

**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 the Democratic Socialist Republic of Sri Lanka.

SC. FR. Application No. 180/2016

1. Wanigasundara Appuhamilage Don Dharmasiri Wanigasundara,
210/D/1, Medagama, Panirendawa,
Madampe.
2. Megesuriya Mudiyansele Palitha Priyankara Bandara Megesuriya,
Aludeniya, Hemmathagama.
3. Udadeniya Viyannalage Nandapala,
No. 341/1, Negambo Road,
Katunayaka.
4. Miyanamaditte Gedara Ranjith Wijerathna Bandara Kaduwela,
No. 60/3, Amarathunga Mawatha,
Mirigama.
5. Kodippili Patabendige Priyantha Nilmini Kumari
No. 367/3, Pasyala Road, Mirigama.
6. Munasingha Appuhamilage Janaka Ravindra Munasingha,
No. 264/3. Gorge E De Silva Mawatha,
Kandy.

7. Badana Mudiyansele Mahindasena,
26, Puchibogahapitiya, Balagolla,
Kengalla.
8. Adikari Mudiyansele Lalith
Parakrama Adikaram,
No. 41/1 Heeressagala Road, Kandy.
9. Jayapathma Herath Mudiyansele
Amarathilaka Jayapathma,
Dangahamulahenewatta,
Galapitiyagama, Nikaweratiya.
10. Galabalana Dewage Karunasena,
No. 85, Bogahawatta, Kirindiwela.

PETITIONERS

-Vs-

1. Kalyani Dahanayake
Commissioner General of Inland
Revenue
The Inland Revenue Department,
Sir Chittampalam A Gardiner
Mawatha
Colombo 2.
2. U. B. Wakkumbura
Senior Commissioner (Human
Resources)
The Inland Revenue Department,
Sir Chittampalam A Gardiner
Mawatha
Colombo 2.
3. Dr. R.H.S. Samarathunge
Secretary, Ministry of Finance
Secretariat Building
Colombo 01.

4. Dharmasena Dissanayake
Chairman,
Public Service commission
177, Nawala Road
Narahenpita
Colombo 05.
5. A. Salam Abdul Waid
6. D. Shriyantha Wijayatilaka
7. Prathap Ramanujam
8. V. Jegarasasingam
9. Santi Nihal Seneviratne
10. S. Ranugge
11. D.L. Mendis
12. Sarath Jayathilaka
(5th to 12th Respondent- all
members of the Public Service
Commission, 177, Nawala Road,
Narahenpita
Colombo 05).
13. H.M. Gamini Seneviratne
Secretary,
Public Service commission
177, Nawala Road
Narahenpita
Colombo 05.
14. The Attorney General
Attorney General's Department
Colombo 12.

RESPONDENTS

BEFORE : Sisira J. de Abrew, J.
Priyantha Jayawardena, PC. J. and
Nalin Perera, J.

COUNSEL : M. Kumarasinghe with H.L.D. Nishanthi
instructed by Mrs. J. Kumarasinghe for
the Petitioners.

Yuresha de Silva, SSC. for the
Respondents.

**ARGUED &
DECIDED ON** : 16.05.2017

Sisira J. de Abrew, J.

Heard both Counsel in support of their respective cases.

Petitioners joined the Inland Revenue Department as Class III, Grade II Tax Officers in August, 1993. Thereafter, in 2001 they were promoted to Class III, Grade I as Senior Tax Officers. In February, 2006 interviews were held for the promotion of officers to Class II, Grade II. For that interview only 134 officers were called and all 134 officers were selected (including the petitioners) to the said promotion.

Although the said 134 officers were selected for the said promotion only 122 officers were given the promotion. It has to be noted here the Petitioners were not given the promotion by the decision of the Public Service Commission. The decision of the Public Service

Commission to refuse to grant the approval for the Petitioners is reflected in 4R7 and 4R9.

Being aggrieved by the decision of the Public Service Commission not to grant the promotion to the Petitioners, the Petitioners appealed to the Administrative Appeals Tribunal (hereinafter referred to as the A.A.T.). The A.A.T, by order dated 12th of October 2009, directed the Public Service Commission (hereinafter referred to as the P.S.C.) to grant the promotion to the Petitioners with effect from 02nd of October 2006. It has to be noted here that the other 122 officers were granted the promotion with effect from 02/10/2006. P.S.C. implemented the order of the A.A.T. and the Petitioners assumed duties as per the order of A.A.T. The Petitioners got the promotion with effect from 02nd of October 2006. But later in March, 2016 P.S.C. back dated the date of promotion of the above mentioned 122 Officers with effect from 22nd of February 2006. After hearing the said order of the P.S.C., the Petitioners too, by document marked P6 dated 29th of April 2016, appealed to the P.S.C. to back date their promotion to the same date i.e. 22nd of February 2006. But the P.S.C. did not respond to their appeal. In effect date of the promotion of the Petitioners remained as 02nd of October 2006. Their appeal to the P.S.C. was to back date their promotion to 22nd of February 2006. Since the P.S.C. did not respond to the appeal made by the Petitioners, Petitioners have come before this Court by way of this petition.

Petitioners contend that their fundamental rights guaranteed by Article 12(1) of the Constitution have been violated by the members of the P.S.C. since they (members of the P.S.C.) did not back date their date of promotion to 22nd of February 2006.

Reasons given by the P.S.C. not to back date the date of promotion of the Petitioners to 22nd of February 2006 are found in the document marked 4R19 dated 15th of July 2016.

When we consider 4R19 it appears that the P.S.C. has taken up the position that there was no possibility to consider appeals to amend the date of appointments of the officers appointed on directions given by the A.A.T. or the Supreme Court.

Although the P.S.C. has stated those reasons in 4R19, it appears that they have taken somewhat different decision with regard to some other Officers which is found in 4R20 dated 20/10/2016. The document marked 4R20 indicates that appointments of 11 Tax Officers who were appointed on the directions given by the A.A.T. with effect from 02/10/2006 were back dated to 22/02/2006. The question that arises is as to why the P.S.C. did not apply the same rule to the Petitioners' appeal.

When we consider all the above facts, we are of the opinion that the decision of the P.S.C. not to back date the date of promotion of the Petitioners to 22nd of February 2006 is unreasonable and is violative of Article 12(1) of the Constitution. We hold that the Petitioners have not got the equal protection of law. For the above reasons, we hold that the members of the P.S.C. (4th -12th Respondents) have violated the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution.

We therefore direct the P.S.C. and the members of the P.S.C. to back date the promotion of the Petitioners to the post of Assessor Class II Grade II to 22nd of February 2006. When we consider

the facts of this case, we are of the opinion that we should not order any costs.

Registrar of this Court is directed to forward a certified of copy of this judgment to the 4th to 13th Respondents.

The P.S.C. is directed to implement the order of this Court within one month from today. In giving effect to this order, the P.S.C. must take steps not to affect the seniority of the Petitioners as it existed in February 2006.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

Nalin Perera, J.

I agree.

JUDGE OF THE SUPREME COURT

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