

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

***In the matter of an application under
Articles 17 and 26 of the Constitution
of the Democratic Republic of Sri
Lanka.***

Case no.: S.C. F/R 181/2014

Wijetunge Mudiyanseelage Lalith
Kumara Wijetunge,
No.426, Uyanwatte, Pologolla.
Now at:
No. 29B, Sirimalwatte West,
Gunnepana, Kandy.

PETITIONER

vs.

1. M. A. S. Weerasinghe,
Commissioner General of Agrarian
Development,
Department of Agrarian
Development,
No.42, Marcus Fernando
Mawatha, Colombo 07.

1A. D. V. Bandulasena,
Commissioner General of Agrarian
Development (Acting),
Department of Agrarian
Development,
No.42, Marcus Fernando
Mawatha, Colombo 07.

1B. A. H. M. L. Aberathne,

Commissioner General of Agrarian
Development,
Department of Agrarian
Development,
No.42, Marcus Fernando
Mawatha, Colombo 07.

2. Priyantha Mayadunne,
Former Additional Secretary,
Development Projects and
Agrarian Service,
Ministry of Economic
Development,
No 464/A, T. B. Jaya Mawatha,
Colombo- 10.

2A. Janaka Dharmakeerthi,
Secretary,
Ministry of Agriculture and
Plantation,
1200/9, Rajamalwatte Road,
Battaramulla.

3. Tharani Anoja Gamage,
Former Commissioner (Human
Resource Development),
Department of Agrarian
Development,
No.42, Marcus Fernando
Mawatha, Colombo 07.

4. Dayasiri Fernando,
Former Chairman,

4A. Sathya Hettige,
Former Chairman.
Public Service Commission,

No. 177, Nawala Road,
Narahenpita.

4B. Dharmasena Dissanayaka,
Former Chairman.
Public Service Commission,
No. 177, Nawala Road,
Narahenpita.

4C. Jagath Balalpatabandi
Former Chairman.
Public Service Commission,
No. 177, Nawala Road,
Narahenpita.

4D. Sanath J Ediriweera, Chairman.
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

4D. Sanath J Ediriweera,
Chairman,
Public Service Commission,
No. 177, Nawala Road,
Narahenpita.

5. S. C. Mannapperuma,
Former Member,

5A. Kanthi Wijetunga,
Former Member,

5B. A. Salam Abdul Waid,
Former Member,

5C. Indrani Sugathadasa,
Former Member,

5D. S.M. Mohomed,
Member,
Public Service Commission,
1200/9, Rajamalwatte
Road, Battaramulla.

6. Ananda Seneviratne,
Former Member,

6A. Sunil A. Sirisena,
Former Member,

6B. D. Shirantha Wijayatilaka,
Former Member,

6C. C.R.C Ruberu,
Former Member,

6D. N.H.N. Chithrananda, Member.
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

7. N. H. Pathirana,
Former Member,

7A. I.N. Soyza.
Former Member,

20th to 22nd Respondents above;
all at Public Service Commission,
No. 177, Nawala Road,
Narahenpita.

7B. Prathap Ramanujam,
(Former Member),

7C. A.L.M. Saleem,
(Former Member)

7D. Pallegama Member.
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

8. Palitha M. Kumarasinghe,
Former Member,

8A. V. Jegarasasingam,
Former Member,

8B. Leelasena Liyanagama
Former Member

8C. D.S.A. De Silva,
Member,
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

9. Sirimavo A. Wijeratne,
Former Member,

9A. Santi Nihal Seneviratne,
Former Member,

9B. Dian Gomas,
Former Member,

9C. N. Selvakkumaran,
Member

Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

10. S. Thillanadarajah, Former
Member,

10A. S. Ranugge,
Former Member,

10B. Dilith Jayaweera
Former Member

10C. M.B.R. Pushpakumara,
Member
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

11. A. Mohamed Nahiya,
Former Member,

11A. D.L. Mendis,
Former Member,

11B. W.H. Piyadasa
Former Member

11C. A.D.N. De Zoysa,
Member,
Public Service Commission,
1200/9, Rajamalwatte
Road, Battaramulla.

12. M. D. W. Arlyawansa,
Former Member,

12A. Sarath Jayathilaka,
Former Member,

12B. Suntharam Arumainayaham
Former member,

4th to 12th all formerly members
of the Public Service Commission,
No. 177, Nawala Road,
Narahenpita, Colombo 05.

12C. R. Nadarajapillai,
Member,
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

13. T. M. L. C. Senaratne,
Former Secretary, Public Service
Commission Public Service
Commission, No. 177, Nawala
Road, Narahenpita, Colombo 05.

13A. L.A. Kalukapuarachchi,
Secretary
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

13B. Mangala Dayarathne,
Secretary,
Public Service Commission,
1200/9, Rajamalwatte Road,
Battaramulla.

14. S. M. P. K. Weerasekera Menike,

Assistant Commissioner
(Departmental)
Class III,
C/O Department of Agrarian
Development, No.42, Marcus
Fernando Mawatha,
Colombo 07.

14A. H. M. Eranga Atapattu,
Assistant Commissioner
(Departmental)
Class III, C/O Department of
Agrarian
Development,
No.42. Marcus Fernando
Mawatha,
Colombo 07.

15. S. Y. D. A. Somawansa,
Assistant Commissioner
(Departmental)
Class III;
C/O Department of Agrarian
Development, No.42, Marcus
Fernando Mawatha,
Colombo 07.

16. A. R. R. Ramanayake,
Assistant Commissioner
(Departmental)
Class III, C/O Department of
Agrarian
Development,
No.42, Marcus Fernando
Mawatha,
Colombo 07.

17. A. Devapriya,
Assistant Commissioner
(Departmental)
Class III,
C/O Department of Agrarian
Development, No.42, Marcus
Fernando Mawatha, Colombo 07.

18. The Attorney General,
Attorney Generals Department,
Colombo 12.

BEFORE: **S. THURAIRAJA, PC, J**
YASANTHA KODAGODA, PC, J
MAHINDA SAMAYAWARDHENA, J

COUNSEL: Manohara de Silva, PC with Nadeeshani Lankathilake for the
Petitioner.
Ganga Wakisthta Arachichi, Deputy Solicitor General for 1B, 2A,
4D, 5D, 6D, 7C, 8C, 9C, 10C, 11C, 12C, 13B and 18th Respondents.

WRITTEN Petitioner on 17th November 2021.

SUBMISSIONS: 1B, 2A, 4D, 5D, 6D, 7C, 8C, 9C, 10C, 11C, 12C, 13B and 18th
Respondents on 11th April 2023.

ARGUED ON: 06th December 2023.

DECIDED ON: 29th February 2024.

S. THURAIRAJA, PC, J.

The Petitioner, namely Wijetunge Mudiyanseelage Lalith Kumara Wijetunge (hereinafter referred to as "the Petitioner"), filed this application by petition dated 27th June 2014 against the above-named 1st to 18th Respondents (hereinafter sometimes collectively referred to as "the Respondents") seeking relief in respect of the alleged infringement of his fundamental rights guaranteed by and under the Constitution of the Democratic Socialist Republic of Sri Lanka.

This Court granted leave to proceed on 29th July 2015 based on alleged violation of Article 12(1) of the Constitution.

Factual Overview

The Petitioner, presently holding the position of Grade I Agrarian Development Officer in the Department of Agrarian Development, lodged this application against the decision of the 1st Respondent (Commissioner General of Agrarian Development) and/or 4th to 12th Respondents (members of the Public Service Commission) pertaining to the promotion of officers, namely the 14th, 15th and 14A Respondents, to the post of Assistant Commissioner of Agrarian Development (Departmental) Class III (hereinafter referred to as "Assistant Commissioner") over and above the Petitioner in a manner violative of his fundamental rights guaranteed under Article 12(1).

As per letters dated 21st January 2013 and 08th March 2013, and annexed Scheme of Recruitment (marked "P8", "P9" and "P10" delineated threshold qualifications for eligibility respectively), applications for the post of Assistant Commissioner were to be effected through a limited competitive examination followed by a merit-based interview.

In terms of the preamble to the Scheme of Recruitment (hereinafter sometimes referred to as the "SOR"), applications were so-called to fill 24 vacancies in the post of Assistant Commissioner of Agrarian Development Class III. Further, Clause 02 of the

SOR delineated the following threshold qualifications for eligibility to be promoted to the post of Assistant Commissioner:

- i. Five (05) years of active and satisfactory service in the post of Agrarian Development Officer Grade I;
- ii. Five (05) years of satisfactory service immediately preceding the date of promotion to the post of Assistant Commissioner Agrarian Development (Departmental) Class III;
- iii. Willingness and ability to serve in any part of Sri Lanka and possess sufficient mental and physical fitness to discharge the duties of the post.

Clause 06.III of the SOR stipulated that applicants were required to possess all threshold qualifications as described above on or before the closing date for applications.

The marking scheme appended to the SOR is reproduced below:

Written Examination

Paper	Maximum Marks
Agrarian Development Law and Agricultural Tendencies in Sri Lanka	100
Case Study	100

Interview

Category	Qualifications	Maximum Marks
Seniority	For each year of service in Grade I beyond 5 years (05 marks for each year)	50 marks
Merit	Merit	20 marks

	i. Extra Qualifications (above the recruitment qualification) (a) Post Graduate Diploma from a recognized University – 20 marks (b) University Grants Commission recognized degree on any subject/field – 15 marks	
	ii. Comparative evaluation of service at Agrarian Development Centres (a) Profit – 05 marks (b) Neutral – 02 marks (c) Loss – 0 marks	25 marks
	iii. Performance at the interview	05 marks

The Petitioner has stated that, having sat for and successfully passed the written examination, he was called to face the interview panel on 24th October 2013.

Following the interview, the Petitioner learned that 23 applicants, including the 14th to 17th Respondents, were promoted to the post of Assistant Commissioner, but not the Petitioner himself. The list of successful candidates was published on the Public Service Commission website, a copy of which was produced and marked "P19". The Respondents have submitted that the 24th vacancy was reserved due to a disciplinary inquiry of an officer selected to be appointed to the post of Assistant Commissioner, who has since been exonerated from all charges and accordingly promoted.

According to the written submissions of the Respondents dated 11th April 2023, the Petitioner's scores at the written examination and merit-based interview, as compared to the marking scheme within the scheme of recruitment, are as follows:

Written Examination

Paper	Maximum Marks	Marks awarded to the Petitioner
Agrarian Development Law and Agricultural Tendencies in Sri Lanka	100 marks	74 marks
Case Study	100 marks	46 marks

Interview

Category	Qualifications	Maximum Marks	Marks awarded to the Petitioner
Seniority	For each year of service in Grade I beyond 5 years (05 marks for each year)	50 marks	00 marks
Merit	Merit i. Extra Qualifications (above the recruitment qualification) (a) Post Graduate Diploma – 20 marks (b) Degree 1 st class – 15 marks (c) Degree 2 nd Upper – 10 marks (d) Degree 2 nd Lower – 08 marks	20 marks	20 marks
	ii. Comparative evaluation of service at Agrarian Development Centres	25 marks	10 marks* (*Profit for the years

	(a) Profit – 05 marks (b) Neutral – 02 marks (c) Loss – 00 marks		2008 and 2010)
	iii. Performance at the interview	05 marks	03 marks

Thereby, the Petitioner had scored 157 marks in total, whereas, as per the Respondents, the cut-off mark was 159 marks.

The issues upon which the Petitioner has based the current application primarily revolve around two key points: first, the failure to receive additional marks under the 'Seniority' category due to the delayed antedating of his Grade I promotion; second, the denial of additional marks under the 'Merit – Operational Performance' category for submitting evaluation reports that reflected a profit for the years 2008, 2011 and 2012.

Antedating Grade I Promotion

Expanding upon the first issue, the Petitioner has submitted that he had been promoted as a Grade I Officer with effect from 14th July 2007 and would have completed 5 years and 08 months at the closing date of the applications for the promotion to Assistant Commissioner. By letters dated 04th October 2013 and 25th September 2013 (marked "P7a" and "P7b" respectively), he had also formally requested the antedating of his promotion to Grade I to be with effect from 28th August 2006. The Interview Panel's knowledge of the Petitioner's pending application to antedate his Grade I promotion, which would have awarded the Petitioner an additional 05 marks, and of the said application's bearing on the Petitioner's eligibility to be promoted to the post is evident upon perusal of remarks within the 'Other' column of the interview notes marked "R3", The reproduced excerpt reads:

"පෙරදාකම් කිරීම සම්බන්ධව උපදෙස් ඉල්ලා ඇත. ඒ අනුව සුදුසුකම් තීරණය කෙරේ."

[Advice is sought regarding ante-dating. Eligibility will be decided accordingly].

Whereas, as per the Petitioner, the 14th and 15th Respondents, having sat for the Grade I promotional examination only in 2011, had themselves requested for their own Grade I promotions to be antedated as they did not satisfy the requirement of possessing 5 years of service to be eligible for the post of Assistant Commissioner at the time applications were closed and, therefore, did not possess the threshold qualifications as required by Clause 06.III of the SOR.

In the Respondents' written submission dated 11th April 2023, the Respondents have averred that the Petitioner appealed to the Administrative Appeals Tribunal to antedate his promotion as a Grade I Officer only on 25th September 2013 and requested a concession for his Efficiency Bar Qualification only on 07th April 2017.

According to the Respondents, the examination for promotions to the post of Grade I officers for 2005 was only held in the year 2007. According to the Scheme of Recruitment for appointments to the post of Grade I Officer, Grade II Officers had to fulfil, *inter alia*, 12 years of satisfactory service. The Petitioner, having joined service in the year 1994, would not have completed 12 years by 2005 and was therefore not eligible to sit for the examination to promote officers to Grade I for 2005. The Respondents have submitted that it was due to 'administrative inadvertence' that this requirement was not published in the notice, and the Petitioner, therefore, sat and passed the exam.

The Respondents have stated that the Public Service Commission, on humanitarian grounds, decided not to cancel the Petitioner's promotion to Grade I, and additionally, to rectify the administrative inadvertence, decided not to antedate the Petitioner's promotion to the Post of Grade I Officer. However, upon appeal to the Administrative Tribunal, the Public Service Commission approved the Petitioner's request for a concession on the Petitioner's Efficiency Bar Examination by decision dated 22nd May 2017 and 31st May 2017 (marked "CA1" and "CA2" respectively) and, subsequently,

antedated the Petitioner's appointment as a Grade I Officer by letter dated 07th December 2017 (marked "CA3").

Whereas, the 14th and 15th Respondents passed the Grade 01 examination in 2011 and, after being promoted to the post of Grade I officers, had requested for the antedating of their promotions. The 14th and 15th Respondents' requests were approved by the Public Service Commission on 06th November 2013. According to the Respondents, the 14th and 15th Respondents were two of 08 officers who had been recommended by the Director General Establishment with regard to antedating of Grade I promotions of Agrarian Development Officers. Thereby, the requests of the 14th and 15th Respondents were approved by the Public Service Commission on 06th November 2013, and the promotions were antedated to 12th November 2007 and 08th December 2006, respectively. The Petitioner's request to ante-date his Grade I promotion, however, was granted by the Public Service Commission only on 22nd May 2017.

The Respondents have stated that it is the Petitioner's own failure to request the antedating of his promotion that the same could not be effected, and therefore, no marks could have been awarded to the Petitioner at the time of the interview.

Operational Performance Report for 2012

As per the marking scheme within the scheme of recruitment, marks were awarded under the 'Merit' category for the comparative evaluation of service at Agrarian Development Centres; specifically, 05 marks were allocated for each report that reflected a profit statement. The Petitioner has stated that he secured profit statements at the Morayaya Agrarian Development Centre for the years 2008, 2011 and 2012 (marked "P18a", "P18b" and "P18e", respectively), which would have totalled 15 marks.

According to the Respondents, the Petitioner only scored 10 marks for the reports submitted for the years 2008 and 2011 as the report for 2012 was inadequately and/or incorrectly prepared at the time it was submitted to the interview panel, despite no proof being submitted in support of this statement. In fact, an Audit Report prepared

by the Auditor General dated 30th January 2017 (marked CA4) demonstrates that the Petitioner had indeed recorded a profit for the Morayaya Agrarian Development Centre in 2012.

The Respondents, in their written submission dated 11th April 2023 have argued that, nevertheless, no marks could have been awarded to the Petitioner as the interview panel could only allocate marks for the material submitted on the date of the interview and not otherwise, in compliance with the SOR.

It is immensely curious, then, as the Petitioner has rightly averred, that the 14A Respondent (the 16th successful candidate) had been granted the opportunity to submit documents in proof of comparative evaluation of service after the conclusion of the interview (document in proof marked "P22").

The 4B Respondent, in his affidavit dated 18th November 2016, has confirmed that the 14A Respondent was allowed to submit reports as proof of comparative evaluation of service in the years 2011 and 2012, *with* certification of the Assistant Commissioner, subsequent to the date of the interview after receiving assurance from the 14A Respondent that the reports for the years 2011 and 2012 were in the process of being drafted.

Analysis

It is pertinent to note that, during the course of these proceedings, it was admitted that the interview board had incorrectly scored the Petitioner, who should have received an additional 10 marks and was granted the same by the Department of Agrarian Development, thereby increasing his score to 163 marks. Accordingly, it was also admitted that the Petitioner should have received the promotion. The relevant excerpt of the journal entry dated 31st March 2022 is reproduced below:

"...DSG who is appearing for the Respondent informs Court that the cut off mark for the appointment was 159. However, the interview board has given only 153 marks to the Petitioner.

Accordingly, he was not given the promotion. However, thereafter, the Petitioner has made representation to the Department of Agrarian Development.

Having considered the said representations, the Department of Agrarian Development has granted additional 10 marks since the interview board has by an oversight not given the correct marks to the Petitioner. Accordingly, the Petitioner should have got 163 marks at the interview.

In the circumstances, the Petitioner should have got the promotion along with the others who were promoted subsequent to the interview held for the relevant promotions."

Thereby, it has already been established that the Petitioner should have received the promotion to Assistant Commissioner. Nevertheless, the question of whether the Petitioner's rights guaranteed under Article 12(1) of the Constitution were violated by the Respondents remains and will be answered in the forthcoming sections of this judgement.

Article 12(1) of the Constitution provides as follows:

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

It was observed by Amerasinghe J in ***Perera v. Monetary Board of the Central Bank and Ors. (1994) 1 Sri L.R. 152*** in that persons are entitled to complain if they were invidiously or arbitrarily treated by or in the selection process of promotion and or recruitment to the public sector, and that the essence of these complaints would be that their right to equality guaranteed by Article 12 of the Constitution has been violated.

Early views on the concept of equality mirrored the 'reasonable classification doctrine', as can be seen in the discussion of Article 12 by Chief Justice S. Sharvananda in ***Elmore Perera v. Major Montague Jayawickrema, Minister of Public Administration and Plantation Industries and Others [1985] 1 Sri L.R. 285;***

"This Article is violated both by unequal treatment of the equals and equal treatment of the unequals. The aim of the article is to ensure that invidious distinction or arbitrary discrimination shall not be made by the State between a citizen and a citizen who answers the same though the concept of equality does not involve the idea of absolute equality among human beings. Hence equality before the law does not mean that things which are different shall be treated as they were the same. Thus the principle of equality enacted under Article 12 does not absolutely prevent the State from differentiating between persons and things, The State has the power of what is known as a "classification" on a basis of rational distinction relevant to the particular subject dealt with. So long as all persons falling into the same class are treated alike there is no question of discrimination and there is no question of violating the equality clause. The discrimination which is prohibited is treatment in a manner prejudicial as compared to another person in similar circumstances. Discrimination is the essence of classification; so long as it rests on a reasonable basis there is no violation of the constitutional rights of equality. Article 12 prohibits not only discriminatory legislation in favour of a particular person as against the others in like condition but it also has reference to the way the law is administered.

[...]

[A] person setting up grievances of denial of equal treatment must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relevance to the object sought to be achieved. Before a person can claim to be discriminated against another, he

must show that the other person was similarly situated or equally circumstanced, he must make out that not only he had been treated differently from others, but he had been so treated from persons similarly placed without any reasonable basis and such differential treatment is unjustifiably made."

The evolution of the legal concept of equality in Sri Lanka and this Court's partial departure from the interpretation of the nature of Article 12(1) developed by Chief Justice S. Sharvananda has been extensively discussed in cases such as ***Wijerathna v Sri Lanka Ports Authority (SC/FR/256/2017, SC Minutes of 11th December 2020)***. Kodagoda J, while maintaining that the classification doctrine continues to play a significant role in this Court's determination of violations of fundamental rights, discusses the current approach of 'substantive equality' adopted by this Court to rights guaranteed under Article 12 as follows;

"[S]ince the pronouncement of the majority judgment in Elmore Perera v. Major Montague Jayawickrema, Minister of Public Administration and Plantation Industries and Others, the Supreme Court of Sri Lanka has somewhat distanced itself from the interpretations provided by Chief Justice S. Sharvananda to the concepts of 'equality' and 'discrimination', and provided an expansive and more progressive definition of the concept of equality, founded upon the concept of 'substantive equality', aimed at protecting persons from arbitrary, unreasonable, malicious and capricious executive and administrative action.

[...]

It is necessary to place on record that the 'reasonable classification doctrine' continues to play an important role in certain factual situations, in determining whether the right to equality has been infringed."

The approach of 'substantive equality' is encapsulated in the oft-cited views of former Chief Justice of India, Justice Bhagwati in E.P. **Royappa v. State of Tamil Nadu AIR 1974 SC 555**:

"Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional doctrinal limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14."

The meaning of arbitrariness with regard to the principles enumerated in Article 12(1) can be understood from the interpretation of Article 14 of the Indian Constitution. In the case of **Sharma Transport v. Government of A.P. (2002) 2 SCC 188**, it was observed that:

"The expression 'arbitrarily' means: in an unreasonable manner, as fixed or done capriciously or at pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone."

In the case of **Maneka Gandhi v. Union of India, (1978) 1 SCC 248**, it was observed:

"The principle of reasonableness, which legally and philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

The above view was reiterated in **R.D. Shetty v. International Airport Authority, (1979) 3 SCC 489**:

"The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is protected

by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law."

Within our own legal framework, Chief Justice Sarath Silva has discussed reasonableness as a paramount requirement in establishing the basic standard of right to equality in ***Wickremasinghe v. Ceylon Petroleum Corporation and others [2001] 2 Sri L.R. 409:***

"Although the objective is to ensure that all persons, similarly circumstanced are treated alike, it is seen that the essence of this basic standard is to ensure reasonableness being the positive connotation as opposed to arbitrariness being the related negative connotation."

It is an established legal principle, then, that reasonableness is an essential element of non-arbitrariness.

Returning to the instant case, it is hardly necessary to emphasize that, the efficiency and integrity of the public administration system of a country hinge on the quality and calibre of the officers who serve that system. Therefore, it becomes imperative to ensure that the recruitment of such officers is conducted with utmost diligence. A fundamental aspect of achieving this objective is to ensure that recruitment to the Public Service of a country is effected according to published procedures which incorporate proper selection criteria and due and fair process that affords equal opportunity. Effective governance necessitates an administration of competent public officials as well as public trust and confidence in that administration.

Clause 06.III of the Scheme of Recruitment (marked P10) for the selection and appointment of suitable candidates for the post of Assistant Commissioners reads as follows:

"06. අනෙකුත් සේවා කොන්දේසි

III. අයදුම්පත් කැඳවීමේ අවසන් දිනට තනතුරට බඳවා ගැනීම සඳහා අවශ්‍ය සියළුම සුදුසුකම් සෑම ආකාරයකින්ම සපුරා තිබිය යුතුය."

[06. Terms of Service

III. All the qualifications required for recruitment to the post must be fulfilled in all respects by the last date of application.]

The last date of application was provided in Clause 08.II of the SOR to be 25th March 2013. The Petitioner fulfilled this requirement as he was promoted to Grade I with effect from 14th July 2007 and thereby completed 05 years of service as a Grade I Officer by the closing date of applications for the post of Assistant Commissioner.

In contrast, the 14th and 15th Respondents, according to the Written Submissions of the Respondents dated 11th April 2023, only sat for and passed the exam for the post of Grade I Officer in 2011 and the requests for the antedating of their promotions were granted by the Public Service Commission only on 06th November 2013. Evidently, the 14th and 15th Respondents, did not, in fact, possess the threshold qualifications on or before the date applications for the post were closed, i.e. 25th March 2013.

Moreover, the Respondents have stated that the structured interview for the post of Assistant Commissioner was held on 24th October 2013 and 13th November 2013. I find it interesting that the date of the Petitioner's interview was scheduled to be held on 24th of October 2013, whereas I make the assumption that the interviews of the 14th and 15th Respondents were held on 13th November 2013 following the approval of their antedating requests as otherwise, the 14th and 15th Respondents could not have scored the additional marks as they did under the 'Seniority' category.

As discussed, the Respondents' knowledge of the Petitioner's pending application to ante-date is evident in the comments within the interview mark sheet. While the Respondents have submitted that the Interview Panel could not have awarded

additional marks to the Petitioner at the time the interview was conducted on 24th October 2013, I am inclined to be skeptical of the position.

A common theme that emerges within the Respondents' submission is 'administrative inadvertence'; to name a few examples, the Petitioner's promotion to Grade I due to an error in the notice published to call for applications; the subsequent effect of this error on the Petitioner's request to ante-date his promotion; and the fact that successful candidates such as the 14th and 15th Respondent did not possess the required threshold qualifications in accordance with the SOR at the time applications for the post of Assistant Commissioner were closed. I am forced, then, to ask: is it not a sequence of administrative inadvertences of the public authorities that has formulated the obstacle to the Petitioner's promotion?

Furthermore, despite the Respondents' own submission that in compliance with the SOR, the Interview Panel could only allocate marks for the material submitted on the date of the interview and not otherwise, the Interview Panel allowed the 14A Respondent to submit material following the interview, whereas the Petitioner was not afforded or even made aware of this opportunity, which can only be described as unreasonable and arbitrary decision-making. Perhaps the Respondents would, once again, cite administrative inadvertence as an explanation.

In light of the abovementioned facts and circumstances, I find that the Petitioner has been successful in establishing that he has been unreasonably and arbitrarily denied being appointed as an Assistant Commissioner as a result of the decisions of the 1st Respondents.

The validity of the decision to antedate the promotions of the 14th and 15th Respondent has also been challenged by the Petitioner. The Petitioner has submitted that such promotions are contrary to the provisions of Clause 1.11 read with 1:11:1 of Chapter II of the Establishments Code, which reads:

"1:11 පහත දැක්වෙන අවස්ථාවන්හි දී කවර හේතුවක් නිසා හෝ පෙරදානම කිරීමක් නොකළ යුතු

1:11:1 එවැනි පෙරදානම කිරීමක් හේතුවෙන් අදාළ නිලධරයාට, එම තනතුරට හෝ ශ්‍රේණියට ඔහුට පෙර පත්කළ නිලධරයෙකුට වැඩි ජ්‍යෙෂ්ඨත්වයක් හිමිවන්නේ නම් හෝ එම තනතුරට තෝරා ගැනීමේ දී දෙනු ලැබූ ජ්‍යෙෂ්ඨත්ව පිළිවෙලෙහි යම් වෙනසක් ඇති වන්නේ නම්."

[1.11. No pre-dating shall be granted for any of the following reasons:

1.11.1. *If by reason of such pre-dating the officer concerned has more seniority than any officer appointed before him in the said post or grade or there is a change in the order of seniority given in the selection of that post.]*

It is trite law that the Establishment Code, by virtue of its constitutional origin, acquires statutory force, and this Court has consistently recognized that the provisions of the Establishment Code should be complied with and given effect.

This approach is evident in early cases such as **Perera vs. Jayawickreme [1985 1 SLR 285]**, where Wanasundera J, with regard to the Establishment Code, observed that:

"This Code constitutes the norm and embodies the necessary safeguards to protect the rights of public officers. It constitutes the state of the law on this matter and is and should be applicable, without exception, to all public officers of the class or category to which the petitioner belongs. Any departure in a particular case from this basic norm, which is of general application, would be a deprivation of the protection given by the law and must be regarded as unequal treatment and a violation of Article 12(1) of the Constitution."

Kulatunga J observed **in Perera vs. Ranatunga [1993 1 SLR 39 at p.54-55]** that the Code embodies:

" a constitutional recognition of the concept of the Rule of law, in particular, that government should be conducted within the framework of recognized rules and principles and that, in general, decisions should be predictable and the citizen should know where he is which in turn restricts arbitrary action or discrimination. The relevant provisions of the Establishments Code are in conformity with this concept and through Article 55 (4) are made complementary to Article 12."

This ratio has been endorsed and followed in several succeeding judgments of this Court, a recent example of which is ***Locomotive Assistants Union v Abeywickrama (SC/FR 29/2018 SC Minutes dated 16th July 2020)***.

The decision to antedate the promotions of the 15th Respondent to 08th December 2006 caused the 15th Respondent to gain seniority over the Petitioner, who was promoted to the post of Grade I Officer with effect from 14th July 2007.

I find that this decision is, therefore, contrary to the provisions of the Establishment Code and constitutes unequal treatment violative of the Petitioner's rights guaranteed under Article 12(1) of the Constitution.

Decision

In view of the foregoing circumstances and reasons, I hold that the Respondents have, by the afore-stated impugned decisions and conduct, jointly infringed the Fundamental Rights of the Petitioner guaranteed by Article 12(1) of the Constitution by depriving him of the right to equality.

I further direct that the Petitioner be forthwith appointed to the Post of 'Assistant Commissioner of Agrarian Development (Departmental) Class III' with back wages and, based on the updated mark sheet of the structured interview held for the Post of Assistant Commissioner in 2013, be appointed with the appropriate seniority and rank in relation to the successful candidates, including the 14th (S.M.P.K Weerasekara Menike), 14A (H.M. Eranga Atapattu) and 15th (S.Y.D.A. Somawansa) Respondents.

Application Allowed.

JUDGE OF THE SUPREME COURT

YASANTHA KODAGODA, PC, J

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J

I agree.

JUDGE OF THE SUPREME COURT

26.03.2024 - Addendum

This case was argued and judgment was delivered on 29/02/2024 and the same was uploaded to the Supreme Court website.

It was brought to our notice that there is a typographical error in the said judgement. Hence, this case was mentioned before the same bench on 26/03/2024.

The Counsel who originally appeared, appeared again and took notice of the order.

The last paragraph of the said judgment in pages 26 and 27 should read as follows:

"I further direct that the Petitioner be forthwith appointed to the Post of 'Assistant Commissioner of Agrarian Development (Departmental) Class III' with back wages and, based on the updated mark sheet of the structured interview held for the Post of Assistant Commissioner in 2013, be appointed with the appropriate seniority and rank in relation to the successful candidates, including the 14th (S.M.P.K Weerasekara Menike), 14A (H.M. Eranga Atapattu) and 15th (S.Y.D.A. Somawansa) Respondents."

This judgment is reuploaded to the Supreme Court website on 04/04/2024 with the aforementioned correction.
