

**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.

1. K.L.W.Perera
2. Rohini Sudasinghe
3. A.S.J.Wijayashantha
4. B.M.Chandrawathi
5. H.M.D.Kumari Herath
6. H.A.L.Wijerathna
7. A.W.P. Kulathunga
8. M.D.R.C. Dissanayake
9. P.H.Chulakanthi
- 10.T.D. anoma Chithrani
11. P.A. Sugathapala
12. T.D.Ranaweera
- 13.W.K.Lakshmi
14. N.H.K. Navarathna
15. M.S.S.Chandrasekara
16. S. Ariyarathna
17. K.L.W.Priyanyhi
- 18.H.P.C.S.Kumarihamy

All of Sri Jayawardenapura General Hospital,
Thalpathpitiya, Nugegoda.

Petitioners

SC/FR 210/2001

Vs

1. Sri Jayawardenapura General Hospital Board,
Thalpathpitiya, Nugegoda.
2. G.Chandima De Silva
- 2(a). Dr. H.A.P.Kahandaliyanage (Chairman)
3. Dr. J.B. Peiris
4. Dr. A.L.M. Beligaswatta
- 4(a). Dr.V.K.P Indraratne

5. Abeysinghe
6. Dr.H.H.R. Samarasinghe
 - 6(a) P.J.Ambawatte
7. Dr.(Mrs.) C.N. Karunarathne
 - 7(a). Dr. Harsha Kumudini Samarasinghe
8. K.V.P.Ranjith De Silva
 - 8(a) Mr. Chamath De Silva
9. Dr. D.L.D. Lanerolle
 - 9(a).Dr. N.S.A. Senaratne
- 10.D.G.Dayarathne
 - 10(a).Mr.S.M. Nanda Lalitha Senanayake
- 11.Dr. P.G.Maheepala
- 12.Prof. Janaka De Silva
- 13.Hon. Attorney General

Attorney General's Department,
Hulftsdorp, Colombo 12.

Respondents

- Before : Priyasath Dep CJ
Sisira J de Abrew J
Nalin Perera J
- Counsel : Manohara de Silva PCwith Boopathi Kahathuduwa
for the Petitioners.
Ranjan Mendis with B.S. Peterson for the 1st 2(a), 4(a) and 9(a)
Respondents.
Yohan Abeywickrama SSC for the 4th and 5th Respondents.
- Argued on : 15.1.2018
- Decided on : 21.6.2018

Sisira J De Abrew J.

This court by its order dated 14.10.2009, granted leave to proceed for alleged violation of Article 12(1) of the Constitution. The petitioners have stated the following facts.

The petitioners were appointed to the post of Grade III clerk in Sri Jayawardenapura General Hospital during the period commencing from 1995 to 1997. When the petitioners were appointed to the post of Grade III clerk, there were clerks already in the Sri Jayawardenapura General Hospital. The said clerks had been appointed during the period commencing from 1984 to 1995 before the petitioners were appointed to the post of Grade III clerk and they (the clerks appointed during the period commencing from 1984 to 1995) had not been placed on any grade when they were appointed. By a document dated 24.11.2000 marked P5, the clerks in the Sri Jayawardenapura General Hospital have been graded into three classes in the following manner.

Post	Salary Scale
Class I	T-2-5
Class II Segment A	T-2-2
Class II Segment B	T-2-1

The Sri Jayawardenapura General Hospital by the said letter marked P5, has placed the Petitioners in Class II Segment B the salary scale of which is T-2-1. The clerks who were appointed during the period commencing from 1984 to 1995 have been placed on the salary scale of T-2-2 by the said document marked P5. Learned

President's Counsel for the petitioners contended that as a result of the said procedure introduced by the document marked P5, the petitioners would have to wait for 20 years to reach Class I, but the clerks who had been appointed during the period commencing from 1984 to 1995 would be in a position to reach Class I in 10 years. This was the argument of the petitioners. On the strength of the said argument, the petitioners move this court to direct the Respondents to place the petitioners in the same Grade of the other clerks who had been appointed as clerks during the period commencing from 1984 to 1995. The petitioners also move this court to direct the 1st to 10th Respondents to prepare a proper scheme of grading according to law. The petitioners contended that their fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the Respondents. The petitioners have narrated the above facts in their petition.

The Respondents in their statement of objections admit that there are certain mistakes in the document marked P5.

The petitioner's application is to place them in the same grade of the other clerks who had been appointed as clerks during the period commencing from 1984 to 1995. The petitioners have been appointed as clerks during the period commencing from 1995 to 1997. If the petitioners' application is allowed, a person who had been appointed as a clerk in 1984 would be equal to a person who had been appointed as a clerk in 1997. If the petitioners' application is allowed, it would be unreasonable by the clerks who were appointed as clerks in 1984. Such a decision would undoubtedly affect the rights of the clerks who were appointed during the period commencing from 1984 to 1995. They are not even before court. It has to be noted here that the people who were appointed as clerks during the period commencing from 1984 to 1995 have been in clerical service in Sri

Jayawardenapura General Hospital long prior to the appointments of the petitioners as clerks. Therefore, it is unreasonable to equalize two categories now. For the above reasons I hold the view that said application of the petitioners cannot be allowed.

When I consider all the above matters, I am unable to hold that the Respondents have violated the fundamental rights of the petitioners guaranteed by Article 12(1) of the Constitution. I therefore refuse to grant the relief claimed by the petitioners. For the aforementioned reasons, I dismiss the petition of the petitioners with costs.

Petition dismissed.

Judge of the Supreme Court.

Priyasath Dep PC Chief Justice

I agree.

Chief Justice.

Nalin Perera J

I agree.

Judge of the Supreme Court.

