla.
- Added 27C Neil Bandara Hapuhinne  
Director General  
Department of Manpower and Employment  
9<sup>th</sup> Floor, Sethsiripaya,  
Battaramulla.
- Added 27D Mr. Lal Samarasekera  
Director General(acting)  
Department of Manpower and Employment  
9<sup>th</sup> Floor, Sethsiripaya,  
Battaramulla.
28. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.

**Respondents**

29. D.H. Neville Piyadigama, Co-Chairman  
National Pay Commission  
Room No. 2G 10, BMICH, Colombo 07.
30. J.R. Wimalasena Dissanayake, Co-  
Chairman  
National Pay Commission  
Room No. 2G 10, BMICH, Colombo 07.
31. G.L. Wimaladasa Samarasinghe, Member.
32. V. Jegarajasingam, Member.
33. G. Piyasena, Member.
34. R.A.D.R. Malini Peiris, Member
35. Dayananda Widanagamachchi, Member.
36. S. Swarnajothi, Member.
37. B.K. Ulluwishewa, Member.
38. Sujeewa Rajapakse, Member,

39. H.W. Fernando, Member.
40. Sampath Amarathunga, Member.
41. Ravi Liyanage, Member
42. W.K. Hemachandra Wegapitiya, Member.
43. Keerthi Kotagama, Member.
44. Reyaz Mihular, Member.
45. Priyantha Fernando, Member.
46. L. Shelton Devendra, Member.
47. W.W.D. Sumith Wijesinghe, Member.
48. G.D. Somaweera Chandrasiri, Member.
49. W.H. Piyadasa, Member.  
31<sup>st</sup> to 49 Respondents all of the National  
Pay Commission, Room No. 2G 10,  
BMICH, Colombo 07.

**Added Respondents**

50. Mr. Gotabaya Jayaratne,  
Secretary  
Ministry of Labour and Trade Union  
Relations, Labour Secretariat,  
Narahenpita, Colombo 05.
- Added 50A R.P.R. Rajapaksha
- Added 50B Sarath Abeygunawardena  
Secretary  
Ministry of Labour and Trade Union  
Relations, Labour Secretariat,  
Narahenpita, Colombo 05.
51. K.L.L. Wijeratne, Chairman.
52. Nimal Bandara (member).
53. Dayananda Widanagamachchi(member).
54. J. Charitha Ratwatte(member).



55. Prof. Kithsiri Madapatha Liyanage (member).
56. Leslie Shelton Devendra (member).
57. Suresh Shah (member).
58. Sanath Jayantha Ediriweera (member).
59. V. Rangunathan(member).
60. Kamal Mustapa(member).
61. Prof. Gunapala Nanayakkara (member).
62. Nandapala Wickremasuriya (member).
63. Madam Sujatha Cooray (member).
64. Gerry Jayawardana (member).
65. S. Thillainadarajah (member).
66. Dr. Anura Ekanayake (member).
67. Sembakuttige Swarnajothi(member).
68. P.K.U. Nilantha Piyaratne(member).
69. N.H. Pathirana(member).
70. H.T. Dayananda(member).
71. T.B. Maduwegedera(member),
72. Dr. Wimal Karandagoda (member).
73. A. Kadiravelupillai(member).
74. Asoka Jayasekera (Secretary).

National Salaries and Cadre Commission  
Room No. 2 G 10, BMICH,, Colombo 07.

**Added Respondents**

75. S. Ranugge, (Chairman)
76. C.P. Siriwardene (Member)
77. Dr. Damitha de Zoysa (Member)
78. Lalith Kannangara (Member)
79. Janaka Sugathadasa (Member)
80. Chithrangani Wagiswara (Member)
81. Chandrani Senaratne (Member)
82. Kingsley Fernando (Member)
83. G.S. Edirisinghe (Member)
84. M.C. Wickremesekera (Member)
85. Dr. Palitha Abeykoon (Member)
86. D. Abeysuriya (Member)
87. Leslie Devendra (Member)
88. Anura Jayawickreme Perera (Secretary)

National Salaries and Cadre Commission  
Room No. 2 G 10, BMICH, Colombo 07.

**Added Respondents**

Before : Jayantha Jayasuriya, PC, CJ  
Murdu N.B. Fernando, PC, J  
S. Thurairaja, PC, J.

Counsel : Faiz Musthapa , PC with Ms. Thushani Machado for the  
Petitioners .  
Ms. Viveka Siriwardene, DSG for the 1<sup>st</sup> -10<sup>th</sup>, 30<sup>th</sup> – 43<sup>rd</sup>  
Added Respondents and 28<sup>th</sup> Respondent.

Argued on : 13.01.2020

Decided on : 06.07.2020

**Jayantha Jayasuriya, PC, CJ**

There are thirty-four Petitioners in this matter. In the year 1999, they along with several others were recruited to the Ministry of Youth Affairs and Sports as Graduate Trainees. Approximately ten thousand persons had been recruited under the said programme. Those recruits had been posted to different departments under different Ministries. The Petitioners in this application, thirty-four in number, were functioning as Career Guidance Officers attached to the Ministry of Productivity Promotion at the time of filing this application (13 September 2011).

In the year 2000, the Petitioners had been issued with letters of appointment to the post of “Career Guidance Officer” and were placed at the salary scale of Rs. 72,600 – 14x1560 - 3x2,460 - 106,740. Three years thereafter, in 2003, they had been confirmed in the said post. From 25<sup>th</sup> April 2006, the Petitioners had been placed at the salary scale MN4 in accordance with the Public Administration Circular No. 6 of 2006. At that stage, the Petitioners were attached to the Ministry of Labour Relations and Foreign Employment. On 10.05.2006 the Secretary of the aforesaid Ministry had written to the Chairman of the National Salaries and Cadres Commission seeking guidance as to the appropriate salary scale and the step in which the Petitioners should be placed on. Thereafter in December 2006 the same Secretary had recommended to the Secretary Ministry of Public Administration that the Petitioners be placed at the salary scale MN6. However, three years thereafter on 27 March 2009, the same Secretary had informed the Association to which the Petitioners belonged to, that the Salaries and Cadres Commission has not approved a salary revision and therefore, there is no provision to place the petitioners in the scale MN5. The salary scale approved to the Petitioners is MN4. Petitioners contend that they should have been placed at the salary scale of MN6 instead of MN4. In the year 2010, a new Department called Department of Manpower and Employment had been established under the Ministry of Labour Relations and Manpower and the petitioners were absorbed in to the newly established Department. At the time of establishing the new department, Department of Management Services on 09.02.2010, had approved the cadre positions on the recommendations of the National Salaries and Cadres Commission in the newly established department.

Thereafter in June 2010, the Secretary Ministry of Labour Relations had sought the approval of the Department of the Management Services to suppress 38 existing positions of Career Guidance Officers and to create thirty-eight Supra Grade positions and to place the petitioners at the salary scale MN7. However, The Salaries and Cadres Commission had not recommended creating Supra Grade positions. They had observed that the officers who are currently in service could be absorbed into a structured grading system and that thereby more responsibilities can be attached to the officers who would be absorbed into higher grades. The Petitioners contend that the said decision of the National Salaries and Cadres Commission is arbitrary, capricious, unreasonable and discriminatory. They further contend that the said decision amounts to an infringement of their fundamental right to equality as guaranteed by Article 12(1) of the Constitution.

Petitioners pray, that the aforesaid decision of the Salaries and Carders Commission be declared null and void and of no force or avail in law. They further seek an Order directing the Director General (Establishments) and the members of the National Salaries and Cadres Commission to recommend to the public Service Commission to create and or to make order that the Petitioners are entitled to be promoted to the Supra Grade carrying the salary scale of MN7. They further seek an Order of this Court directing the Respondents to place Petitioners at the salary scale MN6 pending the creation of Supra Grade or in the alternative to place Petitioners at the salary scale MN6 or any other salary scale that the Court may consider fit and proper.

The Petitioners' plea for theses reliefs is based on two main grounds. First they contend that they are assigned with duties and in fact they do perform such duties that are similar to the duties assigned to those officers who are placed in the MN7 salary scale. Second, they claim that those other recruits who were recruited initially under the same programme along with the Petitioners – the Graduate Trainee Programme – and assigned to other Departments and Ministries are now functioning in different capacities placed at the salary scale of MN7. It is their contention that therefore the failure to create a Supra Grade and place them in MN7 salary scale is discriminatory.

The Learned Deputy Solicitor General who represented all the Respondents submitted that the Petitioners' claim is misconceived in law. It is her contention that the decision not to recommend suppression of existing thirty eight positions in the relevant Department and create thirty eight supra grade positions to facilitate petitioners to be placed at salary scale MN7 is in accordance

with the established rules and practices and reflect the actual need in the relevant Department. The Co-Chairman of the National Pay Commission – the twenty ninth Respondent - contends that the entitlement to a particular salary scale in the public service is mainly dependent on the basic qualifications required for the particular post and not based on any qualifications acquired by an individual officer while in service. Such factors as well as the success at the Efficiency Bar examinations will be taken into account in situations of either confirmation or promotions. It is further contended that the duties of the Career Guidance Officers cannot be equated with the duties assigned to Project Officers and therefore they belong to two different categories. Further, the two schemes of recruitments in relation to these two categories are different to each other. Petitioners through their counter affidavits have reiterated their initial positions.

An examination of all the material placed before this Court establishes that the Petitioners who possessed under graduate degrees were initially appointed as trainees in the year 1999. They were not recruited through a competitive examination. They had been assigned to the Ministry of Samurdi, Youth Affairs and Sports. It is reasonable to conclude that the co-recruits who were recruited under the same scheme along with the petitioners would have been assigned to different ministries. They were initially placed on a one-year trainee period and thereafter they were to be appointed to a permanent position within the respective ministry if they successfully complete the relevant training and the aptitude test.

The Circular issued by the Secretary of Finance in July 2000, regulates the appointment of those trainees to the permanent posts. (P9). This was issued to *interalia* all Secretaries and Heads of Departments. According to the said circular the basic salary scale set out had been Rs 72,600 - 14x1560 – 5x2460 – 1,06,740. However, this circular further recommends to select trainees with higher qualifications and skills through a structured interview if they are to be appointed to posts which have salary scales greater than the aforesaid.

In October 2000, when the Petitioners were appointed to the post of Career Guidance Officer, they were placed at the salary scale 72,600 – 1,560 x14 – 2,460x3 – 1,06,740/-(P11). In the scheme of recruitment issued two years later - in 2002 - for the post of Career Guidance Officer the same salary scale had been prescribed (P10). I observe that the initial salary scale of a staff grade officer at that stage was Rs. 74,160/-. Therefore, the Petitioners had at no stage been placed at a salary scale of Staff Grade Officers. It is pertinent to note that the Petitioners do not raise any concern over the salary scale that they were placed in when they were appointed to the post of

Career Guidance Officers in the year 2000. They do not raise any concern regarding the salary scale prescribed in the scheme of recruitment formulated two years thereafter – in 2002.

The decision Petitioners are challenging, through these proceedings, is the decision of the National Salaries and Cadres Commission not to recommend the suppression of thirty-eight existing positions and creating a similar number of Supra Grade positions. This decision is reflected in the letter, dated 09.09.2010 (P32). It is pertinent to note that the decision so challenged observes that the current officers can be absorbed in to a structured graded system having prepared a scheme of recruitment in compliance with the Public Administration Circular 06/2006 and thereby attach more responsibilities to officers who would be absorbed in to higher grades. I further observe, that the Salaries and Cadre Commission in the same document had expressed the view that it is more appropriate to take a decision on this matter after taking into account the instructions in the circular issued pursuant to the Cabinet decision approving the proposal of the Minister of Finance submitted on 20 July 2010 to establish a scheme of transfer in addressing the concerns of the graduate trainees recruited by the Government (paragraphs 03 and 04 of P-32).

I am of the view that the impugned decision and the views expressed therein, should be considered in the context of the changes that had taken place between the year 2000 and 2010 namely the time of appointment of the petitioners to the relevant post and the date of impugned decision. In the year 2006, through the Public Administration Circular No 06 dated 25 April 2006, Salaries in the Public Service were restructured based on the Budget Proposals presented in the same year. This circular sets out the basis and criteria that need to be adopted in the conversion of salaries as provided therein. It is admitted that the Petitioners were placed at the salary scale MN4. This conversion has been made in accordance with the said Circular in correspondence to the salary scale on which they were placed in at the time the Circular came into operation. However, the Petitioners contend that they should have been placed in the scale MN6 instead of MN4.

It is pertinent to note that the salary conversion placing them in the scale MN4 took place in 2006 and they have invoked the jurisdiction of this Court through these proceedings only in the

year 2011. The Petitioners claim that they entertained a legitimate expectation that they would be placed at salary scale MN7 at a subsequent stage. The basis for the Petitioners claim that they had a legitimate expectation that they would be placed at a salary scale higher than MN4 is two fold. First they claim that by being provided special training enabling them with the necessary skills to perform their duties when promoted, had given rise to a legitimate expectation. Secondly, duties they were performing were equivalent to the duties of a field officer as well as a staff grade officer and thereby they entertained a legitimate expectation.

It is settled law that infringing a legitimate expectation of an individual by an executive or administrative decision could lead to a violation of the Right to equality guaranteed by Article 12(1) of the Constitution. In **Dayarathna and others v Minister of Health and Indigenous Medicine** (1999) 1 SLR 393, His Lordship Amarasinghe, J observed that ,

“ It is the duty of this Court to safeguard the rights and privileges, as well as interests deserving of protection such as those based on legitimate expectations, of individuals” (supra at p 413).

His Lordship Priyantha Jayawardane PC J in **G.M. Nimalasiri v Colonel P.P.J. Fernando et al.** (SC FR 256/2010, SC minutes of 17<sup>th</sup> September 2015) cited with approval **Dayarthna** (supra) and with reference to the doctrine of legitimate expectation held that,

“It arises from establishing an expectation believing an undertaking or promise given by a public official or establishing an expectation taking into consideration of established practice of an authority”.

His Lordship Prasanna Jayawardane PCJ, in **Ariyaratne et al. v Illangakoon et al.** (SC FR 444/2012, SC minutes of 30<sup>th</sup> July 2019 at pp 56-57), observed that

“the first characteristic which will sustain a petitioner’s claim that he has a substantive legitimate expectation the respondent public authority will act in a particular manner with regard to him, is that the petitioner must establish the public authority gave him a specific, unambiguous and unqualified assurance that it will act in that manner [or,

alternatively, that the respondent public authority has followed an established and unambiguous practice which entitled the petitioner to have a legitimate expectation the public authority will continue to act in that manner or that the facts and circumstances of the dealings between the public authority and the petitioner have created such an expectation]”,

The impugned decision (P32) clearly sets out the reasons and the basis for the decision not to recommend the suppression of existing posts and creating Supra Grade posts, at that stage. The Salaries and Cadres Commission had observed that the Cabinet had approved to establish a transfer scheme for graduate employees in the public sector. Such approval was granted having considered the proposal submitted by the Minister of Finance in July 2010 to address the concerns relating to them. The Salaries and Cadres Commission has expressed the view that it is more appropriate to take a decision on the proposal to suppress existing posts and creating Supra Grade posts after taking into account the instructions in the circular that would be issued in giving effect to the transfer scheme referred to hereinbefore. The Salaries and Cadres Commission has recommended to develop a scheme of recruitment in line with the Circular 6/2006 taking into account the cabinet decision dated 18.11.2009 which approved the creation of the department in which the Petitioners serve. It is their view that such process will provide an opportunity to assign more responsibilities based on seniority and will create an environment to enjoy a scheme of structured unhindered promotions. It is pertinent to note, that this Court had observed that

“PA Circular No. 6/2006, which deals with the Budget proposals is not a document prepared merely for the purpose of increasing the salary of government employees. On the contrary, the said document had been prepared for the purpose of restructuring the Public Service salaries based on Budget proposals for 2006.”.... “By these proposals, (as stated by the 5<sup>th</sup> respondent), 126 different salary scales that had existed previously had been reduced to 37”. – Her Ladyship Dr Shirani A Bandaranayake CJ in **Akarawita et al v Dr Nanda Wickramasinghe**, SC FR 320/2007, SC minutes of 02.11.2010.

The impugned decision taken in the context of the observations and recommendations of the Salaries and Cadres Commission as reflected in the letter dated 09.09.2010 (P32) demonstrates



that the decision in question is rational and reasonable. In my view it addresses the concerns and requirements of the officers concerned, interests of the Department they serve as well as the overall policy regarding the public sector. All these interests had been taken into consideration in making the recommendations therein. Therefore, I am unable to hold that the impugned decision is unreasonable and / or capricious and / or arbitrary.

It is important to note,

“a mere hope or an expectation cannot be treated as having a legitimate expectation”,  
**Siriwardane v Seneviratne and 4 others** ([2011] 2 SLR 1 at p 7).

In **Siriwardane** (*supra* at p 8) Her Ladyship Dr Shirani A Bandaranayake J, further observed

“A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question”.

Petitioners contend that the documents produced marked P28, P29 and P24 reflect that the respondents ‘held out a promise’ that the Petitioners would be placed on a higher salary scale. This court observes that the document marked P29 contains a proposal submitted by the Secretary of the Labour Relations Ministry, to suppress 38 posts of Career Guidance Officers and create 38 Supra Grade positions. P28 is a document where the Secretary of the National Salaries and Cadres Commission confirmed that the Commission would submit its recommendations if called for on the proposal to appointment Career Guidance Officers as Field Supervising Officers. P24 is a record of discussion where it had been proposed to submit a new Cabinet Memorandum and to seek recommendations of the National Salaries and Cadres Commission on the proposal to create twenty-five supra grade positions. However, I am unable to accept this assertion. None of these documents reflect that the Respondents did hold out a promise to the Petitioners. If at all they contain only recommendations and / or proposals.

When the facts of this case are considered in the context of the jurisprudence setting out the parameters of the doctrine of legitimate expectation, as have been set out hereinbefore, it is clear that the conduct of any of the Respondents or any other public authority could not have created a legitimate expectation in the Petitioners that they would be placed in a position, with a higher salary scale. Petitioners were initially recruited as Graduate Trainees in 1999 and were paid an allowance of Rupees 4000/- per month. The Petitioners do not raise any concerns regarding the salary scale in which they were placed, when they were appointed Career Guidance Officers in the year 2000 (RS 72,600 – 1,560 x14 – 2,460x3 – 1,06,740/-) (P11). In fact the salary scale on which they were placed correspond to the salary scales referred to in the general circular governing “the attachment to permanent positions” (P9) as well as the scheme of recruitment approved in the year 2002 (P10). They had not been placed at the salary scale of a staff grade officer of which the initial salary step remained at Rs 74, 160/-. The salary conversion that took place with the introduction of the circular in 2006 is in line with the provisions of that circular and they were placed at the salary scale of MN4. Therefore, the conduct of any of the respondents could not have created a legitimate expectation on the petitioners that they would be placed on a higher salary scale than MN4.

The other submission of the Petitioners is that, the Petitioners’ right to equality has to be considered in the proper context of all surrounding facts and circumstances including the current salary scales and steps in which the fellow recruits had been placed in the other Ministries and or Departments. Fellow recruits who joined as Graduate Trainees in the year 1999 along with them are now placed on salary scales MN5 and or MN6. It is contended that those who hold the positions such as Statistical Officers of the Department of Census and Statistics, Labour Officers, Counselling Officers attached to the Ministry of Child Development and Women’s Affairs, Family Counsellors of the Ministry of Justice and Child Rights Development Promotion Officers attached to the Department of Probation and Child Care are placed at salary scales higher than the salary scale that the Petitioners are placed in, namely MN4. However, document X1 submitted by the Petitioners along with the motion dated 5<sup>th</sup> February 2020 reflects that the graduates who were recruited under the same programme launched in 1999 had been appointed to the Ministry of Science and Technology as Science and Technology Officers in the year 2000,

and were placed at a similar salary scale on which the petitioners were placed in at the time of appointment as Career Guidance Officers (Rs 72,600 – 14x1,560 – 5x2,460- 106,740/-).

It is pertinent to note that the basic qualifications required at the time of entry to a particular position could vary according to the different nature of tasks that needs to be performed and the skills required. Some of those positions may require the officer to possess a post-graduate qualification at the time of entry. It is artificial and un realistic to claim that all ten thousand persons who were initially recruited under the same scheme as trainees should be placed on the same or identical salary scale when they have been appointed into permanent positions in different Departments and Ministries. The salary scale of a particular post will have to be dependent on many factors. Therefore the fact that a group of persons who were recruited under a particular scheme as trainees had later been placed on permanent posts with passage of time in different ministries, departments and institutions attracting different salary scales *per se* cannot result in a claim of unequal treatment.

Decisions on the creation of new posts, required qualifications at the entry point to hold such posts, mode of recruitment and the salary scales relating to such posts have to be made by authorities based on an array of considerations. In fact according to the document marked X tendered by the Petitioners along with the motion dated 5<sup>th</sup> February 2020, the Director-General of Combined Services on 11<sup>th</sup> September 2019 had called for observations from all Secretaries on the possibility of creating a supervisory position relating to Development Officers with the salary scale MN7. Needs of each ministry or the department will be unique and a proper appraisal in regard to all relevant aspects in the context of the overall policy on the structure in the public service should be made in reaching a final decision on such matters. Wishes and views of different groups including the current employees in the relevant institution who are potential beneficiaries, is only one factor that may be considered in the process of making such decisions. Document marked X2 submitted by the Petitioners along with the motion dated 5<sup>th</sup> February 2020, reflect that it is only in the year 2018, a scheme of recruitment had been approved to create a post of District Vidatha Officers of the Management Assistant Supra Class with the salary scale MN7. Approval of a scheme of recruitment in relation to a particular post would require a process of consultations, negotiations and discussions.

Her Ladyship Dr. Shirani Bandaranayake J in **Tuan Ishan Raban and Others v Members of the Police Commission** ([2007] 2 SLR 351 at 359-360) observed, that

“Article 12(1) of the Constitution ensures the protection from arbitrary and discriminatory action by the executive and / or the administration. The objective of Article 12(1) of the Constitution therefore is to give persons equal treatment. However such guarantee does not forbid reasonable classification, which is founded on intelligible differentia. The concept of equality only forbids action which is unreasonable, arbitrary and capricious, and not the classification that is reasonable. This is based on the theory that a classification which is good and valid cannot be regarded as arbitrary”.

The Supreme Court in **Ananda Dharmadasa and Others v Ariyaratne Hewage and Others** ([2008] 2 SLR 19 at 33) observed that “that every differentiation would not constitute discrimination and accordingly classification could be founded on intelligible differentia”.

In **Akarawita et al** (supra) it was observed that,

“Article 12(1) of the Constitution therefore brings in a guarantee that there shall be no discrimination between one person and another, who are equals. This does not however mean that there cannot be any classifications between groups. Classifications are allowed if they are not arbitrary and as stated in **Ram Krishna Dalmia v Justice Tendolka** (AIR 1985 S.C. 538), classifications have been founded upon intelligible differentia. The objective of this is to treat equals equally and not unequally”.

Facts and circumstances relating to the case under consideration as discussed hereinbefore clearly demonstrate that the respondents at no stage had acted unreasonably, arbitrarily or capriciously. Members of a group of nearly ten thousand possessing similar qualifications, recruited together but placed in different positions in different departments cannot be assured with similar opportunities during the entire career including in relation to the opportunities or avenues for promotions. Promotions will be dependent on many criteria and they will be unique. The structure of each individual Department or Institution will depend on the needs of each such individual department or institution and will have to be in line with the policy in relation to the

public sector. Therefore, maintaining different schemes of promotions in different departments and institutions does not create an inequality between the employees in one such department or institution as against the employees in another institution or department even though they possess similar qualifications and were recruited as a single group and later posted to such different institutions and / or Departments.

In view of the above findings, I hold that the Petitioners have failed to establish a violation of their fundamental rights – the Right to equality guaranteed under Article 12(1) of the Constitution.

It is also pertinent to note that the Petitioners had invoked the jurisdiction of this Court on 29<sup>th</sup> July 2011- more than ten months since the impugned decision. Respondents contend that the Petitioners have failed to satisfy Article 126(2) of the Constitution – the requirement to invoke the jurisdiction of the Supreme Court within one month of the alleged violation of the Fundamental Right. In reply, the Petitioners claim that they are entitled to the benefit of section 13(1) of the Human rights Commission of Sri Lanka Act No 21 of 1996. However, Respondents further contend that the Petitioners through the documents produced marked P33 and P34 had failed to demonstrate that there was an inquiry pending before the Human Rights Commission at the time the Petitioners invoked the jurisdiction of this Court.

His Lordship S.N. Silva CJ in **H.K. Subasinghe v The Inspector General of police et al.** SC (Spl) No 16 of 1999, SC minutes of 11.09.2000, observed that

“The petitioner seeks to bring a complaint within the time limit on the basis that he made a complaint to the Human Rights Commission of Sri Lanka within the stipulated time. In this regard the petitioner relies on section 31 of the Human Rights Commission of Sri Lanka Act, No. 21 of 1996 which provides that where a complaint has been made within a period of one month to the Human Rights Commission, the period within which the inquiry into such complaint was pending before the Commission will not be taken into

account in computing the period within which an application should be filed in this Court.

The petitioner has failed to adduce any evidence that there has been an inquiry pending before Human Rights Commission. In the circumstances, we have to uphold the preliminary objection raised by learned State Counsel”.

In **Divalage Upalika Ranaweera et al v Sub Inspector Vinisias et al**,<sup>1</sup> SC FR 654/2003, SC minutes of 13.05.2008, His Lordship Amaratunga J observed that

“a party seeking to utilize section 13(1) of the Human Rights Commission Act to contend that ‘the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court’ is obliged to place material before this court to show that an inquiry into his complaint is pending before the Human Rights Commission”.<sup>2</sup>

I observe that P33 is a copy of an undated and unsigned application of one K.K.Palitha Padmasiri submitted to the Human Rights Commission. P34 is a letter issued by the Human Rights Commission on 16<sup>th</sup> November 2010. It is addressed to Mr. K.K.Palitha Padmasiri. It refers to an application submitted on 06<sup>th</sup> October 2010. The Human Rights Commission had directed that further details be submitted by 15 December 2010. However, Petitioners claim that P34 is a copy of a letter the 13<sup>th</sup> Petitioner received from the Human Rights Commission informing that observations have been called from the Respondents. This assertion is factually incorrect. As described above, P34 is a letter calling further details from the Petitioner in relation to the response of the Respondents dated 26<sup>th</sup> October 2010. There is no material indicating that the

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<sup>1</sup> It is pertinent to note that the judgment referred to in this paragraph is reported in [2008] 1 SLR at page 260 under the name **Ranaweera and Others v Sub-Inspector Wilson Siriwardane and Others**. An examination of the Petition and the Affidavit of the Petitioners in this case reveal that the 01<sup>st</sup> Respondent named therein is “Sub Inspector Vinisias” and not “Wilson Siriwardane”. “Wilson Siriwardane” is the person who is named as “care of” in the postal address of the three Petitioners.

<sup>2</sup> [2008] 1 SLR 260 at 273

13<sup>th</sup> Petitioner did in fact submit further details called by the Human Rights Commission. There is no material placed before this court to demonstrate that there was an inquiry pending before the Human Rights Commission at the time the Petitioners invoked the jurisdiction of this Court, more than ten months after the impugned decision P32.

Under these circumstances, Petitioners have failed to establish that they have complied with Article 126(1) of the Constitution in invoking jurisdiction of this Court. However, I observe that this Court on 14.05.2013 had granted leave to proceed in this matter. There is no material indicating that the Court considered the 'time bar' when granting leave to proceed. At the argument stage Court heard submissions of both parties on merits even though the learned Deputy Solicitor-General raised an objection on the basis of time bar. Therefore, I proceeded to consider all such submissions and to make the determination on merits, following the practice adopted in Ananda Dharmadasa et al v Ariyaratne Hewage et al, [2008] 2 SLR 19, even though this application could have been dismissed in *limine* on the basis of time bar.

In view of my findings on the merits of this matter as recorded hereinbefore, the Petitioners have not been successful in establishing that their Fundamental Right guaranteed in terms of Article 12(1) of the Constitution had been infringed by the Respondents. This application is accordingly dismissed. No costs ordered.

Chief Justice

Murdu N.B. Fernando, PC, J

I agree.

Judge of the Supreme Court

S. Thuraija, PC, J.

I agree.

Judge of the Supreme Court