

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

In the matter of an application under and in terms of
Article 126 of the Constitution.

1. Wasantha Disanayake, No. 37/34,
Weerapuranappu Place, Wariyapola Road,
Matale.
2. Wickramapala Yapa, No. 189, Pallemulla,
Haloluwa.
3. Wadugodage Shantha Weerasingha,
Pahalawatta, Welhipitiya, Dikwella.
4. Kiribanda Bandara Wijewardane, No. 55, Isuru
Uyana, Udaperuwa, Kinigama, Bandarawela.
5. Hapu Archchige Premachandra Jayawardane,
No. 214C, Doranagoda West, Udugampola.
6. Wariga Jeyesta Mudiyanseleage Bandula, No. 49,
Irrigation Office Road, Matale.
7. Wanakku Arachchige Don Udaya
Priyanthajayakodi, No. 61, Bollatha, Ganemulla.
8. Wanigasekara Mudiyanseleage Wajirapani
Wishaka Wanigasekara, No. 220/A, Sarvodaya
Mawatha, Makandana, Madapatha'
9. Desi Malkanthi Samarawickrama, No. 477/2,
Makumbura, Pannipitiya.
10. Mathara Lokuge Kamal Priyantha, 8E,
Mahabuthgamuwa, Angoda.

Petitioners

Vs.

S.C. FR Application No. 611/12

1. Secretary,
Ministry of Public Administration and Home
Affairs, Independent Square,
Colombo 7.
2. Secretary,
Ministry of Finance,
Colombo 1.
3. Director General
Department of Census and Statistics,
No. 109, 5th Floor, Rotunda Tower,
Colombo 03.
4. Director (Administration)
Department of Census and Statistics,
No. 109, 5th Floor, Rotunda Tower,
Colombo 03.

5. Director General of Examinations,
Department of Examinations,
Isurupaya, Battaramulla
6. Vidyajothi Dr. Dayasiri Fernando,
Chairman, Public Service Commission,
No. 77, Nawala Road, Narahenpita,
Colombo 05. And others.
7. Palitha M. Kumarasinghe, P.C. Members,
Public Service Commission, No. 177, Nawala
Road, Narahenpita, Colombo 05.
8. Sirimavo A. Wijeratne, Member, Public
Service Commission, No. 177, Nawala Road,
Narahenpita, Colombo 05.
9. S.C. Mannapperuma, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
10. Ananda Seneviratne, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
11. N.H. Pathirana, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
12. S. Thillanadarajah, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
13. M.D.W. Ariyawansa, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
14. A. Mohomed Nahiya, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.

**(All Members of the Public Service
Commission)**

- 06A. A. Sathya Hettige, Chairman,
Public Service Commission,
No. 177, Nawala Road, Narahenpita,
Colombo 05.
- 07A. S.C. Mannapperuma, Member,
Public Service Commission,
No. 177, Nawala Road, Narahenpita,
Colombo 05.
- 08A. Ananda Senevirathne, Member,
Public Service Commission,
No. 177, Nawala Road, Narahenpita,
Colombo 05.

- 09A. N.H. Pathirana, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
- 10A. S. Thilandarajah,
Member.
Public Service Commission,
No. 177, Nawala Road, Narahenpita,
Colombo 05.
- 11A. A. Mohomed Nahiya, Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
- 12A. Kanthi Wijethunga,
Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
- 13A. Sunil S. Sirisena,
Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
- 14A. I.N. Soysa,
Member,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
- (All Substituted Members of the Public
Service Commission)**
15. Secretary,
Public Service Commission, No. 177,
Nawala Road, Narahenpita, Colombo 05.
16. M.N. Junaid, Co-Chairman,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
17. C.N.C.W. Mathews,
Co-Chairman,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
18. B. Wijerathna,
Secretary,
National Salaries and Cadres Commission,
No. 130, Block 02, BMICH, Colombo 07.
19. Ariyapala de Silva,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.

20. S.C. Mannapperuma,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
21. Deshabandu M. Mackey Mohomed,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
22. Prof. Carlo Fonseka,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
23. Soma Kotakadeniya,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
24. Jerry Jayawardena,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
25. Dr. Lionel Fernando,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,Colombo 07.
26. Leslie Devendra,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH, Colombo 07.
27. V. Kanagasabapathi,
Member,
National Salaries and Cadres Commission,
No. 130, Block 02,
BMICH,
Colombo 07.
28. Gunapala Wickramarathna,
Member, National Salaries and Cadres
Commission, No. 130, Block 02,
BMICH,Colombo 07.

29. Honourable Attorney General,
Department of Attorney General,
Colombo12.

Respondents

BEFORE : K. Sripavan., C.J.
B.Aluwihare, ,P.C., J.
P. Jayewardene, P.C., J.

COUNSEL Asthika Devendra for the Petitioners with J. Nandasiri,
Viraj Dayaratne D.S.G. for 1st to 5th, 6A to 14A, 15th and 29th
Respondents.

ARGUED ON : 23.09.2014

WRITTEN SUBMISSIONS)

FILED ON) : 26.11.2014 by the Respondents.

DECIDED ON : **10.09.2015**

SRIPAVAN, C.J.

The Petitioners are employees of the Department of Census and Statistics holding the post of “Statistical Officer – Grade I”. They were originally appointed as “Statistical Investigators” during the period 1984 to 1991; absorbed to the post of “Statistical Officers – Grade II” on 4th October 2000; absorbed to the post of “Statistical Officers – Grade I” on 21st October 2011.

The Petitioners state that after the post of “Statistical Investigators” was abolished on 4th October 2000, the Officers holding the said posts were absorbed as “Statistical Officers”; the next promotion of the “Statistical Officer” being the post of “Statistician”.

The Petitioners allege that the previous internal recruitment to the post of “Statistician” was in 2005 whereby letter dated 28th June 2005, applications were called from qualified internal candidates to fill the vacancies in the post of “Statistician”. The marking scheme published along with the notification contained the allocation of marks as follows:-

1. Seniority	-	60
2. Performance Appraisal Report	-	25
3. Contribution to the Enforcement Of the Dept. Publications & Research		08
4. Educational Qualifications		<u>07</u>
Total		100
		=====

The Petitioners state that the 3rd Respondent, by letter dated 12th September 2012 called for applications for examination from internally qualified "Statistical Officers". According to the said publication, vacancies are to be filled after interviewing the candidates who have obtained more than 40 marks at the written examination held by the 5th Respondent. The complaint of the Petitioners is that the new method of recruitment is a significant departure from the scheme of recruitment, the one which was in operation. The said scheme provided as follows:-

- (i) Should have passed the Efficiency Bar Examination prescribed for Statistical Officer Grade III and should have satisfactorily and successfully completed 08 years of uninterrupted service as Statistical Officer in Grades I, II and III.
- (ii) Required qualifications from Statistical Investigators prior to the absorption to apply for the post of "Statistician" is
 - (i) With a degree - 5 years service both in the post of Statistical Investigator and in the post of Statistical Officer
 - (ii) With Advanced Level - 8 years service both in the post of Statistical Investigator and In the post of Statistical Officer.
 - (iii) With Ordinary Level - 10 years service both in the post of Statistical Investigator and in the post of Statistical Officer.
- (iii) Required qualification from the Graduates who were recruited in 1999/2000 to perform and develop the significant/important functions of Government, 5 years of continuous service in the post of Statistical Officer excluding the period they served as Graduate Trainees.

Though the Petitioners in Paragraph 18 of the Petition state that they were never informed of a new scheme of recruitment and that they were neither asked to participate nor were their opinion obtained before the new scheme of recruitment was introduced, the 3rd Respondent at paragraph 10 of his affidavit dated 27th June 2012 states as follows:-

- (a) The new scheme of recruitment was proposed strictly in accordance with the guidelines stipulated in the Public Administration Circular No. 6 of 2006, the aim of

which was to ensure uniformity in the salary and organizational structure of the public and corporation sectors;

- (b) in granting approval to the said new scheme, the Public Service Commission considered the recommendations of the National Salaries and Cadres Commission, the Director General of Establishments, the Director General of Department of Census and Statistics and the Secretary to the Ministry of Finance and Planning;
- (c) discussions were held with the Trade Unions of the Department of Census and Statistics and the views expressed by them were taken into consideration
- (d) In keeping with all schemes of recruitment that have been prepared under the aforesaid circular, appointments to the post of “Statistician” under the limited stream (internal appointments) are to be made upon the results of a written examination;
- (e) the subject matter of the written examination will be directly related to their area of work and therefore the best method is adopted in selecting candidates who have the required knowledge and skills for the said post;
- (f) the Petitioners with their long period of service would be in an advantageous position since they would be more knowledgeable about the subject matter of the examination.

The Petitioners in their counter affidavit dated 8th July 2013, state that they were unaware of the averments referred to in paragraph 10(b) and (c) above. However, they did not deny the said averments.

A scheme of recruitment once formulated is not good for ever; it is perfectly within the competence of the appropriate authority to change it, rechange it, adjust it and re-adjust it according to the compulsions of changing circumstances. The Court cannot give directions as to how the Public Service Commission should function except to state the obligation not to act arbitrarily and to treat employees who are similarly situated equally. Once the Public Service Commission lays down a scheme, it has to follow it uniformly. Having laid down a definite scheme of promotion, the Public Service Commission cannot follow the irrational method of pick and choose.

Article 12(1) of the Constitution contemplates the right to equality and states that

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

What is meant here is that equals should be treated equally and similar laws and regulations should be applicable to persons who are similarly circumstanced. In reference to Article 12 (1) of the Constitution, it would be necessary to show that there had been unequal treatment and therefore there exist discriminatory action against the Petitioners.

The complaint of the Petitioners that their seniority was not considered adequately in the impugned scheme of recruitment cannot in any event form the basis of discrimination as the requirement of service from non-graduate to sit for the relevant examination is only 10 years of service. However, under the open competitive stream, only graduates become eligible to apply.

In *Union of India Vs. S.L. Dutta* (1991) 1 SCC 505; AIR 1991 SC 363 the petitioner who was serving as Air Vice Marshal was considered eligible to the promotion as Air Marshal. However, the scheme was changed by the Government and as per the changed policy, the petitioner was not considered eligible for the promotional post. The petitioner challenged the new scheme and the High Court allowed it holding that *"the new promotion policy was not framed after an in-depth study"* and directed the Government to consider the case of the petitioner under the old scheme of recruitment. On an appeal by the Government to the Supreme Court, the Court observed

"A consideration of policy regarding the promotional chances of officers of the Flying Branch in the Air Force would necessarily involve scrutiny of the desirability of such a change which would require considerable knowledge of modern aircraft, scientific and technical equipment available in such aircraft to guide in navigating the same, tactics to be followed by the Indian Air Force and so on. These are matters regarding which judges and lawyers of Courts can hardly be expected to have much knowledge by reason of their training and experience."

Even from a practical point of view, the functions of the Court is not to advise in matters relating to promotions of public officers. The Court can only strike down a scheme of recruitment if it is wholly unreasonable and violates the provisions of the Constitution or any statute. It would be hazardous and risky for the Court to tread an unknown path and should leave such task to the expert bodies.

Considering all the above mentioned facts and circumstances, I am of the view that the new scheme of recruitment to the post of "Statistician" cannot be categorized as arbitrary and in

violation of the petitioners fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

For the reasons stated above, I hold that the Petitioners have not been successful in establishing their fundamental rights guaranteed in terms of Article 12(1) of the Constitution had been infringed by the Respondents. The application is accordingly dismissed. I make no order on costs.

CHIEF JUSTICE

B. ALUWIHARE P.C.,J

I agree.

JUDGE OF THE SUPREME COURT.

P. JAYWARDENE, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT.