

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 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

01. Edirachcharige Kushan,
No. J/11, Green Terrace,
Kahanthota Road,
Malabe.

02. Isuru Nadayalage Ashoka
Premasiri
Udanvita, Melsiripura.

03. Antanette Priyadarshani Rodrigo,
No. 139/1, Kepungoda,
Pamunugama.

04. Anura Deshapriya Palangasinghe,
No. 11, Sri Subodha Foundation,
Siribopura,
Hambanthota.

05. J.A.P.K.S. Jayakody,
No. 44, Thammita, Makevita.

06. S.M. Sandya Sudharshani,
206 E, Negombo Road,
Pahala Narangamuwa,
Giriulla.

07. W. Roshani Chandrika,

S.C. (F/R) Application No: 66/2019

No. 274/7, Ashokarama Road,
Ihala Bomiriya,
Kaduwela.

08. Thawarajah Jeyakanthan,
No. 11/34A, Weliamuna Road,
Hendala,
Wattala.

Petitioners

-Vs

01. Sri Lanka Bureau of Foreign
Employment, No. 234, Denzil
Kobbekaduwa Mawatha, Koswatta,
Battaramulla.

02. The Chairman,
Sri Lanka Bureau of Foreign
Employment, No. 234, Denzil
Kobbekaduwa Mawatha, Koswatta,
Battaramulla.

03. The General Manager,
Sri Lanka Bureau of Foreign
Employment, No. 234, Denzil
Kobbekaduwa Mawatha, Koswatta,
Battaramulla.

04. Keerthi Muthukumarana,
Deputy General Manager (Legal),
Sri Lanka Bureau of Foreign
Employment, No. 234, Denzil
Kobbekaduwa Mawatha, Koswatta,

Battaramulla.

05. P.P. Weerasekara,
Deputy General Manager (Planning),
Sri Lanka Bureau of Foreign
Employment, No. 234, Denzil
Kobbekaduwa Mawatha, Koswatta,
Battaramulla.

06. B.M.W. Gunasinghe,
Assistant Manager (Licence),
Sri Lanka Bureau of Foreign
Employment, No. 234, Denzil
Kobbekaduwa Mawatha, Koswatta,
Battaramulla.

07. The Secretary.
The Ministry of Foreign Employment,
No. 51/2/1, 2nd Floor,
Assert Arcade Building
York Street, Colombo 01.

08. G.G.P. Wijewardane

09. S. Wijesinghe

10. A.L.D.D. Lakranee

11. A.P.A Subasinghe

12. S. I. Chandanee

13. N.D.A. Jayasinghe

14. N. M Udalagama

15. K. M. Sriyalatha
16. R. M. N Rathnayake
17. A. Muthukumarana
18. B.A.D.N Rathnayake
19. K.R.K.B Menike
20. S.A.P.P Kumari
21. U.K.L.P Ayagama
22. D.D.A.N Jayawardane
23. K.R.P.K.H Gunarathne
24. K.M.N Anuruddha
25. M.C.N Ilaam
27. U.L. Ajeess
28. W.A. Nishanee
29. R.W.A.S Wasanthi
30. K.S.S.P Gunathilake
31. N.S Gamage
32. N.K Kannangara
33. W.L.C. Manohari

34. W.P.G.D.A.I Senanayake

35. U.I Madihahewa

36. S.T.L Kumara

37. A. Dangalla

38. S.P.C.J Senanayake

39. W.N Inoka

40. P.A.S Gunarathne

41. I.K Wickremasinghe

42. B.M.W Gunasinghe

43. H.K Iranganee

44. A.T.P Perera

45. P.A.T.G Paththapperuma

46. D.G.R.C.T Bandara

47. A.B.M Saleem

48. D.M.R.L Sirisena

49. H.V.G.L.D Weerathne

50. P.L Chandrika

51. A.B.M Saleem

52. Preethi Chaminda

8th to 52nd Respondents are of,
Sri Lanka Bureau of Foreign
Employment,
No.234, Denzil Kobbekaduwa
Mawatha,
Koswatta, Battaramulla.

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

Respondents

BEFORE : HON. JAYANTHA JAYASURIYA, PC, CJ.
HON. K. KUMUDINI WICKREMASINGHE, J.
HON. A.L. SHIRAN GOONERATNE, J

COUNSEL : Rasika Dissanayake with Sandun Senadhipathi and
Dinusha Pathirana instructed by Manjula Balasooriya for the Petitioners in *both*
cases.

Ikram Mohamed, PC with M.S.A. Wadood and Harshani Mallawaarachchi, Jerome
Senanayake instructed by Mallawaarachchi Associates for the 1st, 2nd and 5th
Respondents in SC.FR.No. 66/2019 and for the 1st and 2nd Respondents in
SC.FR.No.72/2019.

Saliya Pieris, PC with Farhad Jiffrey for the 8th to the 50th Respondents.

C.J. Fernando with Anjula Thalakumbura for the 4th Respondent in SC. FR. No.
66/2019 and for the 5th Respondent in SC.FR. No. 72/2019.

Nihal Jayawardena, PC with Radhya Herath instructed by Gunasekara Associates for the 48th and 49th Respondents in *both cases*.

Rajin Gooneratne, SC for the 7th and 53rd Respondents in SC.FR.No. 66/2019.

Ms. Sureka Ahmed, SSC for the 3rd, 4th and 9th Respondents in SC.FR.No. 72/2019.

ARGUED ON : 28.08.2024

WRITTEN SUBMISSIONS: by the 1st to 8th Petitioners on 12th July 2021 and 20th September 2024

By the 1st, 2nd, 4th and 5th Respondents on 15th November 2021 and 20th September 2024

By the 8th to 50th Respondents on 15th November 2021 and 20th September 2024

By the 48th and 49th Respondents on 08th November 2021 and 20th September 2024

By the 4th Respondent on 20th September 2024

DECIDED ON : 29.11.2024

K. KUMUDINI WICREMASINGHE, J.

This is a Fundamental Rights Application filed under Article 126 (1) of the Constitution by the Petitioners seeking, inter alia, a declaration that their fundamental rights to equality before the law and equal protection of the law guaranteed under Article 12 (1) of the Constitution of Sri Lanka have been violated and/or are in imminent danger of being infringed and/or are being continuously violated due to the actions, omission, and/or failure to act/or neglect to perform the duty of/by the 1st to 52nd Respondents.

When this case was called on 19th July 2021, Learned Counsel for both SC F/R 66/2019 and SC F/R 72/2019 moved that these two applications be listed together as the two applications are connected. Following which, both matters were listed together for hearing on 16th July 2024 and resumed on 28th August 2024 for further hearing. Once all parties had made their respective submissions, all parties agreed to abide by one judgment. Although all parties agreed to abide by one judgement, two judgements have been written for the purposes of clarity to all parties. This is to address the different objections raised in the two applications.

The 1st Petitioner stated that he was recruited to the post of General Assistant of the Sri Lanka Bureau of Foreign Employment with effect from 17th May 1999 and thereafter, was promoted to the post of Administrative Officer with effect from 5th April 2012. The 1st Petitioner states that he obtained a degree in Bachelor of Science with second class upper in the year 2009 from the London Metropolitan University and obtained the postgraduate qualification in August 2018 in the field of Masters of Public Management, from the School of Postgraduate Studies.

The 2nd Petitioner was recruited to the post of Still Photographer at the Sri Lanka Bureau of Foreign Employment with effect from 24th September 2001 and was promoted to the post of Administrative Officer with effect from 5th April 2012. The 2nd Petitioner stated that he obtained a degree of Bachelor of Arts in the year 2009 from the University of Kelaniya and thereafter obtained a postgraduate qualification in the year 2015 in the field of Master of Social Sciences (Mass Communication) from the University of Kelaniya.

The 3rd Petitioner was recruited to the post of General Assistant at the Sri Lanka Bureau of Foreign Employment with effect from 15th February 1999 and was promoted to the post of Administrative Officer with effect from 5th April 2012. The Petitioner obtained a degree in Bachelor of Arts from the University of Kelaniya in the year 2005 and thereafter obtained a postgraduate qualification in the year 2013 in the field of Master of Arts from the University of Kelaniya.

The 4th Petitioner was recruited to the post of General Assistant at the Sri Lanka Bureau of Foreign Employment with effect from 01st November 1997 and was promoted to the post of Administrative Officer with effect from 5th April 2012.

The 4th Petitioner obtained a degree in the Bachelor of Arts in the year 2010 from the University of Sri Jayawardhanapura and thereafter a postgraduate qualification in the field of Master of Arts from the University of Kelaniya in the year 2015.

The 5th Petitioner was recruited to the post of typist at the Sri Lanka Bureau of Foreign Employment with effect from 01st October 1998 and was promoted to the post of Administrative Officer with effect from 05th April 2012. The 5th Petitioner obtained a degree in Bachelor of Arts in the year 2014 from the University of Sri Jayawardhanapura in the year 2014 and thereafter obtained a postgraduate qualification in the field of Masters of Art from the University of Kelaniya.

The 6th Petitioner was recruited to the post of General Assistant at the Sri Lanka Bureau of Foreign Employment with effect from 14th December 1992 and was promoted to the post of Administrative Officer with effect from 05th April 2012. The 6th Petitioner obtained a degree of Bachelor of Arts in the year 2007 from the University of Jayawardenapura and thereafter obtained a postgraduate qualification in the field of Master of Arts from the University of Kelaniya in 2012.

The 7th Petitioner was recruited to the post of General Assistant at the Sri Lanka Bureau of Foreign Employment with effect from 20th September 1995 and was promoted to the post of Administrative Officer with effect from 05th April 2012. The 7th Petitioner obtained a Bachelor of Science in Management in 2010 from the University of Sri Jayawardhanapura and then received a Master of Public Management from the School of Postgraduate Studies.

The 8th Petitioner was recruited to the post of Welfare Assistant at the Sri Lanka Bureau of Foreign Employment from 1st June 1994 and thereafter promoted to Administrative Officer with effect from 5th April 2012. The Petitioner obtained a degree in Bachelor of Science in Management in the year 2014 from the National University of Ireland and thereafter obtained a postgraduate qualification in the field of Masters of Public Management from the School of Postgraduate Studies in August 2018.

The 1st Respondent is the Sri Lanka Bureau of Foreign Employment. The 2nd Respondent is the Chairman and the 3rd Respondent is the General Manager of the Sri Lanka Bureau of Foreign Employment. The 4th to 6th Respondents are the Chairman and the Committee appointed by the 3rd Respondent to resolve issues about recruitment and promotions of the 1st Respondent Bureau. The 7th Respondent is the Secretary of the Ministry of Foreign Employment, Sri Lanka. The 8th to 52nd Respondents have been named as Respondents to this application in consequence of their promotions to the post of Assistant Manager grade IV of the 01st Respondent Bureau over the Petitioners. The 53rd Respondent is the Hon. Attorney General.

The Petitioners stated that on or about 21st December 2016, the Secretary to the President had issued a circular addressed to all the Secretaries of the Ministries as well as the Provincial Secretaries with the view of addressing the anomalies of the employees of such institutions. The Petitioners stated that according to the said circular the predecessor of the 2nd Respondent by way of circular dated 01st March 2017 declared the 15th of March 2017 as the date for the employees of the 1st Respondent Bureau.

Thereafter, the 3rd Respondent by way of an internal memo bearing No. 3/2017 marked **P12** published the names of the Chairman and members of five committees appointed by the 1st Respondent Bureau to look into the respective grievances of the employees of the 1st Respondent Bureau. The Petitioners stated that the 1st to 8th Petitioner and several other employees of the 1st Respondent Bureau had submitted their respective grievances to the aforesaid committee. The Petitioner stated that on or about 23rd January 2019 the Petitioner came to know that letters of promotion were being issued to some employees based on a report prepared by the aforesaid grievances committee.

The Petitioners stated that they came to know that the aforesaid committee had submitted a report containing certain recommendations concerning the respective grievances of the employees and the Petitioners stated that they applied for a copy of the said report under the provisions of the Right to Information Act No. 12 of 2016 marked **P14**.

Upon the perusal of the aforementioned report, the Petitioners stated that the grievances committee had made certain recommendations to promote the 8th to 52nd Respondents to the post of Assistant Manager over and above the Petitioners contrary to the provisions of the scheme of recruitment of the 1st Respondent Bureau.

The Petitioners stated that given their academic qualifications and experience in their present post of administrative office, the Petitioners were the most qualified candidates to be promoted to the Assistant Manager post in terms of the scheme of recruitment of the 1st Respondent Bureau.

Aggrieved by the report and the decision of the grievances committee the Petitioners had submitted an appeal to the 2nd Respondent through the 4th Respondent. The 4th Respondent having gone through the said appeal heard the anomalies of the Petitioners and admitted that an injustice has been caused to the Petitioners due to the failure of the committee to consider the academic qualifications of the Petitioners and recommended that the Petitioners also be promoted to the relevant post. The recommendation is marked **P16**.

The Petitioners stated that despite this recommendation made by the 4th Respondent, the 1st to 3rd Respondent had failed and/or neglected to implement such recommendation.

In the above circumstances the Petitioners stated that the decision of 1st to 7th Respondents to promote the 8th to the 51st Respondent to the post of Assistant Manager and the promotion of the 52nd Respondent to the post of Administrative Officer and the failure and/or denial to promote the Petitioners to the post of Assistant Manager is ex facie unfair, unlawful, irrational, illegal, unlawful and ultra vires and is a violation of the Petitioners Fundamental Rights guaranteed under Article 12(1) and Article 14(1)(g) of the Constitution.

The 4th Respondent who was the Chairman of the grievances committee had admitted that the Petitioners names were not included in the recommended list of nominees due to an inadvertance and thus agreed to include the Petitioners names on the list. This admission is marked **P16** as mentioned above, minutes of a

meeting held on 02nd January 2019 of a discussion held with the participation of officials of the Ministry of Foreign Employment, the 4th and 5th Respondents above named and the 1st to 3rd and 5th Petitioners. In which the 4th Respondent stated that the committee's aim was to solve and provide redress to the grievances of the employees of the 1st Respondent Bureau on humanitarian basis and not according to the established scheme of recruitment of the 1st Respondent Bureau.

On 04th March 2021, having heard the Counsel for the Petitioner in support of this Application and the Learned President's Counsel who appeared for the Respondents, this court granted leave to proceed under Article 12(1) and Article 14(1)(g) of the Constitution for the alleged violation of the said fundamental right by the Respondents. The Court also issued an interim order as prayed for in paragraph “h” of the prayer of the petition. The court refused to grant the interim order as prayed for in paragraph “i” of the prayer of the petition.

In the objections of the 1st, 2nd, 4th and 5th Respondents, the Respondents stated that the implementation of the said concept of the then President was to address the grievances in the public service which is a distinct and different purpose which is to inter alia ensure efficient and satisfied public service as per the said circular, which is not a recruitment process for which the regular scheme of recruitment of the 1st Respondent Bureau is applicable.

The Respondents further state that the Scheme of Recruitment was not a criteria for the process if redress of grievance granted and the process carried out under **R1** was not the recruitment of the 1st Respondent for which the Scheme of Recruitment is otherwise applicable. On the contrary the process carried out was to grant redress to grievances of the employees of the 1st Respondent Bureau's employees who had already been recruited and employed by the 1st Respondent Bureau. This position has been reiterated in the minutes of the meeting held with the 4th Respondent as mentioned above.

As per the statement of objections of the 48th and 49th Respondents stated that both Respondents were promoted to as Administrative Officers on 5th April 2012 and while serving as Administrative Officers, the General Manager of the 1st Respondent Bureau by way of letters informed the Respondents that they have

been promoted as Acting Assistant Managers, the Letters are marked **L-2(a)** and **L-2(b)**.

The Respondents stated that thereafter when the grievance committee was appointed, the Respondents submitted to the aforementioned committee that they were on the brink of completing three years in the position of Acting Assistant Manager and hence they are suited to be made permanent in the same position.

The Respondents state that on the 22nd February 2018 Respondents were transferred as Administrative Officers to Anuradhapura and Trincomalee on purported disciplinary grounds. However, on 12th March 2018 the General Manager of the 1st Respondent revoked the purported transfer, reverting the Respondents to their previous designations. On 22nd January the Respondents received letters stating that they were promoted as Assistant Managers (MM1-1 (G-11)) with effect from 04th October 2018. The Respondents stated that they were appointed to the post of Assistant Managers (MM1-1 (G-11)) of the 1st Respondent Bureau consequent to the recommendations of the Grievances Committee comprising the 4th to 6th Respondents.

In the Statement of Objections of 8th, 10th, 11th, 12th, 13th, 14th, 15th, 17th, 18th, 20th, 21st, 22nd, 24th, 25th, 28th, 29th, 30th, 32nd, 33rd, 34th, 35th, 37th, 38th, 39th, 41st, 42nd, 44th, 45th, 50th Respondents, the Respondents stated that they had completed more than 10 years in the post of Administrative Officer and/or the Respondents had completed more than 5 years in the post of Acting Assistant Manager prior to being promoted to the post of Assistant Manager. The Respondents further stated that at the time of being promoted to the post of Assistant Manager, the qualifications held by the Respondents were well above the required qualification even in terms of the Scheme of Recruitment of the 1st Respondent Bureau.

The Respondents further stated that the Petitioners were promoted to the post of Administrative Officer on 05.04.2012. They had not even completed a period of five years in the post of Administrative Officer at the time of calling grievances by the aforementioned grievances committee. The Respondents highlighted the fact that even though the scheme of recruitment had not been considered by the

grievances committee, the Respondents had obtained the required qualification to be promoted to the position of Assistant Manager even in terms of the Scheme of Recruitment. The Respondents stated that they had completed more than 10 years in the post of Administrative Officer and/or completed more than five years in the post of Acting Assistant Manager prior to being promoted to the post of Assistant Manager.

The Respondents stated that they are more senior to the Petitioners having more experience in the post of Administrative Officer as the Respondents were promoted to the post of Administrative Officer prior to the Petitioners and the Respondents have served in the capacity of Administrative Officer for a longer period than the Petitioners. Further, the Respondents have completed sufficient academic and educational qualifications to be promoted to the post of Assistant Manager.

The Respondents stated that in 2012 they were called for interviews conducted by the 1st Respondent Bureau for the post of Assistant Manager and they participated in the said interview process whilst serving in the capacity of Administrative Officer. However, the Respondents claim that the Petitioners were not called for the same interviews as the Petitioners had not completed the required qualifications in terms of the Scheme of Recruitment to be promoted to the post of Assistant Manager. The Respondents stated that even though they had the required qualifications in terms of the Scheme of Recruitment they were not promoted to the post of Assistant Manager in 2012 and this was what they divulged to the grievance committee. The Grievances committee recommended to promote employees serving in the post of Administrative Officer to the post of Assistant Manager who had served in the post of Administrative Officer for more than 10 years and/or who had served more than five years in the post of Acting Assistant Manager.

In the written submissions of the Petitioners, the Petitioners stated that the 1st, 3rd, 4th and 7th Petitioners had fulfilled the required qualifications as per section 4(ii) of the above circular and accordingly applied for the post Assistant Manager in Response to the said Chairman's Circular 02/2013 in March 2013. The Petitioners stated that the 1st Respondent Bureau without any valid reason abandoned the interviews for the said promotions.

The Petitioners stated that the 2nd and 5th Petitioner being degree holders were entitled to be promoted to the post of Administrative Officer in 2007 however the marks allocated for their degrees had not been given to 2nd and 5th Petitioners and thus they were deprived of their promotion to the said post in 2007.

The 6th Petitioner claimed that the Petitioner was denied the promotion to the post of Administrative Officer in 2007 despite the 6th Petitioner having fulfilled all the necessary qualifications and therefore had to wait for a further five years in the same post until he was promoted to the Post of Administrative Officer on or about 05.04.2012.

The Petitioners in their written submissions stated that in view of the academic qualifications and the experience in the present post of Administrative Officer, the Petitioners were the most qualified candidates to be promoted to the Assistant Manager in terms of the scheme of recruitment Bureau. The Petitioners claimed that although officers who have experience of five years in the in the post of Administrative Officers who are eligible to be promoted to the post of Assistant Manager, the committee comprised of the 4th to 6th Respondents have increased the said period of service for 10 years and hereby acted in contrary to the provisions of the scheme of recruitment.

In the Petitioners counter objections reiterate the position that although the said committee has considered education qualifications for the promotion of the post of Administrative Officer, no such qualification has been considered for the post of Assistant Manager. Therefore, the applications of the Petitioners have not been duly and fairly considered in a transparent and fair manner by the grievances committee.

The Petitioners further stated that the grievance committee comprising of the 4th to 6th Respondents were supposed to address the anomalies of employees, however, as per the purported report of the grievance committee, the said committee has allowed a committee member who is the 6th Respondent who has recommended himself to be promoted to a higher post. Such promotions recommended by the said committee in fact defeats the purpose for which the said committee was appointed and the Petitioners who were more suitable for being promoted to the

post of Assistant Manager as they possessed the required qualifications, have been denied of the said promotion.

The Petitioners stated that in March 2013 when the applications were called for the post of Assistant Manager by way of Chairman's Circular 02/2013, the Petitioners did possess the required qualifications to be promoted to the post of Assistant Manager.

The 48th and 49th Respondents in their written submissions contended that the main premise of the Petitioners argument against the 48th and 49th Respondents is that the Respondents had not completed the requisite period of 5 continuous years of service in the capacity of Acting Assistant Manager to be eligible for promotion as Assistant Managers in accordance with the provisions of the scheme of recruitment.

The Petitioners alleged that the temporary placement of the 48th and 49th Respondents is a violation of section 9.3.1 (vii) of Section 9.3 of the Public Enterprise Circular No. PED/12 which stipulates that an acting appointment made under exceptional circumstances must be limited to a period not exceeding 3 months. The Petitioners further alleged that the aforesaid temporary placement is in violation of section 13.3 of Chapter VII of the Establishment Code.

The Respondents stated that as per the 1st Respondent Bureau's Letter marked **P-22** to the counter objections which states that “මබගණේ ඉල්ලීම පිළිබඳව සානුකම්පිතව සලකා බලා 2015-10-21 දින සිට ක්‍රියාත්මක වන පරිදි මාස 03ක කාලයක් සඳහා රත්නපුර පළාත් කාර්යාලය වන නාවකාලිකව අනුයුක්ත කරනු ලැබේ.” The Respondents stated that this highlights unambiguously that the 1st Respondent Bureau has not acted in contravention of the aforesaid section of the Circular. The 48th and 49th Respondents claim that thus it is amply clear that the Respondents are in complete compliance with the scheme of recruitment pertaining to Assistant Managers as reflected in **P18** of the Petition.

As per the written submissions of the Respondents, the Respondents claim that they joined the 1st Respondent Bureau prior to the Petitioners and they were promoted to the post of Administrative Office prior to Petitioners being promoted

to the same position. It is the position of the Respondents, that in terms of **P10** of the petition it is evident that the primary purpose to appoint the grievances committee is to inquire the submitted grievances and to make recommendations giving special attention to appropriate steps to resolve grievances which relates to recruitments, promotions and permanentize.

It is submitted that some of the Respondents Employees had fulfilled sufficient qualifications in the scheme of recruitment to be promoted to the post of Assistant Manager prior to the Petitioners, nevertheless such Respondents were not promoted to Assistant Manager until it was recommended by the Grievance Committee.

It is the Respondents position that whilst the Petitioners were promoted to their current post of Administrative Officer with effect from the 5th of April 2012 and whereas, the Respondent Employees were promoted to the same post not less than 5 years before.

The Respondents have provided the following details illustrating years in which the Respondents received their promotions to the post of Administrative Officer.

Year promoted to the post of Administrative Officer	Respondent Employee above named
1998	8th Respondent
2000	10th and 11th Respondent
2002	12th Respondent
2003	13th, 14th, 30th, 32nd, 33rd, 34th, 35th Respondents
2004	15th, 17th, 18th, 20th, 21st, 22nd, 24th, 25th, 28th, 29th, 44th, 50th Respondents
2007	37th, 38th, 39th, 41st, 42nd, and 45th Respondents

It is further submitted by the Respondents that some of the Respondents went on to serve as acting Assistant Managers prior to receiving full promotions in 2019. The details of such Respondents have been submitted as follows:

Year appointed as Acting Assistant Manager	Respondent Employee who was appointed as Acting Assistant Manager
2004	10th Respondent
2012	12th, 13th, 22nd, 30th, 32nd, 33rd Respondents
2013	35th Respondent
2015	34th, 42nd Respondents
2018 (for 7 months)	14th Respondent

It was the Respondents submission that having obtained service experience of more than 5 years in the post of Administrative Officer and having obtained service experience as Acting Assistant Manager prior to being promoted to the post of Assistant Manager the Respondents were senior to the Petitioners, further enabling them to possess experience in service over the Petitioners.

The Respondents further submitted that they too possess academic qualifications not less than the academic qualifications possessed by the Petitioners which are set out in statement objections marked **R-2A to R-30A**. However, It is noted that 7 Respondents do not possess a Bachelor's Degree as required by the SOE.

The Respondents state that the Petitioners came before this court after participating in the said grievance process in which promotions were primarily based on the recommendations of the grievances committee and not on the Scheme of Recruitment. The Respondents stance is that the Petitioners having participated in the same grievance process as the Respondents have accepted the process adopted by the grievance committee.

In the affidavit submitted by the 4th Respondent it is who was the chairman of the aforementioned Grievances Committee and provides observations on the document marked **P16** by the Petitioners and stated that that the aforementioned minute on **P16** was made by him as he had been made aware that there were some employees who did not belong to the five year and the ten year category, who held Master's Degrees or equivalent qualifications which warranted the relevant promotions. However, the 4th Respondent affirms that there was no grievance committee in operation at the time when the minute was made and therefore the said minute has not been made in his capacity as the Chairman of the Grievance Committee. He further stated that said minute has not been addressed to any particular official as it was merely an observation and that recommendations of the Grievance Committee were not binding on the top management who had the discretion of accepting or rejecting the said recommendations.

The Petitioners in their written submissions contend that Respondents claim that they are better qualified than the Petitioners. However, the Petitioners point out that as per the Respondents own document marked R1, the 14th, 15th, 18th, 20th, 24th, 25th, 30th, 38th, 39th, 42nd, 45th and the 50th Respondents are less qualified than the Petitioners and thus ineligible for promotion to the position of Assistant Manager.

The Petitioners further assert that the 1st to 7th Respondent have purported to grant promotions to certain individuals on the basis that they held the position of Assistant Manager in an acting capacity. The Petitioners aver that as these individuals had occupied this position for a period exceeding six months a duration which is expressly stipulated by the Establishment Code, permitting the Respondents to hold the acting post beyond the six month limit constitutes a clear violation of the Establishment Code.

The Petitioners stated that the Respondents joined the 1st Respondent Bureau at the same period on or after the Petitioners. The Petitioners state that given that the Petitioners have a comparable or longer period of service, they are equally or more qualified for the promotion of Assistant Manager.

The 48th and 49th Respondents aver in the further written submissions that their temporary placements were on temporary basis and as such makes no changes to their posts as an Acting Assistant Manager.

The Respondents aver in their further written submissions that the Petitioners are in fact relying on the Redress of Grievance Committee and the mechanism and seeking themselves to be promoted whereas according to the said scheme, the Petitioners do not have 10 years seniority in the position to be promoted as opposed to all the Respondents who had their basic qualification of 10 years according to the redress of Grievance Committee criteria.

Leave to proceed has been granted by this court for the alleged violation of rights guaranteed under Article 12(1) and 14(1)(g). Article 12(1) reads that

“All persons are equal before the law and are entitled to the equal protection of the law”.

Considering the framework of Article 12(1) of the Constitution, which guarantees the right to equality, and applicability of the principle of legitimate expectation, it becomes clear that the expectation in question must be based on a promise or commitment made by the relevant authority. If such a promise exists, denying such opportunity they are claiming would be inconsistent or unreasonable in the context of proper administrative conduct.

Justice Ranasinghe CJ (As he was then) in **Ramuppillai Vs. Festus Perera, Minister of Public Administration, Provincial Councils & Home Affairs and Others 1991 1 SLR 11** examined in length the meaning and applicability of Article 12(1) of the Constitution and held that:

“The reach, scope and content of the provisions of Article 12 which guarantees equality before the law and also the equal protection of the law - were considered at length in three cases shortly after the Constitution of 1978 was promulgated: the judgment of Sharvananda, J., (as the Chief Justice then was) and Wanasundera, J., in the case Palihawadanavs. A.G., et al the judgment of Sharvananda, J., delivered on 8.8. 1980 in the case of Perera vs. University

Grants Commission, (2) the judgment of Wanasundera, J., delivered in October 1980 in the case of *Seneviratne vs. University Grants Commission*, What the concept of "equality", so assured in Article 12, connotes was elucidated by them, with reference to the several authorities referred to in their respective judgments: and what is relevant for the purposes of the issue under consideration in this Application may be set down as follows, that such equality meant that, among equals, the law should be equal and it should be equally administered: that like should be treated alike: that all persons are equal before the law and are entitled to equal protection of the law: that no citizen shall be discriminated against on grounds of race, religion, language, casts, sex, political, opinion, place of birth or any of such grounds: that equality of opportunity is an instance of the application of this general rule: that whilst Article 12 does not confer a right to obtain State employment, it guarantees a right to equality of opportunity for being considered for such employment: that what is postulated is equality of treatment to all persons in utter disregard of every conceivable circumstance of difference as may be found amongst people in general: that it prohibits class legislation, but that reasonable classification is not forbidden: that "it must appear that not only that a classification has been made, but also that It is one based upon some reasonable ground - some difference which bears a just and proper relation to the attempted classification:" *Gulf of Colombo Co. vs. Ellis*(4) : that it merely "requires that all persons subjected to such legislation shall be treated alike under'- like circumstances and conditions, both in the privileges conferred and on liabilities imposed" -(Willis, *Constitutional Law* 1936 Ed.p.574,580) : that whilst "reasonable classification is permitted without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction bearing a reasonable and just relation to the things in respect of which such classification is imposed" - *Southern Railway Company vs. Greane* : that "in order to pass the test of permissible classification, two conditions must be fulfilled, namely,

(i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and

(ii) that the differential must have a rational relation to the objects sought to be achieved by the Act: that "what is necessary is that there must be a nexus between the basis of the classification and the object of the Act."

Budhan Chaudhry vs. the State of Bihar : that discrimination of persons in one class or similarly circumstanced should be avoided: that the basis of classification must generally be so drawn that those who stand in substantially the same position in respect of the law are treated alike: that Article 12 nullifies sophisticated as well as simple-minded modes of discrimination: that equal protection carries with it, of necessity, the doctrine of classification, for inequalities and disabilities whether natural, social or economic may have to be taken into account if justice and fairness is to be achieved as a final result: that the principle of equality does not mean that every law must have universal or uniform application to all persons irrespective of differences inherent by nature's attainment or circumstances: that the State must be allowed to classify persons or things for legitimate purposes: that the classification to be acceptable must be based on some real or substantial distinction bearing a just and reasonable relation to the object sought to be attained: that in any permissible classification-mathematical nicety or perfect equality is not expected.” (at pages 19-20)

*“The Indian Supreme Court in the case of State of Kerala vs. Thomas and others in which Article 14 of the Indian Constitution which corresponds to Article 12 of our Constitution was considered and in which the court, dealing with the concept of equality embodied in the Indian Constitution, observed: that the concept of equality embodied in the Indian Constitution ensures to all citizens equality of opportunity in matters relating to employment: that that is an incident of the guarantee of equality contained in Article 14: that there could be reasonable classification of the employees in matters relating to employment or appointment: that the Supreme Court of India has taken the view that equal protection of the law is a pledge of the protection of equal laws, and has evolved the doctrine of reasonable classification: that such classification is one which includes all who are similarly situated and none who are not: that discrimination is the essence of classification: that equality is violated if it rests on unreasonable basis: that those who are similarly circumstanced are entitled to an equal treatment: that equality is amongst equals: that classification is therefore to be founded on substantial differences which distinguish persons, groups together from those left out of the group and such differential attributes must bear a just and rational relation to the object sought to be achieved: **that the categories of classification***

for promotion can never be closed on the contention that they are all members of the same cadre in service: that, if classification is made on educational qualifications or if classification is made on the ground that persons are not similarly circumstanced in regard to entry into employment such classification can be justified: that there is no denial of equal opportunity unless the person who complains of discrimination is equally set with the persons who are alleged to have been favoured (emphasis added): that there is no prohibition of the prescription of reasonable rules for selection to any office: that in regard to employment, like other terms and conditions associated with and incidental to it, the promotion to a selected post is also included in the matters relating to employment: that even in regard to such a promotion all that is guaranteed is equality of opportunity: the power to make reservation of appointments includes the power to provide reservation of selected posts: that in doing so the State has to take into consideration claims consistent with the maintenance of the efficiency of the administration: that the rule of parity is equal treatment of equals in equal circumstances: that the rule of classification is not a natural and logical corollary of the rule of equality, but that the rule of differentiation is inherent in the concept of equality: that equality means parity of treatment, under parity of conditions: that any classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory: that the test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and omitting none natural falling into that category: that the equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion, but that it does not prohibit the prescription of reasonable rules for selection and promotion applicable to all members of a classified group: that the principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity: that with regard to promotion the normal principle is either merit--cum-seniority or seniority-cum-merit :that seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority, that a rule which provides that given the necessary requisite merit a member of a backward class shall get priority to ensure adequate representation will not violate Article 14: that the concept of equality is that if persons are dissimilarly placed they cannot be made equal by having the same treatment: that

equality of employment opportunity admits discrimination with reason, and prohibits discrimination without reason: that reservation of post for a section of the population has the effect of conferring special benefits on that section because it would enable members belonging to that section to get employment or office under the State which otherwise in the absence of reservation they could not have got: that such preferential treatment is plainly a negation of the equality of opportunity for all citizens in matters relating to employment or appointment to an office under the State: that permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and such differentia must have a rational relation to the object sought to be achieved by the statute: that equality of opportunity in matters of promotion must mean equality between members of the same class of employees and not equality between members of separate independent classes: that a classification based upon the consideration that an employee belongs to a particular section of the population with a view to according preferential treatment for promotion is a clear violation of equality of opportunity: that in no case has the Court ever accepted and upheld a classification and differential treatment for the purpose of promotion among employees who possessing the same educational qualifications were initially appointed to the same category of posts: that to overdo classification is to undermine equality: that to expand the frontiers of classification beyond those which have so far been recognised is bound to result in creation of classes for favoured and preferential treatment for public employment and thus erode the concept of equality of opportunity for all citizens in matters relating to employment under the State: that in construing Articles of the Constitution the historical background, the felt necessities of the time, the balancing of conflicting interests must all be considered; that the genius of Articles 14 and 16 of the Indian Constitution consists not in literal equality but in progressive elimination of pronounced inequality: that even if racial classifications do have some negative educative effect, the classifications may be so effective that they should be instituted despite this draw back, and that if a court is convinced that the purpose of a measure using racial classification, is truly benign, that is that the measure represents an effort to use the classification as part of a program designed to achieve an equal position in society for all races then it may be justified in permitting the State to choose the means for doing so, so long as the means chosen

are reasonably related to achieve that end: that the courts adopt a policy of restrained review where the situation is complex and is intertwined with social, historical and other substantially human factors: that through imperceptible extensions, a theory of classification should not be evolved which may subvert, perhaps submerge the precious guarantee of equality, which would result in the ideals of the supremacy of merit, the efficiency of the public service and the absence of discrimination being sacrificed.

The judgments referred to earlier clearly show that the provisions of Article 12(1) and (2) bring within their reach equality of opportunity for employment as well and that such guarantee of equality applies not only in the matter of selection for employment, but also at the stage of selection for promotion”. (At pages 21- 24)

In analysing the facts of this case, the Respondents argue that they hold senior positions compared to the Petitioners and are also more qualified, thus justifying their promotions over the Petitioners. However, upon reviewing the documents submitted by both parties, it is evident that some of the Respondents do not, in fact, possess higher qualifications than the Petitioners. Notably, one Respondent only holds an A-Level qualification, which undermines the claim that all Respondents are more qualified.

The Petitioners also allege that some promotions were influenced by personal connections between certain Respondents and the 4th to 6th Respondents. This allegation of favoritism has not been addressed by the Respondents in their written submissions or during the Argument stage. Furthermore, 6 Respondents have joined the 1st Respondent Bureau after the Petitioners as per **R-1** and yet have still been promoted.

As held in the case of **Leelananda Vs National Institute of Education SC (FR) 266/93, SCM 2.3.94** it was held that “*Powers conferred on public authorities are rarely, if ever, absolute, unfettered, or unreviewable: such powers are held in trust and must be exercised for the public good, and not for the personal benefit or according to private whims and fancies; accordingly the legality and the propriety of the exercise of power can and must be tested by examining whether it was within*

jurisdiction; in conformity with applicable fundamental rights; for the purpose for which it was given and according to proper procedures and so on”.

According to the Respondents’ written submissions however, with reference to the documents marked **R1** to **R4** in the limited objections submitted by the 1st, 2nd, and 5th Respondents on April 21, 2021, the primary purpose of the circular marked **R1** was to enhance public service efficiency and address grievances that public servants may have encountered during specified periods. The Scheme of Recruitment (SOR), however, pertains to general recruitment, promotion, and application processes within the 1st Respondent Bureau and was therefore not intended as a criteria for the grievance redress process under **R1**, as this was not a recruitment procedure to which the SOR would otherwise apply.

Upon the direction of His Excellency the President, this grievance committee was appointed to examine public sector employees grievances from the past 10 years based on specific parameters. As per **R4**, the committee recommended promotions for Administrative Officers who had either served 10 years in that role or had 5 years of experience as Acting Assistant Manager to be promoted to the post of Assistant Manager.

The Petitioners assert that, despite participating in the same grievance process, they were overlooked by the Respondents. The Petitioners do not seek to challenge the grievance committee's process, as they also took part in it, nor do they intend to nullify the promotions granted to the Respondents, as evidenced by the prayer of the petition. Their contention is that they were unfairly disregarded in the grievance process while the Respondents received promotions over them.

The Petitioners note that, although the grievance committee’s criteria for promotion recommendations included either 10 years of service as an Administrative Officer or 5 years as Acting Assistant Manager, certain recommendations lack transparency and consistency. They point out, for instance, that the 51st Respondent was granted a double promotion from grade S1 to JM, despite not meeting the requirement of 5 years’ experience at the junior manager level, a prerequisite under the SOE. Additionally, the 43rd Respondent was granted two forms of relief: the backdating of their appointment to Administrative Officer and subsequent promotion to Assistant Manager. The Petitioners stated that this

relief mirrors the appeals of the 2nd and 5th Petitioners, whose similar requests were disregarded.

The Respondents have consistently maintained the position that the recommendations were based not on the SOE but on the grievances presented, with promotion recommendations made according to criteria to be promoted to the position of Assistant Manager, applicable to Administrative Officers who had either completed 10 years in the position or 5 years as Acting Assistant Manager. The directive from His Excellency the President was to resolve workers' issues within the past 10 years, which guided the grievance committee in making its recommendations.

The Respondents maintain that the promotions of the 8th to 51st Respondents were not made according to the recruitment scheme of the 1st Respondent Bureau, but rather in response to grievances raised by them. However, upon reviewing the academic qualifications and work experience of the Respondents who were promoted over the Petitioners, it cannot be concluded that they were more qualified or experienced. The lack of uniformity and transparency in the promotion process recommended by the 4th to 6th Respondents is concerning.

It is the Respondents' stance that the promotions in question were granted not under the standard scheme of recruitment but through a special grievance redress mechanism on direction of the President, which operated under distinct criteria to address inequities. While the Petitioners may meet the minimum qualifications under the recruitment scheme, they fail to satisfy the additional requirements stipulated by the grievance committee. Allowing promotions based on these grievance specific criteria does not equate to a violation of equal protection under Article 12 of the Constitution, as the principle guarantees equal protection of the law, not equal violation of it. Just because a few Respondents may have benefitted improperly does not create a legal obligation to extend the same flawed benefit to Petitioners. The Petitioners do not seek to challenge the grievance committee's process, nor do they intend to nullify the promotions granted to the Respondents. As such, upholding the claims of the Petitioners would undermine the integrity of recruitment processes and perpetuate systemic deviations from fairness and meritocracy, contrary to the purpose of equal protection.

It was held in the case of **C. W. Mackie and Co. Ltd. v Hugh Molagoda, Commissioner-General of Inland Revenue and others [1986] 1 Sri LR 300** “*But the equal treatment guaranteed by Article 12, is equal treatment in the performance of a lawful act. Via Article 12, one cannot seek the execution of an illegal act. Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, founded in law in contradistinction to an illegal right which is invalid in law*”

A similar approach was taken by the Indian Courts in the applicability of Article 14 of the Indian Constitution which is the corresponding Article to Article 12 of our Constitution. In **Ram Prasad v Union of Indian [1979] AIR Raj 131** it was stated that “*the guarantee under Article 14 cannot be understood as requiring the authorities to act illegally in one case because they have acted illegally in other cases. No one can contest that a wrong must be extended to him as well in order to satisfy the provisions of Article 14.*”

In **Chief Commissioner v Kitty Puri [1973] AIR Delhi 148** it was clearly stated that “*But the respondent No. 1 cannot contend that because the society and the government have illegally shown favour to some persons, then this Court must compel them to commit another illegality to show favour to respondent No. 1 in the same way. This is not the meaning of equality guaranteed by Article 14 of the Constitution.*”

This reasoning reinforces the principle that governmental actions must adhere to standards of fairness, rationality, and non-arbitrariness when dealing with individuals in matters such as appointments, promotions, transfers, or dismissals.

Equal treatment under Article 12(1) does not justify perpetuating illegal or improper acts to avoid claims of discrimination. Instead, equal treatment requires adherence to lawful and reasonable norms.

Article 14 (1) (g) of the Constitution reads that:

“Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise”;

In relation to professional activities, this right can be applied in two ways: to ensure the continuous operation of occupations and to protect individuals' livelihoods from being harmed by adverse professional practices.

Considering all the aforementioned facts and circumstances in this case, the petitioners failed to demonstrate that their fundamental rights under Article 12(1) and Article 14(1)(g) of the Constitution were violated, as the respondents' actions were not shown to be arbitrary, capricious, or unreasonable.

For the reasons aforesaid, I hold that the Petitioners have been unsuccessful in establishing that their fundamental rights guaranteed in terms of Article 12(1) and Article 14(1)(g) of the Constitution had been infringed by the Respondents.

Consequently, the court dismisses this application, concluding that the Petitioners claims lacked merit in light of the case's circumstances.

I make no order as to costs.

JUDGE OF THE SUPREME COURT

JAYANTHA JAYASURIYA P.C., CJ,

I agree.

CHIEF JUSTICE

A.L. SHIRAN GOONERATNE, J,

I agree.

JUDGE OF THE SUPREME COURT

**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 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C. (FR) Application No: 72/2019

01. A.H Hulugalla,
No.169, Honnanthara,
Piliyandala.

02. T.N Haputhanthri
No.220, Wattahena,
Niwithigala,
Rathnapura.

03. S.N Wijethunga,
“Vijaya”, Kotawila,
Kaburugamuwa.

04. C.A.A.R.E. De Mel,
No.151, Near Rural Bank,
Marapana, Rathnapura.

05. Nishantha Athukorala,
No.462, Lake Road,
Marahena South, Horana.

06. M.R. Prasangika,
Aruknulla, Atakalanpanna,
Rathnapura.

07. T.G.A.K. Wipulananda,
No.298A, Horepola,

Godakawela.

Petitioners

-Vs-

01. The Chairman,
Sri Lanka Bureau of Foreign
Employment,
No. 234,
Denzil Kobbekaduwa
Mawatha,
Battaramulla.

02. The General Manager,
Sri Lanka Bureau of Foreign
Employment,
No. 234,
Denzil Kobbekaduwa
Mawatha,
Battaramulla.

03. The Minister,
Ministry of
Telecommunication, Digital
Infrastructure and Foreign
Employment,
No.79/1
5th Land,
Colombo 03.

04. The Secretary,
Ministry of
Telecommunication, Digital

Infrastructure and Foreign
Employment,
No.79/1,
5th Land,
Colombo 03.

05. The Chairman,
Grievances Committee
(recruited, promotions and
permanent) of Sri Lanka
Bureau of Foreign
Employment,
No. 234,
Denzil Kobbekaduwa
Mawatha,
Battaramulla.

06. The Member,
Grievances Committee
(recruited, promotions and
permanent) of Sri Lanka
Bureau of Foreign
Employment,
No. 234,
Denzil Kobbekaduwa
Mawatha,
Battaramulla.

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

Respondents

BEFORE : HON. JAYANTHA JAYASURIYA, PC, CJ.
HON. K. KUMUDINI WICKREMASINGHE, J.
HON. A.L. SHIRAN GOONERATNE, J

COUNSEL : Rasika Dissanayake with Sandun Senadhipathi and Dinusha Pathirana instructed by Manjula Balasooriya for the Petitioners in *both cases*.

Ikram Mohamed, PC with M.S.A. Wadood and Harshani Mallawaarachchi, Jerome Senanayake instructed by Mallawaarachchi Associates for the 1st, 2nd and 5th Respondents in SC.FR.No. 66/2019 and for the 1st and 2nd Respondents in SC.FR.No.72/2019.

Saliya Pieris, PC with Farhad Jiffrey for the 8th to the 50th Respondents.

C.J. Fernando with Anjula Thalakumbura for the 4th Respondent in SC. FR. No. 66/2019 and for the 5th Respondent in SC.FR. No. 72/2019.

Nihal Jayawardena, PC with Radhya Herath instructed by Gunasekara Associates for the 48th and 49th Respondents in *both cases*.

Rajin Gooneratne, SC for the 7th and 53rd Respondents in SC.FR.No. 66/2019.

Ms. Sureka Ahmed, SSC for the 3rd, 4th and 9th Respondents in SC.FR.No. 72/2019.

ARGUED ON : 28.08.2024

WRITTEN SUBMISSIONS: 1st to 7th Petitioner on 15.07.2021 and 20.09.2024
1st, 2nd and 5th Respondents on 15.09.2021
1st and 2nd Respondent on 20.09.2024

DECIDED ON : 29.11.2024

K. KUMUDINI WICREMASINGHE, J.

This is a Fundamental Rights Application filed under Article 126 (1) of the Constitution by the Petitioners seeking, inter alia, a declaration that their fundamental rights to equality before the law and equal protection of the law guaranteed under Articles 12 (1) and (2) of the Constitution of Sri Lanka have been violated and/or are in imminent danger of being infringed and/or are being continuously violated due to the actions, omission, and/or failure to act/or neglect to perform the duty of/by the 1st to 06th Respondents.

The Petitioners stated that they are Employees of Sri Lanka Bureau of Foreign Employment (hereinafter referred to as SLBFE), recruited on a contract basis in the years 1997, 1998 and 1999 for non Managerial (SIV) and (SV) staff as clerical service and office aid service.

The 1st Petitioner was recruited to the SLBFE on contract basis in the year 1998 for non managerial S-IV staff as General Assistant. Her service was made permanent in 2001 and she was confirmed as an officer S-IV-A(i) however at the time her service was made permanent, she was demoted from grade SV-IV to S-IV-A(i). In 2004 she was promoted to General Assistant and thereafter in 2007 she was promoted to Grade S-III as a Welfare Assistant. In 2014 she was promoted to grade S-II as Welfare Assistant and thereafter in 2015 promoted her service to Grade 1 as Staff Assistant and also adjusted her promotion to Grade S-II in 2014 to commence from 2011 instead. The next promotion she was eligible for was Grade M-VI (Managerial Staff) in the year 2018 for which she stated she was not selected even though she was eligible.

The 2nd Petitioner in the year 1997 for non managerial S-IV staff as General Assistant. Her service was made permanent in 2001 and she was confirmed as an officer S-IV-A(i) however at the time her service was made permanent, she was demoted from grade SV-IV to S-IV- A(i). In 2004 she was promoted to General Assistant and thereafter in 2007, she was promoted to Grade S-III as a Welfare Assistant. In 2014 she was promoted to grade S-II as a data entry operator and thereafter in 2015 promoted her service to Grade 1 as Staff Assistant and also

adjusted her promotion to Grade S-II in 2014 to commence from 2011 instead. The next promotion she was eligible for was Grade M-VI (Managerial Staff) in the year 2018 for which she stated that she was not selected even though she was eligible for the post.

The 3rd Petitioner in the year 1998 for non managerial S-IV staff as General Assistant. Her service was made permanent in 2001 and she was confirmed as an officer S-IV-A(i) however at the time her service was made permanent, she was demoted from grade SV-IV to S-IV- A(i). In 2004 she was promoted to General Assistant and thereafter in 2007 she was promoted to Grade S-III as a Welfare Assistant. In 2014 she was promoted to grade S-II as a Welfare Assistant and thereafter in 2015 promoted her service to Grade 1 as Staff Assistant and also adjusted her promotion to Grade S-II in 2014 to commence from 2011 instead. The next promotion she was eligible for was Grade M-VI (Managerial Staff) in the year 2018 for which she stated that she was not selected even though she was eligible for the post.

The 4th Petitioner in the year 1997 for non managerial S-IV staff as General Assistant. Her service was made permanent in 2001 and she was confirmed as an officer S-IV-A(i) however at the time her service was made permanent, she was demoted from grade SV-IV to S-IV- A(i) . In 2004 she was promoted to General Assistant and thereafter in 2007 she was promoted to Grade S-III as a Welfare Assistant. In 2014 she was promoted to grade S-II as a data entry operator and thereafter in 2015 promoted her service to Grade 1 as Staff Assistant and also adjusted her promotion to Grade S-II in 2014 to commence from 2011 instead. The next promotion she was eligible for was Grade M-VI (Managerial Staff) in the year 2018 for which she stated that she was not selected even though she was eligible for the post.

The 5th Petitioner in the year 1999 for non managerial S-IV staff as General Assistant. His service was made permanent in 2001 and he was confirmed as an officer S-IV-A(i) however at the time her service was made permanent, she was demoted from grade SV-IV to S-IV- A(i). In 2004 he was promoted to General Assistant and thereafter in 2007 he was promoted to Grade S-III as a Welfare Assistant. In 2014 he was promoted to grade S-II as a data entry operator and

thereafter in 2015 promoted his service to Grade 1 as Staff Assistant and also adjusted his promotion to Grade S-II in 2014 to commence from 2011 instead. The next promotion he was eligible for was Grade M-VI (Managerial Staff) in the year 2018 for which he stated that he was not selected even though he was eligible for the post.

The 6th Petitioner was recruited to the SLBFE on contract basis in the year 1999 for non managerial S-IV staff as General Assistant. Her service was made permanent in 2001 and she was confirmed as an officer S-IV-A(i) however at the time her service was made permanent, she was demoted from grade SV-IV to S-IV-A(i). In 2004 she was promoted to General Assistant and thereafter in 2007 she applied for the position of Grade S-III as a Welfare Assistant and passed the written test however, could not face the interview as she was abroad on approved foreign leave. Applied for Grade S1 in 2018 since she has completed 18 years of service in Grade SIV and completed all other necessary requirements.

The 7th Petitioner was recruited to the SLBFE on contract basis in the year 1999 for non managerial S-IV staff as General Assistant. Her service was made permanent in 2001 and she was confirmed as an officer S-IV-A(i) however at the time her service was made permanent, she was demoted from grade SV-IV to S-IV-A(i). In 2004 she was promoted to General Assistant grade S- IV. She applied for Grade SI in 2018 as she had completed 20 years of service in Grade SIV and met all other requirements.

The 1st Respondent is the Chairman of Sri Lanka Bureau of Foreign Employment and the 2nd Respondent is the Deputy General Manager of the Sri Lanka Bureau of Foreign Employment. The 3rd Respondent is the Minister of Sri Lanka Bureau of Foreign Employment. The 5th Respondent is Secretary to the Bureau of Foreign Employment. The 5th Respondent is the Chairman of the grievance committee and the 6th Respondent is a member of the Grievances Committee. The 07th Respondent is the Hon. Attorney General.

The Petitioners state that in 1997 to 1999 there were 84 employees recruited by SLBFE employment for the following posts on contract basis:

1. Managerial Grade
2. Clerical Service S-VI
3. Office Aids S-V

The Petitioners stated that after numerous requests their services on contract basis were made permanent by cabinet approval in 2001. However, at the time of being made permanent the SLBFE formed an inter grade and degraded the employees into a lower grade. The intergrades formed by the SLBFE are as follows:

1. Managerial Grade M-VI
2. Grade S-IV inter grade as S-IV- A(i)
3. S-VI Clerical Service Inter grade
4. Office Aids S-V to S-VI

The Petitioners stated that at the end of the probationary period of three years, apart from the employees in the clerical service others were made permanent to the same grade backdated in time. The Petitioners stated that when promotions were made for lower grades, the Respondents considered the contract period and triple promotions granted for managerial grade and office aid staff.

The Petitioners stated that due to the degradation made at the time they were made permanent they have lost 3 to 4 years seniority in service and thereby deprived them of promotions and entitlements in their career. The Petitioners stated that in 2005 they made continuous requests to the relevant authority to promote their service to Grade S-IV and backdated as given to other grades recruited with them.

The Petitioners stated that thereafter they were promoted to grade S- IV with effect from 2004 in the year 2006. The Petitioners stated that some employees who were recruited with them for the same grade were permanent and preceded in time from the date of recruitment.

The Petitioners stated that the Respondents have granted promotions for some employees contrary to the proper recruitment procedure marked **P12**.

The Petitioners stated that in 2015 as result of numerous requests made to the Chairman of the SLBFE established a grievance committee to provide redress in terms of necessary promotions for employees. The Petitioners stated that unfortunately, the committee did not do justice to them and employees in similar standing were treated differently. Aggrieved by which the Petitioners had informed the relevant authorities and as a result the Ministry of Foreign Employment established another grievance committee to solve the employees issues regarding recruitment, promotion and salaries marked **P14**.

The Petitioners stated that after the establishment of the said committee, the Petitioners submitted facts regarding discriminatory treatment and unfair promotions they had endured following which the member of the grievance committee decided the Petitioners should be promoted to grade S-IV since the day they were made permanent. However the grievance committee had not admitted such recommendation to their report. Proof of the grievances submitted by the Petitioners are marked **P14b** and **P14c**.

The Petitioners stated that according to the report of the grievance committee the marked **P15** following qualifications were required to be promoted to the position of Managerial level MV1.:

Degree from a recognised university and three years experience in grade S-1

Or

10 years experience in grade S-1 position

The Petitioners stated that the scheme of recruitment of the SLBFE marked **P18** for the Manger grade VI position required the following qualifications:

I. Degree of a recognised university of equivalent with 03 years experience in General Administration in a senior supervisory capacity in a recognised establishment.

II. Confirmed officers of SLBFE in Non Managerial grade S-1 with a degree of a recognised university of G.C.E. A/L in four subjects with a Diploma in Personal Management from a recognised Institute with 03 years experience in the relevant field of SLBFE

Or

III. Confirmed officers possessing G.C.E. O/L with 10 years experience in the relevant field out of which 02 years should have been in a Supervisory post in the SLBFE.

Or

IV. Confirmed Officers of the SLBFE in the non-managerial Grade S-1 with 10 years satisfactory services (for merit promotions only)

The Petitioners further stated that they had completed all the necessary requirements to be promoted to grade S-1 and grade MV1 even though the grievance committee has not promoted them.

The Petitioners also stated that when they applied for promotions despite fulfilling all necessary requirements, as per the committee report they were not eligible for the said promotions however, promotions were granted to others in 2019. The Petitioners stated that such discriminatory treatment has violated their fundamental rights guaranteed under Article 12(1) and (2) of the Constitution.

In the Limited objections of the 1st, 2nd, 5th and 6th Respondents, the Respondent averred that this application is misconceived in law as this application is not supported by a valid affidavit and or the petition and affidavit is vague and unclear. The necessary parties have not been brought before court in this application and the Employer of the Petitioners namely the SLBFE which is a body corporate has not been made party to this application. The Respondents also claimed that this application is time barred as the Petitioners had not come to court in time.

Leave to proceed was granted by this court on the 04th March 2021 for the alleged violations of Article 12(1) and (2).

As per the objections of the 1st, 2nd and 5th Respondents, the Respondents stated that this application is time barred and that all necessary parties to the application have not been made party to this application including the Sri Lanka Bureau of Foreign Employment.

The Respondents stated that the Secretary to the President had issued a circular addressed to all the Secretaries of the Ministries as well as the Provincial Secretaries with the view of addressing the anomalies of the employees of such institutions. According to the said circular 1st Respondent by way of circular dated 01st March 2017 declared the 15th of March 2017 as the date for the employees of the SLBFE marked **R1** and **R2**.

Thereafter, the 1st Respondent by way of an internal memo bearing No. 3/2017 marked **R3** published the names of the Chairman and members of five committees appointed by the SLBFE to look into the respective grievances of the employees of the SLBFE. The Respondents stated that the Petitioners and several others participated in the process and made application for redress and upon careful scrutiny of the applications the committee recommended redress in terms of the criteria laid out for redress. The report of the Committee is marked **R4**. The Respondents stated that the said recommendations have been implemented as far back as 22.01.2019 with effect from 04.10.2018 as evidenced by **R5**. The Respondents stated that the Scheme of Recruitment was not a criteria for the process if redress of grievance granted and the process carried out under **R1** was not the recruitment of the SLBFE for which the Scheme of Recruitment is otherwise applicable. On the contrary the process carried out was to grant redress to grievances of the employees of the SLBFE's employees who had already been recruited and employed by the SLBFE.

In the affidavit of the 4th Respondent, he averred that the recommendations of the aforementioned grievance committee was forwarded to his predecessor on 04.10.2018 and the ministry informed the SLBFE to take steps to implement the said recommendations. He further stated that the Ministry of Foreign Employment

has only directed the SLBFE to implement the recommendations contained in the report by the grievance committee.

As per the affidavit submitted by the 5th Petitioner stated that they have come to court within the stipulated time and that said Respondents have acted in violation of the Scheme of Recruitment of the SLBFE and the institutional circulars as well as Public Administration circulars whereas the Respondents are not entitled under the law to disregard the scheme of promotion of the SLBFE and to grant the promotions by way of mere reliefs to employees who have not fulfilled the necessary qualifications. Further, the Petitioner stated that no reason whatsoever had been adduced by the Respondents to substantiate their illegal and purported decision not grant the reliefs to the Petitioners by promoting them to the post of Administrative Officer (Grade M VI).

The 5th Petitioner stated that none of the petitioners were summoned to explain their respective grievances to the aforementioned grievance committee. The 5th Petitioner stated that the grievance committee has not acted fairly and transparently when awarding these promotions. The 5th Petitioner further highlighted that the 5th Respondent who was the chairman of the grievance committee has admitted that the names have not been included in the recommended list due to inadvertence and thus established that the committee comprising the 5th Respondent has acted irresponsibly.

As per the Counter objections of the Petitioners stated that they have come to court within the stipulated time disclosing all material facts to the court for the determination of this matter. The Petitioners stated that in view of the grievances presented by the Petitioners to the Grievance committee, the Petitioners were the most suitable candidates to be granted reliefs under the terms of the applicable relief scheme in addition to the qualifications the Petitioners had to be promoted to the post of Administrative officer (Grade M- VI) in terms of the scheme of recruitment of the SLBFE.

The Learned Counsel for the Petitioners by way of motion informed the court that the 1st respondent called for internal applications for the post of JM 1-2 for which this application is also applicable. The Learned Counsel argued that if these

positions are filled before this application is disposed of, this application will be rendered nugatory. On 27th August 2021 the court heard submissions of the learned counsel for the Petitioners, as well as the Counsel for the Respondents and refused to grant interim relief as prayed for by the Petitioners in the motion.

As per the written submissions of the 1st, 2nd and 5th Respondents that the scope of the grievance committee was limited into looking into grievances falling within the parameters of R1 and making recommendations. The Respondents highlighted that no opposition was raised in respect of this process and no challenge whatsoever was made by the Petitioners. The Respondents reiterated the fact that all necessary parties have not been made party to this action including the employer of the Petitioners namely the SLBFE. The Respondents further submitted that the Petition and the affidavits submitted by the Petitioners are vague and invalid. The affidavits submitted by the 1st, 2nd and 3rd Petitioners being Buddhists have sworn their affidavits whilst the 6th and 7th Petitioners being Christians have affirmed their affidavits and the 4th Petitioner has sworn as a HE in HER affidavit, owing to which the Respondents submitted that evidence set forth by these affidavits cannot be relied upon.

The Respondents further raised that the petitioners should have challenged promotions made under the Redress of Grievances scheme on the basis that the scheme of recruitment of SLBFE has not been followed. The Respondents submit that this challenged this in the year 2017 on the basis that it was contrary to the scheme of recruitment but the petitioners thought it fit not to do so. The Respondents further that the individual action of Mr. Keerthi Muthukumarana laid out in document marked P16 is not a decision of the Grievance Committee and the said minute has been issued erroneously and is not valid or binding in law.

As the Petitioners submitted in their written submissions, certain employees being a member of the said grievance committee has recommended himself to be promoted to the post of Assistant Manager. The spouse of the 5th Respondent has been recommended for promotion to a higher position, while the Petitioners have been overlooked. The Secretary of the Trade Union which represents the Jathika Sevaka Sangamaya has been recommended to be promoted to the post of Administrative Officer from the post of General Assistant despite the fact that he

did not even possess the basic qualifications required to be promoted to the said post. One A.J.M Saleem has been recommended to be granted double promotions from Grade S1 to Grade JM despite the fact that he had no five years' experience in the junior manager level which is a prerequisite as per the provisions of the scheme of recruitment of the SLBFE. Despite the fact that no such recommendation had been made by the grievance committee. One D.G.R.C.T. Bandara who is an employee of SLBFE has been recommended for double promotions from Grade SI to Assistant Manager despite the fact that he did not possess the required qualification and experience. These claims have not been refuted by the Respondents. Based on the above it can be concluded that the grievance committee has seemed to favour certain employees over the Petitioners.

In the further written submissions of the petitioners, the petitioners stated that the Petitioners, along with several other employees of the Sri Lanka Bureau of Foreign Employment, submitted their grievances.

The grievances presented to the Grievances Committee by the respective Petitioners are as follows:

1. The 1st, 2nd, 3rd, 5th and 7th Petitioners commenced their employment with the Sri Lanka Bureau of Foreign Employment on contract basis as General Assistants (Grade S IV) on or around March 2nd 1998, December 8th 1997, February 12th 1999 and December 8th 1997 Respectively. However, in 2001, these Petitioners were made permanent employees and appointed to Grade S IV (A), a grade lower than the initial contract grade with which they were engaged.
2. Despite having been employed with the SLBFE for over 19 years the promotions of The 1st, 2nd, 3rd, 5th and 7th Petitioners to the next grade have been unduly delayed by the Respondents. Consequently, the Petitioners requested the Grievance Committee to backdate their promotions to Grade S I and to advance their promotion to the position of Administrative Officer (Grade M VI).

3. Thereafter the 4th Petitioner joined the Sri Lanka Bureau of Foreign Employment on 01.12.1998 on contract basis as a General Assistant (Grade S IV) and was made a permanent employee in the year 2001 by appointing the 4th Petitioner to Grade S IV (A) which in fact a grade lower to the grade the 4th Petitioner was initially contracted with by the Sri Lanka Bureau of Foreign Employment.
4. When applications were called for the position of Grade S I, the 4th Petitioner had submitted an application but was not called for an interview. Despite the 4th Petitioner's 19 years of service with the Sri Lanka Bureau of Foreign Employment, employees who joined after the 4th Petitioner were granted the promotion. The 4th Petitioner sought an explanation for this exclusion but received no response from the Sri Lanka Bureau of Foreign Employment but received no reply from SLBFE.
5. Therefore, the 4th Petitioner submitted to the grievances committee appointed in the year 2017 seeking to promote the 4th Petitioner to the Grade S I and to have back dated the said promotion and further grant the 4th Petitioner a promotion to the next post of Administrative Officer (Grade M VI).
6. The 6th Petitioner joined the Sri Lanka Bureau of Foreign Employment on 21.02.1999 on contract basis as a General Assistant (Grade S IV) and was made a permanent employee in the year 2001 by appointing the 6th Petitioner to Grade S IV (A) which in fact is a grade lower to the grade the 6th Petitioner was initially contracted with by the Sri Lanka Bureau of Foreign Employment. Despite having served the Sri Lanka Bureau of Foreign Employment for over 18 years without receiving any promotions, the 6th Petitioner has been subjected to unfair and unjust treatment. Consequently, the 6th Petitioner requested the Grievances Committee to either grant a promotion to Grade S I or advance the Petitioner directly to the position of Administrative Officer (Grade M VI).

The Petitioners stated that following the above mentioned submission of Grievances Committee, none of the Petitioners were summoned to present or explain their grievances to the committee.

The 1st and 2nd Respondents in their further written submissions stated that the reliefs sought under this application are unclear, vague and are too wide to seek to restrain the SLBFE from making any promotions would seriously affect the entire functioning mechanism of the SLBFE and in any event the SLBFE has not been made a party to this application. The Respondents reiterate the fact that the observations that were made by one Keerthi Muthukurmara the 5th Respondent and chairman of the grievance committee was done in his personal capacity as there was no grievance committee in operation at the time and has no bearing on this application. The Respondents stated that this position is evidenced in the affidavit submitted by the 5th Respondent dated 06.06.2024.

The Respondents further stated that the Petitioners cannot in law approbate and reprobate on the one hand relying on the redress of Grievance exercise and seeking to be recommended thereon and at the same time trying to impeach the said process by arguing that the Redress of the Grievance exercise is contrary to the Scheme of Recruitment of the SLBFE.

Accordingly, this court granted leave to proceed on the alleged violations of Article 12(1) and Article 12(2) of the Constitution.

The Respondents have raised two objections, namely that: (i) all necessary parties to the action have not been named, especially the Sri Lanka Bureau of Foreign Employment, who is the employer of the Petitioners and (ii) that certain Affidavits submitted by the Petitioners are defective.

(i) SLBFE not made a party to this action

When this case was called on 19th July 2021, Learned Counsel for both SC F/R 66/2019 and SC F/R 72/2019 (This case) moved that these two applications be listed together as the two applications are connected. Following which, both matters were listed together for hearing on 16th July 2024 and resumed on 28th

August 2024 for further hearing. Once all parties had made their respective submissions, all parties agreed to abide by one judgment. Although all parties agreed to abide by one judgement, two judgements have been written for the purposes of clarity to all parties. This is to address the different objections raised in the two applications.

The Respondents have raised an objection regarding the parties to this application stating that the SLBFE is a corporate body, which is the employer of the Petitioners, has not been made a party to SC F/R 72/2019. However, since all parties have agreed to have the two matters listed together and to abide by one judgement, and since SLBFE is named as the 1st Respondent in SC F/R 66/2019, and the Chairman of the SLBFE has been named as the 1st Respondent in this application, who in fact has the authority to carry out any direction given by this court. Therefore, no prejudice is caused to the Respondents. Accordingly, I overrule this objection raised by the Respondents.

(ii) Defects in the Affidavits of the Petitioners

It has been raised by the Respondents that some of the affidavits submitted by the Petitioners are defective and therefore the evidence set forth by these affidavits cannot be relied upon.

As per Justice Priyantha Jayawardena in the case of ***M Tudor Danister Anthony Fernando v Rankiri Hettiarachchige Freddie Perera*** SC HC CALA 279/2014 **decided on 17th December 2014** “ *What is essential in an affidavit is to state that the person who is stating the facts therein does so after taking an oath or affirmation as an affidavit is considered as evidence in law. Therefore, it is necessary to show that the person who swears or affirms to the facts stated in the affidavit did so before a competent authority or a person. For this reason the place of swearing or affirmation, the date on which the affidavit was signed are essential parts of the jurat (at page 12).*

There is specific reference in the jurat that the affidavit was “read over to the within named deponent....” The disputed part of the affidavit is the use of the word ‘affirmed’ instead of ‘sworn’ in the remaining portion of the jurat.

Apart from stating that the Petitioner signed the affidavit before a Commissioner for Oaths, Jurat states the place and the date on which the affidavit was signed. Jurat in an affidavit is an integral part of an affidavit and it cannot be considered in isolation. In other words an affidavit should be considered in its totality. In applying this test and considering the totality of the affidavit and applying the relevant law and accepted practices, the fair conclusion that could be arrived is that the Petitioner has stated the facts in the affidavit under oath before the Commissioner for Oaths as demonstrated at the beginning of the affidavit and, the affidavit filed along with the instant Petition fulfills the requirements of the Oaths and Affirmation Ordinance (at page 13).”

Upon perusal of the defects in the affidavits in this application, it is evident that the defects are similar to those of the above mentioned case and do not affect the substance of the petition. These trivial defects do not in any way change the facts presented in the affidavits. However, it is quite unfortunate that the Petitioners have not yet taken any steps to correct these defects in their affidavits.

Article 12(1) of the Constitution reads that:

“All persons are equal before the law and are entitled to the equal protection of the law”.

Article 12(2) of the Constitution reads that:

“No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds:

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any Public Corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office:

Provided further that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language”.

Considering the framework of Article 12(1) of the Constitution, which guarantees the right to equality, and applicability of the principle of legitimate expectation, it becomes clear that the expectation in question must be based on a promise or commitment made by the relevant authority. If such a promise exists, denying the petitioner the opportunity they are claiming would be inconsistent or unreasonable in the context of proper administrative conduct.

I have dealt with the application of Article 12(1) extensively in SC F/R 66/2019 which is the connected case of this matter and reiterate that the same principles apply to the facts of this case.

The Petitioners claim that the decision of the Respondents is unlawful, arbitrary and offends the principles of reasonableness and fairness.

It is the Respondents contention that these promotions have been made not according to the scheme of recruitment of the SLBFE but according to the grievances presented to the committee in order to ensure a healthy and content public service by addressing all anomalies/grievances state employees may have and to address the same through this process.

Article 12 of the Sri Lankan Constitution guarantees equality before the law and equal protection under the law. This principle does not merely prevent overt discrimination but ensures that lawful standards are applied uniformly and justly. The Supreme Court has consistently held that Article 12 guarantees equal treatment in the performance of lawful acts, not unlawful ones. Individuals cannot demand illegal actions simply because such actions were permitted in other instances.

Judicial precedents, such as *C.W. Mackie and Co. Ltd. v Hugh Molagoda* [1986] 1 Sri LR 300 and *Gamaethige v Siriwardene* [1988] 1 Sri LR 384 emphasise that

equality does not validate the repetition of illegality but ensures fairness within the bounds of the law. Furthermore, Article 12 does not allow unequals to demand equal treatment. Equal opportunity applies only to individuals in comparable circumstances, and this case illustrates that the petitioners sought promotions without meeting the required qualifications, unlike other officers who adhered to service norms. This aligns with the principle that unequals cannot be treated as equals. Additionally, past instances of unlawful actions cannot justify future similar actions. Judicial interpretation clarifies that the repetition of errors does not align with the equal protection clause, as seen in *Jayasekera v Wipulasekara* [1988] 2 Sri LR 237.

Equal protection requires adherence to lawful criteria for decisions like promotions, ensuring consistency and fairness in governance. Claims of discrimination must be founded on lawful grounds; in this case, the petitioners failed to demonstrate their qualifications matched the criteria, making their allegations baseless. By mandating that government authorities act in a manner that is non-arbitrary, rational, and reasonable, Article 12 underscores a framework that prevents individuals from using the concept of equality to compel illegal acts or justify arbitrary actions. This ensures genuine equality while safeguarding the integrity of governance systems.

When a public authority makes a decision, it is expected to act in accordance with the principles of natural justice by ensuring transparency and providing explanations for its actions. These procedural rights are essential to upholding the protections of Article 12 of the Constitution, which prevents unequal or arbitrary treatment. Such rights emphasise formal justice, fairness, and the rule of law, ensuring that decisions are made objectively and impartially, thereby fostering consistency in governance. In this case, the Respondents acted within their lawful authority based on the criteria set out in the redress granting scheme, and their decision-making process adhered to established criteria. The Respondents' actions were in alignment with procedural fairness and the legitimate objectives of the public service, ensuring equal treatment based on applicable standards.

Considering all the aforementioned facts and circumstances, it is evident that the steps that were taken by the Respondents cannot be categorised as arbitrary, which

had violated the Petitioners fundamental rights guaranteed in terms of Article 12(1) and Article 12(2) of the Constitution.

For the reasons aforesaid, I hold that the Petitioners have not been successful in establishing that their fundamental rights guaranteed in terms of Article 12(1) and Article 12 (2) of the Constitution had been infringed by the Respondents.

This application is accordingly dismissed.

I make no order as to costs.

JUDGE OF THE SUPREME COURT

JAYANTHA JAYASURIYA P.C., CJ,
I agree.

CHIEF JUSTICE

A.L. SHIRAN GOONERATNE, J,
I agree.

JUDGE OF THE SUPREME COURT