

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

*In the matter of an application under Article 126 of  
the Constitution of Sri Lanka*

**S.C.F.R. 64/2009**

1. S.A.W. de Silva  
“Kusum”, Etholuwa  
Meetiyyagoda, Ambalangoda
2. A.I.L. Sugathadasa  
“Isuru”, Weligampitiya  
Pokunuwita
3. G. Nishantha Morawakage  
265/2, Weera Mawatha  
Depanama, Pannipitiya
4. W.K.M.S.T. Bandara  
75, Ihala Kanogama, Katupotha
5. M.U. Gayani  
“Aruna”, Udakanatta Watta  
Mudugamuwa, Weligama
6. S.S. Vithanage  
No.22, 4<sup>th</sup> Lane, Ratmalana
7. W.U.S. Alwis  
No.103, Galkanuwa Road  
Gorakana, Moratuwa
8. Chaminda Kottawatta  
Ranna North Ranna, Tangalle
9. B.G.C. Nilushika  
No.33/12, Angulana Railway

Satation Road, Lakshapathiya,  
Moratuwa

10. P.M. Kanattawatta  
No. 218, 6<sup>th</sup> Lane  
Dikhenpura, Horana
11. M.K.D. Thushari  
D.S. Abeygunawardena Mawatha  
Morawaka
12. A.T. Piyasiri  
No. 46, Kapuhena Road  
Maha Uduwa
13. U.I. Mathugamage  
Horaketiya Junction  
AgalOya, Bulathsinghala
14. H.M.N. Munasingha  
“Singhavilla”, Pahalaharwella  
Weegabugedara, Kurunegala
15. L.P. De Silva  
Galle Road, Middaramulla  
Ahungalla
16. B.M. Niroshan Wimaladasa  
No. 49 1/1, Moratumulla North  
Moratuwa
17. W.R.N. Deepagoda  
11 km Post, Ambalanwatta  
Atakalampanna
18. H.A.V.L.S. Nawaratna  
8B, Public Servants Village  
Diurumpitiya, Gatahatta
19. K.P.U. Pushpakumara  
No. 441/2, Old Road

Moraketiya, Pannipitiya

20. M.M. Kappagoda  
Kandededara, Devalegama
21. K.L.A. Ariyakeerthi  
Temple Road  
Magulagama
22. K.M.J.M. Warnasuriya  
Galgamuwa South  
Mahaarachchimulla, Kurunegala
23. M.G.S. Priyadarshani  
No. 54/B, Ihagama  
Madawala, Harispattuwa
24. E.M.M.K. Ekanayake  
“Sahana”, Gammadugolla  
Malkaduwwa Road, Kurunegala
25. W.S.D. Gunaratne  
No. 43/1 A, Kottapola  
Hakahinne, Kegalle
26. L.J.C. Gunathilake  
No. 275/14, Bandaranayake  
Mawatha, Kegalle
27. S.P.R. Disanayake  
“Shanthi”, Pitawala  
Hewadiwela, Rambukkana
28. D.R.I. Udeshini, No. 103, Alawwa  
Road, Warakapola
29. S.V. Ranathungage  
No. 48, Danovita Road  
Meerigama

30. H.P. Keerthirathne  
497, Bandaranayake Road  
Weyangoda
31. G.J.R.N.N.D. Ramanayake  
No. 20/74, “Green Terance”  
Parakandeniya, Imbulgoda
32. R.C. Warusavithana  
A-130, Perth Paradise  
Ratnapura Road, Gurugoda, Horana
33. A.K.M. Kularatna  
Wagawathugoda, KudaUduwa  
Horana
34. D.M.C.K. Dissanayake  
“Disawasa”  
Amunukola Road, Eppawala
35. R.R.P. Malalasekera  
No. 58, Konwewa, Upuldeniya  
Anuradhapura
36. W.A.J. Bandara  
Pahalagama, Dunumala  
Warakapola
37. A.M.P.G. Seneviratne  
1/301, Wedagewatta Road  
Kotuwegoda, Rajagiriya
38. M.K.A.P. Gunathilake  
No. 352, Awissawella Road  
Kelanimulla, Mulleriyawa New  
Town
39. S. Rajinikanth, No. 32  
Mariya Basar, Lindula

40. R.M.W.L. Ratnayake  
No. 214/E, “Sanasuma”  
Midahinna, Kinigama, Bandarawela
41. S.E. Pussawalage  
No. 38/1, Beraliyadola Watta  
Hapugala, Wakwella, Galle
42. K.L. Priyantha  
“Yamuna”, Meeruppa  
Denipitiya
43. K.G.A. Gunasekara  
Mohottiwatta  
Watagedaramulla  
Denipitiya
44. K.G.K. Dhasmasiri  
“Thilaka”, Hittatiya Mada  
Matara
45. N.M. Ranaweera  
“Ranasewana”  
Malimbada North, Matara
46. H.M.K.P.A.B. Wijeratne  
No. 66, Yatawatta, Matale
47. M.M.S.B. Wijethilake  
No. 74/1, Kurundeniya, Akurana
48. K. Jayantha, Ambagahawatta  
MahaEla Kandiya, Koggala  
Ambalantota
49. H.K. Samarasinghe  
“Darshana”, Gangasiri Mawatha  
Malimbada Palatuwa
50. H.L.K. Thushari

No. 803/4, Gurugewatta  
Koralalma, Gonapola Junction

51. J.A.K.K. Jayasuriya  
“Sikuruwana”, Kalatuwawa  
Pasyala
52. L.M.S.P. Kumara, No. 18/2  
Meewella Road, Pethiyagoda  
Kelaniya
53. S.W.S.G. Dissanayake, No. 375,  
Potategama, Pahala Giribawa  
Galagamuwa
54. B.K.P.B. Rodrigo, 223-D,  
Henewatte Road, Welivita,  
Kaduwela
55. N. Abeythunga, No. 124A,  
Maragoda, Thelijjawila
56. W.P.G. Pushpakumara  
No. 261, Bandagiriya Welihatta  
Hambantota
57. C. Widanapathirana  
Wellandagoda, Kirama
58. H.M.Y.B.L. Heenkenda  
422/1, Dippitiya, Alawathugoda
59. B.K.M. Dharmasiri, No. 286/2,  
Payingamuwa, Hidagala,  
Peradeniya
60. K. Sasikaran, Manchavanapathy  
Veethy, Kokuvil-West, Kokuvil

**PETITIONERS**

V.

1. Saliya W. Mathew, Chairman
2. K.L.L. Wijeratne, Member
3. S.C. Mannapperuma, Member
4. Deshabandu M. Mackie Hashim,  
Member
5. Dr. Jerry Jayawardena, Member
6. Ariyapala de Silva, Member
7. Dr. Loyd Fernando, Member
8. V.Kanaksabhpathy, Member
9. Gunapala Wickramaratne, Member
10. Soma Kotakadeniya, Member
11. Leslie Devendra, Member
12. D.W. Subasinghe, Member
13. Prof. Carlo Fonseka, Member  
*1<sup>st</sup> to 13<sup>th</sup> respondents* all of the National  
Salaries and Cadres Commission, No.  
2G-10, Bandaranayake Memorial  
International Conference Hall (BMICH),  
Buddaloka Mawatha, Colombo 7
14. Industrial Development Board, 615,  
Galle Road, Katubedda, Moratuwa
15. K.G. Gamini Gunadasa, Chiarman
16. A.P. Kurumbalapitiya, Member
17. K.G.T.P. Dissanayake, Member
18. S.H. Harischandra, Member
19. N.W. Hettiarachchi, Member
20. Aruna Gunawardene, Member
21. A.M.D. Bandara, Member  
*14<sup>th</sup> to 21<sup>st</sup> respondents* all of the  
Members of the Industrial Development

Board, 615, Galle Road, Katubedda,  
Moratuwa

22. Hon. Attorney-General, Attorney-  
General's Department, Colombo 12

**RESPONDENTS**

Before: Saleem Marsoof, PC, J.  
Chandra Ekanayake, J.  
Dep, PC, J.

Counsel: J.C. Weliamuna with Pulasthi Hewamanne for the Petitioner  
Ms.Viveka Siriwardene SSC, for the respondents

Written submissions  
tendered on: 4.1.2010 for petitioners  
4.1.2010 for 1<sup>st</sup> to 13<sup>th</sup> and 22<sup>nd</sup> respondents

Argued on: 26.11.2013

Decided on: 27.03.2014



CHANDRA EKANAYAKE J.

The 1<sup>st</sup> to 60<sup>th</sup> petitioners by their petition dated 20.01.2009 (filed together with an affidavit of the 1<sup>st</sup> petitioner) had sought reliefs by way of declarations to the effect that the 1<sup>st</sup> to 13<sup>th</sup> respondents have violated the fundamental rights of the petitioners' guaranteed under Article 12(1) of the Constitution and that the decision of the 1<sup>st</sup> to 13<sup>th</sup> respondents and/or 14<sup>th</sup> to 21<sup>st</sup> respondents to categorise the petitioners as Management Assistants (MA) is null and void and that the petitioners are entitled to be categorised either as Middle Management (MM) or Junior Management (JM) or as executives or managers thereof and to be so appointed to such grade forthwith, an order to quash that part of P6 strictly in so far as it is applicable to the petitioners, a direction to the 1<sup>st</sup> to 13<sup>th</sup> respondents and/or 14<sup>th</sup> to 21<sup>st</sup> respondents to take steps forthwith to categorise the petitioners either as Middle Management (MM) or Junior Management (JM) or as executives or managers thereof. Further, the petitioners had sought compensation in a sum determined by this Court.

When this application was supported on 19.2.2009 this Court had proceeded to grant leave to proceed in respect of the alleged violation of fundamental rights guaranteed under Article 12(1) of the Constitution.

The petitioners are employees of the 14<sup>th</sup> Respondent Board – namely Industrial Development Board (hereinafter sometimes referred to as the “IDB”) holding the posts of 'Enterprise Promotion Managers - (EPM) -Executive Grade -V' as evidenced by the letter of appointment of the 1<sup>st</sup> petitioner marked P2 and the other petitioners too were issued with similar letters of appointment. Further they had been recruited as Enterprise Promotion Managers – Executive Grade – V, by an open competitive examination followed by an interview. The educational qualifications of all the petitioners are borne out by the document annexed to the petition marked P1. It is further averred that in terms of the previously applicable Scheme of Promotion, those who had 7 years in EPM – Executive Grade – V were entitled to be promoted to EPM – Executive Grade – IV as per P9 [entitling to a higher salary, emoluments and being eligible to apply for the post of Assistant Director – (AD) thereof - see P8(f).]

As averred in paragraph 2 of the petition the petitioners have challenged the purported decision

of the respondents to categorize them as Management Assistants which being a non-executive/ non -managerial grade in the Public Service and it is further alleged that by this their promotional prospects also have been abolished.

Petitioners have further contended that prior to the impugned decisions of the respondents as per the structure of Grades of Employees that prevailed in the IDB, Enterprise Promotion Manager – Grade IV or V were Executive Grades (Vide paragraph 4 of the present petition). Consequent to the Public Administration Circular No.06/2006 by which salaries in the Public Service inclusive of statutory boards were revised, salaries of employees of corporations, statutory boards and fully owned government companies were effected by Management Services Circular No.30 (P3). The schedule to the said P3 which is annexed to the Petition marked P4 has categorized the employees of Corporations, Statutory Boards, fully owned government companies as follows :-

Higher Management	-	<b>HM</b>
Academic and Research	-	<b>AR</b>
Middle Management	-	<b>MM</b>
Junior Management	-	<b>JM</b>
Management Assistant	-	<b>MA</b>
Primary Level	-	<b>PL</b>

Petitioners complain that by the Schedule of Grades (based on P3 and P4) issued by the Salaries and Cardres Commission in respect of the employees of the IDB which is annexed to the petition marked P6 (being an annexure to the covering letter of 21/02//2006 – (P5)], they were aggrieved in the following manner:-

- (a) that petitioners have been placed under Management Assistant - MA category which being a non-executive position and
- (b) EPM Executive Grade - IV was abolished which being a promotional step until then.

It is noteworthy that in terms of P6 they have been placed on the salary scale MA5.2. In the aforesaid circumstances it is contended that purported decisions of the respondents to categorize the petitioners as Management Assistants (non executive/non-managerial grade) and

abolition of promotional prospects thereof constituted an infringement of their rights guaranteed under Article 12 (1) of the Constitution.

The 1<sup>st</sup> Respondent by his affidavit dated 29.5.2009 has mainly relied on the following among others:-

- (a) the Management Circular No. 30 stated that restructuring of salaries will not in any way affect the status of employees and,
- (b) that petitioners have been correctly categorized as Enforcement/ Operational/ Extension Officers, for the purpose of revision of salary without changing the status enjoyed by them.

The petitioners have taken up the position that they were employees of the Industrial Development Board (IDB) and were holding the post of Enterprise Promotion Manager (EPM) Executive Grade V, which is an Executive Grade. According to the documents marked P8(a) to P8(i) they were entitled to be promoted to EPM Executive Grade IV on completion of 7 years of service in that position. Furthermore, the petitioners have produced documents to establish that they had discussions and exchanged correspondence [P7(a) to P7(d)] to resolve this anomaly. The document marked P9 was also produced to substantiate the position that their employer namely- the Industrial Development Board (IDB) recommended that EPM Executive Grade - V to be categorized as Junior Management (JM) under the new scheme. This has to be considered in the context of non

filing of objections by the IDB - (14<sup>th</sup> respondent) and 15<sup>th</sup> to 21<sup>st</sup> respondents who being its members. They have consented to abide by any decision that would be given by this Court in this regard.

An examination of the letters of appointment issued to the petitioners (P2) and other material, in conjunction with the averments contained in paragraph 13 of the petition establishes that the duties that were performed by the petitioners immediately prior to the impugned categorization by the new circular belong to an Executive Grade. The petitioners contend that the impugned categorization has positively brought them down from the management level (Enterprise Promotion Managers – Executive Grade – V) to a non-managerial - level viz: a grade called

Non-Managerial level (Enforcement /Operational/Extension Officers) under the salary scale MA5.2. However the respondents laid stress heavily on the fact that the petitioners were never classified as Management Assistants and in fact they were classified as Enforcement /Implementation/Extension Officers solely for the purpose of revision of salary.

The petitioners' position is that in accordance with the Public Administration Circular No. 06/2006 the salaries of employees of corporations, statutory bodies and fully owned government companies were brought under the Management Circular N0. 30 (P3 and P4). Under P3 employees of the said institutions have been classified into several categories and the petitioners in their petition state that they should have been categorized either as JM meaning Junior Management or MM meaning Middle Management.

Petitioners' complaint is that based on the Circular P3 the Salaries and Cadres Commission (S&CC) issued a schedule of grades applicable to employees of the Industrial Development Board (IDB) which abolished the EPM Executive Grade IV which the petitioners belonged to and placed them in a new category called MA( Management Assistant (MA) (Kalamanakara Sahayaka) which falls into a non-executive grade. And as per P6 they have been placed on the salary scale MA. 5:2.

The petitioners have produced documents to establish that they had discussions and exchanged correspondence [P7(a) to [P7(d)] to resolve this anomaly. They have also produced the document (P9) to prove that their direct employer the Industrial Development Board (IDB) has recommended that EPM Executive Grade -V be categorized as Junior Management(JM) under the new salary scheme. This has also been borne out by the fact that the IDB the 14<sup>th</sup> respondent and the 15th to 21st respondents being its members have not filed objections and have consented to abide by any decision that would be given by this Court.

An examination of the letters of appointment of the petitioners (P2) together with the averments contained in para 13 of the Petition establishes that duties performed by the petitioners immediately prior to the impugned categorization by the new Circular belonged to an executive grade. What has to be ascertained is whether the new categorization of the petitioners according to the relevant Circular amounts to a demotion and/ or placing them in an inferior

position to the position or grade that existed before the promulgation of the same as claimed by the petitioners.

The petitioners claim that the impugned categorization has positively brought them down from the management level (Enterprise Promotion Managers – Executive - grade - (V) to a grade in a non-managerial level to wit: Enforcement /Implementation/Extension Officers under the salary scale MA 5:2. However the respondents laid stress heavily on the fact that they were never classified as Management Assistants and in fact they were classified as Enforcement/Implementation/ Extension Officers, solely for the purpose of re-structuring the salary structure.

It is also submitted on behalf of the respondents that the petitioners were Executive Officers holding the designation of Enterprise Promotion Manager (EPM) Grade-V and that they continued to be Executive Officers designated as EPM Grade-V. The learned counsel for the respondents submitted that the abbreviations ‘MA’ is merely an acronym which only denotes salary code. To buttress this argument the learned counsel drew the attention of Court to the contents of paragraph 2 of annexure 11 of P3 which is to the following effect:

“The proposed new salary structure arises out of a re-structuring process covering all the prevailing salary scales and it is not an exercise of granting percentage increases on the existing salary scales. Accordingly various categories of employees, who have hitherto been drawing different salary scales, have been broadly regrouped as follows founded on factors such as entry qualifications, nature of duties assigned to the post, level of responsibilities and the position held in the organizational structure etc. It shall be noted that this re-categorization is purely for the purpose of restructuring the salary structure and shall not in anyway affect or vary the current status of the employee.”

In view of the above submission of the learned counsel for the respondents this Court is unable to accept that the abbreviation 'MA' is used to identify the new position under the new circular,

is merely an ‘acronym’ which only denotes a salary code. It is the considered view of this court that the regrouping of the grades under the new circular has been made having taken into consideration inter alia the standing of each employee, their qualifications, nature of duties assigned to the particular post, level of responsibilities and the position held by each employee in the organizational structure before the introduction of the new circular.

Thus I am hesitant to accept the position that the abbreviation ‘MA’ by which the new post was identified was merely an acronym devoid of a meaning. As such this Court holds the view that the two letters are **abbreviations** but not **acronyms**. According to the Oxford Advanced Learner's Dictionary - 4<sup>th</sup> Edition by A.P.Cowie:

Abbreviations- ‘shortened form of a word or phrase’.

Examples given therein are as follows:

‘**Sept.**’ for September and, ‘**GB**’ for Great Britain.

Furthermore following are given under the word 'abbreviation' in – “The New Shorter Oxford English Dictionary Edited by Leslye Brown – Vol.1-A-M, 1993” :-

'The result of abbreviating; a reduced form; an abridgment. A shortened form of a word, phrase, or symbol.

Wherefore ‘MA’ as used in P6 has to be none other than an abbreviation of the phrase '**Management Assistant**'.

According to the same dictionary:

Acronym - a word formed from the initial letters of a group of words, eg. UNESCO for United Nations Educational, Scientific and Cultural Organization. Thus I am hesitant to accept the two letters as an acronym as submitted by the respondents' Counsel. On the contrary the Court is of the view that the two letters ‘MA’ as used in the relevant circular is an abbreviation of the phrase ‘Management Assistant’ and not an acronym. Further this Court holds the view that the contention of the respondents that this classification only denotes a salary code cannot be accepted.

Further it is manifestly clear from P6 that the abbreviations of the other positions therein clearly denotes:-

(a) **HM- to mean Higher Senior Managers,**

- (b) **MM- to mean Middle Managers,**
- (c) **JM- to mean Junior Managers,**
- (d) **PL- to mean Primary Level.**

Thus, this Court concludes that the letters 'MA' is not an acronym but an abbreviation denoting the phrase and that **MA - 5:2** denotes the category of Management Assistants.

Now I shall advert to the contents of Management Circular No.30.

According to clause 3.2 of the Annexure II of P.3 Management Assistants' Service has been defined as follows;

‘The services that supplement, facilitate, and support functions performed by executive and managerial personnel of institutions are classified as Management Assistant Services’.

In view of the above, I am persuaded to accept the position of the petitioners that they have been categorized into a group which actually rendered supportive services to them (the petitioners) prior to the implementation of P6 and the impugned categorization, demonstrably brought them down from their previous status as officers of Executive Grade - V. The Court also holds that this manifest lowering of their grade definitely affects their future promotional prospects wherein they have been categorized(or classified) as ‘Management Assistants’ which is a non-executive and/or non-managerial grade.

It appears to Court that the petitioners had a legitimate expectation of being promoted to senior positions in their career gradually by seniority and experience as provided by the conditions of recruitment that prevailed at the time of recruitment. It was alleged that abolition of EPM Executive Grade – IV by P6 (which being the next promotional step) that existed prior to P6, affected their promotions in the service and is discriminatory. In my view, this constitutes a substantial ground to seek relief in respect of an imminent infringement of the rights guaranteed under Article 12(1). In this regard, observation of His Lordship Kulatunga, J in, *Gunaratne v. Sri Lanka Telecom* {(1993) 1 SLR 109} at 115 would lend assistance to wit - if a scheme affects the promotions in an existing service it is inherently discriminatory and prospective

candidates for promotions under such scheme may apply for a declaration that such scheme is invalid on the ground that it constitutes an imminent infringement of their rights under Article 12(1). The learned Senior State Counsel for the respondents took up the position that the petitioners' application is time barred and should be dismissed in *limine*. On a perusal of all the material before Court, the grievances of the petitioners amount to a continuing violation of their rights.

According to their petition the petitioners had been Enterprise Promotion Managers Executive Grade -V prior to the impugned categorization and that they performed numerous administrative functions in the IDB. According to para 4(b) of the counter affidavit of the 1<sup>st</sup> respondent and P10 which were identical to the contents of Clauses 3-6 in P3 which establishes that they had been in the Junior/Middle management level in the IDB. As evidenced by R2A, 'MM 1-2' is the salary code corresponding to the Enterprise Promotion Managers (EPM) Executive grade - 1V which being the next promotional step of the petitioners prior to the impugned circular. Contention of the petitioners' was that as per R2A under the new scheme the next step in their promotional rung should have been the Middle Level Management Grade (MM1-2).

It is observed that by categorizing the petitioners into a group which rendered supportive services to them, prior to the implementation of P6 have brought them down from their original executive status to a non-executive and/or a non-managerial category namely: 'Management Assistants' jeopardizing their future promotional prospects.

Viewed in the above context, I conclude that by failure to place the petitioners either in the Middle Management(MM) or in Junior Management (JM) under the new classification, 1<sup>st</sup> to 21<sup>st</sup> respondents have violated their fundamental rights guaranteed to them under Article 12(1) of the Constitution.

Thus, this Court proceeds to grant the reliefs sought by sub-prayers (c)-(g) of the prayer to the petition dated 20/01/2009 to wit,

- (1) a declaration that the 1<sup>st</sup> to 21<sup>st</sup> respondents have violated the fundamental rights guaranteed under Article 12(1) of the Constitution of Sri Lanka,



- (2) a declaration that the decision of the 1<sup>st</sup> to 21<sup>st</sup> respondents to categorise the petitioners as Management Assistants (MA) is null and void,
- (3) a declaration that the petitioners are entitled to be categorised either as Middle Management (MM) or Junior Management (JM),
- (4) an order quashing that part of P6 strictly in so far as it is applicable to the petitioners as above,
- (5) a direction to the 1<sup>st</sup> to 21<sup>st</sup> respondents forthwith to take steps to categorise the petitioners either as Middle Management (MM) or Junior Management (JM).

In all the circumstances of the case, no order is made with regard to costs.

Judge of the Supreme Court

SALEEM MARSOOF, PC, J.

I agree

Judge of the Supreme Court

DEP, PC, J

I agree

Judge of the Supreme Court.