

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 Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

S.C.F.R. Application No: 327/2015

1. W. Sunil Abeysiri,
2. M.M. Chandrika Jayakanthi,
3. I.M.T. Ihalagama,
4. T.P.G. Sudharmika Alwis Wijeratne,
5. Sujatha Karunaratne,
6. A. Gamage Priyanthini Yahampath,
7. Nishanthi Kariyapperuma,
8. J. Chandralal Dissanayake,
- 1st to 8th Petitioners of Sri Lanka
Broadcasting Corporation,
Colombo 7.
9. Sri Lanka Nidahas Sevaka Sangamaya,
No. 493/1, T.B. Jayah Mawatha,
Colombo 10.
10. P.P.S. Pathmasiri,
The Secretary,
Sri Lanka Nidahas Sevaka Sangamaya,
Sri Lanka Broadcasting Corporation,
Colombo 7.

11. Sri Lanka Broadcasting Corporation
Engineers' Association,
P.O. Box 574, Torrington Square,
Colombo 7.

12. Mudith Siriwardena,
The Secretary,
Sri Lanka Broadcasting Corporation
Engineers' Association,
P.O. Box 574, Torrington Square,
Colombo 7.

13. Sri Lanka Broadcasting Corporation
Technical Officers' Union,
Sri Lanka Broadcasting Corporation,
Colombo 7.

14. A.H.J.D. Aluthwatta,
Assistant Secretary,
Sri Lanka Broadcasting Corporation
Technical Officers' Union,
Sri Lanka Broadcasting Corporation,
Colombo 7.

15. Radio Broadcasters Union,
Sri Lanka Broadcasting Corporation,
Colombo 7.

16. Sujeewa Priyashantha,
President,
Radio Broadcasters Union,
Sri Lanka Broadcasting Corporation,
Colombo 7.

Petitioner

Vs.

1. Sri Lanka Broadcasting Corporation,
Colombo 7.

2. Nanda Muruththettuwegama,
Former Chairman,
Sri Lanka Broadcasting Corporation,
Colombo 7.

2A. Malaka Thalwatta,
Former Chairman,
Sri Lanka Broadcasting Corporation,
Colombo 7.

2B. Rohana Dewa Perera,
Former Chairman,
Sri Lanka Broadcasting Corporation,
Colombo 7.

2C. Jagath Wickramasinghe,
Former Chairman,
Sri Lanka Broadcasting Corporation,
Colombo 7.

2D. Hudson Samarasinghe,
Chairman,
Sri Lanka Broadcasting Corporation,
Colombo 7.

3. Deepika Priyadarshini Peiris,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

3A.W.A.B. Wimalasiri,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

3B.Gamini Wijayawardena,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

3C.D.C.W. Hapugoda,
Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

4. W. Jayasiri,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

4A.Dr. Asanga Gunawansa,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

4B.Sisira Munasinghe,
Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

5. Keerthi Samarasinghe,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

5A.A.M.P.T. Abeysinghe,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

5B.Sanjeewani Weerasinghe,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

5C.N.S.P. Wahala Thantrige,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

5D. P.K. Rathnayake,
Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

6. Chandrika Kulathilaka,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

6A. Helald Senadheera,
(Working Director)
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

6B. M.P.S.R. Somasiri,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

6C. J. Yogaraj,
Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

7. Arundathi Sri Renganathan,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

7A.G.M.J.K. Gunawardena,
Former Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

7B.D. Heiyanthuduwa,
Board Member,
Sri Lanka Broadcasting Corporation,
Colombo 7.

8. E. Hettiarachchi,
Former Director General,
Sri Lanka Broadcasting Corporation,
Colombo 7.

8A.Chandrapala Liyanage,
Former Director General,
Sri Lanka Broadcasting Corporation,
Colombo 7.

8B.N.A.I. Nalin Kumara Nissanka,
Director General,
Sri Lanka Broadcasting Corporation,
Colombo 7.

9. D. Bhathiya Jayathilaka,
10. N.M.D.Y. Aluthge,
11. C.R. Kodithuwakku Archchi,
12. K.A. Nimal Premasiri,
13. C. Kumari Kalubowila,
14. M.D. Madawala,
15. A.D. Ferny Roshini,
16. W.P. Thushari Welagedara,
17. K.A.K.M. Vajira Perera,
18. D. Ihalagamage,
19. W.M. Chandrasiri,
20. L.N. Mallika Perera,
21. T.A.P.G. Jayathilake,
22. Mangalika Priyanthi,
23. Lal Mallawaarachchi,
24. M.A.C.P. Sampath Kumara,
25. B.P.S. Perera,
26. I.C.M.D. Iddamalgoda,

27. Chandana Bandarage,
28. L.S. Deepal Perera,
29. N.M. Athukorala,
30. S.A.A. Chaminda Sakalasuriya,
31. C.H. Jayantha Chandralal,
32. B. Sanathchandra Mendis,
33. B.M.S. Bandaranayake,
34. M.H.A.M. Pathmasiri,
35. A. Jeewanthi Thalagala,
36. U.D.Yapa,
37. B.A.A. Priyangani Balasooriya,
38. J.C. Dhanawalavithana,
39. R.S.D. Pathirana,
40. Sanath Deneththi,
41. R.D. Somadasa,
42. S. Uthpalawanna Liyanage,
43. R.M.P. Asoka Rathnayake,
44. D.S.Y. Aruna Shantha,

45. H.D. Bimal Priyashantha,
46. B.S.N.C. Cooray,
47. W.S. Lakmini Cooray,
48. P.V.A.S.Perera,
49. B.A. Amaranath Sanjeewa,
50. H.I.G.V. Reginold Silva,
51. P.M. Lakshman,
52. R.J. Bonifas,
53. B.A.M. Dhammika,
54. R.A Harischandra,
55. D.G.Ishara Sirimanna,
56. J.A Mahinda Perera,
57. B.D Jayasinghe,
58. D.W.L Hemachandra,
59. R.M. Dayarathne,
60. R.D.Sampath Nimalsena,
61. R.D.W Nishantha,
62. A.K.N.P Perera,

63. K.P.D.Nihal Karunaratne,

64. H.B.Jinadaree Piyasena,

65. C.D.Chandrani Nayagara

9th to 65th Respondents all

C/O

Sri Lanka Broadcasting Corporation,

Independence Square,

Colombo 07.

66. Attorney General,

Attorney General's Department,

Colombo 12.

Respondents

Before: Hon. S. Thurairaja, PC, J.

Hon. Janak De Silva, J.

Hon. Mahinda Samayawardhena, J.

Counsel:

Manohara de Silva PC with Kaveesha Gamage, Harithriya Kumarage and Sasiri Chandrasiri for the Petitioners

Saliya Pieris PC with Thanuka Nadasiri for the 1st Respondent

Pulasthi Hewamanne with Harini Jayawardene for the 9th – 17th, 19th, 24th, 25th, 27th, 29th, 38th, 41st to 43rd, 45th, 48th, 52nd, 54th, 56th, 58th, 59th, 61st, 63rd and 65th Respondents

Sabrina Ahmed SSC for the 66th Respondent

Written Submissions tendered on:

01.02.2021 by the Petitioners

16.10.2020 by the 9th– 17th, 19th-24th, 25th- 27th, 29th-38th, 41st, 43rd, 45th- 48th, 52nd, 54th – 56th, 58th – 59th, 61st, 63rd & 65th Respondents

Argued on: 25.02.2025

Decided on: 05.08.2025

Janak De Silva, J.

The 1st to 8th, 10th, 12th, 14th and 16th Petitioners are employees of the Sri Lanka Broadcasting Corporation (SLBC), the 1st Respondent. The 9th, 11th, 13th and 15th Petitioners are the Sri Lanka Nidahas Sevaka Sangamaya, SLBC Engineers' Association, SLBC Technical Officers' Union and the SLBC Radio Broadcasters Union respectively. The 10th and 12th Petitioners are Secretaries of the 9th and 11th Petitioner Unions and the 14th Petitioner is the Assistant Secretary of the 13th Petitioner. The 16th Petitioner is the President of the 15th Petitioner. The Petitioners state that the 9th, 11th, 13th and 15th Petitioners file this application in the interests of their Members who are adversely affected by the impugned infringement of the fundamental rights of its members.

At all times material to this application, the 2nd Respondent was the Chairman and the 3rd to 7th Respondents were members of the Board of Directors of the 1st Respondent. The 8th Respondent was the Director General and Chief Executive Officer of the 1st Respondent.

The Petitioners allege that the 9th to 41st Respondents, who are also employees of the 1st Respondent, were granted promotions without calling for applications contrary to the scheme of recruitment and promotions. They further allege that the 42nd to 65th Respondents, who are also employees of the 1st Respondent, were granted salary increments personal to them contrary to regular annual increment scheme.

Leave to proceed has been granted under Article 12(1) of the Constitution.

The 9th to 41st Respondents and several others not identified in the petition have been granted promotions to higher posts. The Petitioners claim that these promotions have been made in terms of a decision of the Board of Directors of the 1st Respondent held on 25.05.2015. It is alleged that this was done contrary to the scheme of recruitment and promotion and as they are members of the Jathika Sevaka Sangamaya (JSS).

Only the 8th and 9th Respondents have filed objections in the form of affidavits.

The 8th Respondent admits that the 9th to 41st Respondents were granted promotions and that the 42nd to 65th Respondents were granted salary increments personal to them. He denies that these were made contrary to the scheme of recruitment and promotion. The 8th Respondent claims that the 1st Respondent never had an approved scheme of recruitment and promotions and that the impugned promotions and salary increments were given based on the powers vested in the Board of Directors of the 1st Respondent in terms of the Sri Lanka Broadcasting Corporation Law No. 5 of 1974 as amended (SLBC Law). This was done as the 9th to 41st Respondents and the 42nd to 65th Respondents were continuously overlooked for promotions and salary increments for the last 20 years by virtue of them being members of the JSS.

The Respondents raised three preliminary objections namely (a) Time bar, (b) Necessary parties and (c) Misrepresentation or suppression of material facts.

Time Bar

This application was filed on 11.08.2015. The impugned decision was made on 25.05.2015.

Article 126 (2) of the Constitution states that:

“Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf,

within one month thereof, in accordance with such rules of Court as may be in force, apply to the Supreme Court by way of a petition in writing addressed to such Court...” (emphasis added)

It is trite law that time begins to run from the date that the Petitioners became aware of the infringement or imminent infringement [*Edirisuriya v. Navaratnam and others* (1985) 1 Sri LR 100; *Siriwardena v. Brigadier Rodrigo* (1986) 1 Sri LR 384 at 387; *Gamaethige v. Siriwardena* [1988] 1 Sri LR 384; *Gunawardena v. Senanayake* FRD (1) 177; *Narendrakumar v. Ziyard and others* (2000) 1 Sri LR] 252, 258; *Dayaratne and others v. National Savings Bank and others* (2002) 3 Sri LR 116; *Balachandra Arachchige Don Nuwan v. C. D. Wickramaratne* (SC Application No. 46/2021, Supreme Court Minutes 23.11.2022 at pg. 7), *Hewakuruppu v. Tea Commissioner* (SC/FR Application No. 118/84 , S.C.M. 10.11.1984); *Sri Lanka Nidahas Rubber Inspectors’ Union and others v. Members of the Public Service Commission and others* (SCFR Application 109/2015, S.C.M. 25.09.2019.); *Weerathunga Arachchige Michael Padmasiri v. The Governor Southern Province* (SCFR) Application No: 211/2016, S.C.M. 02.08.2023.at page 14].

The Petitioners claim that they became aware of the impugned acts on or about 15.06.2015. On this basis, the application is time barred.

Nevertheless, the Petitioners contend that they have made complaints to the Human Rights Commission of Sri Lanka (HRCSL) marked P27A to 27H.

Section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 (HRCSL Act), stipulates that:

“Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, 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 by such person in terms of Article 126(2) of the Constitution.”

In ***Thilangani Kandambi v. State Timber Corporation & Others*** (S.C.F.R. Application No: 452/2019; S.C.M. 14.12.2022 at page 9), I identified four key principles on the application of Section 13(1) of the Act in relation to Article 126(2) of the Constitution. They are as follows:

- a) The initial view was that mere production of a complaint made to the HRCSL within one month of the alleged infringement is sufficient to get the benefit of the provisions in section 13(1) of the HRCSL Act [***Romesh Coorey v Jayalath*** (2008) 2 Sri.L.R. 43, ***Alles v. Road Passenger Services Authority of the Western Province***, (S.C.F.R. 448/2009, S.C.M. 22.02.2013)].
- b) However, the present position is that a petitioner must show evidence that the HRCSL has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate. [***Subasinghe v. Inspector General of Police, SC (Spl)*** 16/1999, S.C.M. 11.09.2000; ***Kariyawasam v. Southern Provincial Road Development Authority and 8 Others***, (2007) 2 Sri.L.R. 33; ***Ranaweera and Others v. Sub-Inspector Wilson Siriwardene and Others*** (2008) 1 Sri.L.R. 260; ***K.H.G. Kithsiri v Faizer Musthapha***, (S.C.F.R. 362/2017, S.C.M. 10.01.2018); ***Wanasinghe v. Kamal Paliskara and Others***, (S.C.F.R. 216/2014, S.C.M. 23.06.2021)].
- c) A party cannot benefit from the provisions in section 13(1) of the HRCSL Act where the complaint to the HRCSL is made one month after the alleged violation [***Alagaratnam Manoranjan v. G.A. Chandrasiri, Governor, Northern Province***, (S.C.F.R. 261/2013, S.C.M. 11.09.2014)].
- d) The provisions of section 13(1) of the HRCSL are not available to a petitioner who has made a complaint to the HRCSL only to obtain an advantage by bringing his application

within Article 126(2) of the Constitution [*K.H.G. Kithsiri v Faizer Musthapha, (S.C.F.R. 362/2017, SCM 10.01.2018)*]

The Respondents claim that the Petitioners have failed to prove that a complaint was made to the HRCSL within one month from the Petitioners becoming aware of the alleged infringement.

The Petitioners countered that they became aware of the promotions granted to the 9th to 41st Respondents and salary increments granted to the 42nd to 65th Respondents, on or about 15.06.2015 and within one month thereof, they made complaints to the Human Rights Commission [P27A to P27H].

The 2nd Petitioner complained to the HRCSL on 23.06.2015 against the promotion given to the 9th Respondent. Thereafter, the 2nd Petitioner received a letter dated 18.01.2016 (CA4) from the HRCSL stating that it transpired during the inquiry held on 28.10.2015 that an application was pending in the Supreme Court on the same matter. Hence there is clear evidence that the HRCSL conducted an inquiry into the complaint made by the 2nd Petitioner.

Similarly, a complaint has been made by the 11th Respondent on 23.06.2015. That is a complaint made in general on behalf of all the members of the 11th Respondent against all promotions and salary increments contrary to the scheme of recruitment and promotion. The HRCSL has by letter dated 30.11.2015 informed that an inquiry into the complaint will be held on 18.12.2015.

Moreover, the complaint made to the HRCSL by the 6th Petitioner dated 07.07.2015 (P27F) is adequate to overcome the time bar objection.

The complaint makes it clear that the 6th Petitioner was seeking to obtain a remedy in the interest of all employees of the 1st Respondent who are adversely affected by the alleged infringement.

This is clearly evident by her answers to the question no. 08 (අසාධාරණය සිදුවූ බව සනාථ කිරීමට කරුණු කෙටියෙන් දක්වන්න) and the question no. 15 (මෙයින් ඔබ බලාපොරොත්තු වන සහනය කුමක්ද?) of this application form, which are as follows:

For question no. 08,

“සහකාර අධ්‍යක්ෂ සිටිල්ලම් සහ සහකාර අධ්‍යක්ෂ ප්‍රකාශන යන තනතුරු මෙන්ම තවත් තනතුරු රැසක් බඳවාගැනීමේ පටිපාටිය උල්ලංගනය වන අයුරින් අයදුම්පත් හෝ සම්මුඛ පරීක්ෂණ කැඳවීමකින් තොරව ලබාදීම.

සංස්ථාව මගින් ලබාදෙන බොහෝ උසස්වීම් තනතුරු පෞද්ගලික හිතවත්කම මත මෙන්ම දේශපාලන හිතවත්කම මත ලබාදීම.

උදා - ළමා වැඩබලන පාලක”

For question no. 15,

“සියළුම අසාධාරණ පත්වීම් අවලංගු කර කිසිදු දේශපාලන බලපෑමකින් තොරව, පෞද්ගලික හිතවත් කම් වලින් තොරව දක්ෂයින්ට, සුදුසුකම්ලත් අයට සුදුසු තනතුරු ලබාගැනීමට හැකිවන පරිදි ක්‍රියාකිරීම ”

By the letter dated 07.07.2015 the HRCSL has informed the 6th Petitioner that her complaint had been registered under No. HRC/2387/15 and was receiving the attention of the HRCSL (P27F). Moreover, by letter dated 15.03.2016, the HRCSL has informed 12 complainants including the 6th Petitioner of its inability to proceed further with their respective complaints, including the aforesaid HRC/2387/15, due to this application pending in the Supreme Court.

Section 14 of the HRCSL reads as follows:

*“The Commission may, on its own motion or on a complaint made to it by an aggrieved person or group of persons **or a person acting on behalf of an aggrieved person or a group of persons**, investigate an allegation of the infringement or imminent infringement of a fundamental right of such person or group of persons caused-*

a) by executive or administrative action; or

b) as a result of an act which constitutes an under the Prevention of terrorism Act, No. 48 of 1979, committed by any person.”

In **A.A. Dinesh Priyankara Perera v. 6118, Police Constable & Others** [SC FR 260/2011; 01.04.2016 at page 5], Aluwihare, PC, J. held:

“Although the two categories, namely “a person acting on behalf of an aggrieved person” or “a group of persons” are not referred to in section 13 (1) of the HRC Act, I propose to give a purposive interpretation. I am of the view that Section 13 (1) would be applicable, irrespective of whichever category complains to the HRC.”

Hence, I am of the view that the Petitioners can obtain the benefit of the complaints made to the HRCSL by the 6th and 11th Respondents for the purpose of Sections 13(1) and 14 of the HRCSL Act. I hasten to add that although a complaint made to the HRCSL by a trade union will suffice for the purpose of Section 14 of the HRCSL Act, a trade union does not have *locus standi* to maintain an application under Article 126(2) of the Constitution [**Development Co-ordinators' Society v. The Secretary, Ministry of Public Administration and Home Affairs and Others** (S.C.F.R. 545/2011, S.C.M. 30.05.2025)].

For the foregoing reasons, I overrule the first preliminary objection on time bar.

It is also apposite to state at this point that the 9th, 11th, 13th and 15th Petitioners have no *locus standi* to maintain this application [**Development Co-ordinators' Society (supra)**]. However, the other Petitioners are entitled to do so [**Development Co-ordinators' Society (supra)**].

Necessary Parties

The Respondents submitted that the Minister under whose supervision the 1st Respondent came should have been made a party. It was contended that the Board of Directors gave the promotions and the increments based on a direction by the Minister.

However, there is no evidence before us of any such direction by the Minister to the Board of Directors of the 1st Respondent. The impugned promotions and salary increments have admittedly been granted by the Board of Directors of the 1st Respondent.

In any event, the Board of Directors of the 1st Respondent is not legally bound to give effect to illegal directions of the Minister. They exercise statutory powers vested on them in terms of the SLBC Act and hold them in trust on behalf of the people of Sri Lanka and not the Minister or their political masters. Should they fail to exercise their powers and functions in accordance with the public trust doctrine, a fundamental rights application can be maintained against them and they can be personally held accountable.

I overrule this preliminary objection.

Suppression or Misrepresentation of Material Facts

The Respondents claim that the Petitioners have failed to disclose that they had received promotions without being subjected to an interview and without relying on any scheme of recruitment and promotion, and purely on political patronage of being the members of the 9th Petitioner Union.

Admittedly, a fundamental rights application is liable to be dismissed *in limine* where there has been a suppression or misrepresentation of material facts [***Liyanage and Others v. Ratnasiri, Divisional Secretary, Gampaha and Others* (2013) 1 Sri LR 6 at 17; *Gas Conversions (Pvt) Ltd and Others v. Ceylon Petroleum Corporation and Others* (SCFR 91/2002); *Jahangir Sheriffdeen v. Sandamali Aviruppola, Principal, Visaka Vidyalaya and Others* (SCFR 1/2015, S.C.M. 03.10.2016 at 11); *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and Others* (2002) 1 Sri LR 277 at 286; *Fernando v. Ranaweera and Others* (2002) 1 Sri LR 327 at 328; *D.T. Wickramaratne and Others v. University Grants Commission and Others* (SCFR 13/2015, S.C.M. 20.7.2016 at 10); *Wickramage Don Subadra v. Kotikawatte Mulleriyawa Pradeshiya Sabhawa and***

***Others* (SCFR 247/2016, S.C.M. 05.08.2024 at 25); *Kayleigh Frazer v. Jayawardena and Others* (SCFR 399/2022, S.C.M. 11.05.2023 at 12); *Werage Sunil Jayasekera and Others v. B.A.P. Ariyaratne and Others* (SCFR 64/2014, S.C.M. 05.04.2022 at 20)].**

A material fact is a fact which the Court is necessarily required to consider by law in determining the alleged infringement of a fundamental right.

Article 12(1) of the Constitution guarantees equal protection of the law and not equal violation [***Mackie & Co. v. Molagoda* (1986) 1 Sri LR 300, 309-313; *Gamaethige v. Siriwardena* [1988] 1 Sri LR 384 at 404; *Jayasekera v. Wipulasena and Others* (1988) 2 Sri LR 237; *Jayasuriya v. Vandergert, Secretary, Ministry of Foreign Affairs and Others* (S.C.F.R., 620/97 S.C.M. 30.10.1998); *Dissanayake v. Priyal De Silva* (2007) 2 Sri LR 134; *Ceylon Electricity Board v. Hon. Athauda Seneviratne and Others* (S.C. Appeal No. 167/2014; S.C.M. 23.05.2025)].**

Assuming that the Respondents are correct in asserting that the Petitioners were beneficiaries of illegal decisions by the previous administrations, that is not a material fact in determining whether the promotions and salary increments granted to the 9th to 41st Respondents and the 42nd to 65th Respondents infringe Article 12(1).

Accordingly, I overrule the third preliminary objection.

Analysis of the Merits

The Petitioners submitted that the decision of the 1st to 8th Respondents, or any one or more of them, to grant promotions to the 9th to 41st Respondents and other employees, as well as the decision to grant three salary increments to the 42nd to 65th Respondents, in terms of the Board of Directors' decision No. 3/2015 dated 25.05.2015, is arbitrary, capricious, unreasonable, without force or effect in law, and violative of the fundamental rights guaranteed under Article 12(1) of the Constitution.

The Petitioners contended that no applications were called, no interviews were conducted, and no process was followed to assess whether the promotees possessed the required qualifications and experience for the posts. Furthermore, they submitted that the promotions were granted in contravention of the approved scheme of recruitment and promotion, with some of the promoted posts being newly created and not forming part of the approved cadre of the 1st Respondent Corporation.

The promotions were made personal to the promotees, overlooking other employees with higher qualifications and longer service and the salary increments granted to the 42nd to 65th Respondents were also done in an ad hoc manner, contrary to the annual increment scheme. It was further emphasized that the promotions and salary increments were granted to office bearers and members of the JSS based solely on their political affiliations.

In response, the Respondents countered that the Petitioners' case is fundamentally flawed, as their entire argument hinges on an alleged misapplication or contravention of the scheme of recruitment and promotion, which, in fact, was not in force at the relevant time. They further submitted that, in accordance with Section 19(4) and Section 20 of the SLBC Law, the 1st Respondent Corporation has the discretion to appoint officers and servants, determine their terms and conditions of service, and fix their remuneration, and the aforesaid Respondents, who had served long and satisfactorily within the Corporation, were rightly and lawfully promoted.

Moreover, the aforesaid salary increments, were also lawfully executed in accordance with the powers of the 1st Respondent and duly documented. In conclusion, the Respondents submitted that the substantive reliefs sought by the Petitioners to annul the promotions and increments granted in May 2015 are also rendered academic, as these decisions were subsequently implemented, and it was not specifically challenged in the prayer by the Petitioners.

Admittedly, Sections 19(4) and 20 of the SLBC Law empowers the 1st Respondent to appoint staff of the corporation and to determine their wages and terms and conditions of employment. Nevertheless, it does not vest unfettered discretion on the Board of Directors of the 1st Respondent.

In ***Dr. Athulasiri Kumara Samarakoon and Others v Hon. Ranil Wickremesinghe and Others*** (SC FR No. 195/2022, S.C.M. 14.11.2023 at 42), Jayasuriya, PC, CJ. held that:

*“In its current form the **Right to Equality guarantees protection from arbitrary exercise of power and discretion by State functionaries and enhances the Rule of Law.** It further requires State authorities to ensure that their conduct will not breach the trust placed on them and **ensure that public resources placed in their custody are protected and preserved for the benefit of the people and not to exhaust for political or personal benefit.**”* (emphasis added)

The 1st Respondent is a public institution providing an important public service with public funds. Its recruitment and promotions procedures must be aimed at recruiting persons replete with most appropriate knowledge, skills and attitudes to the respective positions in a transparent manner with a view to efficiently maintaining the public service with high productivity, providing equal opportunities to all those who fulfill required qualifications to be recruited and career progression. These objectives can be achieved only through the establishment of a structured scheme of recruitment and promotion incorporating such objectives.

It is in this context that I must confess of a sense of incredulity that the 1st Respondent does not have an approved scheme of recruitment and promotion given that it was established as far back as 1974 and plays a pivotal part in disseminating information to the public.

As Amerasinghe, J. observed in ***Perera and Others v. Monetary Board of the Central Bank of Sri Lanka and Others*** [(1994) 1 Sri LR 152 at 166]:

“[...] if society is to be purged of and freed from the related evils of corruption, nepotism and favouritism, public institutions embarking on executive or administrative action in terms of Article 126(1) of the Constitution must be clear of inequalities and/or unevenness. Transparency in recruitment proceedings would go a long way in achieving public expectations of equal treatment. The selection of a person must be viewed as a serious matter requiring a thoroughgoing consideration of the need for the services of an officer, and a clear formulation of both the basic qualities and qualifications necessary to perform the services, and the way in which such qualities and qualifications are to be established. In order to ensure that justice is done and seen to be done, it is at least desirable that cadres, the criteria for selection, the method of selection and the eventual basis for selection - for instance by the publication of marks obtained - be made known to those concerned. Ideally, the whole process from the determination of the cadre to selection must be easily recognized and seen through, if not obvious. A selection process veiled in secrecy and not openly avowed and expressed is at least open to the suspicion of the existence of something evil or wrong. It is of a questionable character.”

Article 12(1) of the Constitution stipulates that, All persons are equal before the law and are entitled to the equal protection of the law. In ***W.P.S. Wijerathna v. Sri Lanka Ports Authority & Others*** (SCFR Application No. 256/17, S.C.M. 11.12.2020 at 14-15), my learned brother Kodagoda, PC,J. held:

*“It is well settled law that, at the core of Article 12 of the Constitution is a key concept, namely the concept of ‘equality’. **The concept of equality is founded upon the premise that, all human beings are born as equals and are free. Equality***

confers equal value, equal treatment, equal protection and equitable opportunities to all persons, independent of or notwithstanding various demographic, geographic, social, linguistic, religious and political classifications based on human groupings prevalent in contemporary society, some of which are immutable or born to and others acquired.” (emphasis added)

Article 12(1) seeks to protect persons from arbitrary, unreasonable, malicious and capricious executive and administrative actions. [***Karunathilaka and another v Jayalath de Silva and others*, [2003] 1 Sri LR 35; *Ariyawansa and others v. The People’s Bank and others*, [2006] 2 Sri LR 145; *Kanapathipilli v. Sri Lanka Broadcasting Corporation and Others* [2009] 1 Sri LR 406].**

The absence of a scheme of recruitment is not a warrant for the Board of Directors of the 1st Respondent to make promotions and grant salary increments based on political considerations. I have no hesitation in holding that the 9th to 41st Respondents were granted promotions and the 42nd to 65th Respondents were granted salary increments personal to them in an arbitrary manner based purely on their political affiliation.

For all the foregoing reasons, I declare that the 1st to 7th Respondents have infringed the fundamental rights of the 1st to 8th Petitioners guaranteed by Article 12(1) of the Constitution.

I further declare all promotions granted to the 9th to 41st Respondents and all the salary increments granted to the 42nd to 65th Respondents consequent to the decision of the Board of Directors of the 1st Respondent on or about 25.05.2015 null and void.

I award the 1st to 8th Petitioners a total of Rs. 4,80,000/= as compensation to be paid by the 2nd (Nanda Muruththettuwegama), 3rd (Deepika Priyadhsrashani Pieris), 4th (W. Jayasiri), 5th (Prof. Keerthi Samarasinghe), 6th (Chandrika Kulathilaka), and 7th (E. Hettiarachchi) Respondents from their personal funds. Hence, each of the 1st to 8th Petitioners will get Rs. 60,000/= as compensation. Each of the 2nd to 7th Respondents named above will thus pay Rs. 80,000/= each as compensation from their personal funds.

I direct each of the 2nd to 7th Respondents to make the aforesaid payment to the Registrar of this Court within 2 months of the delivery of this judgment. The Registrar is directed to disburse the compensation paid as set out in this judgment.

In the exercise of the just and equitable jurisdiction of this Court, I further direct the 1st Respondent and the present Board of Directors of the 1st Respondent to forthwith formulate a Scheme of Recruitment and Promotion to all posts in the 1st Respondent Corporation with the approval of all the necessary authorities within 6 months of the delivery of this judgment. The approved Scheme of Recruitment and Promotion should be filed in the registry with notice to the Petitioners.

Judge of the Supreme Court

S. Thurai Raja, P.C., J.

I agree.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court