

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

In the matter of an application under Article 17 read with Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC/FR Application No. 169/08

1. Balasooriya Arachchige Chandradasa
2. Rammuthu Purage Premawathi Suraweera
3. Samarathunge Arachchige Ranaseeli
4. Malalage Chandralatha Peiris
5. Pathiranage Niwanthi Perera
6. Dona Bandumathi Lokugamage
7. Udagedara Appuhamilage Chitra Gethanjali
Wimaladasa
8. Sudathge Ravindra Athula Theja Hemanatha
9. Nandana Jayadasa
10. Mahabalage Don Aruni Manoja Jayawardana
11. Mestiya Don Jayantha Gunathilaka
12. Geethangani Jayathunga
13. Jayawardenage Champa Sriyani
14. Manathunge Subadhra Manathunga
15. Disanayake Mudiyanseelage Pushpa Manel
Disanayake
16. Mabulage Dhanapali Hemalatha
17. Kasthuri Mudiyanseelage Uthpala Iresha Kasthuri
18. Dikkuburage Chandralatha De Silva
19. Ranasinghe Arachchige Nadeeka Ranasinghe
20. Wickramasinghe Athukoralage Shantha
21. Chandima Wijewardana
22. Werapurage Sitha Ranjani Fernando
23. Suriya Arachchilage Gayani Asanka

24. Don Rupasena Vithana
25. Adikari Mudiyanseleage Thamara Kumari Gunathilaka
26. Pathirage Dona Seetha Gajanayake
27. Meemange Somawathie
28. Chandrani Mangalika Hapuarachchi
29. Hollu Pathirage Anura Ananda Caldera
30. Chitra Kananke Liyanage
31. Atthanayake Arachchige Pushpa
32. Ranathunga Arachchige Sriyalatha
33. Herath Mudiyanseleage Lalith Wasantha Siriwardana
34. Dharshana Lalitex Samarawickrama
35. Puwakpitiyage Maurya Desappriya Bandara
Hewawasam
36. Pallegama Gohagodage Chandradasa
37. Kalu Arachchilage Dimuthu Wasana Rathnayaka
38. Uduwa Vidanalage Sajeewa Chandani Perera
39. Herath Mudiyanseleage Chandrika Kumari
40. Hewa Kasakarage Sepali
41. Dulani Kumuduni Hettiarachchi
42. Katukurunde Gamage Ajantha Himali Gamage

All C/O the Office of the Assistant Commissioner of
Co-operative Development,
No. 72, Mahameghawatta Road,
Maharagama.

43. Ranketta Kumbure Gedara Sumanarathna
44. Arambawattage Kusumawathie
45. Galbokke Balapatibedige Darmasiri
46. Jayasundara Walpola Kankanamalage Susatha
Siriwardana
47. Batugedara Gamethiyalage Padmini Batugedara
48. Bulathsinghalage Deepika Chandarakanthi Cooray

49. Suriyage Swarnalatha
50. Widanagamage Wansawathi
51. Wijesuriya Arachchige Don Christy
52. Ranathunga Gamaralalage Sriyama Mangalika
Weerasinghe
53. Paththamperuma Arachchige Don Selton Lionel
54. Bambrandage Rtta Mary Beatrice
55. Perumbada Pedige Dayarathna
56. Dissanayake Kapuruhamige Jayathe Dissanayake
57. Dehiwalage Greta Jenet Matilda Perera
58. Sakalasuriya Appuhamilage Buddika Kaushalya
Sakalasuriya
59. Herath Mudiyansele Chamila Udeni Samarakoon
60. Abesinghe Mudiyansele Pushpa Kamalani
61. Warusapperuma Ranasinghe Arachchige Don
Pradeepika Samanthi Kamari Ranasinghe
62. Madaga Ananda Premalal
63. Elandari Dewage Lasika Niroshini
64. Rathna Sirige Indrani Senavirathna
65. Nalintha Wickramarachchi
66. Wijerathna Walisinghe
67. Werawardana Pathirannahelage Nalin Bandara
Jagathsiri
68. Ranepura Dewage Seetha Ramyalatha
69. Vitana Wickramasinghe Arachchige Rathna Manel
Wickramasinghe
70. Gamlath Mohotti Appuhamilage Senajith Dinesh
Rupasinghe
71. Mukthu Kusumalatha De Silva
72. Morapitiya Liyanage Hoshan Indula Mahanada
73. Ranasinghe Kerthi Ranasingha
74. Vithana Palpita Korallalage Padmakumara

75. Dasanayaka Pathirennahalage Thilaka Malani
76. Karunanayaka Athukoralalage Mangalika Briyatrish
77. Samaradivakara Mudiyansele Nandani
Pathmalatha
78. Mallawa Arachchige Darmapiya
79. Yakdehge Pathma Piyaseeli
80. Sakalachchari Nekathige Nilmini Priyangika
81. Kirigalbodage Chandana Kapila Rathnaweera
82. Wanasinghe Arachchige Nimal Chandra Wanasingha
83. Pata Pelige Brighot Padminie
84. Vithana Pathirannahelage Ramya Surajini
85. Hetti Pathirage Saman Thusitha Kumara
86. Karavitage Chandrawathie
87. Adikari Appuhamilage Sunil Adikari
88. Nanakkara Jayasuriya Appuhamilage Leela
Indrawathi Kumari
89. Kurukulasuriya Nirmala Anjela Felicia Priyadarsani
Perera
90. Nugawela Pathirannahelage Champa
91. Chakrawarthige Roshini Samanthi Priyadarshani
92. Mahavithanage Don Gunapala Mahadeva
93. Madihe Arachchige Amoda Lochani Gunawardana
94. Kukulaarachchige Nilanthi Shayamali
95. Waligamage Kamanie Krishanthi Perera
96. Herath Mudiyansele Nishanthi Herath
97. Muthugala Arachchige Geethi Priyanwada
Muthugala
98. Dissanayaka Mudiyansele Wasantha Kumuduni
Dissanayaka
99. Mallikage Mahinda Sarath Kumara Perera
100. Wijayalath Paranawitharanage Pathma Kumara
Wijayalath

101. Karunaratne Muhandiramlage Ganga Jeewani
Karunaratne
102. Arachchi Kapuge Don Lasantha Meril Sanjeewa
All C/O the Office of the Assistant Commissioner of
Co-operative Development – Gampaha, Walawwatta,
Kidagammulla, Gampaha.
103. Naida Hewa Ruwan Amaradewa
104. Jayathunga Weda Arachchige Mohan Jayathunga
105. Kalutharage Anoma Suwarnalatha Fernando
106. Kalutharayalage Ruwandika Nilusha Piyasena
107. Babina Kankanamge Vipula Dewapriya Abeyrathna
108. Kumarage Wasantha Padmini
109. Wewalwala Hewage Dayani
110. Kasthuri Badalge Pathmini
111. Darmadasa Wickramarachchi
112. Geemuni Indrane Shyamika
113. Hewa Numuni Arachchige Piyasena
114. Hewage Yasarupika Rosayuru
115. Sittrachchary Gahithayanlage Dayawathie
116. Kiriwaththuduwage Dona Padmini Perera
117. Babumunysinghe Arachchige Chitra Ranjani
118. Yahamuni Somawathie
119. Kalapuge Dona Rukmani Wasantha
Abeygunawardana
120. Liyan Arachchige Don Dudly Lalith Gunawardana
121. Rathnasekara Kuruppu Arachchige Sathyapala
122. Karunamuni Prabhavi Niranjali Silva
123. Ranasinghe Arachchige Chandrika Geethani
Ranasinghe
124. Thota Hewage Tylet Hemalatha Silva
125. Disanayaka Mudiyansele Kularathna Bandara
126. Lesthuruge Indika Sapumal Fernando

127. Bothalage Daya Swarnapali
128. Thewara Thanthrige Shiromani Fernando
129. Don Lionel Vithana
130. Ranasinghage Don Uditha Indragith
131. Kalubowilage Lakshman
132. Amara Chakna Wawthilage Udulawathie Menike
Kalubivila
133. Manna Markkalage Latha Marian Cooray
134. Ethuldora Arachchige Deepa Malathi
135. Kande Ranasinghege Somalatha
136. Thibbotuge Perasanga Kalum Perera
137. Olaboduwage Kumudini Priyanga Perera
138. Hewafonsekage Shiromi Chinthika Fonseka
139. Madampe Hettiarachchilage Sujeewani Thisera
140. These Appuhamilage Enoka Siriwardhana
141. Hewage Thushari Darshani Perera
142. Bulathwatthe Rathnayaka Mudiyanselege Nethali
Priyangika
143. Maligaspe Korlage Chithra
All C/O the Office of the Assistant Commissioner of
Co-operative Development – Kalutara, No. 246,
Galle Road, Kalutara-North.
144. Hewafonsekage Chinthaka Pubudu Kusumasiri
Fonseka
145. Chaminda Rasith Abayaratne
146. Rajapaksha Pillasdeniyage Karunathilake
147. Nandalal Thissa Dias Sucharitharathna
148. Salman Arachchige Chandarasena
149. Thiramuni Sunil Fernando
150. Kapuruge Don Jayantha Neel

151. Kudaligamage Asoka Ranjith Perera

All C/O the Office of the Commissioner of
Co-operative Development, No. 444, Duke Street,
Colombo 01.

Petitioners

Vs,

1. Hon. Reginald Cooray,
Former Chief Minister of the Western Provincial
Council, Chief Minister's Officer, No. 32, Sie Marcus
Fernando Mawatha, Colombo 07.
2. Hon. Hector Bethmage,
Former Minister of Lands, Agriculture, Irrigation and
Animal Production of the Western Provincial
Council,
C/O the Chief Minister's Office, No. 32, Sir Marcus
Fernando Mawatha, Colombo 07.
3. Hon. Dulip Wijesekara,
Former Minister of Electricity,
Provincial Ways and Co-operatives of the Western
Provincial Council, No. 204, Denzil Kobbekaduwa
Mawatha, Battaramulla.
4. Hon. Prasanna Ranathunga,
Former Minister of Health, Indigenous Medicine,
Social Welfare, Probation and Child Care and Council
Affaires of the Western Provincial Council,
Independence Square, Colombo 07.

5. Hon. Gamini Thilakasiri,
Former Minister of Sports, Youth Affairs, Women's
Affaires, Fisheries of the Western Provincial Council,
No. 204, Denzil Kobbekaduwa Mawatha,
Battaramulla.

6. Hon. Alavi Moulana,
Former Governor of the Western Provincial Council,
Governor's Office, Unity Plaza, Colombo 04.

- 6A. K.C. Logeswaran,
Former Governor of the Western Province,
Governor's Office, No. 98/4, Havelock Road,
Colombo 05.

- 6B. A.J.M. Muzamil,
Former Governor of the Western Province,
Governor's Office, No. 98/4, Havelock Road,
Colombo 05.

- 6C. Roshan Gunathilake,
Governor of the Western Province,
Governor's Office, No. 98/4, Havelock Road,
Colombo 05.

7. K. Champa N. Perera,
Secretary, Ministry of Electricity,
Provincial Ways and Co-operatives of the Western
Provincial Council, No. 204, Denzil Kobbekaduwa
Mawatha, Battaramulla.

8. S.H. Hewage,
Former Provincial Commissioner of Co-Operative
Department, Provincial Department of Co-operative
Development, No. 444, Duke Street, Colombo 01.
9. Victor Samaraweera,
Former Chief Secretary, Former Provincial Council,
Western Provincial Council, Srawasthi Mandiraya,
No. 32, Sir Marcus Fernando Mawatha, Colombo 07.
- 9A. Jayanthi Wijethunga,
Former Chief Secretary, Former Provincial Council,
Western Provincial Council, Srawasthi Mandiraya,
No. 32, Sir Marcus Fernando Mawatha, Colombo 07.
- 9B. Pradeep Yasarathne,
Chief Secretary, Western Provincial Council,
Srawasthi Mandiraya, No. 32, Sir Marcus Fernando
Mawatha, Colombo 07.
10. Hon. Attorney General,
Attorney General's Department, Colombo 12.
11. Prasanna Ranatunga,
Former Chief Minister of the Western Provincial
Council, Chief Minister's Office, No. 32, Sir Marcus
Fernando Mawatha, Colombo 07.
- 11A. Isuru Devapriya,
Former Chief Minister of the Western Provincial
Council, Chief Minister's Office, No. 32, Sir Marcus
Fernando Mawatha, Colombo 07.

12. Upali Kodikara,

Former Minister of Electricity and Power, Provincial Roads, Housing and Construction, Water Supply and Drainage, Social Welfare, Urban and Estate Infrastructure Facilities of the Western Provincial Council, No. 32, Sir Marcus Fernando Mawatha, Colombo 07.

12A. Sumithral Mendis,

Former Minister of Health and Child Care of the Western Provincial Council, No. 32, Sir Marcus Fernando Mawatha, Colombo 07.

13. Jagath Angage,

Former Minister of Agriculture, Irrigation and Tourism Activities of the Western Provincial Council, Independence Square, Colombo 07.

14. Nimal Lansa,

Former Minister of Transport, Sports and Youth Affairs, Women's Affairs, Food Supplies and Distribution, Co-operative Development, Domestic Economic Promotion, Fisheries, Rural Development, Tourism, Investment Promotion Co-ordination and animal Production and Development of the Western Provincial Council, No. 32, Sir Marcus Fernando Mawatha, Colombo 07.

14A. Lalith Wanigaratne,

Former Minister of Co-operative Development of the Western Provincial, No. 32, Sir Marcus Fernando Mawatha, Colombo 07.

15. Udaya Gammanpila,

Former Minister of Agriculture, Agrarian Development, Minor Irrigation, Industry, Environmental Affairs and Cultural and Arts Affairs of the Western Provincial Council, C/o the Chief Minister's Office, No. 32, Sir Marcus Fernando Mawatha, Colombo 07.

15A. Gamini Thilakasiri,

Former Minister of Agriculture, Agrarian Development, Minor Irrigation, Industry, Environmental Affairs and Cultural and Arts Affairs of the Western Provincial Council, C/O the Chief Minister's Office, No. 32, Sir Marcus Fernando Mawatha, Colombo 07.

16. S. S. Satharasinghe,

17. H.M.A.H. Herath,

18. S.P. Uyangoda,

19. G.P. Nimal,

20. V.M.N. Dissanayaka

All C/O the Office of the Assistant Commissioner of Co-Operative Development, No. 72, Mahameawatta Road, Maharagama.

21. L.D.L. Jayawickrama,

22. M. Sumanawathie,

23. M. Sunandawathie,

24. H.K.K. Kusumalatha,

All C/O the Office of the Assistant Commissioner of Co-operative Development, Kaluthara.

25. Wilbert Gallage,

26. W.A.U. Perera,

27. A.M. Hamsa,

All C/O the Head Officer of the Department of
Western Provincial Co-operative Development,
No.444, Duke Road, Colombo 01.

28. D.D. Jayamaha,

29. M.P.M. Muthugala,

30. N.S. Dehigahawatta,

31. H.P.T. Nandani,

32. K. Rathnayaka,

All C/O the Office of the Assistant Commissioner of
Co-operative Development, Gampaha.

33. D.D. Upul Santha de Alwis,

Former Provincial Commissioner of Co-operative
Development, Provincial Department of Co-
operative Development, No. 444, Duke Street,
Colombo 01.

33A. Ruwini Wijewickrama,

Provincial Commissioner of Co-operative
Development,
Provincial Department of Co-operative
Development,
No. 444, Duke Street, Colombo 01.

34. Hon. Ranjith Somawansa Kalawila Withanage,

Former Minister of Education of the Western
Provincial Council, No. 32, Sir Marcus Fernando
Mawatha, Colombo 07.

Respondents

Before: **Hon. Justice Vijith K. Malalgoda PC**
Hon. Justice E.A.G.R. Amarasekara
Hon. Justice Mahinda Samayawardhena

Counsel: Dr. Jayampathy Wickramaratne, PC, with Ms. Subashini Weerakkodi for the
Petitioners,

Mahen Gopallawa, SDSG, with Ms. Sureka Ahmed, SC, for the 6C, 7th,9B, 10th and 33A,
Respondents.

Argued on: 30.05.2023

Decided on: 05.10.2023

Vijith K. Malalgoda PC J

151 Co-operative Inspectors attached to the Department of Co-operative Development of the Western Province, had complained of the violation of their fundamental rights guaranteed under Article 12 (1) of the Constitution by the Executive or Administrative action taken by the 1st to the 7th Respondents.

When the matter was supported for leave on the 26th of August 2008, this Court having considered the material placed before the Court had granted leave to proceed for alleged infringement of Article 12 (1) of the Constitution. After the leave to proceed was granted and the matter was fixed for hearing, on 30th April 2009, an application was supported on behalf of 17 Intervenient Petitioners. The Petitioners did not object to the said intervention, and the request for intervention was permitted by this Court. The Intervenient Petitioners were named as 16th -32nd added respondents to the instant application.

As revealed before us the main grievance that was complained by the Petitioners, was the decision by the Western Provincial Council to place a group of Co-operative Inspectors at a higher salary step against the scheme of Recruitment (hereinafter referred to as SOR) applicable to the Co-operative Inspectors Service.

At the time the alleged violation took place the SOR to the post of Co-operative Inspectors Service consisted of 3 grades namely Class II-B, Class II-A, and Class I. In terms of the SOR, the recruitment Grade was Class II-B and the basic requirement for entry into Class II-B was Four passes at the GCE (Advance Level) Examination and a pass at the Co-operative Employees Certificate (Advance) Examination conducted by the Co-operative School Polgolla was considered as an added qualification.

As per the SOR Co-operative Inspectors in Class II-B who have been confirmed in that grade and have five years of satisfactory service and successfully completed the Second Examination held for Co-operative Inspectors by Co-operative College were eligible to be promoted to Class II- A of the Co-operative Inspectors Service.

Promotions to Class I was made on the availability of vacancies based on seniority from among Co-operative Inspectors who have completed 5 years of satisfactory service and successfully completed the 1st Examination held for Co-operative Inspectors by the Co-operative College.

As submitted before this Court, the Co-operative Inspectors considered their service above the Government Clerical Service or the Management Assistant Service that was introduced after Public Administration Circular 06/2006 since the basic qualification was the four passes at the G.C.E. (Advance Level) as against G.C.E. (Ordinary Level) for the Management Assistants. However Public Administration Circular 06/2006 placed the Co-operative Inspector's salary at MN I-2006 scale, whereas the Management Assistants were placed at MN 2 -2006 scale.

The Co-operative Inspectors were agitating against the said placement to the National Salaries and Cadre Commission and by letter dated 04.01.2008, their recommendation was communicated to the Secretary of the relevant Ministry by the said commission to place Co-operative Inspectors at MN 3-2006.

As further submitted by the Petitioners, the subject of Co-operative being a devolved subject under the 13th amendment to the Constitution, Provincial Co-operative Departments were functioning in the provinces with the implementation of the 13th Amendment and the Petitioners belonging to the Western Province Co-operative Department.

The Western Provincial Council had granted the MN I-2006 scale to the co-operative Inspectors in the Western Province prior to the salary revision recommended by the National Salaries and Cadre Commission and Placed Co-operative Inspectors in Class II-B at step-I, Class II-A at step 12 and Class I at step 23.

According to the Petitioners, although the entry-level qualifications for Co-operative Inspectors were G.C.E. (Advance Level) there were graduates serving as Co-operative Inspectors and at the time the instant application was filed, there were about 85 graduates serving as Co-operative Inspectors in the Department of Co-operative Development of the Western Province at different levels (i.e., Class II-B, II-A, and I) including 37th, 38th, 42nd, 93rd to 102nd, 135th and 138th Petitioners.

The Petitioners were unaware of any decisions by the Western Provincial Council or by the National Salaries and Cadre Commission to place a group of Co-operative Inspectors serving in the Western Provincial Council at MN4-2006 from April 2008, but they were surprised when they got to know that approximately 20 Co-operative Inspectors receiving a salary higher than the others for the month of April 2008, which they have subsequently complained to this Court by the instant application.

As further submitted by the Petitioners, the said salary increase was granted ignoring the class under which the recipient of the said increment was serving at that time but the only basis was that the recipient was a graduate employed after 1977 and had served for 15 years or more as a Co-operative Inspector. The said *ad hoc* increment granted to a small number of Co-operative Inspectors serving in the Western Province had created a salary anomaly among the Co-operative Inspectors since even a class I officer of the Co-operative Inspectors Service was entitled to an MN 3 salary.

The Petitioners when invoking the Jurisdiction of this Court had made the Chief Minister, the Board of Ministers of the Western Provincial Council, the Governor, the Secretary to the Co-operative Ministry- Western Province, and the Attorney General as Respondents. Among the Respondents, only the 7th Respondent the Secretary to the Co-operative Ministry Western Province filed objections before this Court justifying the decision impugned before this Court.

According to the 7th Respondent, graduate employment schemes were implemented as far back as year 1971 and before, but their grievances were not looked into until 1994. For the first time, Public Administration Circular 20/94 was issued in granting relief to certain categories of under-employed graduates identified by the circular as “රාජ්‍ය සේවයේ ලිපිකාර හා සමාන්තර සේවාවන්හි උගත සේවා නියුක්ත උපාධිධාරීන්ට සහන සැලසීම සහ 1971-1976 දක්වා කාලය තුළ උපාධිධාරී අභ්‍යාස යෝජනා ක්‍රමය යටතේ බඳවා ගනු ලැබූ නිලධාරීන්ට සහන සැලසීම” and as per the said circular (7R10) it was applicable to,

- a) graduates who joined the Public Service under the graduate training scheme between 1971-1976

- b) graduates who joined prior to 1971 to positions allied to plan implementation officers
- c) graduates who joined outside the graduate training scheme between 1971-1977
- d) graduates who joined under the graduate placement scheme subsequent to 1977 and have completed 15 years of service in the Public Service

The next document the 7th Respondent relied upon in his objection was the Public Administration Circular 20/94 (II) issued on 15.07.2005, (7R 11) extending the relief granted to under-employed graduates in clerical and allied services who joined those services after 1977. The said circular was applicable to those who joined clerical and allied services between 01.01.1978 and 31.12.1980 and obtained the degree during this period or prior and served in the same capacity for 15 years as of 01.06.1994

Whilst referring to the above two circulars, the 7th Respondent had tried to explain that, even though there is no specific reference that, those circulars are applicable to the Co-operative Inspectors Service, those circulars apply to the Co-operative Inspectors service as well. In paragraph 16 of his affidavit the 7th Respondent referred to the above as follows;

“16. Answering the averments contained in paragraph 12 of the said petition I admit that PA Circular 29/94 does not include Co-operative Inspectors as an allied service for the clerical service. However, I state that until the circular No. 06/2006 the Co-operative Inspectors were placed on the same salary scale as of the clerical and allied services. Accordingly, they were considered employees of a similar category until circular No. 6/2006. Further, I state that circular No. 2/97 classified the public service according to the salary scale, and accordingly, Co-operative Inspectors were also categorized among others, along with the clerical service according to their salary scale Rs. 45,900-14x320-6x 1,560-73,740 (salary Code T.2.1.-T.2.5) until the circular No. 6/2006 was implemented. The preamble to circular No. 2/97 is annexed herewith marked 7R4.”

However, the above position is contradicted by his own document which was produced by him marked 7R 7(a). The above document is a memorandum submitted to the Provincial Board of Ministers of the Western Province to obtain approval to extend the relief granted to the under-employed graduates in clerical and allied service by Public Administration Circular 20/94 (original Circular) to the Co-operative Inspectors with similar qualification.

In the said provincial memorandum, the reason to obtain special approval was explained as follows;

2. 1994.06.15 දිනැති රාජ්‍ය පරිපාලන චක්‍රලේඛ 20/94 හි 2 (ආ) II වගන්තිය ප්‍රකාර රාජ්‍ය පරිපාලන චක්‍රලේඛ 37/92 හි එස් 3:8 මත 1994.06.01 දින සිට ක්‍රියාත්මක වන පරිදි මෙම නිලධාරීන්ගේ වැටුප් ප්‍රතිශෝධනය කිරීමට කටයුතු කර ඇත. ඉහත චක්‍රලේඛය ප්‍රකාරව මෙම නිලධාරීන්ගේ වැටුප් සකස් කිරීම පිළිබඳව යම් යම් මතභේද මතු වූ හෙයින් මේ සම්බන්ධයෙන් ගත යුතු ක්‍රියා මාර්ගය පිළිබඳව බස්නාහිර පළාතේ සමූපකාර සංවර්ධන කොමසාරිස් විසින් ආයතන අධ්‍යක්ෂකගෙන් උපදෙස් විමසා ඇත. රාජ්‍ය පරිපාලන චක්‍රලේඛ 20/94 හි 2 ආ II යටතේ සහන ලබා දී ඇත්තේ ලිපිකරු හා සමාන්තර සේවාවන්හි නියුතු උෞත සේවා නියුක්ත උපාධිධාරීන්ට පමණක් බවත් සමූපකාර සමිති පරීක්ෂක සේවයේ නිලධාරීන්ට එම චක්‍රලේඛයේ සහන ලබාදිය නොහැකි බවත් ආයතන අධ්‍යක්ෂ විසින් දන්වා ඇත.

As revealed before us the provincial Board of Ministers has approved the said memorandum and the Co-operative Inspectors who were eligible to come under the said decision were paid salaries according to the Public Administration Circular 20/94, even though the Director Establishment had taken a different view. However, there was no challenge to the implementation of the said decision by the rest of the Co-operative Inspectors at that time.

With regard to the implementation of the second circular issued in the Year 2005 (Public Administration Circular 20/94 (ii)), the 7th Respondent had taken up the position that Public Administration Circular 20/94 (ii) was issued in the year 2005 expanding the coverage of the original circular and the Governor of the Western Province, the 6th Respondent had approved the decision of the Board of Ministers to place the “Underemployed graduate Co-operative Inspectors” those who joined the service after 1977 and completed 15 years of service to be placed on a salary scale as referred to in the circular.

Even though the 7th Respondent had taken up the above position in his affidavit filed before this Court, he has failed to submit before this Court the decisions of the Board of Ministers and/or the Governor Western Province as referred to above. However, the justification he submitted before this court was twofold.

Firstly, he took up the position that it is correct to consider the graduate Co-operative Inspectors along with clerical and allied services since the Co-operative Inspectors were also drawing a salary equal to those grades and secondly, he justified the implementation of circular 20/94(ii) since the original circular 20/94 too was implemented without any objection in the Western Province in order to give effect to the state policy on resolving grievances of the underemployed graduates.

However, he was silent on the decision communicated to the provincial Co-operative Commissioner by the Director Establishment ruling out that Graduate Co-operative Inspectors were not belonging to clerical and allied services in order to get the benefit of the circular 20/94. In other words, the state policy implemented by circular 20/94 was to give relief only to under-employed graduates in clerical and allied services only and therefore those who do not belong to clerical and allied services are not entitled to the same benefit.

The same officer who issued the 20/94 circular in the year 1994, namely the Secretary to the Ministry of Public Administration had issued another circular subsequently bearing number 29/94, and in the said circular the clerical and allied services were identified as follows;

2-1 (අ) ලිපිකරු හා සමාන්තර ශ්‍රේණි යනු

- 1) සාමාන්‍ය ලිපිකාර සේවය
- 2) යතුරු ලේඛක සේවය
- 3) ලඝු ලේඛක සේවය
- 4) පොත් තබන්නන්ගේ සේවය
- 5) සරප් සේවක සහ
- 6) ගබඩා භාරකරුවන්ගේ සේවය වේ.

The Co-operative Inspectors Service was not included in the said circular. The Petitioners whilst referring to the above circular had taken up the position that the said interpretation was the result of the long-standing grievance complained on behalf of the Co-operative Inspectors.

Even though it was argued on behalf of the 7th Respondent that both Public Administration Circulars which provided relief to under-employed graduates in clerical and allied services had equally applicable to the under-employed graduates in the Co-operative Inspectors Service, Public Administrative Circular 29/1994 clearly leave out the Co-operative Inspectors from the clerical and allied services and therefore a question will arise as to the applicability of those circulars to a group of graduates outside the clerical and allied services.

As already observed in this judgment the wording of the two circulars (7R10 and 7 R 11) are very specific and the circulars do not provide provisions in granting any relief to other groups except those who are covered by the circulars.

As further observed by this Court the grievances and the anomalies complained by the Co-operative Inspectors were resolved by the National Salaries and Cadre Commission and the said decision was communicated by letter dated 04.01.2008 placing the Co-operative Inspectors at MN3-2006 scale. In those circumstances treating the Graduate Co-operative Inspectors on par with the underemployed Graduates in clerical and allied services and granting MN 4-2006 scale had created an anomaly in the Co-operative Inspectors Service by giving a wrong interpretation to the state policy in granting relief to underemployed graduates in clerical and allied services.

As already referred to by me the two circulars relied by the 7th Respondent are specific on their applicability and Circular 20/94 (ii) specifically identified the graduates to whom the said circular is applicable.

For clarity, I would like to once again refer to the second paragraph of the circular which clearly identifies the applicable groups as,

2. 1978.01.01. දින හා 1980.12.31. දින අතර කාලපරිච්ඡේදය තුළ ලිපිකරු හා සමාන්තර සේවා වලට බඳවා ගන්නා ලදුව එම කාලපරිච්ඡේදය තුළ හෝ ඊට පෙර උපාධිය ලබා මේ වන විටද එම තනතුරු වල සේවය කරණ උභය සේවා නියුක්ත උපාධිධාරීන්ට උපාධිය ලබා ගැනීමෙන් අනතුරුව එම තනතුරේ වසර 15 ක සේවා කාලයක සම්පූර්ණ කිරීම හෝ 1994.06.01 හෝ යන දින දෙකෙන් පසුව එළබෙන දින සිට පහත සඳහන් වැටුප් ගෙවීමට රජය තීරණය කර ඇත.

The two highlighted areas in the said paragraph require the graduate to obtain the degree either before or during the period relevant to the circular and should work for 15 years after obtaining the degree. If the degree was obtained in 1978, he needs to wait until 01.06.1994 and in those circumstances, the graduate will have to wait nearly 16 years to become eligible under the said circular.

A group of Graduate Co-operative Inspectors sought intervention in the instant application and as already referred to by me, the Petitioners did not object to the intervention, and the Interventient Petitioners were added as 16th -32nd added Respondents. The papers that were filed by the Interventient Petitioners before this Court includes the details of the Interventient Petitioners and according to them, they were among the recipients who received the salary increment that was challenged before this Court. The details provided by the Interventient Petitioners Respondents can be summarized as follows;

	<u>Date joined</u>	<u>Degree awarded</u>
16. S.S. Satharasinghe	16.11.1981	01.10.1982
17. A.M.A.S. Herath	16.12.1985	01.10.1982
18. S.P. Uyangoda	01.03.1988	Diploma in management by Galle Technical College 11.10.1988
19. G.P. Nimal	30.12.1985	01.11.1983
20. V.M.N. Dissanayake	16.12.1985	01.04.1990
21. L.A.N. Jayawickrama	01.01.1982	01.11.2001
22. M. Sumanawathy	05.12.1985	Higher Diploma in Management by Kandy Technical College 09.11.1983
23. M. Sunandawathi	-	01.09.1982
24. H.K. Kanthi Kusumalatha	01.03.1988	01.04.1990
25. W. Gallage	16.12.1985	01.10.1985
26. W.A. Upali Perera	<u>16.01.1978</u>	01.10.1985
27. M. Hanza	01.03.1988	01.04.1991
28. D.D. Jayamaha	16.12.1985	01.11.1984
29. M.P.N. Muthugala	<u>16.01.1978</u>	01.02.1983
30. N.S. Dehigahawatta	01.03.1988	01.10.1990
31. M.P. Thamara Nandani	15.07.1987	01.10.1982
32. R. Kanthi	16.12.1985	01.10.1981

Out of the seventeen Interventient Petitioners Respondents, only two had joined the Co-operative Inspectors Service (26th and 29th Respondents) between 01.01.1978 and 31.12.1980. But they were not degree holders at the time they joined the service. 26th had obtained the degree seven years after he joined the service and the 29th after five years. However as already observed above the under-employed graduates should possess the degree within the period referred to in the circular and the

above Respondents does not come within the circular even if the circular is applicable to Co-operative Inspectors Service.

All the other Respondents had joined the Co-operative Inspector Service between 1981 and 1988 and except for six Respondents (17th, 19th, 25th, 28th, 31st. and 32nd), others were not degree holders at the time they joined the service. 21st Respondent had obtained the degree in 2001, 19 years after joining the service, and had completed only 07 years of service after obtaining the degree when he was given the salary increment. The 18th and 22nd Respondents were not degree holders but were holding diplomas obtained from Galle and Kandy Technical Colleges and there is no material to show that the Diplomas they possess are equal to a degree.

Even if the argument made on behalf of the 7th Respondent that 1994/20 (ii) circular is applicable to the under-employed Co-operative Inspectors who complete 15 years serving; as identified in the circular the 15 years period will only be applicable after obtaining the degree, and the officer should complete 15 years of service by 31.12.1995. In those circumstances, a further question arises as to the applicability of the said circular to the Interventient Petitioners Respondents.

When considering the above matters, it is clear that no proper scheme was followed when granting the increments to a group of Co-operative Inspectors and the seventh Respondent had failed to produce before the Supreme Court the decision taken by the Board of Ministers of the Western Provincial Council or the directive said to have been signed by the 6th Respondent, Governor, Western Province.

In the absence of a specific decision, the 7th Respondent had heavily relied on the board paper and the decision by the Board of Ministers in implementing the provisions of the main circular, 20/1994 in favour of the Co-operative Inspectors Service in the year 1998 but as already referred to in this Judgment, the said decision was contrary to the state policy on granting relief to the under Employed Graduates in clerical and allied services.

The failure of the North-Western Provincial Public Service Commission to give effect to the “National Teachers Transfer Policy” identified in Circular 95/11 issued by the Ministry of Education and Higher Education was complained about in the case of ***Kamalawathy V. Provincial Public Service Commission of the North -Western Province [2001] 1 Sri LR 1 at 5 Mark Fernando (J)*** held, “while powers in respect of education have been devolved to Provincial Councils, those powers must be

exercised in conformity with national policy. Once national policy has been duly formulated in respect of any subject there cannot be any conflicting provincial policy on the same subject.”

When considering the material already discussed in this judgment, I hold that the Petitioners before this Court were successful in establishing the violation of their fundamental rights guaranteed under Article 12 (1) of the Constitution. Neither the Petitioners nor the 7th Respondent who filed an affidavit before this Court had been able to produce the impugned decision but it is admitted that a small group of Co-operative Inspectors belonging to the Western Provincial Council were placed at a higher salary scale based on a decision said to have taken by the Board of Ministers of the Western Provincial Council and approved by the Governor, which is implemented by the 7th and 8th Respondents.

In the said circumstances, I hold that the 1st to the 7th Respondents and the 8th Respondent have acted in violation of the Petitioners’ fundamental rights guaranteed under Article 12 (1) of the Constitution.

We further direct the said Respondents or their successors to take necessary steps to alleviate the effects caused to the Petitioners by the impugned decision arrived in violation of the fundamental rights guaranteed under Article 12 (1) of the Constitution.

Application allowed

Judge of the Supreme Court

Hon. Justice E.A.G.R. Amarasekara,

I agree,

Judge of the Supreme Court

Hon. Justice Mahinda Samayawardhena,

I agree,

Judge of the Supreme Court