

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

**S.C. (FR) Application
No. 320/2007**

1. Padma Maithrilatha Akarawita,
No. 308, Magamma,
Homagama.
2. G.L.S. Suriarachchi,
No. 23/4, Wickramasinghe Pura,
Battaramulla.
3. Chandralatha Colambage,
No. 63 A/2, Horana Road,
Kesbewa.

Petitioners

Vs.

1. Dr. Nanda Wickramasinghe,
Director Museums,
Department of National Museums,
Sir Marcus Fernando Mawatha,
Colombo 07.
2. D.S. Edirisinghe,
Commissioner General of Labour,
Department of Labour,
Narahenpita,
Colombo 05.
3. Mahinda Madihahewa,
Secretary,
Ministry of Labour Relations and Manpower,
Labour Secretariat,
Colombo 05.

4. Hon. C.R. de Silva,
The Attorney-General,
Attorney General's Department,
Colombo 12.
5. M.E. Lionel Fernando,
Co-Chairman,
National Salaries and Cadre Commission,
Room 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
6. K.N.S. Wimalasuriya Mathew,
Co-Chairman,
7. Ariyapala de Silva,
Member,
8. S.H. Siripala,
Member,
9. Sunil Chandra Mannapperuma,
Member,
10. D.W. Subasinghe,
Member,
11. Gunapala Wickramaratne,
Member,
12. M. Mackey Hashim,
Member,
13. Prof. Carlo Fonseka,
Member,
14. H.M. Somawathie Kotakadeniya,
Member,
15. Don Gnanaratna Jayawardena,
Member,
16. Lloyed Fernando,
Member,

17. Leslie Devendra,
Member,

18. S. Sivanandan,
Member,

(The above 7th to 18th Respondents are all members of the National Salaries and Cadre Commission, Room 2-G 10, BMICH, Bauddhaloka Mawatha, Colombo 07)

19. K.L.L. Wijeratne,
Secretary,
National Salaries and Cadre Commission,
Room 2-G 10, BMICH,
Bauddhaloka Mawatha,
Colombo 07.

Respondents

BEFORE : Dr. Shirani A. Bandaranayake, J.
N.G. Amaratunga, J. &
S.I. Imam, J.

COUNSEL : Uditha Egalahewa with Gihan Galabadage for Petitioners

Rajiv Gunatillake, SC, for Respondents

ARGUED ON: 01.10.2009

WRITTEN SUBMISSIONS

TENDERED ON: Petitioners : 19.01.2010
Respondents : 19.01.2010

DECIDED ON: 02.11.2010

Dr. Shirani A. Bandaranayake, J.

The petitioners, who belong to the Supra Grade of the Librarians' Service, alleged that the decision by the 5th to 19th respondents to place them in the salary scale of MN – 7 in terms of Public Administration Circular, No. 06/2007 was illegal, null and void and violative of their fundamental rights guaranteed in terms of Article 12(1) of the Constitution. The petitioners accordingly had prayed to direct the 5th to 19th respondents to place them in a salary scale comparable to that of Class II Grade II of Sri Lanka Administrative Service.

This Court had granted leave to proceed for the alleged infringement of Article 12(1) of the Constitution.

The facts of this application, as submitted by the petitioners, *albeit* brief, are as follows:

At the time of filing this application, the 1st petitioner was the Librarian of the National Museum, the 2nd petitioner was the Librarian of the Department of Labour and the 3rd petitioner was the Librarian of the Attorney General's Department. They were the only three (3) officers serving in the Supra Grade of the Librarians' Service of Sri Lanka. The 1st petitioner had joined the Sri Lanka Librarians' Service (hereinafter referred to as SLLS) on 16.12.1976 and was promoted to the Supra Grade of the SLLS on 22.03.1998. The 2nd petitioner had joined the SLLS on 01.08.1978 and was promoted to the Supra Grade of SLLS on 14.08.1989. The 2nd petitioner had retired from the service on 07.06.2007. However, she had been re-employed on contract basis thereafter with effect from 08.06.2007 as there were no Supra Grade Librarians in the service. The 3rd petitioner joined the SLLS on 01.06.1984 and was promoted to the Supra Grade of the SLLS on 23.12.1997.

The qualifications required for Supra Grade of SLLS have not been prescribed in the Minute of the SLLS and therefore the appointments to the Supra Grade of the SLLS is governed by the Public Administration Circulars (hereinafter referred to as PA Circulars) No. 47/89 of 27.09.1989 (P_{2a}) and 47/89(1) of 13.11.1991 (P_{2b}). Since 1981 in all PA Circulars issued in the years

1986,1988, 1989, 1993, 1994, 1997, 2002 and 2004, the salary scale assigned to the Supra Grade of the SLLS was higher than the initial salary scale of the Sri Lanka Administrative Service (hereinafter referred to as the SLAS).

In terms of PA Circular No. 09/2004, the Supra Grade Librarians were placed on an initial salary scale of TB – 5 – 3 (172,620 – 11 x 3780 – 214,200), whereas the Class II Grade II of SLAS officers were placed on the salary scale of TB – 5 – 1 – 2 (157,500 – 15 x 3780 – 214,200).

The PA Circular No. 6 of 2006 that came into effect from 01.01.2006 has placed the Supra Grade Librarians in a new scale of MN – 7 with the initial salary scale of 19,755 – 15 x 325 – 11 x 400 – 29,030 and has placed the Class II Grade II of SLAS officers in a new scale of SL – 1 with an initial salary scale of 22,935 – 10 x 645 – 8 x 790 – 17 x 1050 – 53,555. Librarians of Supra Grade had never been placed in a step with such a law increment.

According to the petitioners their duties are similar to that of the Assistant Commissioners, SLAS officers and Assistant Directors of the Public Service and their placement in terms of the new salary revision therefore amounts to a demotion.

The three (3) petitioners made representations to the 19th respondent being the Secretary to the National Salaries and Cadre Commission through the 1st, 3rd and 4th respondents respectively. The 2nd and 3rd petitioners by letters dated 24.04.2006 and 07.05.2006 had appealed to the 19th respondent and to the National Salaries and Cadre Commission, to rectify the anomaly.

The 19th respondent by Circular dated 21.09.2006, advised the Secretary to the Ministry of Public Administration and Home Affairs to place the petitioners in salary step 16 of MN – 7. The 19th respondent by the said letter declared the recruitment Grade of Supra Grade Librarians as salary step 4 of MN, creating a further anomaly.

Thereafter the 2nd and 3rd petitioners by letters dated 01.08.2006 (P_{13a}) and 08.08.2006 (P_{13b}) again complained to the 19th respondent of the salary anomaly. Although there were

discussions even with the 5th respondent, viz., Co-Chairman of the National Salaries and Cadre Commission, there had been no final decision regarding petitioners' grievance.

Accordingly the petitioners complained that after the release of the Circular, No. 06/2006, the petitioners had been deprived of the privilege of importation of motor vehicles on duty concessions in terms of Circular No. 1 of Commerce, Customs Duty and Investment Policy of 30.03.2007, which concession was given to the Supra Grade Librarians by the previous Circular dated 23.06.1999.

The petitioners submitted that for all purposes, the Supra Grade Librarians were considered on par with Assistant Commissioners, Assistant Directors and Accountants of the Public Service. The petitioners submitted that the refusal of the 5th to 19th respondents to take a final decision on their grievance is a violation of their fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The main grievance of the petitioners was that there is a salary anomaly in the salary scale of the Supra Grade Librarians in comparison with the salary scale of the officers in Class II Grade II of the SLAS. In terms of the affidavit filed by the 5th respondent, the promotional structure of the Librarians' Service is four fold from Grade III to Supra Grade and their salary scales since 1992 until 2004 had been as follows:

Table I

	1992	1997	2003	2004
Grade III	S 11 – 1	T 11 – 1	TA 11 – 1	TB 11 - 1
Grade II	S 11 – 2	T 11 – 2	TA 11 – 2	TB 11 - 2
Grade I	S 11 – 3	T 11 – 3	TA 11 – 3	TB 11 - 3
Supra Grade	S 5 – 3	T 5 – 3	TA 5 – 3	TB 5 - 3

The initial salary scale of the Librarians' Service and the SLAS in terms of the PA Circular, No. 9/2004 were as follows:

Table II

Librarians' Service		SLAS	
Grade III	Rs. 121,320/- p.a.	Class II – Grade II	Rs. 157,500/- p.a.
Grade II	Rs. 127,560/- p.a.	Class II – Grade I	Rs. 214, 980/- p.a.
Grade I	Rs. 130, 680/- p.a.	Class I	Rs. 276,540/- p.a.
Supra Grade	Rs. 172,620/- p.a.		

It is to be noted that, according to Table II, the Supra Grade Librarians had been placed at the salary scale of Rs. 172,620/- per annum, whereas Class II Grade II of SLAS officers were to receive Rs. 157,500/- per annum.

The 5th respondent in response to the above position had averred in his affidavit that Class II Grade II is the recruitment grade to the SLAS, whereas the other positions are promotional grades. Notwithstanding the above, the 5th respondent, on behalf of the Salaries and Cadre Commission, had admitted that the salary of the Supra Grade Librarians has been higher than that of the Class II Grade II of the SLAS. The 5th respondent had also averred that although the petitioners had complained that there has been an anomaly in the salary scale of the Supra Grade Librarians in comparison with the salary scale of officers in Class II Grade II of SLAS, that there has been no such anomaly or a change from the earlier position where the Supra Grade Librarians had been drawing a salary higher than the Class II Grade II SLAS officers.

In support of this position, learned State Counsel for the respondents drew our attention to the PA Circular, No. 06/2006, which states the salary scale of Class II Grade II of SLAS as Rs. 22,935/- (pg. 44 of P₄). By letter dated 21.09.2006 (P₁₁), the Secretary to the National Salaries and Cadre Commission had informed the Secretary to the Ministry of Public Administration and Home Affairs that the Supra Grade Librarians shall be placed on the 16th step of MN – 7 Salary Scale, which would be Rs. 24, 630/-.

Accordingly under the PA Circular No. 6/2006, the Supra Grade Librarians would be drawing Rs. 24,630/-, whereas the Class II Grade II SLAS officers would be on a salary scale of Rs. 22,935/-. In such circumstances it would not be correct to state that the petitioners have been placed in a salary scale, which is lower than that of Class II Grade II of SLAS.

The petitioners' next grievance was that they were placed in a salary scale of the MN - 7 category as the said salary scale denies the petitioners' certain privileges such as vehicle permits on duty free basis etc. The petitioners had further complained that for all purposes Supra Grade Librarians were considered on par with Assistant Commissioners, Assistant Directors and Accountants of the Public Service. In support of this contention, the petitioners had annexed a letter dated 25.06.2001 received by the 2nd petitioner (P₁₉) to their petition. This letter is as follows:

“මුදල් අධ්‍යක්ෂ,
මුදල් අංශය.

2001 වර්ෂයේ යෝජිත මාසික ගමන් වියදම් වල උපරිම සීමාව

2001. 04. 04 දිනැති 2001 වර්ෂයේ යෝජිත මාසික ගමන් වියදම් සම්බන්ධව 08/2001 දරණ වක්‍ර ලේඛයට අමතරවයි.

02 ඉහත වක්‍ර ලේඛයේ අංක 06 යටතේ ඇති නිලධාරීවරුන්ට අමතරව පුස්තකාලයාධිපති තනතුරටද ගමන් වියදම් වශයෙන් රු. 4500/- ක මාසික ගෙවීමක් කමිකරු, කොමසාරිස් ජනරාල් විසින් අනුමත කර ඇත.

03 එ අනුව ඉහත වක්‍ර ලේඛයේ දැක්වූ පරිදි ආයතන සංග්‍රහයේ XIV වැනි පරිච්ඡේදයේ විධි විධාන වලට යටත්ව ගමන් වියදම් ගෙවීමට කටයුතු කරන ලෙස දන්වමි.

කමිකරු, කොමසාරිස් ජනරාල්”.

The 5th respondent in his affidavit had averred that the duties of the Supra Grade Librarians are not of a supervisory or an executive nature and those positions are not comparable to that of an Administrative Officer of a Government Department or of Assistant Commissioners and Assistant Directors. In terms of the Minute of the SLAS (R₁), only the officers of the Librarians' Service with 10 years experience would be eligible to sit for the recruitment examination for SLAS Class II Grade II.

Although the petitioners had complained that they were discriminated due to the anomaly created by the introduction of the MN Grade, a careful scrutiny of the Budget Proposals of 2006 shows that this has not been the intention of the said proposals. It is important to note that PA Circular, No. 06/2006, which deals with the Budget proposals is not a document prepared merely for the purpose of increasing the salary of government employees. On the contrary, the said document had been prepared for the purpose of restructuring the Public Service salaries based on Budget proposals for 2006. Accordingly the proposal referred to in PA Circular, No. 06/2006 is different to all the other Circulars referred to by the petitioners. By these proposals, as stated by the 5th respondent, 126 different salary scales that had existed previously had been reduced to 37. Also, all Supra or Special Grade categories of employees similar to Librarians, Railway Station Masters etc., except the employees of the Health Sector were placed in the salary scale of MN – 7. Later as stated earlier, this scale was changed and the Supra Grade Librarians were placed in the salary scale of MN - 16, by letter dated 21.09.2006.

The salary scales for the Supra Grade Librarians in service and for future recruitments thus became as follows:

Table III

Grade	Salary as per PA Circular 9/2004	Recommended salary scale and the step
III	TB 11 – 1	MN 3 – 2006 – Initial step
II	TB 11 – 2	MN 4 – 2006 – step No. 12

I	TB 11 – 3	MN 4 – 2006 – step No. 23
Supra Grade	TB 5 – 3	MN 7 – 2006 – Step No. 16

The salary scales for future recruitments were stated as follows:

Table IV

Grade III – B	Trainee Grade (Non Graduates)	MN 3 – 2006 – Initial step
Grade III – A	Graduates and Trained Officers	MN 4 – 2006 – Initial step
Grade II	-	MN 4 – 2006 – Step No. 12
Grade I	-	MN 4 - 2006 – Step No. 23
Supra Grade	-	MN 7 – 2006

These two tables clearly indicate that the petitioners had not been correct when they had stated that the 19th respondent had declared that the recruitment Grade of Supra Grade Librarians would be placed in salary step 4 of MN scale.

Learned State Counsel for the respondents contended that although the petitioners had complained that they would not be entitled to duty free vehicle permits due to the anomalies in the 2006 Budget proposals, that the said submission is not correct. According to the learned State Counsel, the privilege of importing vehicles on a permit with duty concessions, is a policy decision of the Government, independent of salary structures. The various Circulars issued by the Secretary to the Treasury from time to time indicate that the Government has taken different policy decisions in this regard. For instance, Treasury Circular, No. 866(1) dated 23.06.1999 (P₁₈) is an amendment to the previous Treasury Circular, No. 866 dated 22.02.1999. Learned State Counsel submitted that due to such changes in policy decisions, persons holding the posts of Principals of schools, who were previously entitled to the said privilege of vehicles with duty free concessions, were no longer granted the said concessions. Similarly the Librarians were also not included in the present Circular. Learned State Counsel for the respondents therefore categorically stated that the said change is due to a policy decision of

the Government and had no connection that could be attributed to the decisions taken by the National Salaries and Cadre Commission.

The petitioners referred to the document marked P₁₉, which dealt with an increased allocation for travelling expenses. The said document (P₁₉) has been issued by the Commissioner-General of Labour and refers to the travelling expenses of the relevant Librarian. It is only an internal Circular and not a general Circular applicable to all Government officers. Accordingly as stated by learned State Counsel for the respondents that the issuance of the said letter was to enhance the out put of the activities assigned to the employees of the Department of Labour, and cannot be taken as a document in support of the view that the Supra Grade Librarians are on par with the Assistant Commissioners, Assistant Directors and Accountants of the Public Service.

The 5th respondent in his affidavit had drawn a distinction between the SLAS Staff and the Nursing Staff to show that there has been no discrimination against the petitioners. According to the 5th respondent, the Special Grade of Nursing officers were assigned with a salary scale higher than the Officers of SLAS Class II Grade II. However, the Nursing officers were never considered as equals or superior to SLAS officers. By PA Circular, No. 06/2006, Special Grade of Nursing officers were placed in a salary scale of MT - 8 – 2006, where Supra Grade Librarians were placed in the salary scale MN – 7 – 2006 both at a step higher than the initial salary scale of SLAS Officers, who belong to Class II Grade II.

The petitioners alleged that their fundamental rights guaranteed in terms of Article 12(1) of the Constitution were violated by the 5th to 19th respondents due to the non-placement of the petitioners in a salary scale comparable to Class II Grade II officers of SLAS. Article 12(1) of the Constitution, which deals with the right to equality, reads as follows:

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

Article 12(1) of the Constitution therefore brings in a guarantee that there shall be no discrimination between one person and another, who are equals. This does not however mean that there cannot be any classifications between groups. Classifications are allowed if they are not arbitrary and as stated in **Ram Krishna Dalmia v Justice Tendolkar** (AIR 1958 S.C. 538), classifications have been founded upon intelligible differentia. The objective of this is to treat equals equally and not unequally.

Accordingly each case must be looked at separately to decide whether there had been a violation of the petitioners fundamental rights guaranteed in terms of Article 12(1) of the Constitution. In the present application, petitioners' main contention was that they were equal to officers in Class II Grade II of SLAS, but by the introduction of PA Circular, No. 6/2006, the petitioners were given a lower salary scale than that of Class II Grade II officers of SLAS.

The petitioners belong to the Sri Lanka Librarians' Service, which is under the control of the Director-General of Combined Service in terms of the Minute of the Sri Lanka Librarians' Service. The SLAS is governed by the Minute of the SLAS and in terms of the said Minute, the appointments, postings and transfers of the SLAS officers are dealt with by the Secretary to the Ministry of Public Administration with the approval of the Public Service Commission. It is thus apparent that these two services do not belong to one class but are of two categories. The petitioners had stated that they did not request for SLAS scale, but that of a comparable position. However, their allegation on the basis of the violation of their fundamental rights was entirely based on the premise that they being Supra Grade Librarians had been drawing a higher salary than that of the Class II Grade II officers of SLAS. In the circumstances, their comparable service had been SLAS. The SLAS as stated earlier is totally a different category and the petitioners and SLAS officers cannot be treated as equals.

Notwithstanding the fact that the two groups not being equals, it is also important to note that by letter dated 21.09.2006 (P₁₁) the Secretary for the National Salaries and Cadre Commission had informed to Secretary of the Ministry of Public Administration that the Supra Grade Librarians should be placed at 16th step of MN – 7 scale, which had allowed the Supra Grade Librarians to draw a higher salary of Rs. 24,630/-, where an officer in Class II Grade II of SLAS would be drawing only Rs. 22,935/-.

It is therefore quite evident that there has been no discrimination or arbitrary treatment against the petitioners with the introduction of PA Circular, No. 6/2006. For the reasons aforesaid it is apparent that the petitioners had not been successful in establishing that their fundamental rights guaranteed in terms of Article 12(1) had been violated by the 5th to 19th respondents. This application is accordingly dismissed. In all the circumstances of this application, I make no order as to costs.

Judge of the Supreme Court

N.G. Amaratunga, J.

I agree.

Judge of the Supreme Court

S.I. Imam, J.

I agree.

Judge of the Supreme Court