

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

***In the matter of an Application
under and in terms of Article 17
and 126 of the Constitution of the
Democratic Socialist Republic of
Sri Lanka.***

SC (F/R) Application No. 642/2012.

- 1.** D.C.P. Kaluarachchi,
No. 442/3, Neelammahara Road,
Maharagama.
- 2.** J.D.D.L. Gunasekera,
No.10A, Thalgaspe,
Elpitiya..
- 3.** K.A. Sugath,
No.1/155, Halathota,
Kalutara.
- 4.** S. Ranjan,
No.28, Futimagiri Mawatha,
Batticaloa.
- 5.** K.D.S. Chandra Kumara,
No.45/17, Chandraloka Mawatha,
Thalapathpitiya,
Nugegoda.

6. T.H.M. Sumith Sisira Herath,
No. 47/53, Sir Kuda Rathwatte
Mawatha,
Kandy.
7. A.A. Roshan Perera,
No.836/5, Kurusawala,
Thumpeliya,
Ja-Ela.
8. M.B. Wijeratne,
No.584/2, Halmillaketiya,
Thunkama,
Embilipitiya.
9. I.J.A. Perera,
No. 843/1, Daham Mawatha,
Thalangama North,
Malabe.
10. A.L.A. Herbert Priyantha
Liyanage,
No. 7/G, Station Road, Khahalla,
Katugastota.

PETITIONERS.

-VS-

1. Prof. Dayasiri Fernando.
Former Chairman,
2. Srimala Wijeratne,
Former Member,
3. Palitha Kumarasinghe,
Former member,
4. S.C. Mannapperuma,
Former Member,
5. Ananda Seneviratne,
Former Member,
6. N.H. Pathirana,
Former Member,
7. S. Thillanadarajah,
Former Member,
8. M.D.W. Ariyawansa,
Former Member,
9. A. Mohamed Nahiya,
Former Member,

All of the Public Service Commission, No.177, Nawala Road, Narahenpita, Colombo 5.

10. D.G.M.V. Hapuarachchi,
Former Commissioner General of Excise,
Excise Department of Sri Lanka,
No.34,
W.A.D. Ramanayaka Mawatha,
Colombo 2.

10 A. L.K.G. Gunawardena,
Former Commissioner General of Excise,
Excise Department of Sri Lanka,
No.34,
W.A.D. Ramanayaka Mawatha,
Colombo 2.

10B. K.H.A. Meegasmulla,
Commissioner General of Excise,
Excise Department of Sri Lanka,
No.34,
W.A.D. Ramanayaka Mawatha,
Colombo 2.

11. P.B. Jayasundara,
Former the Secretary,

Ministry of Finance and Planning,
The Secretariat,
Colombo 1.

11A. R.H.S. Samarathunga,
The Secretary,
Ministry of Finance and Planning,
The Secretariat,
Colombo 1.

W.M.N.J. Pushpakumara,
Commissioner General of
Examinations,
Department of Examinations,
P.O. Box 1503,
Colombo.

12. S.M.J. Ariyakumara,
Excise Inspector,

13. K.S.M.G.M. Bandara,
Excise Inspector,

14. C.P.J. Otupitarachchi,
Excise Inspector,

15. B.P.A.M. Asela Fernando,
Excise Inspector,

16. A.A. Sunil Gunathunga,
Excise Inspector,

17. I.N.R.W. Ilangakone,
Excise Inspector,

18. E.B.B.H. Kumara,
Excise Inspector,

19. G.N. Kumarage,
Excise Inspector,

20. T.L.D. Mendis,
Excise Inspector,

21. S.S.B. Perera,
Excise Inspector,

22. K.L.D.T.A. Regies,
Excise Inspector,

23. G. Vineetha Rathnapala,
Excise Inspector,

24. R.A.D.P.K. Senaratne,
Excise Inspector,

25. M. Jayantha Silva,
Excise Inspector,

26. C.H. Sirimanna,
Excise Inspector,

27. T.C. Wijewardena,
Excise Inspector,

28. H.K. Meththasinghe,
Excise Inspector,

29. Y.A.S.P. Yapa,
Excise Inspector,

30. T.D.J. Dissanayaka,
Excise Inspector,

31. Kalarasike Wijesinghe,
Excise Inspector,

32. Dileep Nirosha Jayakody,
Excise Inspector,

33. A.W.M. Majeed,
Excise Inspector,

34. U.B. Marasinghe,
Excise Inspector,

35. D.M.C.P. Jayawardena,
Excise Inspector,

36. M.D. Welagedara,
Excise Inspector,

37. D.H.K. Aruna,
Excise Inspector,

38. M.A. Nimal Shantha,
Excise Inspector,

39. Ravindra Panveriya.
Excise Inspector,

40. W.T.R. Samantha,
Excise Inspector,

41. H.G.P. Ranaweera,
Excise Inspector,

42. I.M.D. Tennakoon,
Excise Inspector,

43. D.J.P. Udayakumara,
Excise Inspector,

All c/o Excise Department of Sri
Lanka, No.34,
W.A.D. Ramanayaka Mawatha,
Colombo 2.

44. Attorney General,
Attorney General's Department,
Colombo 12.

45. Sathya Hettige,
Former Chairman,
Public Service Commission,
No. 177, Nawala Road,
Narahenpita.

46. Kanthi Wijetunga,
Former Member,

47. Sunil A. Sirisena,
Former Member,

48. I.N. Soyza,
Former Member,

All of the Public Service
Commission,
No. 177, Nawala Road,
Narahenpita,
Colombo.

49. Dharmasena Dissanayaka,
Chairman,

50. A. Salam,
Member,

51. V.Jagarajasingham,
Member,

52. Nihal Seneviratne,
Member,

53. Dr. Prathap Ramanujam,
Member,

54. S. Ranugge,
Member,

55. D.L. Mendis,
Member,

56. Sarath Jayathilaka,
Member,

57. Dhara Wijethilaka,
Member,

All of the Public Service
Commission,

No. 177, Nawala Road,

Narahenpita

Respondents

BEFORE : **PRASANNA JAYAWARDENA, PC, J.**
MURDU FERNANDO, PC, J.
S. THURAIRAJA, PC, J.

COUNSEL : Pubuduni Wickramaratne for the Petitioners.
S. Rajaratnam PC, ASG for 10B, 11A, 44th, 49th, 51st-57th
Respondents.
Uditha Egalahewa PC with Ranga Dayananda for the 15th- 18th ,
21st , 25th-28th, 30th , 32nd , 34th , 36th – 38th and 41st Respondents.

ARGUED ON : 11th February 2019.

WRITTEN SUBMISSIONS : Petitioners on 08th October 2018.
10B, 11A, 44th, 49th, 51st-57th Respondents on 14th
March 2019.

DECIDED ON : 7th June 2019.

S. THURAIRAJA, PC, J.

The Petitioners are officials attached to the Excise Department as Chief Excise Inspectors. They have filed a Petition before this Court complaining of a violation of their fundamental rights. It is alleged that the said department has taken steps to fill 22 posts of Superintendent of Excise on the 28th August 2008. They relied on the Scheme of Recruitment as advertised in the Government Gazette No. 1156/31 dated 01st November 2000. According to the said Gazette, 50% of the said positions will be filled by seniority and merit basis and the balance 50% of the 22 vacancies by Limited Competitive Examination.

It is observed that, 11 positions were under the category of seniority and merits were challenged before this Court and was settled subsequently.

The Excise Department took steps to fill the remaining 11 vacancies (Under the Limited Competitive Examination category) for the post of Superintendents of Excise by letter dated 5th July 2012 under the Reference No. EB/102/02/VI under the signature of Excise Commissioner General and called for applications. The Chief Excise Inspectors Union, being agitated with the said letter commenced making representatives to various authorities including the Excise Commissioner General. This is observed by "P 13" a letter dated 17th July 2012 addressed to Excise Commissioner General. This factor proves that, the Petitioners are in receipt of the said letter on or about 5th July 2012 (marked as "P9").

The Petitioners' grievance is that, the vacancies which arose in 2008 were to be filled in 2012 from among officers including those who are qualified as at 2012, hence, a serious prejudice will be caused to the officers who were qualified in 2008. The Limited Competitive examination was held as scheduled on 11th November 2012 and according to the exam results indicate 27 candidates have passed, which includes only 3rd, 4th, 5th and 7th Petitioners. Other Petitioners were not successful in the said exam.

Initially this Court granted leave to proceed under Article 12(1) and stayed the promotions.

The Respondents have submitted a proper explanation for the delay, in holding the exam, which includes pending cases before the Supreme Court, delay in constitution of Public Service Commission, formulating a new recruitment policy for the Excise Department and many other reasons.

Counsels for the Respondents raised a preliminary objection from the inception that, the Petition is time barred; hence, the Petitioners cannot maintain this application.

This matter was fully argued before this bench and all Counsel were given an opportunity to file further written submissions. Senior Additional Solicitor General who appeared for 10th, 44th, 49th, 51st, 52nd, 53rd, 54th, 55th, 56th and 57th Respondents filed written submissions, emphasizing his preliminary objection.

When we perused the brief, we find that, the Scheme of Recruitment was advertised on 1st November 2000 (marked as "P3"). The first recruitment to the post of Superintendent of Excise under the Seniority and Merit Category had commenced in August 2008.

The present process of calling for applications were commenced by the Commissioner General of Excise by letter dated 5th July 2012 (marked as "P9"), indicating the closing date as 2nd August 2012. As discussed earlier, it can be well presumed that, all these Petitioners have received "P9" on or before the 17th of July 2012.

It is submitted that, they have made an application to the Human Rights Commission on 3rd September 2012 (marked as "P 17") and the present petition is submitted before this Court on 1st November 2012 which are after the due period stipulated in the Constitution.

We are of the view that, petitioners have failed to challenge the "P 9" within the prescribed period stated in the Constitution.

In **Alagaratnam Manorajan v. Hon G.A. Chandrasiri and others [SC 261/2013 (F/R)]**, SC Miunutes of 11.09.2014, her Ladyship Justice Eva Wanasundera observed that,

"I am of the opinion that, Section 13 of the Human Rights Commission Act No.31 of 1996 should not be interpreted and/or used as a rule to suspend the one month's time limit contemplated by Article 126(2) of the Constitution, particularly when the person alleging the violation of his fundamental rights has not made his complaint to the HRC within one month of the alleged violation. The provisions of an ordinary Act of Parliament should not be allowed to be used to circumvent the provisions in the Constitution..."

As held by this Court, both in the Case of **Subasinghe vs. The Inspector General of Police** [SC Special 16/99 SC Minutes of 11.09.2000] and the case of **Divalage Upalika Ranaweera and others vs. Sub Inspector Vinisias and others** [SC Application 654/2003 SC Minutes 13.05.2008],

"A party seeking to utilize Section 13(1) of the Human Rights Commission Act to contend that, 'the period within which the inquiry into such complaint is pending before the Commission shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court' is obliged to place material before this Court to show that an inquiry into his complaint is pending before the Human Rights Commission."

In **Gamaethige vs. Siriwardana [1998 1SLR 384]** Fernando J held that,

"three principles are discernible in regard to the operation of the time limit prescribed by Article 126(2). Time begins to run when the infringement takes place; if knowledge on the part of the Petitioner is required (e.g. of other instances by comparison with which the treatment meted out to him becomes discriminatory), time begins to run only when both infringement and knowledge exist. The pursuit of other, remedies judicial or administrative, does not prevent or interrupt the operation of the time limit. While the time limit is mandatory, in

exceptional cases on the application of the principle lex non cogit ad impossibilia, if there is no lapse, fault or delay on the part of the petitioner, this Court has a discretion to entertain an application made out of time..”

In **Demuni Sriyani de Soyza and others v. Dharmasena Dissanayake [SC 206/2008 (F/R)]** SC Minutes of 09.12.2016, his Lordship Justice Prasanna Jayawardena observed that,

“the consequence of this stipulation in Article 126(2) is that, a Petition which is filed after the expiry of a period of one month from the time the alleged infringement occurred, will be time barred and unmaintainable. This rule is so well known that it hardly needs to be stated here and this Court has recognized that it would fail to fulfil its guardianship if the time limit of one month is applied by rote and the Court remains blind to facts and circumstances which have denied a Petitioner of an opportunity to invoke the jurisdiction of Court earlier.”

In **K.H.G. Kithsiri vs. Hon. Faizer Musthapha and Five Others (SC/FR Application No.362/2017)**, SC Minutes 10.01.2018, His Lordship Aluwihare observed that,

“The time limit of one month prescribed by Article 126 of the Constitution to invoke the Fundamental Rights jurisdiction for an alleged violation is mandatory.”

Considering the series of decisions made by this Court and the submissions made by parties with regard to Article 126(2) of the Constitution as well as sections 13 and 14 of the Human Rights Commission Act, we find that, the Petitioners have failed in complying with the requirement of the Article 126 of the Constitution hence, we uphold the preliminary objection raised by the Counsels for the Respondents.

For the purpose of clarity and completeness, we perused all materials before this Court and find that, there is no violation of fundamental rights of the petitioners guaranteed under Article 12(1) of the Constitution.

Considering all, we hold that, there is no merit in this application. Hence, we dismiss the application. We order no cost.

Application dismissed.

JUDGE OF THE SUPREME COURT

PRASANNA JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

MURDU FERNANDO, PC, J.

I agree.

JUDGE OF THE SUPREME COURT