

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

In the matter of an application under
and in terms of Articles 17 & 126 of
the Constitution of the Republic.

1. **U.W. Karunasena**
Madurupitiya, Algama.
2. **T.M.M. Tennakoon**
191/G, Sri Dhammaloka Mawatha,
Kurunduwatta.
3. **K.G. Sunali Bandara**
54/92, Bovila Road, PahalaBoiriya,
Kaduwela.
4. **W.A.J. Kulasinghe**
57, Sri JeewanandaNahimiMawatha,
Hapugoda, Kandana.
5. **P.K.S. Priyangani**
148, Pinkella Road, Hirana, Panadura.
6. **T.M.C. Bandara**
Sumanasewana, Aruppola, Tuntota.
7. **H.G.U.R. Wickramasinghe**
No 97, Sudu Kanda, BothaleMedagama,
Ambepussa.
8. **K.B.D.K Priyadarshani**
176/11, Maligaspe, SarantisaMawatha,
Bope, Galle.
9. **J.S.P. Mangalika**
No. 41, Ruksewana, Udawattawa,
Metikumbura.
10. **A.M.N.B.Alahakoon**

SC (FR) Application No 248/2016

509/2C, Sanhidawatta, Moragollagama,
Knattewewa.

11. W.M. Inoka Kumari

PolaPitupasa Para, Galapitiyagama,
Nikaweratiya.

12. U.A. Santha.

Meegahaena, Kahapathwala.

13. Sugath Hatharasinghe

354/5/3, IsuruPiyasa, Gammana Para,
Watareka.

14. D.A. Sujatha

217/3/1, SudarshanaMawatha, Malabe.

15. T.M. Champa Kumari

SenarathSewana, Seepukulama.

16. K.A.M. Anula Kumarihami

WewaLagaNiwasa, Moragahawewa,
Withikuliya.

17. M.M.W.M.S. Sirimalwatta

Siriliya, 97, Thennekumbura, Kandy.

18. G. Neelaprama

No 504, Puwakpitiya, Galewela

19. N.R.K.A. Mudalige

'Srimali' Dandeniya.

20. K.A. Anusha Kasthuri

F58/1, Madurupitiya, Algama.

21. E.M.S.B. Ekanayake

Alaluwa, Thalhitimulla, Kuliyaipitiya.

22. K.M. Anulawathi

1/345, Nugagasa Idiripita, Puttalam Rd,
bambaragammana, Wariyapola.

- 23. N.N. Rajarathna**
Ekwalapitiya, Piduma, Kuliypitiya.
- 24. T.L.W. Dassanayke**
76/7 A, Ambagahawatta,
Thiruwaneagama, Kalagedihena.
- 25. P. Douglas Bandara.**
86/6, Deranawatta, Pore-Athurugiriya.
- 26. W. Manel Priyangi**
7/31, Dhammaukthikarma Mw,
Vilegoda, Ambalangoda.
- 27. H.P.K. Nimali Umanga Dhanayake**
529, Panadura Rd, Galedandugoda,
Horana.
- 28. K.B.A.K. Kariyawasam**
53, Singhagiri, School Lane,
Siddhamulla, Piliyandal.
- 29. Lakmali Marasinghe**
Pitawela, Hewadiwela, Rambukkana.
- 30. Hemamali P. Wijesinghe**
No: 89, New Coloney, Paradise,
Kuruvita.
- 31. I.D.M. Wijebandara**
259/1A, Kandy Rd, Warakapola.
- 32. R.K.S. Anuradha Senevirathna**
36/10, Pittakanda Rd, Warakapola.
- 33. J.A.M.K. Edirisinghe**
162/A, Araththana, Handessa.
- 34. H.A.M.N Hapuarachchi**
%, Vehigala Rd, Kadugannawa.
- 35. J.A.D.M.M. Jayasuriya**

121, Alapalawala, Handessa, Kandy.

36. K.P.K.G.B. Gunaratne

Warapitiya Estate, Wharakgoda,
Ussapitiya.

37. M.D.M.A.S.K. Dasanayake

29, Gampola Rd, Kadugannawa.

38. K.M.Renuka Damayanthi

192/C, Galanga, Menikdiwela.

39. S.S. Gurusinghe

Muththettuwa, Uwrugala, Waralla.

40. N.W. Buddhiwardena

Kurunduwatta Junction, Wehiena
Mattaka.

41. D.W.C.Kumudu Kumari

Hamugodapara, Kumme, Beddagama.

42. H.L. Tharanga Kumari

'Nyana' Kirindiela, Meetiyaoda.

43. K.M.G. Jinaka

127/73, Kohombanwatta, Watareka-
east, Galle.

44. S.A.P.L. Rodrigo

Sanasuma, Nahinna, Dodangoda.

45. W.R.J. Vasana Premachandra

64/9, Piriwena Rd, Rathmalana.

46. D.M.S.R. Priyanga

125/02, Niwandama, Ja el.

47. M.D.K.Marasinghe

129, Mahahena Junction, Mandawela.

48. R.M.P.S.R. Bandara

235, Batahen Road, Kirikiththa,
Weliweriya.

- 49. S.A.N.Priyadarshani**
No: 389/5, Ihala Biyanwila, Kadawatha.
- 50. N.M. Paranagamage**
18/A1/6, Siyane Uyana, Yakkala.
- 51. M.M.S.R. Cooray**
No:306/2G, Ihala Biyanwila,
Kadawatha.
- 52. P.M.R.Priyadarshani**
295/D, 3rd Lane, Samagi Mw.
Hewagama, Kaduwela.
- 53. E.L.D.A Sajeewani.**
12/A, Sumedha Mw. Gnemulla.
- 54. R.N.K. Wijsekara**
78/15, Railway Quarters, Bestiyan Mw,
Colombo Fort.
- 55. K.G.C.P.Samarasooriya**
44/7 P, Salgaduwiththa, Sangabo Mw,
Diggala Rd, Keselwatta, Panadura.
- 56. K.A.S.M. Keragala**
Alaluwa, Thalhitimulla, Kuliypitiya.
- 57. A.A.T.K. Amarasinghe**
431, Elvitigala Mw, Colombo 05.
- 58. G.G.U.H. Godagedara**
98/C, Bollatha, Ganemulla.
- 59. D.M.I.S.K Dissanayake**
Siwallawagedra, Ithanawatta
- 60. Ajith Athukorala**
No 42/5 Pitipana South Dolahena,
Homagama.
- 61. Champa Nilmini Wivkremaarachchi**
86/6, Deranawatta, Pore-Athurugiriya.
- 62. A.M.A.Dilhani Dilrukshika.**

142 , Mahabellana, Alubomulla.

63. B.G.Ajantha Samankumari

27/C-19, Nagawanarama Rd,
Nedagamuwa, Kotugoda.

64. B. Janani N Senevirathna

431, Elvitigala Mw, Colombo 05.

65. Nadeeka Dharshani Jayawardena

106/5, 13th lane, Ebillawatta Rd,
Boralesgamuwa.

66. Sudevi Ranasighe

137/A, Dagonna.

67. K.G.D. Reshani Dharmawardena

181, Meegahawatta, Delgoda.

68. M.A.D.R. Athukorala

325A, Mabodala, Veyangoda.

69. W.S.Rajapakse

No 62/1, Negombo Rd, Katuwellegama.

70. B.G.G.Samanthika

48/5, Pallewatta, Hasalaka.

71. W.M.U Bandara

74 A, Dimbula- Gawatenna,
Menikhinna.

72. R.A. Chamila Wilrukshi

150/12, Pitumpe Road, Meepe ,
Padukka.

73. H.A.K. Nayanakumari Ariyaratna.

1/284, Amaragiri Estate, Loluwagoda,
Kandangamuwa, Mirihana.

74. M.R.S.Peiris

426/3, Dematagolla, Horampella.

75. K.S.D.Kumari

141, Ekamuthu, Kawdella, Galagedara.

- 76. H.D. Weerasisri**
38, Mihindu Mw, Malwatta,
Nittambuwa.
- 77. I.P. Priyadarshani**
Bambaragama, Pitigaldeniya
- 78. A.M.S. Palitha Attanayake**
Medagodakotuwa, Pethiyagoda,
Gelioya.
- 79. M.W. Jayantha**
No. 120, Kolabissa
- 80. U.H.G.P.Rathnasiri**
34A, Hiddaulla, Handessa
- 81. W. Weerarathna**
17E, Blue Lotus Road, Hadigama,
Piliyandala.
- 82. K.T. Piyasantha**
12/4, Wadumulla, Wathugedara,
Ambalangoda.
- 83. A.R.Athukorala**
132, Pallegunnepana, Polgolla.

PETITIONERS

Vs.

- 1. Dr. Senerath Dissanayake**
Director General of Archaeology,
Department of Archaeology, Sir Marcus
Fernand Mw, Colombo 07
- 1(a) Prof. P.B.Madaawala**
Acting Director General of Archeology,
Department of Archaeology, Sir Marcus
Fernando Mw., Colombo 07.
- 1(b) Prof. Anura Manatunga**

Director General of Archaeology,
Department of Archaeology, Sir Marcus
Fernando Mw., Colombo 07.

2. W.M. Bandusena

Secretary, Ministry of Education,
“Isurupaya”, Pelawatta, Baththaramulla.

2(a) Mr. M.K. Bandula Harischandra

Ministry of Buddhasasana, cultural religious
affairs.

135, Srimath Anagarika Dharmapala
Mawatha, Colombo 07.

2(b) Mr. S.T. Kodikara

Secretary, State Ministry of National
Heritage, Performing Arts and Rural Arts
Promotion, 4th Floor, Stage II,
“Sethsiripaya” Battaramulla.

3. Akila Viraj Kariyawasam

Minister, Ministry of Education,
‘Isurupaya’, Pelawatta, Baththaramulla.

3(a) Hon. Mahinda Rajapaksha.P.M.

Minister of Finance, Economy and Policy
Development Ministry of Buddhasasana,
Cultural and Religious Affairs,
Department of Cultural Affairs,
8th Floor, “Sethsiripaya”, Battaramulla.

3(b) Hon. Vidura Wickramanayake

State Minister of National Heritage
Performing Arts and Rural Arts Promotion,
4th Floor, Stage II, Sethsiripaya,
Baththaramulla.

4. Mr. Dharmasena Dissanayaka, Chairman

4(a) Hon. Justice Jagath Balapatabendi,
Chairman

5. Justice A. Salam Abdul Waid, Member

5(a) Prof. Hussain Ismail, Member

5(b) Mrs. Indrani Sugathadasa, Member

6. **Mr.D.S.Wijayatilaka**, Member
- 6(a) **Mr.V.Shivagnansothy**, Member
7. **Dr. Pradeep Ramanujan**, Member
- 7(a) **Dr. T.R.C. Ruberu**, Member
8. **Mrs. V. Jegarasasingam**, Member
- 8(a) **Mr. Ahamod Lebbe Mohamed Saleem**, Member
9. **Mr. S.N. Seneviratne**, Member
- 9(a) **Mr. Leelasena Liyanagama**, Member
10. **Mr. S. Ranugge**, Member
- 10(a) **Mr. Dian Gomes**, Member
11. **Mr. D.L. Mendis**, Member
- 11(a) **Mr. Dilith Jayaweera**, Member
12. **Mr. Sarath Jayathilaka**, Member
- 12(a) **Mr. W.H.Piyadasa**, Member

The 4th to 12th Respondents all of,

Public Service Commission

No. 1200/9, Rajamalwatte Road,
Battaramulla.

13. **Sri Lanka Council of Archaeologists**,
Department of Archaeology, Sir Marcus
Fernando Mw., Colombo 07
14. **Hon Attorney General**, Attorney
General's Department, Colombo 12.
15. **B.M.A.P. Basnayke**,
279/2, Katana Road,
Thimbirigaskatuwa, Negombo.

- 16. K.D.Palitha Weerasinghe,**
No. 127/14C, Diyasunnatha Mawatha,
Rambukkana.
- 17. P.G.M. Karunathilaka,**
77/7/G, Siriwardena Road, Ragama.
- 18. M.A.S.T. Madurapperuma,**
Ridee Kotuwa, Beligala
- 19. . G.K.U.Karunasekara,**
193, Mabopitiya, Alawwa
- 20. U.B.G.V.N. Balasooriya,**
43E, Viduhal Mawatha, Gangoda,
Pilimathalawa.
- 21. H.B.A.K Nilmalgoda,**
No. 163/13A, Kalugalla Mawatha,
Kegalle.
- 22. K.K.D.K.Bowaththa,**
Aluthgangoda, Nawunthuduwa,
Mathugama.
- 23. D.M.B.J.B.Dissanayake,**
Udupitiya, Galagedara.
- 24. Inoka Damayanthi Balasooriya,**
P.53, Police Kanda, Diyathalawa.
- 25. A.D.M.W.K.K.Alahakoon,**
No.142, Meera Road, Isadeen Town,
Matara.
- 26. N.B.Karawgahanga,**
29/5A, Dutugemunu Mawatha, Lewella,
Kandy.
- 27. U.P Wathuge,**
'Mithila' Hangawa, Torayaya,
Kurunegala.

- 28. H.P.S.Karunarithna,**
2E, Attanagalla Road, Pasyala.
- 29. S.M.P.S.B.Samarakoon,**
10/1, Aluamba, Pilawala.
- 30. W.H.A.Sumanadasa,**
270/16F, Royal Garden, Horana
- 31. D.M.Piyathilaka Banda**
No.890, Saliya Mawatha, Vijayapura,
Anuradhapura.
- 32. L.P.N.De Silva,**
279/2, Katana Road,
Thimbirigaskatuwa, Negombo.
- 33. L.M.Gunathilaka Banda,**
183,Bulumulla, Kiribathkumbura.
- 34. P.B.A.Senarithna,**
C-30/A, Hettimulla.

RESPONDENTS

BEFORE: S. THURAIRAJA, PC J.
K.KUMUDINI WICKREMASINGHE, J.
ARJUNA OBEYESEKERE, J.

COUNSEL: Pulasthi Hewamanna with Ms. Thilini Vidanagamage and Harini Jayawardhane
for the Petitioners

Rajitha Perera, SSC, for the 1b, 3b, 4a to 12a and 14th Respondents

Asela Seresinhe for the 15th to 34th Respondents

ARGUED ON: 08.12.2021

WRITTEN SUBMISSIONS: Petitioners on 26.10.2021
15th to 34th Respondents on 03.11.2021

DECIDED ON: 17.07.2024

K. KUMUDINI WICKREMASINGHE, J

The Petitioners filed this application on the 25th of July 2016, *inter alia*, seeking declarations of infringement of their fundamental rights guaranteed under Article 12(1) and 14(1) of the Constitution of the Democratic Socialist Republic of Sri Lanka and further impugning the actions/or inactions and/or failure of the 1st Respondents for the irrational, discriminatory, unlawful and mala fide approach adopted in calling for application to fill the position of Assistant Director in the Department of Archaeology.

The Supreme Court on 02.09.2016 granted leave to proceed for the alleged violation of Article 12(1) of the Constitution.

In the Petition filed before this Court, the Petitioners allege the following facts.

The 1st to the 19th Petitioners have been employed at the Department of Archaeology in various designations including the designations of Exploration Officer, Site Manager, Publication Officer, Excavation Officer, etc., since on or about the year 1999 and are specialised in their respective fields with over 17 years of experience in their respective capacities at the said Department.

The 20th to 83rd Petitioners have been employed at the said Department as Archaeology Research Assistants in various fields since or about the year 2005 and are specialised in their respective fields with over 11 years of experience in their respective capacities at the said Department.

Petitioners state that all the Petitioners have been serving in the Salary Scale MN-04 since their date of appointment with no promotions whatsoever in the said Department.

The Petitioners state that on or about the 30.06.2016 by a circular addressed to all Heads of Units, the 1st Respondent issued a notice calling for internal applications for the posts of Assistant Director in various subjects at the said Department. The Petitioners noted that the said Circular contained certain qualifications which were not in the Scheme of Recruitment (SoR)

published in 1999 which was the Scheme of Recruitment the Petitioners verily believed was in existence at present.

The Petitioners thereafter made attempts to ascertain whether the said SoR had in fact been amended or replaced. The Petitioners emphatically state that had there been a new amended SoR, they should have been consulted. No such consultation has taken place; had there been any such attempt to create a new or amended SoR, the Petitioners would have certainly made representations giving their views to ensure that none of the employees of th Department were adversely affected by such a new/amended SoR. No such representations were called or made by any of the Petitioners.

Thereafter, the Petitioners inquired from the Additional Director General of Archaeology whether in fact a new SoR was implemented or whether the existing SoR had been changed. On or about the 14th of July 2016 the Petitioners were told by the said Additional Director General that a new SoR had been approved. In the discussion it was revealed that a junior officer of the Department had prepared it and it was later approved by the 1st Respondent and finally approved by the Public Service Commission (PSC). The said Additional Director General also informed the Petitioners that she had been newly appointed to the said position and that the new SoR should have been made in consultation with the Petitioners but that since it has nevertheless been approved, the Department was bound to implement the new SoR. The said Additional Director General also informed the Petitioners that if the objective cannot be achieved by the new SoR, the Department may consider changing it in future. Thereafter the Petitioners obtained a new copy of the SoR and that was the first time the said SoR was disclosed to the Petitioners.

The Petitioners state that the new SoR disentitled the Petitioners from applying for the positions of Assistant Director and above which they were qualified and eligible for under the previous SoR.

The Petitioners state that the addition of “5 years experience in MN-05 Grade 01” requirement has disqualified all the Petitioners from applying for the said positions although the Petitioners were qualified to do so under the old SoR. Petitioners further state that in any event there are no “Grade 01” officers in the MN-05 scale at the Department.

They state that they are disqualified to apply for any of the aforesaid positions due to the deliberate inclusion of “5 years experience in MN-05 Grade 01” requirement in as much as all of them are in the MN-04 scale since their appointment. The said call for applications for the post of Assistant Director and the connected new SoR cater for only a very few persons at the said Department and that the qualified persons for the said positions are far below the number of vacancies advertised. The Petitioners stated that the new SoR and call for applications had been designed to give an undue advantage to Technical Service Officers with seniority.

The Petitioners state that the duties of the positions called for are highly technical and specialised and that the Petitioners are most suitable for the said positions following their educational and professional expertise. They state that the said call for applications and the connected recruitment procedure is contrary to the National Archaeological Policy of Sri Lanka published in Extraordinary Gazette No 1572/4 dated 20th October 2008. Petitioners believe that it is the duty of the 1st Respondent to implement the said policy which he has failed to do pursuant to Section 40(a) of the Antiquities Ordinance No 09 of 1940 (as amended).

Petitioners state that the said application is defective and contrary to law since the said call for applications state that the competitive examination to be held will only be held in Sinhala medium which is contrary to provisions of the constitution and the said call for applications has equated National Technical Certificates and Higher National Diplomas which cannot be so equated and the call for applications and the connected SoR lists irrelevant qualifications for the posts applied for which require specialised knowledge.

Petitioners state that in order to address the issues of the Respondents the then Secretary to the State Ministry of Cultural Affairs in response to the cabinet paper submitted by the then Minister of Cultural Heritage has compiled a report highlighting the importance of the establishment of an Archaeological Service paying special notice to the Petitioners who have obtained high level educational qualifications in the subject of Archaeology so that their expertise may be utilised by the Department of Archaeology in a more effective manner. The said report was heeded by the then Minister of Cultural Affairs and the establishment of the said Service was in the final stages of implementation with a draft request to call for the establishment of an Archaeology Service Minute being drafted by the said Minister. The said process had been inexplicably halted while

the aforesaid call for recruitment had been made when the said positions could have been filled more effectively subsequent to the establishment of the Archaeological Service as aforesaid.

Petitioners state that the aforesaid conduct of the Respondents in calling for applications for the position of Assistant Director at the said Department in a manner completely excluding the Petitioners and the connected Recruitment Guidelines are irrational, discriminatory, unlawful, mala fide and in violation of the Petitioners rights guaranteed under Article 12(1) of the Constitution for the following reasons among others;-

- a) The call for applications and the surreptitiously introduced the new SoR is contrary to the legitimate expectations of the Petitioners, some of whom have been serving in the said Department for over 17 years expecting promotions;
- b) The Petitioners and other qualified officers holding relevant positions with relevant experience are singled out and discriminated;
- c) The purported changes contained in the new SoR are contrary to the legitimate expectations of the Petitioners and contrary to the procedure and provisions laid down in the Establishment Code and the Constitution.
- d) The aforesaid call for applications/advertisement together with the purported new SoR are contrary to the National Archaeological Policy and has an adverse impact on the subject of Archaeology and the National Heritage of Sri Lanka spanning over 2500 years.

Petitioners further state that the failure on the part of the PSC to take appropriate and meaningful measures against the said calling for applications and the connected SoR is contrary to Government Policy and such inaction also amounts to a violation of Article 12(1) of the Constitution.

The Petitioners are aggrieved by the actions and/or inactions and/or failure of one or more of 1st to 13th Respondents and thus, impugn the following

- a) Failure and/or unusual delay in the establishment of an Archaeology Service, which had been halted for inexplicable reasons at its final stages;
- b) Failure and/or inaction in taking necessary steps to ensure the succession of the Petitioners and other similarly circumstanced employees at the Department of Archaeology;

- c) Deliberately and/or maliciously and/or negligently sabotaging any opportunity available for the Petitioners for succession (i.e promotion) at the Department of Archaeology ;
- d) Violating the rules of natural justice available to the Petitioners and other similarly circumstanced employees in making decisions that concerns them and accordingly, ostracising them from the Department of Archaeology

The 15th to the 34th Respondents alleges the following facts;

The Respondents were eligible according to the SoR referred to by the Petitioners to apply for the Post of Assistant Director of the Department and the said SoR came into being through the correct legal procedure in 2013 and at no point did the Petitioners seek to challenge the legality of the said SoR.

The Respondents were eligible to apply for the said post as per the said SoR referred to by the Petitioners as the Respondents belonged to the MN-05 and MN-07 salary scales. The Petitioners were not eligible to apply for the said post as per the SoR referred to by the Petitioners as they belonged to the MN-04 salary scale. Having failed to contest the legality of the SoR of 2013, about 3 years later the Petitioners filed this Fundamental Rights Application alleging that the calling for applications as the SoR are violative of their fundamental rights.

The Petitioners failed to cite the 15th to the 34th Respondents as Respondents in this application although they were individuals to whom the greatest prejudice was caused as a result of this application. Without giving the opportunity for the Respondents to be heard in the Original Application, the Petitioners succeeded in obtaining an order staying the application procedure and the promotions of the 15th to the 34th Respondents. Therefore the Respondents were permitted to intervene in this application.

The Respondents believe that as a result of this application as well in the interim relief sought by the Petitioners in halting the promotions of the Respondents to the positions of the Assistant Director, for a long period of over 5 years, the Respondents have been unable to progress in the Department. The Respondents state that this new SoR was prepared through a consultative process and is in accordance with the law and the Respondents are in complete agreement with it.

The Respondents believe that the application is devoid of any merit and is based on a misconception of the PSC and its restructuring which took place in 2006. The Petitioners appear to have based this application on the status of affairs prior to 2006 which is no longer comparable to the present status.

The 1st to the 3rd and 6th Respondents alleges the following facts:

The SoR was approved by the PSC with the recommendations of the Line Ministry, Director General of Establishment, Department of Management Services and the National Salaries and Cadre Commission after a very thorough process. The Petitioners did not at any time challenge the SoR when it was introduced. The Respondents state that the Petitioners cannot be heard to say that they were unaware of the process that resulted in approving the SoR.

The Respondents also believe that the Petition and Affidavit is out of time and should be dismissed *in limine*. Petitioners cannot have a legitimate expectation contrary to the provisions of the SoR and the recruitments cannot be made in violation of the SoR and existing policy recruitment. The calling for applications is strictly in terms of the SoR and was with the approval of the PSC. The day- to-day functions of the institution are badly affected by the number of vacancies which are urgently required to be filled.

The Respondents further states that the Petitioners cannot be heard to complain on the basis of any stagnation in MN-04 as several promotions within the public service are available to them to seek promotions. Petitioners have been given an opportunity to apply for posts in relation to MN-05 which is the next grade.

Analysis of the facts

One of the arguments raised by the 1st to the 3rd and 6th Respondents and 15th to the 34th Respondents is that the Petitioners did not at any stage challenge the Scheme of Recruitment when it was introduced. They believe that the Petitioners ought to have challenged it at an earlier point of time.

I will now assess whether the Scheme of Recruitment is in line with the Establishment Code.

The Establishment Code - Volume II - Chapter II - Clause 2:2 states “Every draft Scheme of Recruitment should be forwarded in triplicate by the Secretary to the Ministry to the Director of Establishments.”

Clause 2:3 states “The Director of Establishments will approve the Scheme subject to such amendments as may be made in Consultation with the Secretary”

The new Scheme of Recruitment came into effect on 11.01.2013. According to the new Scheme of Recruitment (document marked P6) the Director General of the Department of Archeology has approved the Scheme of Recruitment with his signature. Which means that the new SoR is in line with the Establishment Code.

In any event, as per the SoR marked P6 and the notice calling for applications marked P4, officers who belong to the category of MN- 05 and MN- 07 are eligible to apply for the post of Assistant Director. The Petitioners belong to the scale MN 4 and this fact has been maintained by the Petitioners throughout the course of this application. Therefore, the next salary step applicable to the Petitioners would be the scale MN 5. The Petitioners are in MN 4 and therefore the Petitioners are not eligible to apply under P4. I agree with the Respondent’s position that the Petitioners cannot have a legitimate expectation for a career progression within the Department in contravention to the appointment letter and the applicable schemes of recruitment and the service minute.

The Petitioners have maintained that P6 which is the new SoR was not circulated within the Archaeology Department as instructed by the Public Service Commission and that they only became aware of the existence of the new SoR (P6) after the post of Assistant Director was advertised. No material has been provided by the Respondents to deny or contradict this position. The 13th Respondent, however, in his affidavit states that SoR in dispute has been published on the web page of the Department of Archaeology.

Now it is important to assess whether the Application of the Petitioners’ is out of time.

According to **Article 126(2) of the The Constitution of the Democratic Socialist Republic of Sri Lanka**, “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 petition in writing addressed to such Court praying for relief or redress in respect of such infringement”

Sathya Hettige P.C.J in Liyanage & Another v Ratnasiri - Divisional Secretary, Gampaha & Others [2013] 1 SRI L.R 10 held *“It must be stated that the Supreme Court has consistently held in a number of cases involving alleged violation of fundamental rights that the time limit within which an application for relief for any fundamental right or language right violation may be filed is mandatory and must be complied”*

In the case of **Edirisuriya v Navaratnam and Others [1985] 1 SRI L.R 101, Ranasinghe, J** held *“The time limit of one month set out in Article 126(20 of the Constitution is mandatory. Yet in a fit case the Court would entertain an application made outside the limit of one month provided an adequate excuse for the delay could be adduced.”*

The case of **Siriwardene v Rodrigo [1986] 1 SLR 384** states as follows;

“An application for infringement for right of equality must be filed within one month of the date from the date of the commission of the administrative act which alleged, constitutes infringement only on a later date, the one month would run from that later date.”

It is important to understand when the alleged violation took place. The reason for the alleged violation of the Petitioners rights is the introduction of the SoR that disentitled them from applying for the post of Assistant Director at the Department. The SoR came into effect on 11.01.2013 and applications for the post of Assistant Director were notified on 30.06.2016 by a circular addressed to all Heads of Units. The Petitioners’ position is that they were not informed about the new SoR and hence could not have known about the new SoR. The purported violation of the Petitioners’ Fundamental Rights would have happened the moment the new SoR was introduced, not when they were notified about the applications for the post of Assistant Director.

It is necessary to state that I am not inclined to favour the Petitioners who observed that there had been a new SoR after three years of introducing one. The Petitioners only came forward when they were not qualified under the new SoR for the position of Assistant Director. Which means they only came forward when the new SoR worked against them, when they could have challenged the SoR when it was first introduced instead. Their position that they were not

informed or they were unaware is not justifiable as three years had passed since the introduction of the new SoR.

The maxim; “Equity aids the vigilant and not the indolent” which means that delay defeats equity. Equity requires those who wish to seek its redress to move quickly in acting upon the same. **Lord Camden, in Smith v Clay [1767] 29 ER 743** held that “*Equity has always refused its aids to stale demands where a party has slept his rights for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence where these are wanting the court is passive and does nothing.*”

The Petitioners slept on their rights for three years. It is reasonable to assume that they were aware of the SoR or should have taken steps to become aware of the new SoR when it was introduced. A delay of three years is unreasonable and unjust. I am of the view that at least one of the 86 Petitioners named in this application was aware of the new SoR.

It is the view of this court that the Petitioners have not come to court on time and therefore on the basis of the aforesaid findings, the Application is dismissed.

Judge of the Supreme Court

S. Thurairaja PC, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court