

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

*In the matter of an application in terms of Article  
126 read with Article 17 of the Constitution of  
the Democratic Socialist Republic of Sri Lanka.*

SC (FR) Application No. 377/2015

1. Rita Rathnayake,  
105/1a, Ginnaliya Road,  
Urubokka.
  
2. Rani Gunathilake Siriwardana,  
Padaukema,  
Tissamaharama.
  
3. Rathnaweera Patabandige Ramya,  
Miriswatta,  
Diyasyaya,  
Tissamaharama.
  
4. Wehella Hewage Shirani,  
Dikwella Niwasa,  
Koggala Road,  
Ruhunuridiyagama.

**PETITIONERS**

-Vs-

1. Y. Wickramasiri,  
Secretary to the Provincial Ministry of  
Education,  
Land and Land Development, Highways,  
Information, Rural and Estate Infrastructure  
Facilities of Southern Province,  
2<sup>nd</sup> Floor,  
Talbot Town Shopping Complex,  
Dickson Junction,  
Galle.
  
2. H. W. Wijerathne,  
Chairman,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.
  
- 2A. Gunasena Hewawitharana,  
Chairman,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.
  
3. U. G. Vidura Kariyawasam  
Secretary,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,

Galle.

4. R. K. R. R. Ranaweera,  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.
  
5. V. A. V. D. P. Rasanjane,   
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.
  
6. Hemakumara Nanayakkara,  
Governor of Southern Province,  
Governor's Office,  
Upper Dickson Road,  
Galle.
  
- 6A. Marshall Perera PC,  
Governor of Southern Province,  
Governor's Office,  
Upper Dickson Road,  
Galle.

- 6AA. Dr. W. W. Gamage,  
Governor of Southern Province,  
Governor's Office,  
Upper Dickson Road,  
Galle.
7. Secretary to the Ministry of Education,  
Isurupaya,  
Battaramulla.
8. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.
9. K. K. P. A. Siriwardana,  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.
- 9A. K. K. G. J. K. Siriwardhane,  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.
10. D. W. Vitharana,  
Member,

Provincial Public Service Commission,  
6th Floor, District Secretariat Office,  
Kaluwella,  
Galle.

11. Shirmal Wijesekara,  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.

12. D. K. S. Amarasiri  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.

12A. Sunil Dahanayake,  
Member,  
Provincial Public Service Commission,  
6th Floor, District Secretariat Office,  
Kaluwella,  
Galle.

13. K. L. Somarathna,  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,

Kaluwella,  
Galle.

13A. L. K. Ariyaratne,  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office, Kaluwella,  
Galle.

14. Munidasa Halpadeniya,  
Member,  
Provincial Public Service Commission,  
6<sup>th</sup> Floor, District Secretariat Office,  
Kaluwella,  
Galle.

**RESPONDENTS**

Before : **P. PADMAN SURASENA J**

**ACHALA WENGAPPULI J**

**MAHINDA SAMAYAWARDHENA J**

Counsel : Upul Kumarapperuma with Sudarshana Gunawardhana,  
Muzar Lye and Radha Kuruwitabandara for the Petitioners.  
Yuresha De Silva, SSC for the Respondents.

Argued on : 22-10-2021

Decided on : 19-05-2022

**P Padman Surasena J**

The Petitioners had joined as Volunteer Teachers to work in Government schools in Southern Province of Sri Lanka. The Government had implemented this as a temporary measure to address the shortage of teachers then prevailed in the public schools of several provinces in the country.

After a lapse of some time, then Minister of Education placed before the Cabinet, the Memorandum dated 28-11-2006 titled "Recruitment of Volunteer Teachers serving in various Provinces in the Island as Teaching Assistants". The said Cabinet Memorandum dated 28-11-2006 has been produced marked **1R 1**. The Cabinet of Ministers having considered the said Cabinet Memorandum, by its decision dated 04-01-2007, granted the approval to recruit the Volunteer Teachers referred to therein, as Teacher Assistants subject to the conditions stipulated in paragraphs 3.1 to 3.5 of the said Cabinet Memorandum. The said Cabinet Decision dated 04-01-2007 has been produced marked **1R 2**.

Consequent to the aforesaid Cabinet Decision (**1R 2**), applications were called for, from Volunteer Teachers who have fulfilled the stipulated conditions for the selection of suitable candidates to be appointed as Teacher Assistants. The newspaper advertisement calling upon Volunteer Teachers to submit applications for the selection of candidates for appointment as Teacher Assistants has been produced marked **1R 4**. According to the said advertisement, all applicants were required to be not less than 21 years and not more than 45 years of age as at 31-12-2005. This requirement was set as a general basic qualification which qualified anyone to apply for the advertised post. It must also be noted that the said advertisement (**1R 4**), has been published as per the instructions given in the letter dated 14-02-2007 issued by the Minister of Education as per the Cabinet Decision on 25-10-2006. The Petitioners have produced the said letter dated 14-02-2007 marked **P 5** and the 1<sup>st</sup> Respondent has produced the same letter marked **1R 3**.

The Petitioners had accordingly applied for that post and were thereafter summoned for an interview. The Petitioners have produced the letters dated 15-05-2007, marked **P 6**

**(a), P 6 (b), P 6 (c)** and **P 6 (d)** which had summoned them for the said interview. It is noteworthy at the outset, that the said letters had categorically stated that the purpose of that interview was not to award appointments but to examine their qualifications.<sup>1</sup>

Thereafter, a list containing 270 names had been published. Those 270 candidates are those who had been temporarily recommended for appointment as Teacher Assistants. This list has been produced marked **P 7**. The said list contained the names of the Petitioners. The Petitioners however state that the 1<sup>st</sup> Respondent thereafter did not take any action to proceed with the said recommendations.

The Respondents, while admitting the list marked **P 7**, state that further proceeding thereof was suspended as per the decision made at a meeting held on 27-08-2007 which was presided over by the President and attended by the Governors and the Chief Ministers of the provinces. This is reflected in the letter dated 30-11-2007 produced marked **1R 5** which is signed by the Minister of Education and addressed to the Chief Minister of Southern Province.

On the 11<sup>th</sup> of December 2008, the Fundamental Rights application bearing No. SC/FR 580/2008 was filed by its 124 petitioners who had prayed *inter alia* for: a declaration that the respondents in that case had infringed their fundamental right guaranteed and protected under Article 12 (1) of the Constitution by failing to act in terms of the document produced marked P 7 in that case; a direction from Court to have them appointed as Teacher Assistants with effect from 01-01-2007. The Supreme Court in that case had granted Leave to Proceed.

The Petitioners in the instant case, have produced a certified copy of the petition of SC FR 580/2008 marked **P 9**. Averments in the petition of SC FR 580/2008 (**P 9**) shows that the document produced marked P 7 in that case, is the letter dated 14-02-2007 which the Petitioners in the instant case, have produced marked **P 5** (the 1<sup>st</sup> Respondent has produced the same letter marked **1R 3** in the instant application). However, it must be

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<sup>1</sup> Vide paragraph 3 of those letters.



noted that the names of the Petitioners of the instant application were not amongst the names of the petitioners of SC FR 580/2008.

The Minister of Education placed before the Cabinet, the Memorandum dated 15-06-2012 (**1R 6**) to seek the approval of the Cabinet of Ministers to appoint Volunteer Teachers serving in the Northern Province, as Teacher Assistants. The Cabinet of Ministers having considered the said Cabinet Memorandum (**1R 6**), by its decision dated 06-06-2013, granted the approval to recruit the Volunteer Teachers serving in the Northern Province as Teacher Assistants subject to the conditions stipulated in the said Cabinet Decision. The said Cabinet Decision dated 06-06-2013, has been produced marked **1R 7**. The Cabinet of Ministers in the same Cabinet Decision (**1R 7**) also decided to extend this approval to the Volunteer Teachers serving in the Southern Province as well on the same conditions. Although the above approval was granted on four conditions, for the purpose of this case, it would suffice to set out below, only two of those conditions. The said conditions are that the candidates should:

- (i) have possessed the basic qualifications required to be recruited to the Public Service; and,
- (ii) be under 35 years of age at the time of joining as a Volunteer Teacher.

The above approval (**1R 7**) given by the Cabinet of Ministers was communicated to the Secretary to the Ministry of Education of Southern Province by the letter dated 18-06-2013, produced marked **1R 8**.

After collecting and compiling the necessary statistics as per the Cabinet Decision (**1R 7**), the Minister of Education, having identified in a schedule, those who have fulfilled the stipulated qualifications as per the previous Cabinet Decisions, had submitted to the Cabinet, the Memorandum dated 20-12-2013 (**1R 9**) to seek the approval of the Cabinet of Ministers to appoint the Volunteer Teachers who have requisite qualifications serving in the Southern Province, as Teacher Assistants.

The Cabinet of Ministers having considered the said Cabinet Memorandum (**1R 9**), by its decision dated 03-01-2014 granted the approval to recruit the Volunteer Teachers serving in the Southern Province as Teacher Assistants subject to *inter alia*, the conditions that the candidates to be appointed should have:

- (i) served in schools in remote areas in the Southern Province for more than 20 years;
- (ii) possessed the basic qualifications stipulated for recruitment as Teacher Assistants; and,
- (iii) be under 35 years of age at the time of joining as a Volunteer Teacher.

The said Cabinet Decision dated 03-01-2014 has been produced marked **1R 10**.

The above was then communicated to the Ministry of Education of Southern Province by the letter dated 07-01-2014 produced marked **1R 11**.

Thereafter the Petitioners had received letters dated 08-05-2014 [produced marked **P 10 (a)**, **P 10 (b)**, **P 10 (c)** and **P 10 (d)**], which had summoned them for another interview to be held on 22-05-2014. This interview too appears to have been designed only to examine their qualifications.

Accordingly, subsequent to the examination of the requisite qualifications of the candidates, two lists were published; one containing a list of Volunteer Teachers who had satisfied all the requirements (**P 13**); another containing a list of Volunteer Teachers who had satisfied all the requirements but were above the age of 45 years (**P 14**). The Petitioners' names were included in the latter (**P 14**) as they were above the age of 45 years as at 22-05-2014 (i.e., the date on which the qualifications of the applicants were verified)

On the 11<sup>th</sup> of December 2014, the said Fundamental Rights application (SC FR 580/2008) was withdrawn on the basis that the petitioners in that application had administratively obtained the relief prayed for in that application. The Court then had terminated the proceedings in that case.

Thus, although it is not clear from the documents made available to this Court, it appears that the 1<sup>st</sup> Respondent had appointed the petitioners of SC FR 580/2008 as Teacher Assistants subsequent to the filing of SC FR 580/2008 application as they (the petitioners of SC FR 580/2008) had fulfilled the conditions as per the Cabinet Decision. The Petitioners in the instant application were not selected for appointment as Teacher Assistants as they were above the age of 45 years as at 22-05-2014.

The complaint made by the Petitioners in their petition is that the Respondents have appointed four candidates who have not fulfilled the necessary requirements. The Petitioners make a specific allegation that the candidate Ven. Thalagalle Punyasara (Interview No. VT-173) and the candidate H. T. Jayalatha (Interview No. VT-43) have been included in the list marked **P 13**, despite the fact that they were over 45 years of age. The Petitioners further allege that the candidate M. M. Indika Pujayshwari (Interview No. VT-112) had been selected despite her failure to provide her date of birth to the 1<sup>st</sup> Respondent and the candidate M. H. Nuzra (Interview No. VT-208) had been selected without even an application being submitted by her. However, it must be noted that the Petitioners have not sought any relief against the aforesaid candidates despite the allegation that the appointments of the said candidates were done arbitrarily. Moreover, the Petitioners have failed to name them as Respondents in the instant application.

Thus, primarily, it is the position of the Petitioners that although they were not selected for appointment to the posts of Teacher Assistant solely because they were over the age of 45 years, some candidates who were above the age of 45 years had been appointed to the post of Teacher Assistant. Petitioners further state that even the 6<sup>th</sup> Respondent, despite bringing their grievances to his attention, has failed to take any further step in relation to their grievances.

It is for the above reasons that the Petitioners state that the failure on the part of the Respondents not to select the Petitioners for appointment as Teacher Assistants is arbitrary, irrational, illogical, unlawful and contrary to the Petitioners' legitimate

expectations and hence would amount to an act of violation of their Fundamental Rights guaranteed under Article 12(1) of the Constitution.

It is in that backdrop that the Petitioners in this application have prayed *inter alia*, for: a dealation that one or more or all of the Respondents and/or the State have violated their Fundamental Rights guaranteed under Article 12(1) of the Constitution; a direction on the Respondents to appoint them as Teacher Assistants.

In the instant case, this Court by its order on 01-03-2016, has granted Leave to Proceed under Article 12(1) of the Constitution.

As has already been stated above, what the Petitioners have alleged in their petition to this Court is an infringement of their Fundamental Rights on the basis that the Respondents had discriminated them. The basis for the complained discrimination according to the petition is the fact that the Respondents had arbitrarily appointed the above named four candidates.

It must be borne in mind that the approval granted by the Cabinet of Ministers to appoint the Volunteer Teachers as Teacher Assistants was subject to the condition that the candidates must have fulfilled the qualifications set out in the Service Minute of Sri Lanka Teachers' Service. This decision is reflected in the Cabinet Memorandum dated 28-11-2006 (**1R 1**) and the Cabinet Decision dated 04-01-2007 (**1R 2**). Further, according to the newspaper advertisement which called upon the Petitioners to submit applications for the selection of candidates for appointment as Teacher Assistants (**1R 4**), all applicants were required to be not less than 21 years and not more than 45 years of age. It must also be noted that the said advertisement (**1R 4**) has been published as per the instructions given in the letter dated 14-02-2007 (**1R 3**) issued by the Minister of Education as per the Cabinet Decision on 25-10-2006.

Respondents have admitted the two lists produced marked **P 13** and **P 14**. The Petitioners' names are found in the list **P 14**. Thus, the Petitioners were clearly above 45 years of age as at 22-05-2014. As the Petitioners become disqualified to be appointed

under the Service Minute of Sri Lanka Teachers' Service, the Respondents could not have lawfully appointed the Petitioners as Teacher Assistants as per the relevant Cabinet Decisions.

The next question I should consider is whether the Respondents have nevertheless arbitrarily appointed the four candidates named in the petition.

The Petitioners claim that contrary to the aforementioned Cabinet Decision [**1R 10**], the Respondents have appointed four candidates who have not satisfied the requirements in **1R3**.

The 1<sup>st</sup> Respondent has satisfied this Court that there was no arbitrary appointment of four candidates whose names have been identified in the petition. The 1<sup>st</sup> Respondent has supported his stance by producing documents marked **1R 12 (a)**, **1R 12 (b)**, **1R 13**, **1R 14**, **1R 15** and **1R 16**. According to those documents it is clear that the appointment of Ven. Talangalle Punnsara Thero to the post of Teacher Assistant was cancelled by letter dated 08-11-2015 (**1R 12(b)**); the candidate H.T. Jayalatha was not appointed as a Teacher Assistant; both M.H. Nuzra and M.M. Indika Pujeshwari were appointed as they have satisfied the necessary requirements.

The Petitioners, with regard to the above assertions by the Respondents, had been content with a mere statement in their counter affidavit to the effect that they are unaware of the said position.<sup>2</sup> However, in view of the aforesaid documents produced by the 1<sup>st</sup> Respondent, such a statement by the Petitioners would hardly help them to substantiate the position they have advanced.

In the light of the above, I am of the view that the Petitioners have failed to prove before this Court that the Respondents have arbitrarily appointed some candidates who were above the age of 45 years to the post of Teacher Assistant, discriminating the Petitioners. I therefore hold that there is no violation of Article 12(1) of the Constitution on that basis.

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<sup>2</sup> Vide paragraph 18 of the counter affidavit filed through motion dated 06-10-2016.

Although the learned counsel for the Petitioner had attempted to advance a case on legitimate expectation, I observe that the Petitioners had not presented their application to this Court on that basis. Thus, the case that the Respondents have met before this Court is a case on discrimination as alleged in the petition.

It is the position of the Petitioners that they had fulfilled all the qualifications as at 31-12-2005 which was the date specified in the advertisement published in the 'Dinamina' newspaper dated 26-03-2007 marked **1R 4**. Since the Petitioners were below 45 years of age as at 31-12-2005 they state that their age should have been calculated as at that date.

It appears from the sequence of events that the process of recruitment had recommenced following the filing of the afore-stated Fundamental Rights application (SC FR 580/2008) by its 124 petitioners. It was thereafter that the Respondents had published the list marked **P 13** which contained the names of Volunteer Teachers qualified to be appointed as Teacher Assistants. The Respondents had indeed subsequently appointed all of them as Teacher Assistants.<sup>3</sup> It must be noted here that the Respondents in this manner, had appointed not only the 124 petitioners in SC FR 580/2008 but also all Volunteer Teachers whose names were found in that list (**P 13**). Accordingly, the Petitioners in the instant application have been left out for a good reason. That is because their names had appeared only in the disqualified list (**P 14**). It was presumably on the above basis that the FR application was withdrawn on 11-12-2014 by its 124 petitioners stating that they had obtained administrative relief.

On the above material, I am convinced that the 1<sup>st</sup> Respondent after processing the applications had ensured that all candidates who had fulfilled the specified requirements, have been appointed as Teacher Assistants. Admittedly, the Petitioners' names were not in the list marked **P 13**, but in the list marked **P 14** which contains the candidates who have not fulfilled the specified requirements. This shows that the Respondents could not

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<sup>3</sup> Vide paragraph 17 of the affidavit of the 1<sup>st</sup> Respondent submitted through motion dated 06.09.2016.

have appointed the Petitioners in the instant application as they had not fulfilled the specified requirements.

Learned Senior State Counsel had brought to the attention of this Court that the maximum age limit of a candidate for the appointment as a Teacher as per the Service Minute of Sri Lanka Teachers' Service, is 35 years.<sup>4</sup>

As per the Cabinet Decision dated 03-01-2014 (**1R 10**), the approval (for appointment as Teacher Assistants) had been granted by the Cabinet of Ministers only to appoint Volunteer Teachers who were below 35 years of age. This is also the criterion set out in the Service Minute of Sri Lanka Teachers' Service. Clause 7.2.2.3 therein specifies the minimum and maximum age to join the Sri Lanka Teachers Service respectively as 18 years and 35 years. The fact that the maximum age specified in the Cabinet Decision dated 03-01-2014 (**1R 10**), could be logically justified as the said scheme [**1R 1, 1R 2**] was introduced to appoint Volunteer Teachers as Teacher Assistants with a view of subsequently appointing them to Grade 3 of the Sri Lanka Teachers' service upon fulfilling the relevant requirements. Therefore, one must bear in mind that the candidates are necessarily required to come under the specified age limit set out in the Service Minute of Sri Lanka Teachers' Service, for any candidate who is above the specified age cannot subsequently be appointed as a Teacher. This was the scheme in the above-mentioned Cabinet Decision.

In the above circumstances, the complaint made by the Petitioners in their written submission that the Respondents had changed the recruitment criteria arbitrarily, is without any justifiable basis and hence cannot be accepted. In any case, as I have already stated, the Petitioners for the reasons best known to them, had only chosen to mention their argument on legitimate expectation in their final written submissions and not in the petition. Therefore, in any case, I cannot accept that legitimate expectation is part of their case before this Court. Be that as it may, as has already been stated before, the letters marked **P 6 (a)**, **P 6 (b)**, **P 6 (c)** and **P 6 (d)** had categorically stated that the

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<sup>4</sup> Clause 7.2.2.3 of the Gazette Extraordinary No. 1885/38 dated 23-10-2014.

purpose of that interview was not to award appointments but to examine their qualifications.<sup>5</sup> Thus, the Petitioners in any case, cannot rely on the said letters which had summoned them for the said interview, to argue that they in any case, had legitimate expectation to be appointed as Teacher Assistants. This is more so when they particularly had not fulfilled the conditions stipulated by the authorities. Thus, in the light of the facts of this case, mere summoning of the Petitioners for an interview to check basic qualifications cannot on its own, form a basis for a case on legitimate expectation.

The Senior State Counsel who appeared for the Respondents emphasized the fact that the post of "Teacher Assistant" is not a post recognized in the Service Minute of Sri Lanka Teachers' Service.<sup>6</sup> It is to be noted that the said post had been created to facilitate the appointment of Volunteer Teachers to the post of Teacher Assistant which was primarily to cater to the grievances of the Volunteer Teachers who had agitated for appointments. The Cabinet Decisions read with the relevant Cabinet Memoranda make it clear that the appointment of Teacher Assistants was contemplated, planned and was to be executed in such a way that those candidates who would be appointed as Teacher Assistants should have fulfilled basic qualifications to facilitate their appointment subsequently to Grade 3 of the Sri Lanka Teacher's service as per the criterion set out in the Service Minute of Sri Lanka Teachers' Service. (Clause 7.2.2.3 states that the maximum age to join the Sri Lanka Teachers Service is 35 years).

Accordingly, I find that the Respondents have acted in compliance with the respective policy decisions of the Cabinet of Ministers and hence committed no discrimination against the Petitioners.

For the aforementioned reasons, I hold that the Petitioners have not been successful in establishing that the Respondents have violated their Fundamental Rights guaranteed under Article 12(1) of the Constitution. This application is accordingly dismissed. There will be no costs.

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<sup>5</sup> Vide paragraph 3 of those letters.

<sup>6</sup> Vide written submissions filed by the Senior State Counsel through the motion dated 22-11-2021.



There are two other matters namely SC FR 20/2018 and SC FR 21/2018 pending before this Court in relation to the same issue. The learned Counsel who represented the Petitioners in those two matters have agreed, as far as those cases are concerned, to abide by the judgment that would be pronounced by Court in SC FR 377/2015. Thus, this judgment must apply to those two cases as well.

**JUDGE OF THE SUPREME COURT**

**ACHALA WENGAPPULI J.**

I agree,

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA J.**

I agree,

**JUDGE OF THE SUPREME COURT**