

**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 & 126 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka in respect of  
violation and/or imminent violation of  
Articles 12(1) and 14(1)(g) of the  
Constitution.

Jebarajes Krishnamoorthy nee  
Kumarasingam,  
8B, Nalandarama Road, Nugegoda.

**Petitioner**

SC FR Application No. 192/2019

-Vs-

1. Dharmasena Dissanayake,  
Chairman,  
Public Services Commission.
- 1a. Hon. Justice Jagath Balapatabendi,  
Chairman,  
Public Services Commission.
2. Prof. Hussain Ismail,  
Member,  
Public Services Commission.
- 2a. Indrani Sugathadasa,  
Member,  
Public Services Commission.
3. Sudharma Karunarathna,  
Member,  
Public Services Commission.
- 3a. V. Shivagnanasothy,  
Member,  
Public Services Commission.

4. Dr. Prathap Ramanujan,  
Member,  
Public Services Commission.
- 4a. T.R.C. Ruberu,  
Member,  
Public Service Commission.
5. V.Jegarasingam,  
Member,  
Public Services Commission.
- 5a. Ahamod Lebbe Mohamed Saleem,  
Member,  
Public Services Commission.
6. G.S.A.De Silva,  
Member,  
Public Services Commission.
- 6a. Leelasena Liyanagama  
Member,  
Public Services Commission.
7. S. Ranugge,  
Member,  
Public Services Commission.
- 7a. Dian Gomes,  
Member,  
Public Services Commission.
8. D.Laksiri Mendis,  
Member,  
Public Services Commission.
- 8a. Dilith Jayaweera,  
Member,

Public Services Commission.

9. Sarath Jayatilaka,  
Member,  
Public Services Commission.

9a. W.H.Piyadasa,  
Member,  
Public Services Commission.

All of:  
No.1200/9,  
Rajamalwatta Road,  
Battaramulla.

10. The Secretary,  
Public Service Commission,  
No.1200/9,  
Rajamalwatta Road,  
Battaramulla.

11. The Secretary,  
Ministry of Public Administration,  
Home Affairs, Provincial Councils  
and Local Government,  
Independence Square,  
Colombo 07.

11a. The Secretary,  
Ministry of Public Service,  
Provincial Councils and Local  
Government, Independence  
Square,  
Colombo 07.

12. The Secretary,  
Ministry of Internal Trade, Food  
Security and Consumer Welfare,  
Level 22, West Tower,  
World Trade Center,

Colombo 01.

- 12a. The Secretary,  
State Ministry of Rattan, Brass,  
Pottery, Furniture, and Rural  
Industrial Promotion.
13. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
14. V. Yoosuf  
Divisional Secretary,  
Divisional Secretariat,  
Eravur Town.
15. M.Y Saleem,  
Commissioner,  
Eastern Province-Department of  
Local Government,  
Kanniya Road, Varothayanagar,  
Trincomalee.
16. W.A Hemantha,  
Senior Assistant Secretary,  
Ministry of Internal & Home  
Affairs and Provincial Councils &  
Local Government. No 330, Union  
Place, Colombo 02.
17. W.A.D Karunathilake,  
Director,  
Ministry of Health, Nutrition &  
Indigenous Medicine,  
385, Ven.Baddegama  
Wimalawansa Thero Mawatha,  
Colombo 10.

18. P.M.H Priyadarshini,  
Commissioner, Department of  
Land Title Settlement, No 1200/6,  
Mihikatha Medura, Rajamalwatta  
Road, Battaramulla.
19. B.P.C Kularathne,  
Deputy Director,  
Sri Lanka Customs.  
No. 40, Main Street,  
Colombo 11.
20. R.M Dayananda,  
Provincial Land Commissioner,  
Uva Provincial Council,  
Raja Vidiya,  
Badulla.
21. A.M.P Arampath,  
Director,  
Department of Management  
Services,  
3rd Floor, Ministry of Finance, The  
Secretariat, Colombo 01.
22. T.A.D.W Dayananda,  
Divisional Secretary,  
Divisional Secretariat,  
Doluwa.
23. M.A.T Senarath,  
Deputy Director General  
(Admin.),  
Ministry of Health, Nutrition and  
Indigenous Medicince,  
385, Ven. Baddegama  
Wimalawansa Thero Mawatha,  
Colombo 10.

24. R.M.P Rathnayake,  
Divisional Secretary,  
Divisional Secretariat,  
Mallawapitye.
25. H.M Nandasena,  
Divisional Secretary,  
Divisional Secretariat,  
Padukka.
26. C. Tennakoon,  
Municipal Commissioner,  
Central Province,  
Municipal Council,  
Pallekelle, Kundasale, Kandy.
27. J. M. T Jayasundara,  
Acting Director General,  
Department of Public Finance,  
Room 112, General Treasury,  
Ministry of Finance,  
Colombo 01.
28. O. M. Jabeer  
Director,  
Sri Lanka Customs,  
40, Main Street, Colombo 11.
29. N. W. Yapa  
Divisional Secretary,  
Divisional Secretariat,  
Thangalle.
30. A. K. N. Wickramasinghe,  
Commissioner,  
Department of Agrarian  
Development,  
42, Sir Marcus Fernando Mw,  
Colombo 07.
31. E. M. P. Ekanayake Divisional

Secretary, Divisional Secretariat,  
Nikaweratiya.

32. M. Warnakulasooriya Divisional  
Secretary, Divisional Secretariat,  
Udunuwara.

33. M. N. P Gunarathne  
Senior Assistant Secretary,  
Ministry of Agriculture, Rural  
Economic  
Affairs, Livestock Development,  
Irrigation and Fisheries & Aquatic  
Resources Development,  
No 11, Jawatte Road, Colombo 05.

34. H. M. B. P. Herath  
Senior Assistant Secretary,  
Presidential Secretariat  
Galle Face, Colombo 01.

35. E. K. A. Sunitha Divisional  
Secretary, Divisional Secretariat,  
Hambanthota.

36. R. M. R. Rathnayake,  
Additional District Secretary,  
District Secretariat, Kurunagale.

37. C. S. Weerasinghe,  
Senior Assistant Secretary,  
Ministry of Defence,  
15/5, Baladaksha Mawatha,  
Colombo 03.

38. N. S. M. L. P. Nanayakkara  
Commissioner,  
Western Provincial Council,  
Department of Local Government,  
No.204, Denzil Kobbekaduwa  
Mawatha, Battaramulla.

39. K. G. Wijesiri,  
Senior Assistant Secretary,  
Ministry of Education,  
"Isurupaya",  
Pelawatta, Battaramulla.
40. R. H. Kamal,  
Additional District Secretary  
(Admin),  
District Secretariat, Galle.
41. C. K. Wijemanna,  
Director,  
Ministry of City Planning, Water  
Supply and Higher Education,  
"Lakdiya Medura",  
35 New Parliament Rd, Sri  
Jayawardenepura Kotte.
42. N. A. Egodawela,  
Divisional Secretary,  
Divisional Secretariat,  
Ukuwela.
43. U. G. V. Kariyawasam,  
Acting Provincial Secretary,  
Southern Province~Public Service  
Commission, 6th Floor  
District Secretariat Building, Galle.
44. E. S. G. Edirisinghe  
Controller (Admin.),  
Department of Immigration &  
Emigration,  
"Suhurupaya",  
Sri Subhuthipura Road,  
Battaramulla.
45. D. D. K. Wickramarachchi  
Divisional Secretary,



Divisional Secretariat, Matara

46. W. M. Ananda  
Divisional Secretary,  
Divisional Secretariat,  
Nuwara Eliya
47. N. H. M. W. W. N. Herath Kumari  
Divisional Secretary,  
Divisional Secretariat,  
Kamburupitiya.
48. S. M. Lal  
Director (Admin),  
Department of Manpower &  
Employment,  
9th floor, Sethsiripaya 2nd stage,  
Battaramulla.
49. M. D. M. D. Karunathilake  
Commissioner (Planning, Research  
& Training),  
Department of Labour,  
Labour Secretariat,  
No 41, Kirula Road, Colombo 05.
50. H. W. M. M. Pushpalatha Menike,  
Attaché,  
Ministry of Public Enterprise,  
Kandyan Heritage and Kandy  
Development, Level 7, West Tower,  
World Trade Centre, Colombo 01.
51. P. S. Wimalaweera  
Senior Assistant Secretary,  
Ministry of Agriculture, Rural  
Economic Affairs, Livestock  
Development, Irrigation and  
Fisheries & Aquatic Resources  
Development,  
288, Sri Jayawardenepura

Mawatha,  
Sri Jayawardenepura Kotte.

52.S.Theivendran  
Additional District Secretary,  
Disctrict Secretariat,  
Jaffna.

53.D.A.H Piyathilake  
Divisional Secretary,  
Divisional Secretariat,  
Rathmalana

54.U.B.R Rajapakshe  
Commissioner (HR),  
Department of Agrarian  
Development,  
42, Sir Marcus Fernando Mw,  
Colombo 07.

55.R.L.S.P Swarnalatha  
Senior Assistant Secretary (Admin)  
Ministry of Women & Child Affairs  
and Dry Zone Development,  
5th Floor, Sethsiripaya Stage II,  
Battaramulla.

56.B.M.P.G.P.V Bandara,  
Divisional Secretary,  
Divisional Secretariat, Kandy, Four  
Gravets, Gangawatakorale.

57.H.A.V.P Hapangama  
Deputy Director,  
Sri Lanka Customs,  
40, Main Street,  
Colombo 11.

58.M.A.L.S.N.K Manthrinayake  
Director,  
Ministry of Plantation Industries,  
11th Floor,

Sethsiripaya 2nd Stage,  
Battaramulla.

59.W.H.M.M.C.K Dayaratne,  
Senior Assistant Secretary, Public  
Service Commission, 1200/9  
Rajamalwatta Road, Battaramulla.

60.D. Muthugala  
Acting Director General,  
Department of Sports Development,  
09, Phillip Gunawardana Mawatha,  
Colombo 07.

61.B.N Pathirana  
Senior Assistant Secretary,  
Office of Leader of the Opposition,  
Parliament of Sri Lanka  
Sri Jayewardenepura Kotte.

62.K.P Chandith  
Director (Admin.),  
Sri Lanka Institute of Development  
Administration,  
28/10 Malalasekara Mawatha,  
Colombo 00700.

63.R.B Gankewala  
Deputy Director,  
Sri Lanka Customs,  
40, Main Street, Colombo 11.

64.Sunil Galagama,  
Municipal Commissioner,  
Western Province-Municipal  
Council,  
Dehiwala-Mount Lavinia,  
Galle Rd, Dehiwala-Mount Lavini

65.J.S.P Piyasena  
Senior Instructor,

Sri Lanka Institute of Development  
Administration-Seconded,  
28/10 Malalasekara Mawatha,  
Colombo 00700.

66.G.M.J.K Gunawardena  
General Manager,  
Coconut Cultivation Board-  
Seconded,  
No. 9/428 Denzil Kobbekaduwa  
Mawatha,Sri Jayawardenepura  
Kotte.

67.A.K.R Alawatta  
Divisional Secretary,  
Divisional Secretariat,  
Negombo.

68.L.P Liyanage  
Director,  
Ministry of Mahaweli  
Development and  
Environment,  
Sobadam Piyasa,  
No. 416/C/1,Robert  
Gunawardana  
Mawatha,Battaramulla.

69.D.M.K.C Dissanayake  
Commissioner,  
North Western Province-  
Department of  
Land Commissioner,  
No.59, Temple Road, Jaffna.

70.P.L Pathmakumara  
Attaché,  
Ministry of Primary Industries and  
Social Empowerment, 16th Floor,  
Suhurupaya,  
Battaramulla.

71.N.U.N Mendis

Director,  
Ministry of Public Administration &  
Disaster Management-Combined  
Services,  
Independence Square,  
Colombo 00700.

72.T.D Pathirana

Foreign Leave,  
Ministry of Public Administration &  
Disaster Management,  
Independence Square,  
Colombo 00700.

73.E.A Rathnaseela

Director,  
Department of Public Finance,  
Room 112, General Treasury,  
Ministry of Finance, Colombo 01.

74.H.K.K.A Jayasundara

Foreign Mission,  
Department of Labour,  
Labour Secretariat,  
No 41, Kirula Road, Colombo 05.

75.C.Abeywickrama

Divisional Secretary,  
Divisional Secretariat,  
Kirinda-Puhulwella.

76.G.P.N.M Abeysekara

Senior Assistant Secretary (Admin.),  
Ministry of Megapolis and Western  
Development,  
17th and 18th Floors,  
"Suhurupaya" Battaramulla.

77.C.Wickramasinghe,

Senior Assistant Secretary,  
Presidential Secretariat,  
Galle Face,  
Colombo 1.

78.M.K.D.N Madampe  
Director,  
Department of Development  
Finance,  
Room No. 142  
1st Floor, Ministry of Finance,  
The Secretariat,  
Colombo 01.

79.C.C Muhandirange  
Divisional Secretary,  
Divisional Secretariat,  
Yakkalamulla.

80.S.J Kahawatta,  
Acting Director General,  
Department of Fisheries & Aquatic  
Resources,  
New Secretarial,  
Maligawatta, Colombo-10.

81.S.B.Udowita  
Addl District Secretary,  
District Secretariat,  
Ratnapura.

82.S.P. Liyanage  
Senior Asst Secretary.  
Ministry of Health, Nutrient &  
Indegenous  
Medicine  
385, Ven Baddegama  
Wimalawansa Thero  
Mawatha, Colombo 10.

83.S.D.N.U. Senadheera  
Senior Advisor  
Sri Lanka Institute of Development

Administration,  
28/10, Malasekara Mw.,  
Colombo 07.

84.A.H.M.L.Abeyrathna,  
Commissioner,  
Department of Agrarian  
Development, 42 Sri Marcus  
Fernando Mw, Colombo 07.

BEFORE: Hon. Buwaneka Aluwihare, PC, J.  
Hon. Yasantha Kodagoda, PC, J.  
Hon. Janak De Silva, J.

COUNSEL: Harsha Fernando with Chamith Senanayake and Yohan Cooray  
instructed by Jagath Talgaswattage for the Petitioner.

M. Gopallawa DSG for the 01<sup>st</sup> to 13<sup>th</sup> Respondents.

ARGUED ON: 16.07.2021.

WRITTEN SUBMISSIONS: 09.07.2021 for the 1<sup>st</sup> -13<sup>th</sup> Respondents.  
16.07.2021 for the Petitioner.  
20.08.2021 for the 1<sup>st</sup> -13<sup>th</sup> Respondents.

DECIDED ON: 31.10.2023

### Judgement

Aluwihare, PC, J,

When the jurisdiction of this Court was invoked by the Petitioner, she was an officer in Grade I of the Sri Lanka Administrative Service (hereinafter 'SLAS'). The Petitioner sought leave to proceed under Articles 12(1) and 14(1)(g) of the Constitution. It was the contention of the Petitioner that her Fundamental Rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution had been infringed by the

Respondents by their arbitrary and unlawful failure to call her for interview for promotion from Grade I to the Special Grade of the SLAS. Having formed the opinion that the application merits adjudication, this Court granted Leave to Proceed under Articles 12(1) and 14(1)(g) of the Constitution on 20<sup>th</sup> June 2019. The 1<sup>st</sup> to 13<sup>th</sup> Respondents were represented by the learned Deputy Solicitor General, the other Respondents, however, were absent and unrepresented.

### The Facts

The merits of the instant case directly correlate to the factual circumstances of Petitioner's Service in the Sri Lanka Administrative Service. Therefore, the facts have been set out below in their warranted detail.

- (1) The Petitioner joined the Public Service as a Science Teacher on 10<sup>th</sup> December 1986. Thereafter, the Petitioner was appointed to the SLAS Class II – Grade II with effect from 10<sup>th</sup> September 1990 (letter marked 'P1A'). The said appointment was made under and in terms of the 1988 Minutes of the SLAS. The Petitioner held the post of 'Assistant Divisional Secretary' in Ambagamuwa Korale, Ginigathhena.
- (2) Thereafter, in October 1992, in terms of the 1988 SLAS Service Minutes (referred to above), the Petitioner duly completed the 1<sup>st</sup> Efficiency Bar Examination (letter 'P4'). In November 1992, the Petitioner married Mr. V. Krishnamoorthy, who at the time was a career officer of the Sri Lanka Foreign Service. In 1992, upon the Petitioner's Husband being posted as the Third Secretary to the Sri Lankan Embassy in Beijing, China, the Petitioner sought and obtained no pay leave from the SLAS under and in terms of Chapter XII-Section 36 of the Establishments Code to join her husband and relocate to Beijing, China. The said leave, to have effect from 1<sup>st</sup> December 1992 to 1<sup>st</sup> December 1995 was approved by letter dated 24<sup>th</sup> November 1992 (marked 'P5A'). The Petitioner therefore had actively served approximately 2 years and 3 months at the time of obtaining the said leave.
- (3) While resident in China, the Petitioner gave birth to her two daughters, in August 1993 and December 1994 respectively. The Petitioner's Husband's period of service was extended by the Foreign Service to 31<sup>st</sup> December 1997. The Petitioner's no pay leave too, was extended till 31<sup>st</sup> December 1997 (marked 'P5B-P5D'). In the



meantime, the Petitioner duly completed the 2<sup>nd</sup> Efficiency Bar Examination as stipulated in the 1988 SLAS Service Minutes. A copy of the results sheet dated 31<sup>st</sup> January 1996 was produced ('P6').

(4) In December 1997, the Petitioner's family returned to Sri Lanka as her Husband was attached to the Ministry of Foreign Affairs in Colombo. Thereafter, the Petitioner resumed actively working in the SLAS, and worked as an Assistant Secretary to the Judicial Service Commission and thereafter as Assistant Divisional Secretary, Thimbirigasyaya from 1<sup>st</sup> January 1998 to 4<sup>th</sup> March 2001, for a period of 3 years and 3 months.

(5) In 2001, the Petitioner's Husband was appointed to the Embassy of Sri Lanka in the Hague, the Netherlands. The Petitioner once again obtained no pay leave in terms of Chapter XII – Section 36 of the Establishments Code. The said no pay leave was obtained from 1<sup>st</sup> March 2001 to 31<sup>st</sup> August 2004. The relevant approval and extension letters were produced (marked 'P7A-P7D'). Upon completion of that assignment, the Petitioner's Husband was reassigned to the Ministry of Foreign Affairs in Colombo with effect from 1<sup>st</sup> September 2004. The Petitioner reported to work with effect from 1<sup>st</sup> September 2004 as the Assistant Secretary/Director of the Ministry of Social Services. The Petitioner served in this capacity for approximately 2 years.

(6) Thereafter, the Petitioner's Husband was once again posted to Bangladesh to serve as Sri Lanka's High Commissioner with effect from 1<sup>st</sup> June 2006. The Petitioner once again accompanied her Husband with her two daughters and relocated to Bangladesh. The Petitioner left the country utilising her accumulated leave under the Establishments Code. Upon arrival, the Petitioner was selected to follow a postgraduate program at Dhaka University, leading to a Master of Social Sciences in Public Administration. Upon completion of her Master's degree, as the Petitioner's Husband continued to serve as the Sri Lankan High Commissioner to Bangladesh, the Petitioner obtained no pay leave once more in terms of Chapter XII – Section 36 of the Establishments Code from 4<sup>th</sup> April 2008 to 16<sup>th</sup> June 2009. The letters of approval were produced (marked 'P8A and P8B').

(7) Upon conclusion of the Petitioner's Husband's term in Bangladesh, the Petitioner returned to Sri Lanka with her Eldest Daughter while the Husband and the Younger Daughter relocated to Chennai, India for the Husband's new posting. The Petitioner states that this was done because her children were then old enough to live with one of their parents and the Petitioner wished to return to active service in the SLAS. Upon her return, the Petitioner was appointed the Director, National Secretariat for Elders, Ministry of Social Services.

(8) On 27<sup>th</sup> April 2010, the Petitioner was promoted to SLAS Grade II (letter marked 'PIC') and on 01<sup>st</sup> July 2010, to SLAS Grade I (letter marked 'PID'). These appointments were made pursuant to the Sections of the 2005 Service Minute of the SLAS. Thereafter, the Petitioner served as the Director, Presidential Task Force for Trilingual Sri Lanka from 18<sup>th</sup> June 2012 to 23<sup>rd</sup> February 2013 and as Additional Director General (Admin and Finance) of the Department of Technical Education and Training from 27<sup>th</sup> February 2013 to 29<sup>th</sup> April 2016. From 2<sup>nd</sup> May 2016 to 1<sup>st</sup> November 2016, the Petitioner served as the Food Commissioner and thereafter, till 31<sup>st</sup> December 2018, she served as the Director (Acting) to Department of Textile Industries. On 1<sup>st</sup> January 2019, she was appointed as the Additional Secretary (Acting) to the Ministry of Public Enterprises, Kandyan Heritage and Kandy Development. At the time the present application was filed, on 23<sup>rd</sup> May 2019, the Petitioner was serving as the Food Commissioner as well as Additional Secretary (Acting) to the Ministry of Public Enterprises, Kandyan Heritage and Kandy Development. Accordingly, from July 2009 to May 2019, the Petitioner was in active service approximately 10 years in active service. In aggregate, the Petitioner has served approximately 19 years in active service. This fact is not disputed by the Respondents.

(9) Upon completion of 18 years in active service, the Petitioner had requested that she be appointed to the Special Grade of the SLAS [letter dated 14<sup>th</sup> March 2018 addressed to the Secretary, Public Services Commission (marked 'P10')]. This request received a response in the form of a letter dated 30<sup>th</sup> May 2018 from the Senior Assistant Secretary of the Ministry of National Policies and Economic Affairs (with the Secretary of the PSC being copied) stating that if the Petitioner so wishes to apply for the promotion, she can do so once applications are called by the SLAS for the

promotion (marked 'P10B'). In a further letter dated 07<sup>th</sup> June 2018 and addressed to the Secretary, PSC through the Senior Assistant Secretary of the Ministry of National Policies and Economic Affairs, the Petitioner detailed the status of her eligibility for promotion to the Special Grade, in particular that she has completed 18 years of active service and as per the 2013 Service Minute of the SLAS, she is eligible for promotion to the Special Grade. The Petitioner further mentions that as per Section 36.4.1 of Chapter XII of the Establishments Code, the period of no pay leave taken by her should not have affected her seniority (marked 'P10C').

(10) On the 20<sup>th</sup> June 2018, the Senior Assistant Secretary of the PSC, on behalf of the Secretary, wrote to the Petitioner, and wrote to the Secretary of the Ministry of Public Administration, Law and Peace, stating that the Petitioner has indicated in her prior appeals that she has achieved the necessary qualifications for the promotion to the Special Grade as per the Extraordinary Gazette No. 1842/2 dated 23<sup>rd</sup> December 2013, and that she should be informed that she may apply for an interview for the said promotion (marked 'P10D'). Thereafter, the Additional Secretary of the Ministry of National Policies and Economic Affairs, on behalf of the Secretary wrote to the Petitioner, in a letter dated 03<sup>rd</sup> July 2018 (marked 'P10E') that she may apply for interview for the said promotion, as per the direction of the aforementioned letter from the PSC.

#### The Position of the Petitioner

The Petitioner filed the present application alleging that she was arbitrarily denied of her right to be called for interviews for promotion to the vacancies of the Special Grade of the SLAS on 1<sup>st</sup> July 2018, and that such denial was in violation of her Fundamental Rights Guaranteed under Article 12(1) and Article 14(1)(g). It must be noted that after the filing of the application, promotions were made to the Special Grade of SLAS on several occasions and the Petitioner too, was promoted to the Special Grade with effect from 1<sup>st</sup> January 2020. The Petitioner thereafter amended the relief sought to reflect her change in post and prayed for the date of her promotion the Special Grade of SLAS to be ante-dated to the 1<sup>st</sup> July 2018. Thus, the scope of the application was narrowed down to the issue of whether the failure to back-date the promotion to 1<sup>st</sup> July 2018 amounts to a violation of her fundamental rights, as alleged.

It is the Petitioner's position that Section 36 of Chapter XII of the Establishments Code applies to the Petitioner in a manner such that her seniority would not have been affected by the no-pay leave taken by her. The Petitioner also submitted that her 'seniority' should be assessed based on her total period of service, as 'period of active service' has a distinct existence. Consequently, it was argued that her eligibility for promotion would have been assessed based on her total period of service, and she would have been called for interview. Although the Petitioner submitted that there is a difference between "Seniority" and "Active service", the Petitioner did not specify the root of such difference or how such difference would have any pragmatic effect on promotions.

The Petitioner argued that under Section 36 of Chapter XII of the Establishments Code she entertained a legitimate expectation that her seniority would be safeguarded despite the no-pay leave taken. She further maintained that the 2013 SLAS Service Minute (marked '11R1' and '11R2'), persons will be called for interviews based on their seniority, and as such, the Petitioner should have been called for interviews. To further buttress this argument, the Petitioner noted that as per the Service Minute, the Interview Board was only required to satisfy themselves of the applicants 'eligibility and seniority' for affirmation of post. The Petitioner argued that, by extension, if there was an issue regarding her seniority, such issue should have been addressed by the Interview Board and not the Respondents who prepared the list of persons being called for interview.

The Petitioner also relied on the contention that Section 36 of the Establishments Code embodies the 'Right to Family' and the recognition of the Family as the fundamental unit in society as envisaged by Article 27(12) of the Constitution as a Directive Principle of State Policy. Citing dicta in *Kirahandi Yeshin Nanduja De Silva and Another v. Principal of Dharmashoka Vidyalaya Ambalangoda and Others* [2017] SC FR 50/2015, and *Ravindra Gunawardena Kariyawasam v. Cnetral Environmental Authority & Others* [2019] SC FR 141/2015, the Petitioner argued that this Directive Principle must be interpreted and upheld in favour of the Petitioner's position that the law does not permit the seniority of officers who are spouses of diplomats to be affected.

### The Position of the 1<sup>st</sup> to 13<sup>th</sup> Respondents

It was the submission of the Respondents that the eligibility criteria and method of promotion to the Special Grade of the SLAS were prescribed in Clause 13.3 of the 2013 SLAS Service Minute (marked '11R1'), with the eligibility criteria being specified in Clause 13.3(a) and the method of promotion being in Clause 13.3(b). The Respondents adverted to the fact that the method of promotion (Clause 13.3(b)) was amended in 2018, and that at the time the promotion in question was being sought, the method of promotion was governed by Clause 13.3(b) as amended. The Clause is reproduced below prior to amendment, and as it appears after amendment for ease of reference.

#### Prior to amendment:

##### **13.3.(b) Method of promotion:**

An officer who completes the above qualifications will be promoted to the Special Grade by the Public Services Commission as per vacancies available as at 1st July and 1st January every year. Recommendations for appointment to the Special Grade will be made following an evaluation made by a Board of Selection consisting of three members appointed by the Public Services Commission. In making its recommendations the said Board of Selection will act on the basis an overall evaluation of the seniority and merits of the officers concerned. For this purpose, officers who have obtained the qualifications stipulated in 13.3(a) above and whose number does not exceed twice the number of existing vacancies shall be subjected to the interview.

#### After amendment (as it presently appears):

##### *13.3 (b) Method of promotion :*

An officer who completes the above qualifications will be promoted to the Special Grade by the Public Service Commission according to vacancies available as at the 1<sup>st</sup> of July and the 1<sup>st</sup> of January every year :

##### Notes

1. Only a number of officers in Grade I who have completed the qualifications in 13.3(a) not exceeding the aggregate of both the number of vacancies and a quantum of 25% of such vacancies will be called for the interview according to the seniority of such officers as at the date on which the vacancies are taken into account.
2. The Board of Interview will examine only the basic qualifications and seniority of the officers who are called for the interview.
3. *The Public Service Commission will promote a number of officers equivalent to the number of vacancies existed in the Special Grade according to the order of seniority of officers in Grade I to the Special Grade as at the date on which the vacancies are taken into account on the recommendations made by the Board of Interview constituting three members appointed by the Public Service Commission.*

In response to the Petitioner's contention that the 2013 SLAS Service Minute contemplated two types of service, being the 'total period of service' and 'period of active service', the Respondents submitted that as per Clauses 13.3(a)(ii) and (iii), the period of service required to be eligible for promotion is only computed in terms

of ‘period of active service’ and no other criteria is used to measure period of service. Consequently, the learned Deputy Solicitor General argued that the differentiation sought to be established was misconceived and contrary to unambiguous language in Clause 13.3(a).

In lieu of the above, it was also submitted on behalf of the Respondents that it is the ‘period of active service’ which must be considered to determine the ‘seniority’ of officers when effecting promotions under Clause 13.3(b) of the Service Minute.

It was the Petitioner’s contention that she had satisfied the minimum eligibility criteria stipulated in Clause 13.3(a) and that she was entitled to be interviewed. Responding to this contention, the Respondents argued that such position is untenable and misconceived, as there is no ‘right’ of being interviewed for the following reasons:

- The SLAS is a ‘cadre-based service’;
- As per Clause 8.2 of the Service Minute, the Special Grade had 301 assigned posts;
- At the time the impugned promotion was due, as per the Seniority List (marked ‘11R5’), there were 799 officers in Grade I;
- Promotions to the Special Grade are contingent upon vacancies available (vide Clause 13.3(b));
- Note No.1 to Clause 13.3(b) prescribes that “*only a number of officers in Grade I who have completed the qualifications in 13.3(a) not exceeding the aggregate of both the number of vacancies and a quantum of 25% of such vacancies will be called for interview according to the seniority of such officers as at the date on which the vacancies are taken into account*”.

Additionally, the Respondents furnished the Court with the following information regarding the promotion:

Should the Petitioner have been called for Interview for promotion to the Special Grade?

The crux of the Petitioner’s submission that her Fundamental Rights guaranteed under Article 12(1) were violated rests on the contention that the Respondents had

**arbitrarily and unlawfully** failed to call the Petitioner for interviews. Therefore, the central question which warrants determination is whether the Respondents had acted as per the mandated procedures, specifically, as per the SLAS Service Minute and the Establishments Code, as applicable.

#### The SLAS Service Minute

Section 13. 3(b) of the Sri Lanka Administrative Service Minute, regarding the promotion of officers to the Special Grade states that a total aggregate of the vacancies available as at 01<sup>st</sup> January or 1<sup>st</sup> July, as well as 25% of persons fulfilling that aggregate shall be called for interviews based on seniority. Accordingly, although 128 applications were received, only 71 officers were called for interviews.

#### The Establishments Code

The Petitioner relies on Section 36:1:4 of Chapter XII of the Establishments Code to contend that she, as the Spouse of an Officer posted abroad, bore a Legitimate Expectation that her seniority would not be affected by virtue of any no-pay leave approved under the Section. Section 36:1:4 of Chapter XII of the Establishments Code reads as follows:

*“Subject to the following provisions, the seniority of such an officer [an officer who is the Spouse of an Officer posted abroad] will not be affected as a result of obtaining this no pay leave.*

- i. An officer who is granted no-pay leave under this section should not be considered for any promotion to any vacancies which may arise during the period of his no pay leave.*
- ii. Where a scheme of recruitment specifies a minimum period of service as a qualification for promotion, **the period of no-pay leave granted under this section should not be reckoned for computing the minimum period of service.**” [parenthesis and emphasis added]*

It is correct to state therefore that Section 36:1:4 of Chapter XII of the Establishments Code provides that where a promotion to a specific grade is dependent on the completion of a minimum period of service, the period of no-pay leave taken by such officer should not be counted for the purposes of ascertaining the minimum period

of service completed by such officer.

### Process of Promotion

The Respondents provided the following details of the process of promotion to the Special Grade in July 2018.

1. By Notice dated 13<sup>th</sup> March 2018 (marked 'P11' and 'P11A'), the Secretary, Ministry of Public Administration and Disaster Management called for applications to the Special Grade of the SLAS.
2. As at 01<sup>st</sup> January there were 19 vacancies in the SLAS Special Grade and as at 01<sup>st</sup> July 2018 there were 38 vacancies, amounting to a total of 57 vacancies as at 01<sup>st</sup> July.
3. Applications were received from 128 Grade I officers of the SLAS, including that of the Petitioner (marked 'P12' and 'P12A').
4. Since the number of applications received exceeded the number of available vacancies, candidates were shortlisted for promotion interviews as specified in Note 1 to Clause 13.3(b) of the SLAS Service Minute, based on the seniority of the officers who had tendered applications.
5. Seniority of the officers was determined by the official 'Seniority List' maintained by the Secretary, Ministry of Public Administration (marked '11R5' and referred to above).
6. Accordingly, 71 officers were shortlisted for interviews and a notice listing the names of such officers was published on the 24<sup>th</sup> of April 2019 (letter marked 'P13A'). The list of names was revised by changing 4 names. The revised list (marked as 'P13C') contains 67 names as 4 officers were listed for both interviews in respect of vacancies available as at 01<sup>st</sup> January 2018 and 01<sup>st</sup> July 2018.
7. For the aforementioned reason, the list of names was once again revised by substituting the names of the 81<sup>st</sup>, 82<sup>nd</sup>, 83<sup>rd</sup> and 84<sup>th</sup> Respondents in place of the 4 officers who were double counted, the 77<sup>th</sup> to 80<sup>th</sup> Respondents. The Respondents submitted that the 81<sup>st</sup> and 82<sup>nd</sup> Respondents were included as the Administrative Appeals Tribunal had quashed the disciplinary orders made against them while the 83<sup>rd</sup> and 84<sup>th</sup> Respondents had been included subsequent



to concessions being granted to them in respect of their Efficiency Bar Examinations from the Public Service Commission for the antedating of their appointment to SLAS Grade I.

8. Subsequently, interviews were conducted, and approval was granted by the Public Service Commission to promote 19 officers with effect from 1<sup>st</sup> January 2018 and 37 officers with effect from 01<sup>st</sup> July 2018.
9. The Respondents also submit that all the officers who were called for interviews and subsequently promoted were senior in service to the Petitioner for the reason that although most of them had joined the SLAS after the Petitioner, they had surpassed her in seniority at the time of her promotion to Grade II, due to their accumulation of service whilst the Petitioner had obtained an extensive period of no-pay leave. Accordingly, all such officers had secured their promotion to the Grade II by the 15<sup>th</sup> February 2010 while the petitioner had secured her promotion to Grade II by the 27<sup>th</sup> April 2010. The same officers had maintained such seniority above the Petitioner in Grade I.
10. The Petitioner was not considered for interviews even though she had tendered an application as she was ranked 208<sup>th</sup> in the Seniority List, which is considerably lower than the seniority ranks of the officers who had been called for interview.

#### The 'Seniority List'

The Seniority List (marked '11R5') lists the Petitioner at No. 208 and therefore places her far beyond the number of SLAS officers within contention of being called for interview for the promotion. The Petitioner disputes the veracity of the 'Seniority List' produced by the Respondents (*vide* para 25 of the written submission dated 12.08.2021). The Petitioner claims that although it is conceded that 11<sup>th</sup> Respondent is responsible for 'maintaining' the list, the author of the list is not revealed and therefore its originality or authenticity is unacceptable. The Respondents maintain that this list was maintained in documentary form since 1978 and since 2001, it was maintained in electronic form in the official website of the Ministry of Public Administration, which was publicly accessible and had been updated at least once every three months on the website, and functions as the central roll or register of SLAS officers.

Provided that this 'Seniority List' is key in determining whether the Petitioner was

within the list of officers and applicants (an interviewee must be both) who could be called for interview, I find it prudent to reiterate the position in our Jurisprudence on who bears the Burden of Proof. Our Courts have strenuously followed the core maxim of '*affirmanti non neganti incumbit probatio*' in holding that the **burden of proof lies upon him who asserts and not who denies**. This is trite law. Applying the principle to the present case, it becomes evident that the burden of proving that the 'Seniority List' cannot be accepted as an official record of the seniority of officers in the SLAS rests firmly with the Petitioner.

It is the Petitioner's contention that her legitimate expectations and Fundamental Right to Equality before the Law guaranteed under Article 12(1) have been violated. It logically follows that it is the Petitioner who asserts that she was within the list of officers who were eligible for promotion to the Special Grade by 1<sup>st</sup> July 2018 and consequently, should have been called for interview. In effect, it is the Petitioner who must prove that she was in such a position. In order to do so, the Petitioner cannot merely dispute the veracity of *the list produced to dispute the Petitioner's position* by the Respondents, she must establish before court, on her own accord, independent to the material produced by the Respondents, that she was placed in the Seniority list of the SLAS in a manner making her not eligible for promotion, but also that the Respondents were bound to call her for interview above and before other applicants. The position of the Petitioner falls further beyond the ambit of merit when considering that, as the Petitioner was a senior officer in the SLAS who had received promotions to Grade II and Grade I which were also conditioned on Seniority and therefore *based on the same list*, had there been any issue with regard to her positioning on the list, she could have raised the matter at any time prior to the calling of applications for vacancies for the Special Grade.

Secondly, it is also worth noting that provisions of the Evidence Ordinance provide for producing duly certified copies of Public Documents as proof of the contents therein and the Court can presume that the Seniority List of the SLAS was produced as genuine. Once the contents therein were proven by operation of the law, the burden of showing its contents are not accurate fell on the Petitioner. Besides noting that no one officer has claimed responsibility for creating the list, the Petitioner has not produced any material which could establish why she should not have been

placed 208<sup>th</sup> in such list by referring to her service record. The Court, therefore, can rely on the Seniority List that was produced by the Respondents as a genuine and accurate document, in the absence of any proof to the contrary.

Accordingly, the following facts must be observed in determining the Respondents compliance with the Establishments Code and the SLAS Service Minute:

The No. of Vacancies for the SLAS Special Grade as at 01<sup>st</sup> July 2018 = 57

The No. of Persons who were shortlisted for Interview [57 + (25% of 57)] = 71

The Seniority Rank of Petitioner according to the List = 208

Clause 13.3(a)(iii) of the SLAS Service Minute lists ‘an active period of service not less than eighteen years as at the date of promotion’ to be eligible for promotion to the SLAS Special Grade. Although the Petitioner sought to submit the view that the service minute contemplates the ‘total period of service’ and seniority, for the purpose of calling officers for interview, must be determined by such ‘total period’, and not ‘active period’, it must be observed that **Clause 13.3 does not require an examination of the entire period of service.** Therefore, it must be understood that any ‘minimum period of service’ contemplated under the Clause refers to ‘active service’ alone.

By extension, the aforementioned conclusion also leads to the view that Section 36 of the Establishments Code did affect the seniority of the Petitioner. Importantly, Section 36 begins by stating that “*Subject to the following provisions, the seniority of such an officer [an officer who is the Spouse of an Officer posted abroad] will not be affected as a result of obtaining this no pay leave...*” and the 2<sup>nd</sup> Proviso reads as follows:

*“Where a scheme of recruitment specifies a minimum period of service as a qualification for promotion, the period of no-pay leave granted under this section should not be reckoned for computing the minimum period of service.”*

Accordingly, it can be understood that the ‘minimum period of service’ contemplated in Clause 13.3 of the Service Minute for the promotion of officers to the Special Grade is stated in Clause 13.3(a)(iii) wherein ‘*an active period of service not less*

*than eighteen years as at the date of promotion*' is required. I therefore subscribe to the view advanced on behalf of the Respondents, that the Petitioner's seniority was duly affected by operation of the law and that she was not arbitrarily or unlawfully denied an opportunity to interview for promotion to the Special Grade.

In the absence of any arbitrary or unlawful action by the Respondents, I hold that the Petitioner has failed to establish a violation of Fundamental Rights guaranteed in terms of Article 12(1) of the Constitution, and the Petitioner is not entitled to the relief prayed. Accordingly, the application is dismissed.

However, taking into account the circumstances of this case, I order no costs.

*Application dismissed.*

Judge of the Supreme Court

Yasantha Kodagoda, PC, J

I agree.

Judge of the Supreme Court

Janak De Silva, J

I agree.

Judge of the Supreme Court

