

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

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**S.C. (FR) Application  
No.317/2010**

Damayanthi Namalee Haupe Liyanage  
Madawalagama,  
206/6, Moratuhena Road,  
Athurugiriya.

**Petitioner**

Vs.

1. H.P.S. Somasiri,  
Director General of Irrigation,  
Department of Irrigation,  
Colombo 07.
2. K.M.P.S. Bandara,  
Director,  
Engineering Service Board,  
Ministry of Public Administration & Home  
Affairs,  
Colombo 07.
3. D. Dissanayaka,  
Secretary,  
Ministry of Public Administration & Home  
Affairs,  
Colombo 07.

4. Dr. G.G.A. Godaliyadde,  
Director of Irrigation,  
Department of Irrigation,  
Colombo 07.
5. Hon. The Attorney General,  
Attorney General's Department,  
Colombo 12.

### **Respondents**

**BEFORE** : Dr. Shirani A. Bandaranayake, CJ.  
Chandra Ekanayake J. &  
R.K.S. Suresh Chandra, J.

**COUNSEL** : Anil Silva, PC., with W. Madawalagama for  
Petitioner  
  
Shaheeda Barrie, SC., for the Respondents

**ARGUED ON** : 26.01.2011.

#### **WRITTNE SUBMISSIONS**

**TENDERED ON** : Petitioner : 21.03.2011

Respondents : 21.04.2011

**DECIDED ON** : 26.03.2012.

**Dr. Shirani A. Bandaranayake, CJ.**

The petitioner, who is a chief Irrigation Engineer attached to the Department of Irrigation, complained that her fundamental right guaranteed in terms of Article 12(1) of the Constitution was violated by the 1<sup>st</sup> – 4<sup>th</sup> respondents by the decision taken by them, which was communicated to her by letter dated 29-06-2009 issued by the 4<sup>th</sup> respondent on behalf of the 1<sup>st</sup> respondent.

Leave to proceed was granted by this Court for the said alleged infringement.

The petitioner's grievance, as stated by her is as follows:

The petitioner had joined the Sri Lanka Engineering Service (hereinafter referred to as SLES) as a Civil Engineer, Class II / Grade II on 02-12-1996, which was subjected to a 3 year probationary period (P1). She was confirmed in the said position on 10-05-2000 to be with effect from 02-12-1996 (P2). In terms of Section 8 of the Minute of the SLES, if the necessary requirements were fulfilled, the said officer could be promoted to Class II / Grade I. Since the petitioner had fulfilled the necessary requirements, she was confirmed in the position of Class II Grade II of SLES on 10-05-2000 to be with effect from 02-12-1996. Thereafter the petitioner was promoted to Class II / Grade I with effect from 02-12-2006 (P7).

The Service Minute of the SLES was amended by Engineering Service Circular No.25 dated 03-03-1993 (P9). In terms of the said amendment, when an officer appointed to a relevant All-island service had passed two Efficiency Bar Examinations with the second language requirement either being completed or exempted with a six years satisfactory service, such an officer would be placed on the salary step of Rs.48,000/- from 07-06-1988.

The Petitioner had been placed on the corresponding salary step of Rs.124,500/- with effect from 02-12-2002 and had been drawing the said salary until June 2009. The petitioner had received a letter on 29-06-2009 signed by the 4<sup>th</sup> respondent, on behalf of the 1<sup>st</sup> respondent stating that the salary scale on which she was placed on 02-12-2002 has been cancelled and that with effect from 24-07-2004 she has been placed on the salary scale of Rs.139,500/- (P11). She was also informed that due to the changes of the date of operation of the salary scale, she has to refund the amounts that had been overpaid.

The petitioner therefore had stated that the cancellation of the decision made on 10-03-2003 and placing her on a different scale with effect from 24-07-2004 and the consequent deduction of her salary, are decisions which are arbitrary, unreasonable, illegal and in violation of her fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The petitioner's grievance is based on the revision of her salary scale by letter dated 29-06-2009 (P11).

It is not disputed that, by his letter dated, 10-03-2003 (P10 b), the then Director General of Irrigation, had informed the petitioner that in terms of the Minute of SLES approval had been granted for her to be placed on the annual salary step of Rs.124,500/- with effect from 02-12-2002. Thereafter a letter was issued to the petitioner dated 29-06-2009 informing her of the change of the said salary scale. This letter is as follows:

**“ ශ්‍රී ලංකා ඉංජිනේරු සේවා ව්‍යවස්ථා සංග්‍රහයේ 2 වන වගන්තිය යටතේ නියමිත වැටුප් තලයේ පිහිටුවීම.**

ඉංජිනේරු සේවා ව්‍යවස්ථා සංග්‍රහයේ 02 වන ඡේදයේ II වන වගන්තිය යටතේ 2002-12-02 වන දින සිට මබ රු.124,500.00 වාර්ෂික වැටුප් තලයේ පිහිටුවීමට රාජ්‍ය පරිපාලන හා ස්වදේශ කටයුතු අමාත්‍යාංශයේ අතිරේක ලේකම් මගින් ලබා දී තිබූ අනුමැතියට අනුව මාගේ සමාංක හා 2003-03-10 දිනැති ලිපියෙන් කරන ලද වැටුප් සංශෝධනය මින් අවලංගු කරන අතර මබ 2004-07-24 දින සිට රු.139,500.00 වැටුප් තලයේ පිහිටුවීමට ඉංජිනේරු සේවා අධ්‍යක්ෂකගේ අංක ES/5/3406 හා 2007-08-02 දිනැති ලිපියෙන් අනුමැතිය ලබා දී ඇති බව කාරුණිකව දන්වමි. "

Learned President's Counsel for the petitioner contended that the letter referred to above should be set aside since the petitioner had completed the 1<sup>st</sup> and 2<sup>nd</sup> Efficiency Bar Examinations within 6 years of her joining the SLES, that she was placed on the 11<sup>th</sup> salary step with effect from 02-12-2002 (P10) by letter dated 10-03-2003, and that by 02-12-2002, she had completed six years in the said service.

Learned President's Counsel for the petitioner relied on the amendment to the Minute of SLES dated 03-03-1993, which stated thus:

" When an officer appointed to a relevant All-island Service has passed two Efficiency Bars and second language test or exempted from that requirement after having completed six (06) years satisfactory

service, he will be placed on the salary step of Rs.48,000/- from 07-06-1988.”

The contention of the learned President’s Counsel for the petitioner is that in terms of the said provision, for a public officer to be placed on the salary step of Rs.48,000/- the necessary requirements would be,

- a) to have completed 6 years of service;
- b) to have passed two Efficiency Bar Examinations; and
- c) to have passed the second language test.

It was also strenuously contended on behalf of the petitioner, that, there is no necessity for the said Efficiency Bar Examinations to be completed within a stipulated time period, since that has not been categorically stated in the said amendment to the Minute of 1993.

Accordingly, it was contended on behalf of the petitioner that she had fulfilled all the necessary requirements stipulated in the said Amendments to the Minute of SLES and therefore she should be placed on the relevant salary scale. It was further submitted that the requirement of satisfactory service in terms of the Gazette Notification No.1589/30 dated 20-02-2009 would not be applicable where the petitioner is concerned, as it should be applicable only to promotions granted to public officers after the said Gazette Notification came into effect.

It is not disputed that the petitioner was appointed with effect from 02-12-1996 (P1) as an officer in Class II Grade II of the SLES. Clause 14 of the said letter of appointment states as follows:-

“ ශ්‍රී ලංකා ඉංජිනේරු සේවයේ II වන පංතියේ II වන ශ්‍රේණියට හිමි නව වැටුප් පරිමාණය වර්ෂයකට රු.53,880 - 15 x 1560 - 77,280/- වේ. රු.60,120 ට පෙර පළමුවන කාර්යක්ෂමතා කඩ ඉමද රු.74,160/- ට පෙර දෙවන කාර්යක්ෂමතා කඩ ඉමද (පූර්ණ වෘත්තීය සුදුසුකම්) ඇත.

අ) ඔබ නව වැටුප් පරිමාණයේ ආරම්භක වැටුප මත සේවයෙහි පිහිටවනු ලැබේ.

ආ) සම්පූර්ණ වෘත්තීය සුදුසුකම් ලබා ගත් විට ඔබ රු.61,680/- ක වාර්ෂික වැටුප මත පිහිටවනු ලැබේ.”

The said Clause 14 therefore clearly had stated that before reaching stipulated salary steps, the petitioner has to face the first and the second Efficiency Bar Examinations.

In fact the said requirement was referred to in the original Minute of the SLES published in the Gazette Notification dated 07-06-1988. Clause 2 of the said Minute and the Note to the said Clause refer to the time period in which the Efficiency Bar Examinations should be completed. The said Clause is as follows:-

“ The Sri Lanka Engineering Service shall consist of Public Officers appointed to any of the Classes and Grades of the Service enumerated below:

New consolidated salary scales and salary steps given should be computed as per Appendix IV of Public Administration Circular No.387 with regard to the year 1988.

<b>Class</b>	<b>Cadre</b>	<b>New Consolidated Salary Scale Per Annum (with effect from 01-01-1989)</b>
Class I	105	Rs.72,000 – 10 x 3,600 – Rs.108,000
Class II Grade I (Grades I & II Combined)	837	Rs.55,200 – 7 x 2,400 – Rs.72,000
Class II Grade II	-	Rs.36,000 – 15 x 1,200 – Rs.54,000

Note - (1) 1<sup>st</sup> Efficiency Bar before reaching the salary step of Rs.40,800 and 2<sup>nd</sup> Efficiency Bar (full professional qualifications) before reaching the salary step of Rs.51,600.”



According to the said Minute the salary scale for Class II Grade II started at Rs.36,000 with 15 annual increments of Rs.1200. The salary steps based on the said Minute would therefore be as follows:

TABLE I

Salary steps	Amount
1	Rs.36,000
2	Rs.37,200
3	Rs.38,400
4	Rs.39,600
<b>5</b>	<b>Rs.40,800</b>
6	Rs.42,000
7	Rs.43,200
8	Rs.44,400
9	Rs.45,600
10	Rs.46,800
11	Rs.48,000
12	Rs.49,200
13	Rs.50,400
<b>14</b>	<b>Rs.51,600</b>
15	Rs.52,800
16	Rs.54,000

This clearly indicates that in terms of the Note on Clause 2 of the Minute of SLES the petitioner had to complete the first Efficiency Bar Examination before reaching the 5<sup>th</sup> salary step and the second Efficiency Bar Examination before

reaching the 14<sup>th</sup> salary step. In other words, the petitioner had to complete the first Efficiency Bar Examination within 4 years of joining the service and the second Efficiency Bar Examination within 13 years in the service.

The promotions of officers in Class II/ Grade II is referred to in Clause 8 of the Minute of SLES. The said Clause states that an officer in Class II / Grade II is required to pass the first Efficiency Bar Examination and to have full professional qualifications and a maximum of 10 years' service in a post enumerated in the Schedule before he becomes eligible for promotion to Class II Grade I.

Learned State Counsel brought to our notice that by implementing the said scheme, an officer who is promoted to Class II Grade I after 10 years on the basis of fulfilment of all necessary requirements, will have to forego five (5) remaining salary increments in Class II Grade I, as the said salary increments for Class II Grade I had been formulated for a 15 years period of service.

Since this had created an anomalous situation, an amendment was brought into in 1993 and by Engineering Services Circular No.25 of 03-03-1993 the Minute of SLES was amended. The said amendment stated that,

“ When an officer appointed to a relevant All-island Service has passed two Efficiency Bars and second language test or exempted from that requirement after having completed six (06) years Satisfactory Service, he will be placed on the salary step of Rs.48,000/- from 07-06-1988 (The date on which the Minutes of Sri Lanka Administrative Service and Sri Lanka Accountants' Service published in the Gazette (Extra Ordinary) of the Democratic Socialist Republic of Sri Lanka).”

Table I referred to earlier, clearly shows that Rs.48,000/- is the 11<sup>th</sup> salary step in Class II Grade II and therefore an officer who has completed the necessary requirement after the completion of both Efficiency Bar Examinations could immediately be placed at the 11<sup>th</sup> salary step.

Learned State Counsel for the respondents submitted that when an officer is permitted to reach the 11<sup>th</sup> salary step at the completion of 6 years, such officer is able to earn further salary increments available to him in Class II Grade II within the 4 years, before he becomes eligible for promotion to Class II Grade I after the completion of 10 years of service.

Learned State Counsel for the respondents contended that the amendment to the Minute of SLES, by Circular No.25, was only an attempt to redress the anomalous situation that the officers in Class II Grade II had to face when promoted to the next Grade, after 10 years of service.

Accordingly, it is evident that under the category to which the petitioner belonged to, the first Efficiency Bar Examination had to be completed within 4 years. As stated earlier the petitioner was appointed on 02-12-1996. She had to pass the first Efficiency Bar Examination by 02-12-2000.

In terms of Engineering Service Circular 23 of 24-11-1992, the First Efficiency Bar Examination consisted of the following subjects:

1. Establishment
2. Finance
3. Second Language (oral test) and
4. Departmental Procedure

It is not disputed that the petitioner failed to complete the 1<sup>st</sup> Efficiency Bar Examination on 02-12-2000. The 1<sup>st</sup> respondent in his affidavit had given the dates on which the petitioner had passed the said Examination, which is as follows:

TABLE II

<b>Efficiency Bar- 1<sup>st</sup> Examination- Subjects</b>	<b>Stipulated Date</b>	<b>Date actually Passed</b>	<b>Delay (if any)</b>
Establishment	02-12-2000	02-10-1998	No
Finance	02-12-2000	10-08-2001	08 Months 02 Days
Departmental Procedure	02-12-2000	28-11-1998	No
2 <sup>nd</sup> Language (oral test)	02-12-2000	24-07-2002	01 Year 07 Months 22 Days

This clearly indicates that there had been a delay of 1 year 7 months and 22 days in the petitioner completing the first Efficiency Bar Examination. The question that would arise at this point is as to the provisions that could apply in instances where there is a delay in passing such Examinations.

The Establishment Code provides for such situations.

Section 10:1 of Chapter VII of the Establishment Code, which deals with increments is as follows:

“ An officer is not entitled to draw an increment as of right. He is required to earn it by the efficient and diligent discharge of his duties and by serving the incremental period in full.”

It is therefore mandatory for an officer to pass the Efficiency Bar Examinations within the stipulated time frame. The Establishment Code, accordingly, contains provisions, which state that, where an increment is deferred for failure to pass an Efficiency Bar, the period of deferment will be the period taken in excess of the normal time allowed for such purpose.

Accordingly, as the petitioner had completed her first Efficiency Bar Examination 1 year 7 months and 22 days after the period that was stipulated, the petitioner's 5<sup>th</sup> increment had to be deferred by an equal period of time. Due to this, every increment thereafter had to be deferred by 1 year 7 months and 22 days.

Contention of the petitioner was that since she has completed her 2<sup>nd</sup> Efficiency Bar within 6 years of joining the service on 07-06-2002, and that by that time she had completed her first Efficiency Bar Examination, the provisions of the Minute of SLES should apply regardless of the provisions of the Establishment Code.

The question that arises at this juncture is that in terms of the provisions laid down under the Minute of SLES, whether the conditions stipulated by the Establishment Code could be disregarded.

As stated earlier, by Engineering Service Circular No.25, the SLES Minute was amended to substitute the paragraphs which brought in the concept of placing an officer in All-island Parallel Service on the salary step of Rs.48,000/- from 07-06-1988. For this it was necessary for such an officer to have passed two

Efficiency Bar Examinations and the Second Language Test or be exempted from that requirement. It was also necessary for such an officer to have completed six (6) years of satisfactory service.

It is therefore apparent that the requirement of six years cannot be purely the number of years, but should be carried out to the satisfaction of the authorities.

'Satisfactory service' is clarified in the Gazette Notification No.1589/30, dated 20-02-2009. Section 186 of the aforementioned Gazette Notification reads as follows:-

“ A public officer must earn his promotion by a satisfactory service and fulfilment of all the required qualifications prescribed in the Service Minute or the Scheme of Recruitment.

- i Satisfactory service means a period of service, during which period an officer had earned all annual salary increments fell due by efficient and diligent discharge of duties, by passing over Efficiency Bars fell due, by qualifying for confirmation in service fell due and during which period he has not committed a punishable offence.
- ii When an officer has not been granted his due annual salary increments for legitimate reason the period during which the increment had stand suspended, reduced,

stopped or deferred . . . shall be excluded in computing his period of satisfactory service.”

In terms of the said provisions, it is quite clear that for the purpose of satisfactory service, it is necessary for an officer to have earned his salary increments and if the increment/s had been suspended, reduced, stopped or deferred, that period should be excluded in computing his period of satisfactory service.

Therefore when calculating the satisfactory service of the petitioner, it is necessary to exclude the period of 1 year 7 months and 22 days, which had been the delay in completing the first Efficiency Bar Examination by the petitioner.

The petitioner had complained that her fundamental rights guaranteed in terms of Article 12(1) had been violated by the respondents.

Article 12(1) of the Constitution deals with the right to equality and reads as follows:-

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

Equality does not mean that identical rules of law should be applicable to all persons. What it postulates is that equals should be treated equally and that equality of treatment be given in equal circumstances. This means that the Legislature is entitled to make reasonable classification for purposes of legislation and thereafter treat all those who belong to one group equally on the basis that the said group falls into one separate class.

In **Kedar Nath Bajoria v The State of West Bengal** (A.I.R. 1953 S.C. 404), the Indian Supreme Court had reiterated the recognition given to reasonable classification under the right to equality and had stated thus:

“ The equal protection of the laws guaranteed by Article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation.”

As stated earlier, the petitioner had complained that by letter dated 29-06-2009 she was informed by the 4<sup>th</sup> respondent on behalf of the 1<sup>st</sup> respondent that the salary scale on which she was placed on 02-12-2002 had been cancelled. The petitioner had then stated that the said cancellation is arbitrary, unreasonable, illegal and violative of her fundamental right guaranteed in terms of Article 12(1) of the Constitution.

The 1<sup>st</sup> respondent in his affidavit had averred that by letter dated 29-06-2009, the petitioner was informed of the rectification of her salary scale. This had to be carried out since there had been an error when the petitioner's salary scale was decided as the period 1 year 7 months and 22 days as explained earlier had to be excluded when computing her satisfactory service.

In fact the petitioner had not been the only person who had been treated as not having a satisfactory service. For instance in 2005 the Secretary to the Ministry of Public Administration and Home Affairs had sought the opinion of the Public Service Commission on the same matter and the Assistant Secretary to the Public Service Commission, by letter dated 18-07-2005 had informed that the



delay in completing the Tamil Oral Test cannot be considered as a satisfactory service period (R6).

Considering all the aforementioned, it is evident that there is a clear distinction between the officers who have a satisfactory service and who have not got that record. The Engineering Services Circular No.25, dated 03-03-1993, would be applicable, as has been clearly stated, only to officers appointed to a relevant All-island service who had obtained the necessary requirements and who had completed six years **satisfactory** service. Therefore in order to apply the said Circular it is necessary that the relevant officer should have six years satisfactory service. The classification therefore would be on the basis of satisfactory service, since there is uniformity in its application. Such classification has been recognised as valid which would satisfy the requirements of equal treatment. Considering classifications and its validity, in **The Anant Mills Co. Ltd. v The State of Gujarat** (A.I.R.1975 S.C. 1234) it was stated thus:

“ Articles 14 forbids class legislation but does not forbid classification. 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 the differentia must have a rational relation to the effect sought to be achieved by the Statute in question.

In permissible classification mathematical nicety and perfect equality are not required. Similarly identity of treatment is not essential. If there is equality and uniformity within each group, the law will not be condemned as discriminatory, though due to some fortuitous circumstances arising out of a peculiar

situation some included in a class get an advantage over others, so long as they are not singled out for special treatment.”

Therefore it is clearly evident that when an officer does not complete the relevant Efficiency Bar Examination within the given time frame, the next increment would be deferred by the period of time corresponding to the period of delay. This action cannot be regarded as a violation of petitioner’s fundamental right guaranteed in terms of Article 12(1) of the Constitution.

For the reasons aforesaid I hold that the petitioner had not been successful in establishing that her fundamental right guaranteed in terms of Article 12(1) had been violated by the respondents. This application is accordingly dismissed.

I make no order as to costs.

Chief Justice

**Chandra Ekanayake, J.**

I agree.

Judge of the Supreme Court

**R.K.S. Suresh Chandra, J.**

I agree.

Judge of the Supreme Court