

**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 & 126 of the Constitution.

**Case No: SC/FR/126/2022**

1. Jayaweera Sumedha Jayaweera,  
Principal's Bungalow,  
St Paul's Girls' School,  
Milagiriya,  
Colombo 05.

**PETITIONER**

Vs.

1. Dinesh Gunawardana,  
Minister of Education,  
Ministry of Education,  
Isurupaya, Battaramulla.
1. Ramesh Pathirana,  
Minister of Education,  
Ministry of Education,  
Isurupaya, Battaramulla.
- 1(B). Hon. Susil Premajyantha,  
Minister of Education,  
Ministry of Education,  
Isurupaya, Battaramulla.
2. Prof. K. Kapila C.K. Perera  
The Secretary Ministry of Education,  
Ministry of Education,

Isurupaya, Battaramulla.

- 2(A). M.N. Ranasingha,  
The Secretary Ministry of Education,  
Ministry of Education,  
Isurupaya, Battaramulla.
3. W.M.N.J. Pushpakumara,  
Additional Secretary Education Services,  
Ministry of Education,  
Isurupaya, Battaramulla.
4. R.A.A.K. Ranawaka  
Secretary Ministry of Lands,  
Ministry of Lands,  
"Mihikatha Madura", Land Secretariat,  
No. 1200/6,  
Rajamalwatha Rd, Battaramulla.
5. E.W.L.K. Egodawela,  
Additional Secretary (School Affairs),  
Ministry of Education,  
Isurupaya, Battaramulla.

The 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents, Members of  
Interview Panel.

6. H.M.C.K. Seneviratne  
11/3, Samagi Mawatha,  
Depanama, Pannipitiya.
7. Hon. Jagath Balapatabendi  
Retired Judge of the Supreme Court,  
(Chairman)  
Public Service Commission.

8. Indrani Sugathadasa,  
(Member)
9. Dr. T.R.C. Ruberu  
(Member)
10. Ahamod Lebbe Mohamed Saleem  
(Member)
11. Leelasena Liyanagama  
(Member)
12. Dian Gomes  
(Member)
13. Dilith Jayaweera  
(Member)
14. W.H. Piyadasa  
(Member)
15. Sundaram Arumainayagam  
(Member)

All Members of the Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

16. M.A.B. Daya Senarath  
(Secretary)  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

17. Mr. G.S. Withanage  
Chairman – Education Service Committee,  
Public Service Commission.

18. Dr. Mrs. Damitha de Zoysa  
(Member)

19. Mr. S.U. Wijerathna  
(Member)

Members of the Education Service Committee  
Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

20. Mr. A.W.R. Wimalaweera  
Secretary-Public Service Commission,  
No. 1200/9, Rajamalwatta Road,  
Battaramulla.

21. Hon. Attorney General  
Attorney Generals Department,  
Colombo 12.

### **RESPONDENTS**

**BEFORE** : **BUWANEKA ALUWIHARE, PC. J**  
**P. PADMAN SURASENA, J**  
**JANAK DE SILVA, J**

**COUNSEL** : Ikram Mohamed PC with R. Hettiarachchi and  
Anuradha Abeysekere for the Petitioner.

Sanjeewa Jayawardena PC with Charitha Rupasinghe and Ms.  
Ridmi Beneragama for the 6<sup>th</sup> Respondent

Kanishka de Silva Balapatabendi DSG. With R. Gooneratne, SC  
for all the Respondents except the 6<sup>th</sup> Respondent.

**ARGUED ON** : 13-09-2023

**DECIDED ON**: 20-09-2023

**Order relating to preliminary objection**

Both the Petitioner and the 6<sup>th</sup> Respondent had applied for the post of Principal (Sri Lanka Education Administrative Service Grade I) responding to the notice produced marked **F1** by which the Secretary of the Ministry of Education had called for applications from suitable candidates to fill thirty-one vacancies which existed at thirty-one National Schools in the year 2021. Subsequent to the selection process, the 6<sup>th</sup> Respondent has been appointed as principal of Visaka Vidyalaya Colombo with effect from 24-01-2022. The Petitioner having failed to secure that appointment from the said selection process, has challenged in this application the appointment of the 6<sup>th</sup> Respondent to the post of Principal of Visaka Vidyalaya Colombo. The Petitioner in her petition has prayed for four main reliefs:

1. A declaration that the marking scheme of Sri Lanka Education Administrative Service class I officers to Grade I schools – 2021 produced marked **F3** has violated the Petitioner’s fundamental rights guaranteed by the Constitution,
2. A declaration that the Petitioner’s fundamental rights guaranteed by Article 12(1) of the Constitution has been violated by the appointment of the 6<sup>th</sup> Respondent to the post of Principal Visaka Vidyalaya with effect from 18-01-2022 and/or by not awarding the Petitioner more marks than the 6<sup>th</sup> Respondent and/or by not appointing the Petitioner to the said post,
3. A declaration that the appointment of the 6<sup>th</sup> Respondent to the post of Principal Visaka Vidyalaya is null and void in law and to make an order directing the Respondents to appoint the Petitioner to the post of Principal Visaka Vidyalaya with effect from 18-01-2022.

At the outset, both the learned Presidents’ Counsel who appeared for the 6<sup>th</sup> Respondent and the learned Deputy Solicitor General who appeared for all the other Respondents (other than the 6<sup>th</sup> Respondent), raised a preliminary objection that the Petitioner has filed this Petition after the 01-month period permitted by Article 126(2) of the Constitution and therefore the

application is out of time. The Court proceeded to hear the submissions of all parties and reserved its order.

According to the Respondents, it is the marking scheme of Sri Lanka Education Administrative Service class I officers to Grade I schools - 2021 produced marked **F3** which the Petitioner has complained as having violated her fundamental rights guaranteed by the Constitution. The Petitioner herself has applied responding to the notice calling for application (**F1**). The list of vacancies expected to be filled through this appointment process has been produced marked **F2**. The marking scheme relied on to award marks to the candidates has also been produced marked **F3**. Admittedly, the marking sheet **F3** has been published right from the beginning in the website. The closing date for the submission of the application was 12-10-2021. Petitioner has filed this application on 05-04-2022. There is no dispute that the Petitioner was aware of the said published marking scheme (**F3**) at the time she had forwarded her application for this post. Thus, the Petitioner has filed the instant application more than six months after the aforesaid alleged act of infringement.

The Petitioner has stated that she had made a complaint to the Human Rights Commission and therefore her application cannot be out of time as per Section 13 (1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 which reads as follows:

“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.”

Mr. Sanjeewa Jayawardena PC who appeared for the 6<sup>th</sup> Respondent argued that the Petitioner has failed to prove that the inquiry into her complaint is pending before the Human Rights Commission. However, we do not need to go that far because Section 13 (1) of the Human Rights Commission of Sri Lanka Act requires the Petitioner to pass a more preliminary threshold. That is the requirement for the Petitioner to have made her complaint to the Human Rights Commission within one month of the alleged infringement. According to the receipt issued by the Human Rights Commission produced by the Petitioner marked **Q-1**, the Petitioner had made the complaint to the Human Rights Commission on 15-02-2022. Therefore, it is clear that the Petitioner had made her complaint to the Human Rights Commission very much after the one-month time allowed by Section 13 (1) of the Human

Rights Commission of Sri Lanka Act No. 21 of 1996. Therefore, irrespective of the fact that the inquiry into the Petitioner's complaint is pending before the Human Rights Commission or not, the Petitioner's case cannot come under Section 13 (1) of the Human Rights Commission of Sri Lanka Act for the purpose of computing the period of one month referred to in Article 126 (2) of the Constitution.

Therefore, we hold that the Petitioner's application in so far as the challenge made to the marking scheme **F3** is out of time.

However, Mr. Ikram Mohommed PC submitted before us that he has sought other relief which are not out of time as per Article 126(2) of the Constitution. He complained that , in certain instances the Petitioner has been deprived of the marks which are legally due to her. Let us proceed to consider that aspect of the case.

According to the marking scheme **F3**, marks to the candidates have been awarded under nine categories. They are as follows:

1. Service experience
2. Educational qualifications
3. English language proficiency
4. Computer literacy
5. Service evaluation
6. Research and publication relevant to education
7. Presentation
8. Case study
9. Overall skills and personality at interview

Mr. Ikram Mohommed PC, contended that the Petitioner's complaint is that she has not been awarded marks to the qualifications and experience she had possessed in respect of the first four categories (i.e., Service experience; Educational qualifications; English language proficiency; Computer literacy) because the Marking Scheme has no such provision to entertain and award marks to those qualifications. In particular, the Petitioner complains that unlike the 2015 marking scheme, the marking scheme **F3**, used in this instance does not permit award of marks to the qualifications and experience she had possessed in respect of the third and fourth categories (i.e., English language proficiency; Computer literacy) because the present Marking Scheme has no such provision to entertain and award such marks to those qualifications. Thus, in effect, it is clear that the Petitioner is challenging the Marking Scheme (**F3**) in respect of the award of marks under those four categories. Therefore, the Petitioner's complaint in respect of the first four categories (i.e., Service experience; Educational qualifications; English language proficiency; Computer literacy) is also out of time.

In respect of the marks awarded under the 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> categories, (i.e., presentation, case study and overall skills and personality at the interview), it is the complaint of the Petitioner that she had performed better than the 6<sup>th</sup> Respondent in relation to the performance under those three categories and therefore she should have been awarded more marks than she has been awarded. We are of the view that we cannot get into the shoes of the panelists who evaluated the applicants and proceed to consider and evaluate afresh, the performance of the candidates by us. Therefore, we are unable to entertain the said complaint made in relation to 7<sup>th</sup>, 8<sup>th</sup> and 9<sup>th</sup> categories.

What remains to be considered are the complaints made by the Petitioner in relation to the 5<sup>th</sup> category service evaluation, and the 6<sup>th</sup> category research and publication relevant to education.

The complaint of the Petitioner with regard to service evaluation is that the Respondents could not, in any event, have appointed the 6<sup>th</sup> Respondent according to the eligibility criteria referred to in the Service Minute (produced marked **Q**) with the counter affidavit of the Petitioner dated 28-11-2022. According to the table at page 13A of the Gazette No. 1928/28 dated 21<sup>st</sup> August 2015, for any applicant to be eligible to be appointed for the post of Principal, he/she should be an officer in Grade I/II/III of the S.L.E.A.S. (General Cadre). While the Petitioner claims that she is an officer in General Cadre, she asserts that the 6<sup>th</sup> Respondent was not in General Cadre but in Special Cadre. However, as pointed out by both Mr. Sanjeewa Jayawardena, PC and Mrs. Kanishka Balapatabendi DSG, at page 2A of the same Gazette in clause 6.1 all Grade I officers must necessarily be in General Cadre. This is because all officers in Grade I are classified under 'General cadre' and there is no 'Special Cadre' in Grade 1. Therefore, the 6<sup>th</sup> Respondent who is a Grade I officer must necessarily belong to the General Cadre. Thus, we see no merit in this argument either.

With regard to the 6<sup>th</sup> category i.e., research and publication relevant to education, it is the position of the Petitioner that the Respondents had arbitrarily deprived her of due marks while arbitrarily awarding undue marks to the 6<sup>th</sup> Respondent. In this regard we observe that both the Petitioner and the 6<sup>th</sup> Respondent had been awarded three marks each (identical marks) under this category. The total marks obtained by the Petitioner is 60 marks; the total marks obtained by the 6<sup>th</sup> Respondent is 67 marks. Thus, the difference in total marks obtained by the Petitioner and the 6<sup>th</sup> Respondent is seven marks;. The maximum mark any applicant could obtain under this category (Research and publication relevant to education) is 05 marks. Therefore, even if the Petitioner's argument that the Respondents had arbitrarily deprived her



of due marks is accepted, the Petitioner can only score 02 more marks which will make her total only 62 marks. Similarly, even if the argument of the Petitioner that the Respondents had arbitrarily awarded undue marks to the 6<sup>th</sup> Respondent is accepted, the 6<sup>th</sup> Respondent's marks can be reduced only by 03 marks making the 6<sup>th</sup> Respondent's total marks 64. Thus, we observe that the Petitioner cannot succeed on this ground as well because the 6<sup>th</sup> Respondent is still ahead of the Petitioner.

For the foregoing reasons Leave to Proceed is refused and the Petition is dismissed without costs.

**BUWANEKA ALUWIHARE PC, J**

**JUDGE OF THE SUPREME COURT**

**P. PADMAN SURASENA, J**

**JUDGE OF THE SUPREME COURT**

**JANAK DE SILVA, J**

**JUDGE OF THE SUPREME COURT**