

**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 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.***

**S.C. (F/R) No. 166/2017 with S.C. (F/R)
Nos. 155/2017, 156/2017, 157/2017,
158/2017, 159/2017 & 12/2017**

1. J. P. Jayasena
Halmillakulama, Nachchaduwa,
Anuradhapura.
2. M.M.M. Heerath
Nallamudawa,
Eppawala.
3. S.S.P. Weerasinghe
Halmillakulama, Nachchaduwa,
Anuradhapura.
4. P. Ranathunga
No. 104, Pahala kuruvita,
Hidogama.
5. A.R. Bandara
Mawatha wewa,
Eppawela.
6. G.W. Bandara
Kusawa,
Nachchaduwa.
7. H.P.S.K. Wickramasinghe
Pansala laga Niwasa,

Ihala wewa, Galkulama.

8. H.B. Udayarathna
Selesthi Maduwa,
Nachchaduwa.
9. H.M.A. Ananda
No. 61, Mawatha Wewa,
Eppawala.
10. D.J.B. Jayawardana
Nachchaduwa wewa para,
Ponimankulama,
Galkulama.
11. H.P.D. Kaldera
Ihala Katugampola,
Hidogama.
12. P.G.B.U. Weerasinghe
No-2 B, Nithulgollawa,
Hurulunikawewa.
13. W.A.P.S. Wanniarachchi
L.B. Janapadaya,
Megoda Wewa.
14. D.M.U.P. Bandara
No-487, C Yaya,
Padavi-Parakramapura.
15. J.T. Kumara
No-48, Nuwara Elliya
Janapadaya,
Padikara Maduwa.

16. W.K.G.P. Walpita
No. 147, Kekirawa road,
Galenbidhunuwewa.
17. S.C.S Udaya Kumara
Mahadiulwewa, Namalpura,
Galenbidhunuwewa.
18. A.G.A Dayananda
No-252/B,
Padikara Maduwa,
Galenbidunuwewa.
19. K.T.L. Perera
No-101, A, Yaya,
Padavi-Paraktamapura.
20. G.K.R. Indika Kumara
Diwara Gammanaya,
Govipalapara, Padaviya.
21. U.A.N. Chamara
Wewapara,
Padaviya.
22. S.A.D. Dinesh Bandara
1 Kanuwa,
Padaviya.
23. H.P. Jayaweera
No. 117, 40 Kolaniya,
Padavi-Parakramapura.
24. M.R.A.P. Jayakodi
No-94/B,

Padavi-Parakramapura.

25. M.P.C.S Kumara
No-93/B,
Padavi-Parakramapura
26. G.W. Weerasekara
No-2260, Yaya 11,
Padavi Sri Thissapura.
27. R.D. Krishantha
1 Kanuwa,
Padaviya.
28. S.R. Nawarathna
No-99, A Yaya,
Padaviya.
29. H.M.G. Jayathilaka
D-9, Ala Para, C Yaya,
Padavi-Parakramapura.
30. S.D.A.G. Chathuranga
No-112/B,
Padavi-Parakramapura.
31. U.G.A. Bandaranayaka
No. 498, C Yaya,
Padavi-Parakramapura.
32. R.M.S.D. Ranasinghe
No-382-A, Maithree Mawatha,
Padavi Parakramapura.
33. H.M.R. Jayathilaka
D-9, Ala para, B Yaya,

Padavi-Prakramapura.

34. P. Anura Dissanayake
Kuruketuwewa,
Kebithigollewa.
35. W.V.C. Kumara
Kandagasgoda, Karadagoda,
Uyangoda, Mathara.
36. M.M. Tharanga Sisira Kumara
Isuru Kerennagolla,
Theliggavila.
37. M.G.P.M. Kumara
126, Mudune Gedara,
Akurassa.
38. H.M. Lakman
Willapaththinige Waththa,
Kanampitiya, Gandara.
39. P.K. Nishantha
No-101, Bandarayakepura,
Kekanadura, Mathara.
40. H.P. Upali
No. 18 ½, Sidevi, Suriyagama,
Suriyara,
Thanamalwila.
41. W.H.D.N. Gamage
Ella Road, Nuganalawa,
Nuwara Eliya.
42. W.A.C. Priyadarshani

12 Warimarga Nivasa, Hawa Eliya,
Nuwara Eliya.

PETITIONERS

vs.

1. M. Thureisingham
Director General,
Department of Irrigation,
230, Bauddhaloka Mawatha,
Colombo 7.

- 1A. S. Mohanrajah
Director General,
Department of Irrigation,
230, Bauddhaloka Mawatha,
Colombo 7.

- 1B. Nihal Siriwardhana
Director General,
Department of Irrigation,
230, Bauddhaloka Mawatha,
Colombo 7.

2. D.D. Ariyaratne
Secretary,
Ministry of Irrigation & Water
Resources Management,
No. 11, Jawatte Road,
Colombo 05.

- 2A. Sisira Kumara
Secretary,
Ministry of Irrigation & Water
Resources Management,

No. 11, Jawatte Road,
Colombo 05.

2B. K.D.S. Ruwanchandra
Secretary,
Ministry of Irrigation & Water
Resources Management,
No. 11, Jawatte Road,
Colombo 05.

2C. Anura Dissanayaka
Secretary,
Ministry of Irrigation & Water
Resources Management,
No. 11, Jawatte Road,
Colombo 05.

3. The Attorney General
Attorney General's Department,
Colombo 12.

RESPONDENTS

***In the matter of an application under
and in terms of Article 126 of the
Constitution read together with
Article 17 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka***

S.C. (F/R) No. 155/2017

1. Kuruppu Arachchige Chathuri
Niroshika
No. 304/27/3, Pinnagollawatta,
Nittambuwa.
2. Ranhoti Bandaralage Manjula
Madumanthi
No. 89, Rajawewa,
Ampara.
3. Nambi Kandage Nayana Thushari
No. 427, Batuwaththa,
Ragama.
4. Galkande Gedara Dulmini
Privadarshani
No. 350/4, Maligathanna,
Uhana.
5. Vinayagam Inthirasanthu
No. 22, Thirunthanikai,
Natpiddimunai Road,
1st Cross Street, Kalmunai.

PETITIONERS

vs.

1. Eng. M. Thuraisingham

Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 07.

- 1A. Eng. S. Mohanarajah
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 07.
2. Eng. R.M.W Rathnayake
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road,
Colombo 5.
- 2A. Eng. N.A. Sisira Kumara
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road,
Colombo 5.
- 2B. Anura Dissanayake
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 500, T, B. Jaya Mawatha,
Colombo 10.

3. Mr. J.J Rathnasiri
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

3A. Padmasiri Jayamanne
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

3B. Mr. J.J Rathnasiri
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

4. Dharmasena Dissanayaka
Chairman,

4A. Hon. Justice Jagath Balapatabendi
Chairman,

5. Prof. Hussain Ismail
Member,

5A. Dr. Prathap Ramanujam

5AA. Indrani Sugathadasa

6. D. Shirantha Wijayatilaka
Member,

6A. V.Shivagnanasothy
Member,

7. Prathap Ramanujam
Member,

7A. Dr.T.R.C. Ruberu
Member,

8. V. Jegarasasingam
Member,

8A. Sudharma Karunaratne

8AA. Ahamod Lebbe Mohamed
Saleem
Member,

9. Santi Nihal Seneviratne
Member,

9A. G.S.A, De Silva P.C.

9AA. Leelasena Liyanage

10. S. Ranugge
Member,

10A. Dian Gomes
Member,

11. D.L. Mendis

Member,

11A. Dilith Jayaweera

Membe

12. Sarath Jayathilaka,

Member,

12A. W.H.Piyadasa

Member

*The 4(A) to 12(A) Respondents
of All;*

Public Service Commission,

No. 1200,

Rajamalwattha Road, Battaramulla.

Presently at

Public Service Commission

No.1200/09,

Rajamalwattha Road,

Battaramulla

13. Mr. H.M.G Senevirathne

Secretary,

Public Service Commission,

No 177, Nawala Road,

Narahenpita, Colombo 05.

13A. A. Kulathunga

Secretary,

Public Service Commission,

No 177, Nawala Road,

Narahenpita, Colombo 05.

13B. M.A, B. Daya Senarath Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

Presently at
Public Service Commission
No.1200/09, Rajamalwattha
Road, Battaramulla

14. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

***In the matter of an application under
and in terms of Articles 17 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka in
respect of the violations of Article
12(1), Article 12(2) and Article 14
(1)(g) of the Constitution.***

S.C. (F/R) No. 156/2017

1. Thenuwara Dawayalage Kalum
Priyankara Sarathchandra,
No.91/1, Tile Factory area,
Manikkamadu, Irakkaman 07.
2. Aaseem Msawwar Thasneem
No 73, Main Street,
Akkaraipattuwa 01.
3. Palliya Guruge Pradeep Kumara
Nanayakkara
32/44/01,
Gonagolla, Ampara.
4. M.K Janaka Dharmasiri
Girana, Narangoda,
Giriulla.
5. G.J Guluwita
30/154/1, Mayadunna, Gonagolla,
Ampara.
6. H.T Krishantha
No: 33/35/02, Nawagiriya,
Gonagolla, Ampara.

7. P. Chaminda Prasanna Kumara
No28/132-A, Warankatagoda,
Ampara.
8. 8. A.G Jayawardane
152/2, Ambalangoda Town,
Damana, Ampara.
9. S.R Senevirathne
29/31/1, Senagama, Wrath
Ketagoda, Ampara.
10. M.D Ruwan Wasana Wijesinghe
No: 33/55, Nawagiriya,
Gonagolla, Ampara.
11. D.M Wimalarathne
1B/28, Namal Oya,
Ampara.
12. Bokalawela Waduge Senaka
Danapala
No 10, Galoya Pallama,
Iginiyalagala, Ampara.

PETITIONERS

vs.

1. Eng. M. Thuraisingham,
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 07.
- 1A. Eng. S. Mohanarajah,
Director General of Irrigation,
Department of Irrigation, No. 230,
P.O. Box 1138, Buddhaloka

Mawatha, Colombo 7.

- 1B. Eng. K.D.N.Siriwardane
Director General of Irrigation,
Department of Irrigation, No. 230,
P.O. Box 1138, Bauddhaloka
Mawatha, Colombo 7.

2. Eng. R.M.W Rathnayake
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.

- 2A. Eng. N.A.Sisira Kumara
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.

- 2B. Anura Dissanayake
Secretary,
Ministry of Irrigation & Water
Resources Management
No. 11, Jawatte Road,
Colombo 05.

3. Mr. J.J Rathnasiri
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

- 3A. Padmasiri Jayamanne
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.
- 3B. Mr. J.J Rathnasiri
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.
4. Dharmasena Dissanayaka
Chairman,
- 4A. Hon. Justice Jagath Balapatabendi
Chairman,
5. Prof. Hussain Ismail
Member,
- 5A. Dr. Prathap Ramanujam
- 5AA. Indrani Sugathadasa
Member,
6. D. Shirantha Wijayatilaka
Member,
- 6A. V.Shivagnanasothy
Member,
7. Prathap Ramanujam

Member,

7A. Dr.T.R.C. Ruberu

Member,

8. V. Jegarasasingam

Member,

8A. Sudharma Karunaratne

8AA. Ahamod Lebbe Mohamed

Saleem

Member,

9. Santi Nihal Seneviratne

Member,

9A. G.S.A, De Silva P.C.

9AA. Leelasena Liyanage

10. S. Ranugge

Member,

10A. Dian Gomes

Member,

11. D.L. Mendis,

Member,

11A. Dilith Jayaweera

Member

12. Sarath Jayathilaka

Member,

12A. W.H.Piyadasa
Member,

The 4A to 12A Respondents of All;
Public Service Commission,
No. 1200, Rajamalwattha Road,
Battaramulla.

***Presently at
Public Service Commission
No.1200/09,
Rajamalwattha Road,
Battaramulla***

13. Mr. H.M.G Senevirathne
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13A. Mr. A. Kulathunga
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13B. M.A. B. Daya Senarath
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

14. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

In the matter of an application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka in respect of the violations of Article 12(1), Article 12(2) and Article 14 (1)(g) of the Constitution.

S.C. (F/R) No. 157/2017

1. Illangasinghe Kalukumara Punchi
Bandaralage Irosha Jeewa Kumari
Illangasinghe
"Sadhapaya", Thalawa Road,
Eppawala.

PETITIONER

vs.

1. Eng. M. Thuraisingham,
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 7.
- 1A. Eng. S. Mohanarajah,
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 7.

- 1B. Eng. K.D.N. Siriwardane
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Bauddhaloka Mawatha,
Colombo 7.
2. Eng. R.M.W Rathnayake
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.
- 2A. Eng. N.A. Sisira Kumara
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.
- 2B. Anura Dissanayake
Secretary,
Ministry of Irrigation & Water
Resources Management,
No. 11, Jawatte Road,
Colombo 05.
3. Mr. J.J Rathnasiri
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.
- 3A. Padmasiri Jayamanne

Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

3B. Mr. J.J Rathnasiri
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

4. Dharmasena Dissanayaka
Chairman,

4A. Hon. Justice Jagath Balapatabendi
Chairman,

5. Prof. Hussain Ismail
Member,

5A. Dr. Prathap Ramanujam

5AA. Indrani Sugathadasa
Member,

6. D. Shirantha Wijayatilaka
Member,

6A. V.Shivagnanasothy
Member,

7. Prathap Ramanujam
Member,

7A. Dr.T.R.C. Ruberu
Member,

8. V. Jegarasasingam
Member,

8A. Sudharma Karunaratne

8AA. Ahamod Lebbe Mohamed
Saleem
Member,

9. Santi Nihal Seneviratne
Member,

9A. G.S.A, De Silva P.C.

9AA. Leelasena Liyanage

10. S. Ranugge
Member,

10A. Dian Gomes
Member,

11. D.L. Mendis
Member,

11A. Dilith Jayaweera
Member,

12. Sarath Jayathilaka
Member,

12A. W.H.Piyadasa
Member,

The 4A to 12A Respondents of All;
Public Service Commission,
No. 1200, Rajamalwattha Road,
Battaramulla.

***Presently at
Public Service Commission
No.1200/09,
Rajamalwattha Road,
Battaramulla***

13. Mr. H.M.G Senevirathne
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13A. A. Kulathunga
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13B. M.A, B. Daya Senarath
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.
***Presently at
Public Service Commission
No.1200/09, Rajamalwattha
Road, Battaramulla***

14. Mr. W.D Somadasa
Director General of
Establishments,
Ministry of Public Administration
and Management, Independence
Square, Colombo 7.

14A. Mr. H.A. Chandana Kumarasinghe
Director General of
Establishments,
Ministry of Public Administration
and Management, Independence
Square, Colombo 7.

15. Mr. H.G.Sumanasinghe
Director General,
Department of Management
Services, Ministry of Finance,
Colombo 01.

15A. Ms. Hiransa Kaluthanthri
Director General,
Department of Management
Services, Ministry of Finance,
Colombo 01.

16. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

***In the matter of an application under
and in terms of Articles 17 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka in
respect of the violations of Article
12(1), Article 12(2) and Article 14
(1)(g) of the Constitution.***

S.C. (F/R) No. 158/2017

1. Singakkarige Udesch Prasanna
No.90, Etabagaha Watta,
Angangoda,
kPayagala.

PETITIONERS

vs.

1. Eng. M. Thuraisingham
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Bauddhaloka Mawatha,
Colombo 07.

- 1A. Eng. S. Mohanarajah
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Bauddhaloka Mawatha,
Colombo 7.

- 1B. Eng. K.D.N. Siriwardane
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,

Buddhaloka Mawatha,
Colombo 7.

2. Eng. R.M.W Rathnayake
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.

2A. Eng. N. A. Sisira Kumara
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.

2B. Anura Dissanayake
Secretary,
Ministry of Irrigation & Water
Resources Management,
No. 11, Jawatte Road,
Colombo 05.

3. Mr. J.J Rathnasiri
Secretary,
Ministry of Public Administration
and Management,
Independence Square,
Colombo 7.

3A. Padmasiri Jayamanne
Secretary,
Ministry of Public Administration
And Management,
Independence Square,
Colombo 7.

- 3B. Mr. J.J Rathnasiri
Secretary,
Ministry of Public Administration
And Management,
Independence Square,
Colombo 7.
4. Dharmasena Dissanayaka
Chairman,
- 4A. Hon. Justice Jagath Balapatabendi
Chairman,
5. Prof. Hussain Ismail
Member,
- 5A. Dr. Prathap Ramanujam
- 5AA. Indrani Sugathadasa
Member,
6. D. Shirantha Wijayatilaka
Member,
- 6A. V.Shivagnanasothy
Member,
7. Prathap Ramanujam
Member,
- 7A. Dr.T.R.C. Ruberu
Member,
8. V. Jegarasasingam

Member,

8A. Sudharma Karunarathne

8AA. Ahamod Lebbe Mohamed

Saleem

Member,

9. Santi Nihal Seneviratne

Member,

9A. G.S.A, De Silva P.C.

9AA. Leelasena Liyanage

10. S. Ranugge

Member,

10A. Dian Gomes

Member,

11. D.L. Mendis

Member,

11A. Dilith Jayaweera

Member,

12. Sarath Jayathilaka

Member,

12A. W.H.Piyadasa

Member

The 4A to 12A Respondents of All;

Public Service Commission,

No. 1200, Rajamalwattha Road,
Battaramulla.

***Presently at
Public Service Commission
No.1200/09,
Rajamalwattha Road,
Battaramulla***

13. Mr. H.M.G Senevirathne
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13A. A. Kulathunga
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13B. M.A, B. Daya Senarath
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

***Presently at
Public Service Commission,
No.1200/09, Rajamalwattha
Road, Battaramulla***

14. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

***In the matter of an application under
and in terms of Articles 17 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka in
respect of the violations of Article
12(1), Article 12(2) and Article 14
(1)(g) of the Constitution.***

S.C. (F/R) No. 159/2017

1. Kumarasinghe Patabadi
Mudiyanselage Inoka
Priyadarshani
"Himali", Serankada.

PETITIONER

vs.

1. Eng. M. Thuraisingham,
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 07.
- 1A. Eng. S. Mohanarajah,
Director General of Irrigation,
Department of Irrigation, No. 230,
P.O. Box 1138, Buddhaloka
Mawatha, Colombo 7.
- 1B. Eng. K.D.N. Siriwardane
Director General of Irrigation,
Department of Irrigation, No. 230,
P.O. Box 1138, Buddhaloka
Mawatha, Colombo 7.

2. Eng. R.M.W Rathnayake
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.

2A. Eng. N.A. Sisira Kumara
Secretary,
Ministry of Irrigation and Water
Resource Management,
No. 11, Jawatta Road, Colombo 5.

2B. Anura Dissanayake
Secretary,
Ministry of Irrigation & Water
Resources Management
No. 11, Jawatte Road,
Colombo 05.

3. Mr. J.J Rathnasiri
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

3A. Padmasiri Jayamanne
Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

3B. Mr. J.J Rathnasiri

Secretary,
Ministry of Public
Administration and Management,
Independence Square,
Colombo 7.

4. Dharmasena Dissanayaka
Chairman,

4A. Hon. Justice Jagath Balapatabendi
Chairman,

5. Prof. Hussain Ismail
Member,

5A. Dr. Prathap Ramanujam

5AA. Indrani Sugathadasa
Member

6. D. Shirantha Wijayatilaka
Member,

6A. V.Shivagnanasothy
Member,

7. Prathap Ramanujam
Member,

7A. Dr.T.R.C. Ruberu
Member,

8. V. Jegarasasingam
Member,

8A. Sudharma Karunarathne

8AA. Ahamod Lebbe Mohamed
Saleem
Member,

9. Santi Nihal Seneviratne
Member,

9A. G.S.A, De Silva P.C.

9AA. Leelasena Liyanage

10. S. Ranugge
Member,

10A. Dian Gomes
Member

11. D.L. Mendis
Member

11A. Dilith Jayaweera
Member

12. Sarath Jayathilaka
Member,

12A. W.H.Piyadasa
Member

The 4A to 12A Respondents of All;
Public Service Commission,
No. 1200, Rajamalwattha Road,
Battaramulla.

Presently at

**Public Service Commission
No.1200/09,
Rajamalwattha Road,
Battaramulla**

13. Mr. H.M.G Senevirathne
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13A. A. Kulathunga
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

13B. M.A, B. Daya Senarath
Secretary,
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

**Presently at
Public Service Commission
No.1200/09, Rajamalwattha
Road, Battaramulla**

14. Mr. W.D Somadasa
Director General of
Establishments,
Ministry of Public Administration
and Management, Independence
Square, Colombo 7.

14A. Mr. H.A. Chandana Kumarasinghe
Director General of
Establishments,

Ministry of Public Administration
and Management, Independence
Square, Colombo 7.

15. Mr. H.G.Sumanasinghe
Director General,
Department of Management
Services, Ministry of Finance,
Colombo 01.

15A. Ms. Hiransa Kaluthanthri
Director General,
Department of Management
Services, Ministry of Finance,
Colombo 01.

16. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

***In the matter of an application under
and in terms of Articles 17 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka in
respect of the violations of Article
12(1), Article 12(2) and Article 14
(1)(g) of the Constitution.***

S.C. (F/R) No. 12/2017

1. Amaraweera Vidana
Kankanamage Wikum
Amaraweera "Kon Sevana"
Gangasiripura,
Tissamaharama.

PETITIONER

vs.

1. Director General of Irrigation,
Department of Irrigation,
No. 230, Bauddhaloka Mawatha,
Colombo 07.
2. Attorney-General
Attorney General's
Department,
Colombo 12,

RESPONDENTS

BEFORE : **B.P. ALUWIHARE, PC, J,**
MURDU N.B. FERNANDO, PC, J and
S. THURAIRAJA, PC, J.

COUNSEL : Manohara de Silva, PC with Sasiri Chandrasiri for the Petitioners
in S.C. (F/R) 166/2017.

Uditha Egalahewa, PC with Vishva Vimukthi for the Petitioners in
S.C. (F/R) Nos. 155/2017, 156/2017, 157/2017, 158/2017 &
159/2017.

S.N. Vijithsingh for the Petitioner in S.C. (F / R) No. 12/2017.

Ganga Wakishta Arachchi, DSG for the
Respondents in all matters.

WRITTEN Petitioner in SC FR No. 166/17 on 21st May 2018

SUBMISSIONS : Petitioner in SC FR No. 155/17 on 22nd November 2019

Petitioner in SC FR No. 156/17 on 22nd November 2019

Petitioner in SC FR No. 157/17 on 22nd November 2019

Petitioner in SC FR No. 158/17 on 22nd November 2019

Petitioner in SC FR No. 159/17 on 22nd November 2019

ARGUED ON : 6th May 2022 and 3rd February 2023.

DECIDED ON : 6th October 2023

S. THURAIRAJA, PC, J.

This Judgement relates to an Application filed in terms of Articles 17 and 126 of the Constitution by the 1st to 42nd Petitioners (hereinafter referred to as “the Petitioners”) seeking relief in respect of an alleged infringement of Fundamental Rights guaranteed under and in terms of Articles 12(1), 12(2) and 14(1)(g) of the Constitution by one or more of the Respondents to this Application.

The 1st Respondent is the Director General of the Department of Irrigation, the 2nd Respondent is the Secretary to the Ministry of Irrigation and Water Resources Management, and the 3rd Respondent is the Attorney General who has been made a Respondent in compliance with the Constitution.

This matter was supported before this Court on 12th February 2018, and leave was granted under Articles 12(1), 12(2) and 14(1)(g) of the Constitution.

In S.C. (F/R) No. 157/17 Counsel for the Petitioners made an application on 24th May 2017 and the Court was informed that S.C. (F/R) No. 157/17 was connected with the instant case, S.C. (F/R) No. 166/17. The Court listed both matters for support with S.C. (F/R) Nos. 155/17, 156/17, 158/17 and 159/17. Leave was granted under Article 12(1) of the Constitution on 10th October 2017.

In S.C. (F/R) No. 12/17, Counsel for the Petitioners made an application on 22nd May 2018 and informed the Court that the circumstances of this matter are the same as in S.C. (F/R) 166/17 Counsel for the Petitioner moved to re-fix this matter with S.C. (F/R) 166/17 for Argument on 21st September 2018, and leave was granted under Article 12(1) of the Constitution on 15th March 2017.

I find it pertinent to refer to the factual matrix of this application as provided by the parties in order to ascertain whether the Petitioner’s Fundamental Rights guaranteed under Articles 12(1), 12(2), and 14(1)(g) of the Constitution have been violated by the 1st to 3rd Respondents.

Facts of the case as per the Petitioners

The Petitioners state that they were recruited to the Department of Irrigation (hereinafter referred to as the "Department") as "Casual Employees" between 1st January 2000 and 3rd March 2014 to the roles of either Technical Officer, Management Assistant and or Primary Grade – Unskilled worker.

Thereafter, the Petitioners state that they received appointment letters from the 1st Respondent (marked "P5(1)" to "P5(42)") stating that the Petitioners were appointed to permanent posts with effect from 24th October 2014 in accordance with the Public Administration Circular 25/2014 (hereinafter referred to as "P.A.C. 25/2014" and marked "P4"). The Petitioners state that the letters of appointment indicated that the afore-stated appointments to permanent posts were subject to a three-year probationary period, following which, if the work is found to be satisfactory, the Petitioners would be issued confirmation letters. The Petitioners state that, up to date, the Petitioners have received no complaints pertaining to unsatisfactory work and, as a result, harboured the legitimate expectation that they would be confirmed in their appointments following the conclusion of three-year probationary period.

According to the Petitioners, however, those who were appointed to the posts of Technical Assistant and Management Assistant received letters on or about 18th August 2015 (marked "P6(1)" to "P6(8)"), which cancelled the previous letters of appointment to permanent posts and instead stated that the aforementioned Petitioners were re-appointed to posts of Primary Grade – Unskilled worker.

The Petitioners state that, despite this, the aforementioned Petitioners continued to carry out the functions of a Technical Assistant and Management Assistant; the Petitioners further state that they were treated similarly vis-à-vis a permanent employee and experienced similar salary deductions.

Thereafter, the Petitioners state that they received a letter on or about 20th June 2016 (marked "P8(1)" to "P8(28)") stating that an Audit had commenced, and as per the

Audit, there were observations of instances wherein the minimum requirements and qualification of an employee under the P.A.C. 25/2014 were not fulfilled. Subsequently, the Petitioners state that the same letter further revealed that they shall be removed from employment as the Petitioners did not fulfil the aforementioned minimum qualifications stipulated in the P.A.C. 25/2014.

The Petitioners state that the 1st Respondent did not communicate information regarding the individual(s) responsible for conducting the Audit, and neither were the Petitioners, at any point in time, summoned, questioned or inquired from to ascertain their compliance with the minimum qualifications. The Petitioners maintain that they fulfilled all requirements set forth in the P.A.C. 25/2014. The Petitioners state that, instead, the Audit was the commencement of an "organized attempt of political revenge" by the Respondents to remove the Petitioners from Public Service posts appointed to them by the previous government.

The Petitioners further state that, notwithstanding the aforesaid letters informing the Petitioners of the commencement of the Audit, the Petitioners continued to work as permanent employees for more than two years; according to the Petitioners, this was until the Petitioners received letters signed by the 1st Respondent between 7th April 2017 and 21st April 2017 (marked "P9(1)" to "P9(42)") stating that the Petitioners' appointments have been cancelled and/or the Petitioners have been removed from employment in light of the discovery made as a result of the Audit, stating that the Petitioners had failed to continuously work for 180 days as set forth in the P.A.C. 25/2014. According to the Petitioners, this same letter further claimed that any advancements of money and loans obtained from the government should be paid on or before 2nd May 2017.

The Petitioners believe that the word "continuous", in the context of the P.A.C. 25/2014, has been erroneously misinterpreted by the 1st Respondent to mean "every day". The Petitioners base this belief on the following reasons: (a) the objective of enacting the P.A.C. 25/2014 was to grant employment for those who were recruited and are still in

the service on Temporary Casual (daily wages), Substitute, Contract or Relief basis; (b) it is impossible for any of the employees in the above categories to work "every day" as none of them are permanent employees and are not assigned work every day; (c) it is impossible and impracticable to work every day as "every day" may include Saturdays, Sundays, as well as public holidays, and as no employee is immune from illnesses, it is impossible to expect that any person could work every day for 180 days; (d) if the word "continuous" is interpreted to mean "every day" it shall not give any substance to the objectives of the P.A.C. 25/2014, and the process of enacting the P.A.C. 25/2014 will be rendered nugatory; and (e) if the government wanted the P.A.C. 25/2014 to confine to employees who have worked "every day" the government would have expressed so, but the Cabinet deliberately used the word "continuous" knowing that employees in the categories specified are not assigned work every day.

The interpretation employed by the Petitioners of the use of the word "continuous" is to mean "six months"; hence, the Petitioners state that an employee must be eligible under the P.A.C. 25/2014 if the said employee has worked continuously for six months. The Petitioners further state that, even if the use of "continuous" is interpreted to mean a total of 180 days from the date of recruitment to 24th October 2014, the Petitioners would still satisfy this requirement.

Additionally, the Petitioners state that, to the best of their knowledge, the aforementioned interpretation of the use of "continuous" employed by the Petitioners was adopted at the time of the Petitioners' appointments as permanent employees.

Moreover, the Petitioners state that, on or about 4th April 2016, the Cabinet adopted the Public Administration Circular 25/14 (II) (hereinafter referred to as the P.A.C. 25/14 (II) and marked "P12"), which cancelled the previously issued P.A.C. 25/14. The Petitioners state that, in doing so, the Cabinet expressly communicated that the P.A.C. 25/14 was being cancelled without prejudice to any permanent appointments made according to the P.A.C. 25/14. In support of the Petitioners' interpretation of the use of "continuous" in the context of the P.A.C. 25/14, the Petitioners state that: (a) when

adopting P.A.C. 25/14 (II) the Cabinet would have been fully aware of the interpretation given to the use of "continuous" in the previously issued P.A.C. 25/14 and, therefore, knowingly, intentionally and deliberately communicated that no appointment made in accordance with the P.A.C. 25/14 was to be affected by its cancellation which confirms that the Petitioners' interpretation of the use of "continuous" was the policy adopted by the government; (b) subsequently, a change in the interpretation of the use of "continuous" amounts to a change in policy as it is a broad concept affecting the livelihood of several Public Officers; (c) as per Article 55 of the Constitution, only the Cabinet has the power to change or make policy in respect of appointments, promotions, transfers, disciplinary and dismissal of Public Officers; and (d) even if the interpretation of the use of "continuous" adopted by the Petitioners is considered erroneous, it is the Cabinet of Ministers, and not the 1st Respondent, that reserves the power under the law to make decisions and/or interpretations to the P.A.C. 25/14 and P.A.C. 25/14 (II) in respect of policy pertaining to appointments, promotions, transfers, disciplinary control and dismissal of Public Officers.

The Petitioners state that, consequently, the removal from employment of the Petitioners in the absence of a hearing and the erroneous interpretation of the P.A.C. 25/14 employed by the 1st Respondent are unjust, unlawful, arbitrary, capricious and in violation of the Petitioners' Fundamental Rights guaranteed by the Constitution. In the foregoing circumstances, the Petitioners claim that the Petitioners' Fundamental Rights guaranteed under Articles 12 (1), 12 (2), and 14 (1) (g) of the Constitution have been infringed and/or are being continuously infringed by the aforesaid executive and administrative action. Hence, the Petitioner prays for an order to quash the decision to remove the Petitioners from employment.

Facts of the case as per the Respondents

As per the 1st Respondent, the Petitioners were not recruited on a casual or contract basis but instead as "Labourers" on an ad hoc/Thaduchitha (කළුච්ඡා) basis. Persons

recruited under the afore-stated category were to be paid only for the days on which they worked, were free to work elsewhere simultaneously on the days they did not work for the Department and were not entitled to leave nor maternal benefits.

The 1st Respondent states that, as per the P.A.C. 25/14, only the persons who were recruited on a temporary, casual (on a daily wage), substitute, contract or relief basis were eligible to be granted permanent employment, and that too only if the said persons, inter alia, (a) had worked for a continuous period of 180 days as of 24th October 2014 as per paragraph 02 of the P.A.C 25/2014; and (b) had possessed the relevant educational qualifications stipulated by the P.A.C. 25/14 as per paragraph 03 of the same. Accordingly, any persons who had not worked for a continuous period of 180 days as of 24th October 2014 or had not possessed the relevant educational qualifications stipulated in the P.A.C. 25/14 will not have a right to permanent employment nor be deemed to be eligible to claim permanent employment under the P.A.C. 25/14.

Moreover, the 1st Respondent states that, as per paragraph 04 of the P.A.C. 25/14, the eligible person(s) ought to be made permanent in the post to which they were initially recruited and not to the post they were serving or in relation to the functions they discharged.

The 1st Respondent further states that, as per the Gazette Notification No. 1733/52 dated 25th November 2011, the powers to make appointments to the posts relevant to this case have been devolved to the Department by the Public Service Commission, and it is the Department's duty to ensure that permanent appointments made under the P.A.C. 25/14 are compliant with the provisions thereof.

The 1st Respondent states that the Petitioners who were recruited as "Labourers" on the aforementioned ad hoc/Thaduchitha (තදුච්ඡිත) basis were issued letters of appointment (marked "P5(1)" to "P5(42)") in respect of the posts of Labourer, Clerk, Technical Assistant, etc.

The 1st Respondent states that, however, the Department was informed by the Department of Management Services by means of a letter dated 18th March 2015 marked "R1" that a number of these appointments, i.e. "P5(12)", "P5(18)", "P5(21)", "P5(30)", "P5(32)", "P5(33)", "P5(41)" and "P10(42)", appeared to have been made on the basis of the functions they performed, which was contrary to the provisions of paragraph 04 of the P.A.C. 25/14. The 1st Respondent states that, accordingly, the abovementioned eight Petitioners were issued fresh letters of appointment dated 18th August 2015 (marked "P6(1)" to "P6(8)") appointing the Petitioners to the posts of "Labourer". The 1st Respondent states that the Petitioners accepted the abovementioned appointments and did not take any legal steps to question the same at the relevant time. Hence, the 1st Respondent maintains that the Petitioners had acquiesced to the act of being appointed as "Labourers" and, as a result, are estopped from complaining about the same.

The 1st Respondent states that, following confusion as to the calculation of the requirement set forth by paragraph 04 of the P.A.C. 25/14 wherein only the persons who had worked satisfactorily for a continuous period of 180 days as of 24th October 2014 would be eligible, a clarification was sought from, and a response thereto was issued by the Ministry of Public Administration and Management to the Ministry of Irrigation and Water Resource Management by means of a letter dated 9th May 2016 (marked as "R2", "R2(a)" and "R2(b)"). The 1st Respondent states that this clarification set forth the interpretation of the said 180 days to mean 180 working days, excluding public holidays, Saturdays and Sundays. As such, the 1st Respondent maintains that the interpretation given in "R2" is consistent with the provisions of paragraph 02 of the P.A.C. 25/14, that the various interpretations of the word "continuous" employed by the Petitioners are erroneous and misleading, and further that the Ministry of Public Administration and Management has informed the Ministry of Irrigation and Water Resource Management by means of a letter dated 2nd October 2015 (marked "R3")

that if the Department wished to act in excess of the provisions in the P.A.C. 25/14, it should be done after receiving a policy decision in respect of the same.

The 1st Respondent states that the Petitioners who served on the ad hoc/Thaduchitha (තදුචිත) basis were not eligible to be considered under the P.A.C. 25/14 as the said ad hoc/Thaduchitha (තදුචිත) basis was not recognized by the P.A.C. 25/14. The 1st Respondent states that, even if the Petitioners were serving as casual employees and were, therefore, eligible to be considered under the P.A.C. 25/14, the Petitioners would be compelled to establish inter alia that: (a) the Petitioners had worked satisfactorily for 180 days continuously as per paragraph 02 of P.A.C. 25/14, and (b) the Petitioners possessed the relevant educational qualifications as per paragraph 03 of the P.A.C. 25/14.

The 1st Respondent states that an internal Investigation Report (marked "R4") in respect of the appointments made under the P.A.C. 25/14 by the Department revealed that the Petitioners had not worked a continuous period of 180 days as required by paragraph 02 of the P.A.C. 25/14 but had yet been granted permanent appointments under the P.A.C. 25/14.

The 1st Respondent states that, in light of the aforementioned circumstances, the Department was compelled to cancel the permanent appointments previously issued to the Petitioners by means of letters dated 31st March 2017 (marked "P9(1)" to "P9(42)").

The 1st Respondent further states that the Petitioners have failed to submit proof of the Petitioners' compliance with the relevant educational qualifications stipulated in paragraph 03 of the P.A.C. 25/14.

As such, the 1st Respondent maintains that: (a) the cancellation of the Petitioners' appointments was reasonable, in good faith and legal, and not politically motivated; (b) the Petitioners have failed to adduce any evidence to suggest that the cancellation of the Petitioners' appointments was politically motivated; and (c) in view of the

aforementioned facts, if the Petitioners' appointments were not cancelled, then it might appear that the Respondents have acted in violation of the provisions of the P.A.C. 25/14.

The 1st Respondent submits the following preliminary objections: (a) the Petitioners are attempting to obtain a relief they cannot obtain directly; (b) the Petitioners have suppressed and/or misrepresented material facts from/to this Court; (c) the Petitioners have failed to come before this Court with clean hands and/or the Petitioners are in breach of the doctrine of *uberima fides*; and (d) the Petition is filed after the expiry of the one month's time set out in Article 126(2) of the Constitution. The 1st Respondent, therefore, prays to dismiss the Petition.

The Preliminary Objections will be addressed within the body of the analysis.

Legal Analysis

Article 12(1) of the Constitution

The specific question before this Court is whether the decision of the 1st Respondent to remove the Petitioners from permanent employment is violative of the equality postulated by Article 12(1) of the Constitution.

The two well-known legal expressions that are interrelated to the concept of equality are found in Article 12(1) of the Constitution, and it provides as follows:

"All persons are equal before the law and are entitled to the equal protection of the law."

Thus, Article 12(1) of the Constitution confers a positive obligation on the State to ensure that every individual is entitled to equal treatment and equal protection guaranteed by the law, regardless of their status in a given circumstance. In this context, it is the duty of the Department of Irrigation to ensure that the permanent appointments are made in line with the P.A.C. 25/14 and its provisions thereof.

In the instant case, the Petitioners who were recruited to the said Department on an ad-hoc /Thaduchitha (කඳුවීම) basis were later appointed as permanent employees in accordance with the P.A.C. 25/14 through appointment letters from the 1st Respondent effecting from 24/10/2014 (as provided in documents marked "P5(1)" to "P5(42)").

Thereafter, as per the letters (marked "P9(1)" to "P9(42)") received by the Petitioners, it is evident that the Petitioners had been removed from permanent employment on the basis that they had not continuously worked for a period of 180 days as required by the P.A.C. 25/14.

Accordingly, the grievance of the Petitioners is that the removal from employment of the Petitioners in the absence of a hearing and the erroneous interpretation of the P.A.C. 25/14 employed by the 1st Respondent are unjust, unlawful, arbitrary, capricious and in violation of the Petitioners' Fundamental Rights guaranteed by the Constitution.

However, in order to determine whether the 1st Respondent violated the Petitioners' Fundamental Rights under Article 12 (1) of the Constitution, firstly, it is necessary to examine the eligibility of the Petitioners to be considered under the P.A.C. 25/14 for permanent employment and secondly, the reasonableness of the conduct of the 1st Respondent.

The P.A.C. 25/14 granted permanent employment to those in the mentioned categories who had completed 180 days of continuous satisfactory service as of 24th October 2014 and who possess educational qualifications to have at least passed Grade 8/Year 9. The Petitioners were recruited as "Labourers" on ad hoc/Thaduchitha (කඳුවීම) basis, and the said ad hoc /Thaduchitha (කඳුවීම) basis was not recognized under the P.A.C. 25/14. In these circumstances, could the challenge based on Article 12(1) succeed? It is apparent from the foregoing circumstances that the Petitioners are not eligible to be considered under the P.A.C. 25/14 for permanent employment and thus have no right to claim permanent employment. The Petitioner cannot claim a right to which he is not entitled, and allowing such would be unlawful and indeed negate the

advancement of equal protection of law principle enshrined in Article 12 (1) of the Constitution.

G. P. A. de Silva J, in **Jayasekara V. Wipulasena and Others [1988] 2 Sri LR 237**, stated as follows:

"Article 12(1) cannot confer on the petitioner a right to which he is not entitled in terms of the very contract upon which he found his complaint of "unequal treatment"."

In **K. J. A Chathumi Sehasa and Another v. S. Irani Pathiranawasam, Principal, Southlands Balika Vidyalaya and 7 Others [2018] S.C. [FR] Application No. 201/2017(SC Minutes dated 30. 05. 2018)**, Aluwihare PC, J. observed as follows:

"For the complaint of an unequal treatment of law to succeed the petitioner must show that the unequal treatment was meted out in the performance of a lawful act. It is a cardinal principle that equal treatment should be referable to the exercise of a valid right, founded in law in contradistinction to an illegal right which is illegal in law".

Justice Shirani Bandaranayake in the case of **Farook Vs Dharmaratne, Chairman, Provincial Public Service Commission, Uva and others (2005) I Sri L. R. 133** observed as follows:

"When a person does not possess the required qualifications that is necessary for a particular position, would it be possible for him to obtain relief in terms of a violation of his Fundamental Rights on the basis of unequal treatment? If the answer to this question is in the affirmative, it would mean that Article 12(1) of the Constitution would be applicable even in a situation where there is no violation of the applicable legal procedure or the general practice. The application of Article 12(1) of the Constitution cannot be used for such situations as it provides to an aggrieved person only for the equal protection of the law where the authorities have acted

illegally or incorrectly without giving due consideration to the applicable guidelines. Article 12(1) of the Constitution does not provide for any situation where the authorities will have to act illegally. The safeguard retained in Article 12(1) is for the performance of a lawful act and not to be directed to carry out an illegal function. In order to succeed the petitioner must be in a position to place material before this Court that there has been unequal treatment within the framework of a lawful act”.

The Petitioners have also maintained that they were of the legitimate expectation that they would be confirmed in their appointments as there were no complaints against them that their work was unsatisfactory.

Prof. Endicott of the University of Oxford [Administrative Law 2nd ed. at p. 283] has commented that a legitimate expectation,

“Might be better called a ‘legally protected expectation”.

In the case of **India vs. Hindustan Development Corporation (1993) 3 SSC 499** it was stated as follows:

"However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in a natural and regular sequence. Again, it is distinguishable from a mere expectation. Such expectation should be justifiable, legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense."

When considering whether the Petitioners can base their application on legitimate expectation, this Court has already held that the Petitioners are not eligible under the P.A.C. 25/14 to be considered for permanent employment. Further, in the instant case, the Petitioners neither satisfy the minimum educational qualifications nor fulfil the requirement of satisfactorily working continuously for 180 days as required by the P.A.C. 25/14. Therefore, there is no legitimate expectation to be frustrated by the 1st Respondent.

With regard to the reasonableness of the conduct of the 1st Respondent in the instant case, although the Petitioners had been wrongly appointed as permanent employees through appointment letters (marked "P5(1)" to "P5(42)") effecting from 24th October 2014, the 1st Respondent had rectified the above by issuing fresh letters of appointment (marked "P6(1)" to "P6(8)") dated 18th August 2015 which comply with the provisions of the P.A.C. 25/14. As the 1st Respondent had taken action to rectify the previously issued letters of appointment to comply with the provisions of the P.A.C. 25/14, I am of the view that the conduct of the 1st Respondent is reasonable.

The Petitioners have also alleged that Petitioners were not provided with an opportunity to establish whether they satisfied the minimum qualifications required by the P.A.C. 25/14. As it has already been established that the Petitioners are not eligible to be considered for permanent employment under the P.A.C. 25/14, this Court can see no justification as to why the Petitioners should be afforded an opportunity for a hearing.

Furthermore, the allegation of the Petitioners that the 1st Respondent had erroneously interpreted the word "continuous" is dismissed by reason of the clarification sought from and the response thereto issued by the Ministry of Public Administration and Management to the Ministry of Irrigation and Water Resource Management which prescribed that the interpretation of the use of "continuous" was to mean 180 working days excluding public holidays, Saturdays and Sundays. The 1st Respondent had acted accordingly and in compliance with the aforementioned interpretation.

It must also be noted that the Petitioners accepted the appointment letters marked P6(1) to P6(8) dated 18/08/2015 without raising any objection and did not seek any relief from the Court at the time they received the above letters. And if the Petitioners are eligible under the Circular, they should have revealed all the details affirming the same. The absence of the above explanations show that the Petitioners were aware that they had no legal basis to challenge the above and thus, the Petitioners cannot now complain that their Fundamental Rights have been violated by the 1st Respondent. The Petitioner had sought relief from the Court to quash the decision taken by the 1st Respondent to terminate the Petitioners' services and/or cancel the appointments, as well as claim advancements of money and loans obtained from the Government to be paid on or before 2nd May 2017. It must be borne in mind that the Petitioners cannot seek this Court to compel the Respondents to act illegally or against the law. The relief sought by the Petitioner is one that this Court, as a Court of Law and Equity, cannot provide since,

"Illegality and equity are not on speaking terms."

Therefore, this Court declares that the Petitioners' Fundamental Rights guaranteed under Article 12(1) of the Constitution have not been infringed by the Respondents in this instant case.

Article 12(2) of the Constitution

While Article 12(1) of the Constitution outlines the positive obligation of the State, Article 12(2) of the same sets out the negative obligation of the State to ensure that,

"No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds".

The Petitioners allege that the Petitioners' removal from employment is an organised attempt at political revenge since the appointments were made permanent by the

previous government. In the instant case, the Petitioners are attempting to insinuate that the Petitioners were discriminated against based on the grounds of political opinion. However, this allegation is insufficient, especially in the absence of any material evidence illustrating the Petitioners' association with the previous government, in establishing that the Petitioners' removal from employment by the 1st Respondent infringes the Fundamental Rights secured by Article 12(2) of the Constitution. In actuality, the decision of the 1st Respondent in removing the Petitioners from employment is evidently in accordance with the provisions prescribed by the P.A.C. 25/14.

In these circumstances, this Court declares that the Petitioners' Fundamental Rights under Article 12(2) of the Constitution have not been violated in the instant case.

Article 14(1)(g) of the Constitution

This Court shall now deal with the Petitioners' complaint of a violation of Article 14(1)(g) of the Constitution.

Article 14(1)(g) of the Constitution states as follows:

"Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise."

It must be noted that this is not an absolute right. It is subjected to Article 15(5), 15(7) and 15(8):

"15(5) The exercise and operation of the fundamental right declared and recognized by Article 14(1)(g) shall be subject to such restrictions as may be prescribed by law in the interests of national economy or in relation to

—

(a) the professional, technical, academic, financial and other qualifications necessary for practising any profession or carrying on any occupation, trade, business or enterprise and the licensing and disciplinary control of the person entitled to such fundamental right; and

(b) the carrying on by the State, a State agency or a public corporation of any trade, business, industry, service or enterprise whether to the exclusion, complete or partial, of citizens or otherwise.

15(7) The exercise and operation of all the Fundamental Rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security.

15(8) The exercise and operation of the Fundamental Rights declared and recognized by Articles 12(1), 13 and 14 shall, in their application to the members of the Armed Forces, Police Force and other Forces charged with the maintenance of public order, be subject to such restrictions as may be prescribed by law in the interests of the proper discharge of their duties and the maintenance of discipline among them."

Further, Article 28(c) of the Constitution lays down the following duty:

"(28) The exercise and enjoyment of rights and freedoms are inseparable from the performance of duties and obligations and accordingly it is the duty of every person in Sri Lanka –

(c) to work conscientiously in his chosen occupation."

Justice A.R.B. Amerasinghe in **W.M.K. De Silva v. Chairman, Ceylon Fertilizer Corporation S.C. Application No.7/88 [1988] 2 Sri L.R. 393** observed as follows:

"In an application for relief under Article 14(1)(g), the Petitioner must also show that her right to engage in any lawful occupation, profession, trade, business or enterprise was, unreasonably obstructed. The Petitioner must go further still and establish that the right claimed was (a) a legal right and that (b) it is a fundamental right."

He further added that:

"Article 14(1)(g), recognizes the right of every citizen to use his powers of body and mind in any lawful calling: to pursue any livelihood and avocation. It confers no obligation to give any particular kind of work or indeed any right to be continued in employment at all."

It would thus be seen that Article 14(1)(g) of the Constitution confers on citizens of Sri Lanka the fundamental right to do work of any particular kind and of their choice. It does not, however, confer the right to hold a particular job or to occupy a particular post of one's choice.

The equivalent to Article 14(1)(g) of our Constitution is Article 19(1)(g) of the Indian Constitution, which states:

"All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business."

In **Fertilizer Corporation v. Union of India (1981) AIR 344, 1981 SCR (2) 52**, the Court held that Article 19(1)(g) of the Indian Constitution does not protect the right to work in a particular post under a contract or employment, and as such Article 19(1)(g)

of the Indian Constitution cannot be invoked against the loss of a job or removal from service.

A similar view was taken in **Elmore Perera v. Major Montague Jayawickrema, Minister of Public Administration and Plantation Industries [1985] S.C./Application No. 134/84**, where Chief Justice Sharvananda stated as follows:

"Article 14(1)(g) recognises a general right in every citizen to do work of a particular kind and of his choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice. The compulsory retirement complained of, may, at the highest affect his particular employment, but it does not affect his right to work as a Surveyor."

In the instant case, the Petitioners have failed to establish that their right to engage in any lawful occupation, profession, trade, business or enterprise was unreasonably obstructed by the Respondents. As this Court exhibited the view that the Petitioners are not eligible to be considered for permanent employment under the P.A.C. 25/14, the Petitioners have further failed to establish that the claimed right was a legal right. Correspondingly, this Court observes that the removal of employment of the Petitioners affects the Petitioners' particular status of employment but does not affect their right to work as "Labourers".

Hence, I am of the view that the Respondents have not infringed the Petitioners' Fundamental Rights guaranteed in terms of Article 14(1)(g) of the Constitution.

Time Bar

The Counsel for the Respondent took up a preliminary objection that the Petition has not been filed within the time frame stipulated in terms of Article 126(2) of the Constitution. As this Court observed, the impugned letters of termination were issued on 31st March 2017 and received by the Petitioners on 7th April 2017. Thereafter, the Petitioners filed the application for the instant case on 5th May 2017. It must be noted

that the one-month time period prescribed by Article 126(2) of the Constitution does not commence from the date the right was violated upon, but instead commences from the date when either party is made aware of this violation or when one can feasibly take steps to come before this Court. Therefore, based on the facts and circumstances of this case, this Court takes the view that the application of the Petitioners in the instant case is not barred by time and accordingly, the preliminary objection raised by the Respondent is dismissed.

Decision

In view of the foregoing circumstances and reasons, I hold that the decisions and conduct of the 1st Respondent have not infringed the Fundamental Rights guaranteed by Articles 12(1), 12(2) and 14(1)(g) of the Constitution. Therefore, I proceed to dismiss this application.

Application Dismissed.

JUDGE OF THE SUPREME COURT

B.P. ALUWIHARE, PC, J

I agree.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC, J

I agree.

JUDGE OF THE SUPREME COURT