

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

In the matter of an application in
terms of Articles 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka in respect of
violation of Articles 12(1) and 14(1)(g) of
the constitution.

S.C. (FR) No. 507/2019

- 1.** Heenatigala Kanaththage Indika
Prasanna, No, 477/8A, Kotte
Road, Pitakotte
- 2.** Wendakoon Mudiyanseelage
Shamira Thilakarathne,
No. 141/1, Church Road, Pahala
Mawila, Nattandiya
- 3.** Indika Kenath Fernando, No.
254/24, Welaboda Rd,
Katunayake.
- 4.** Subhanu Janaka
Hiddallaarachchi, No.13, 11th
Lane, Palathota Watta, Duwa
Temple Road, Kalutara South.
- 5.** Galgamuge Somil Chandima Silva,
No. 72/A, Udugampala Road,
Kotugoda.
- 6.** Balasuriya Lekamalage Gayan
Prasanna Balasuriya
19/A, Nagawanarama Road,
Nedagamuwa, Kotugoda.

- 7.** Thiyunuwan Senadheera
No.34, Marapola, Veyangoda.
- 8.** Sathika Sanjeewanie Liyanage,
No.06 A, Malwattha, Bemmulla.
- 9.** Angodage Don Mahesh Indrajith.
No.536/2, Batagama South,
Kandana.
- 10.** Warnakulasuriya Malith
Sudarsha Lowe
No 82, Convert Rd.,Bolawalana,
Negombo.
- 11.** Suranga Jayawardana
Wickramasinghe
No.474/16,Kamburagalla watta,
Ruggahawila.
- 12.** Kodagoda Ranasinghege Dinusha
Manoj Ranasinghe,
46/2, Wijayamangalarama Road,
Kohuwala
- 13.** Asmagoda Pathiranage Saman
Pushpa
Kumara,
No 2/23, Big city, Pellawatte,
Minuwangoda.
- 14.** Nanayakkara Pathiranage Lakmal
Suranga, Thalachenawattta,
Dadagamuwa, Veyangoda
- 15.** Herath Pathiranage Amila Eranga
Herath,

Ketawala Gedara, Wewagama,
Kuliyapitiya

16. Disanayake Mudiyanseelage
Amitha Ruwan Disanayake,
Ambagaswewa, Hathagama,
Riddibedi Ella, Maho.

17. Gamaralalage Nilantha Aruna
Bandara
Kanmeewala.
Parabewila, Pothuhera,
PC 60330.

18. Rajapaksha Pathirennelage
Upul Jayarathne Edirisinghe
No. 101, Dambutuwa, Debahera.

Petitioners

VS.

1. Airport and Aviation Services
(Sri Lanka) (Private) Limited,
Bandaranaike International
Airport, Katunayake.

2. Major General (Retired) G. A
Chandrasiri Chairman,

2A Athula Galketiya.
Chairman,

3. R. Sooriyarachchi, Vice
Chairman.

Party sought to be added/substituted

Party sought to be added/substituted

3A Dr. Ajith Mendis Vice
Chairman.

3B Awanthi Senarathne Vice
Chairman.

4. A. S.C: Warushahennadige, :
Executive Director,

5. S. N. Sumanasekara,
Director,

6. T. Weerasinghe,
Director,

6(A) Capt. Milinda Ratnayake
Director,

7. U. Manchanayake, Director,

7(A) G U K Algewattage
Director,

8. C. Vitharane, Director,

8(A) Sunil De Silva, Director,

9. D.A De Livera, Director, 9(A) G
A A Priyantha Director,

10. S.D Karunaratne, Director

10A. R.A.P Wijerathnasekara,
Director,

10B. R.M.A Ratnayake,
Director,

10C Amith Wijesuriya
Director,

10D Amal A Randeniya
Director

All of at:

Airport and Aviation Services
(Sri Lanka) (Private) Limited,
Bandaranaike International
Airport, Katunayake.

2nd to 10D Respondents,
being members of the Board of
Directors of Airport and
Aviation Services (Sri Lanka)
(Private) Limited.

11. M.C.G Mahipala, Head of
Human Resources and
Secretary to the Board of
Directors, Airport and Aviation
Services (Sri Lanka) (Private)
Limited, Bandaranaike
International Airport,
Katunayake.

11A K.A. Ruwan Kodikara,
Head of Human Resources
Airport and Aviation Services
(Sri Lanka) (Private) Limited,
Bandaranaike International
Airport, Katunayake.

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

Respondents

Before : P. Padman Surasena, J.
Menaka Wijesundera, J.
Sampath K. B. Wijeratne, J.

Counsel : Harsha Fernando, PC, with Yohan Cooray and Chamith Senanayake instructed by Jagath Talgaswattage for the Petitioners.
Rajitha Perera, DSG for the Respondents.

Written Submissions : Written submissions on behalf of the petitioners filed on 29th March, 2023.
Written submissions on behalf of the 2nd respondent filed on 02nd January, 2023

Argued on : 26.03.2025

Decided on : 30.05.2025

MENAKA WIJESUNDERA J.

The petitioners in the instant matter have been serving as employees of Airport and Aviation services ltd. and currently serving as engineers, senior technical officers and technical officers.

Appointments to these posts are given by the Minister of Tourism and Aviation. The petitioners have joined service as junior officers and subsequent to the promotions in 2017, they had been absorbed to the current positions.

The basic qualification required to join the service has been stated in paragraph 9 of the petition. However, they are at liberty to pursue post graduate education and they have done so in Business Administration, which they claim is highly relevant to their service and most of the petitioners have obtained Masters degrees in Business studies.

The petitioners further state that the salary structure of the petitioner's service includes, the basic salary, salary adjustments, cost of living allowance and other allowances, which includes professional allowance.

The petitioners allege that this professional allowance has been revised and that the petitioners were not included in that scheme but qualifications required to be included in that scheme are to be, head of a division and possess an MBA or any other post graduate qualification in any Financing subject or a post graduate qualification in Business Management.

Similarly, Engineers also have been included in this category, if they hold the position of an Engineer or have registered with the Engineering charter.

The petitioners further allege that they pursued their post graduate education in Business Management with the legitimate expectation of being eligible for the professional allowance before it was revised.

Therefore, the petitioners have alleged that the revision in 2017, by way of P18, has violated their fundamental rights under Article 12(1) of the Constitution.

Upon the support of this application, this Court has granted leave under article 12 (1) of the Constitution.

The respondents in their written submissions have stated that the petitioners are in the field of Engineering and therefore do not fall under a general category, which makes their studies in Business administration and other Commercial aspect studies being redundant and not being relevant.

The respondents have further averred that the petitioners have been paid for their training in professional studies since 2011 but this does not qualify them to receive the professional allowance because they fall short of the "Engineering category".

The respondents have further averred that the petitioners were paid the professional allowance for a short period until the ambiguities in the payment scheme for the Engineering category were ironed out.

The respondents have averred that the petitioners were adequately warned of the futility in them pursuing the MBA courses by way of P8 and P15 and they also state that most of the petitioners have enrolled in their studies after the warning has been issued.

Furthermore, the petitioners also have taken up the objection of the time bar which they substantiate by saying that the revision was made and informed on

the 11th of September, 2017 but the petitioners have prayed for relief on the 22nd of June 2018, which is well over one month.

Therefore, upon considering the facts stated by the petitioners and the respondents, it is very clear to this Court that the petitioners were involved in an employment in the Engineering field but minus the professional qualification which has deprived them of the professional allowance from 2017.

Until 2017 the professional allowance had been paid to the general category due to the rules governing the payment not being clearly set out.

But by September, 2017, it has been set right and P18 has been issued which had clearly indicated who can be paid the professional allowance.

The petitioners had arduously argued that their legitimate expectations were unfulfilled by the actions of the respondents and that their rights had been violated under article 12(1) of the Constitution.

Article 12(1) of the constitution stipulates an equal protection under the law, and in page 81 of the book titled “**Fundamental rights in Sri Lanka**” by **Justice S. Sharvananda**, where he states that “*Equality before the law means that among equals the law should be equal and should be equally administered and that the like should be treated alike*”. He further asserts, “*the rule is that the like should be treated alike and not, that unlike should be treated alike*”.

At this point I also draw my attention to the case of **Pathumma and others vs The State of Kerala A.I.R 1978 S.C. 771 at 786** where it was held that,

“Before a person can claim to be discriminated against another, he must show that all the other persons are similarly situated or equally circumstanced..... Discrimination violative of Article 14 can only take effect if there is discrimination between equals and not where unequals are being differently treated.”

In the instant matter, it is noteworthy to keep in mind that the petitioners never obtained a professional qualification as engineers although they were paid the professional allowance along with the engineers before the revision. Hence, it has to be stated with regret that the petitioners cannot be placed in the category of equals with the engineers in view of the above mentioned Indian judgment.

It also has to be noted that if relief is sought under Article 12(1), the petitioner must come before this Court within one month of the infringement.

But as pointed out by the respondents, they had come to Court well over one month. This delay, which is substantial, makes this application time barred.

Therefore, on considering the material stated above by the petitioners, it is clear with certainty that the petitioners' employment did not fall within the category specified in P18. The petitioners had been duly informed, by way of P8 and P15, that the studies they were pursuing was not relevant for the classification they were trying to obtain when the state policy has been revised by P18.

Upon considering the material submitted by the petitioners, it appears to this Court that they were trying to pursue a rainbow in the sky, which was definitely out of their reach, when they had been well warned and educated.

Therefore, I am of the opinion that the material submitted by the petitioners do not establish any infringement of a right under Article 12(1) of the Constitution, with the requisite degree of certainty.

As such, the instant application is dismissed without costs.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT