

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

**LANKA.**

*In the matter of a petition in terms of Article 126  
read with Article 17 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka.*

**SC (FR) No. 287/2023**

1. B. G. T. G. D. K. Bopitiya  
Chairman.
2. R. M. Jayasena  
Secretary.
3. N. A. U. Buddika  
Treasurer.
4. K. M. D. Mangala Malinda  
Vice President.
5. W. M. N. Deshapriya  
Executive Committee Member.
6. W. A. L. S. Wickramarathne  
Executive Committee Member.
7. K. Kantha Ruban  
Executive Committee Member.
8. D. R. S. C. Dabaliyadda  
Executive Committee Member.
9. P. G. R. D. Bandara  
Executive Committee Member,  
Technical Education Demonstrator  
Union,  
College of Technology,

Ratnapura.

**PETITIONERS**

**-Vs-**

1. S. C. Jagath  
Director General,  
Department of Technical  
Education and Training,  
P. O. Box 557,  
Olcott Mawatha,  
Colombo 10.
2. Dr. Susil Premajyantha  
Minister,  
Ministry of Education,  
Isurupaya,  
Battaramulla.
3. M. N. Ranasinghe  
Secretary,  
Ministry of Education,  
Isurupaya,  
Battaramulla.
4. Sanath J. Ediriweera  
Chairman,  
Public Service Commission.
5. Mrs. S. M. Mohamed  
Member.
6. N. H. M. Chithrananda  
Member.
7. Prof. N. Selvakkumaran  
Member.

8. M. B. R. Pushpakumara  
Member.
9. Dr. A. D. N. De Zoysa  
Member.
10. Mrs. R. Nadarajapillai  
Member.
11. C. Pallegama  
Member.
12. G. S. A. De Silva PC  
Member.
13. Mrs. W. H. M. M. C. K. Dayaratne  
Secretary.  
All of  
Public Service Commission  
No. 1200/9,  
Rajamalwatta Road,  
Battaramulla.
14. H. A. Chandana Kumarasingha  
Director General of  
Establishments Division,  
Ministry of Public Administration,  
Home Affairs,  
Provincial Councils and Local  
Government,  
Independence Square,  
Colombo 07.
15. Dr. (Eng.) Udeni Wickramasinghe

Chairman,  
Tertiary and Vocational Education  
Commission,  
3<sup>rd</sup> Floor, "Nipunatha Piyasa",  
Elvitigala Mawatha,  
Narahenpita, Colombo 05.

16. Dr. K. A. Lalithadheera  
Director General,  
Tertiary and Vocational Education  
Commission,  
3<sup>rd</sup> Floor,  
"Nipunatha Piyasa",  
Elvitigala Mawatha,  
Narahenpita,  
Colombo 05.

17. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE** : **P. Padman Surasena, J.**  
**A. L. Shiran Gooneratne, J.**  
**Mahinda Samayawardhena, J.**

**COUNSEL** : Sapumal Bandara with Vishmi Yapa Abeywardena  
instructed by Manjula Balasuriya for the Petitioner

Sureka Ahmed, SC for the Respondents.

**ARGUED &**

**DECIDED ON:** 14-03-2024

**P. PADMAN SURASENA, J.**

Court heard the submissions of the learned Counsel for the Petitioner as well as the submissions of the learned State Counsel who appeared for all the Respondents.

Having considered the submissions, Court decided to grant Leave to Proceed in respect of the alleged violations of the Petitioners Fundamental Rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution.

The learned State Counsel brought to the attention of Court, paragraphs 6 and 7 of the affidavit dated 29<sup>th</sup> February 2024 filed by the 13<sup>th</sup> Respondent annexed to the motion dated 01-03-2024. In light of the submissions and the material adduced by the Petitioners and also in light of the fact that the Court has decided to grant Leave to Proceed to this Petition, the learned State Counsel informed Court that there is no new material that can be adduced by way of filing any further Statement of Objections.

It was in those circumstances that the learned Counsel for the Petitioner as well as the learned State Counsel for the Respondents concurred that the Court can proceed to hear and determine this case forthwith dispensing with the compliance of the provisions of the Supreme Court Rules in regard to taking other relevant steps preparatory to the hearing of the case. Thus, we proceed to hear and determine this case forthwith. Counsel for both parties were heard on the merits of the case.

The primary concern of the Petitioners in the instant case is the decision by the Public Service Commission to remove one of the hitherto existed pre-requisite educational qualification to become eligible for appointment to the Post of Demonstrator in Technical Colleges. The said hitherto existed pre-requisite educational qualification can be seen in Clause 7.2.2.1 of the document attached to the letter (produced marked **P 3**) dated 20-02-2014 bearing No. PSC/EST/8/1/44/1/1/2013 issued by the Secretary to the Public Service Commission which had introduced the procedure to recruit Demonstrators under the category of Management Assistant (Technical) Grade III.

The 1<sup>st</sup> Respondent by the notice published in the Gazette No. 2,3501 dated 22-09-2023, has called for applications from suitable persons for enrolment as Demonstrators under the category of Management Assistant (Technical) Grade III. The removal of the said hitherto existed pre-requisite educational qualification can be seen in page No. 2397 of the said Gazette

and in page No. 2404 of the same Gazette. The two pages above referred to, show that the said removal of the hitherto required educational qualifications for appointment to the Post of Demonstrator in Technical Colleges has been made applicable to both the Limited Competitive Examination (at page No. 2397 of the said Gazette) and the Open Competitive Examination (at page No. 2404 of the Gazette).

As per the procedure to recruit Demonstrators under the category of Management Assistant (Technical) Grade III set out in **P 3** (Clause 7.2.2.1), one should have passed G.C.E. (Ordinary Level) Examination to become eligible for enrolment as a Demonstrator in the Technical Colleges. It is the requirement of having passed G.C.E. (Ordinary Level) Examination that the Public Service Commission has removed by the subsequently published Gazette No. 2,3501 dated 22-09-2023 marked **P 13**.

Having regard to the functions assigned to the persons to be recruited for this post namely, for the Demonstrators in Technical Colleges, we are unable to summarily dismiss the submission made by the learned Counsel for the Petitioners that such Demonstrators in order to teach the students under them, must be persons with a least qualification of G.C.E. (Ordinary Level) Examination. Indeed, we observe that if the step to remove this Educational Qualification is to be upheld, it would be inevitable that some persons who are illiterate could also become eligible for appointment as Demonstrators in Technical Colleges.

The 13<sup>th</sup> Respondent in his affidavit dated 29-02-2024 has stated that the Public Service Commission has decided to bring back the aforesaid qualification which was removed by the Gazette **P 13**. However, the 13<sup>th</sup> Respondent in paragraph 7 has stated that the said amendment would only apply prospectively without prejudice to any action taken on the previously taken decision by the Public Service Commission. The paragraphs 6 and 7 of the affidavit dated 29<sup>th</sup> February 2024 annexed to the motion dated 01-03-2024 filed by the 13<sup>th</sup> Respondent are as follows.

*6. I state that the Public Service Commission intends to amend the current scheme of recruitment for the post of Management Assistant (Technical) Segment 3 service category of the Department of Technical Education and Training. The proposed amendments are annexed hereto marked X and pleaded as part and parcel hereof.*

7. *I state further that Public Service Commission has decided that the proposed amendments will come into effect prospectively without prejudice to any action or decision taken by the relevant authorities in accordance with the prevailing provisions of the scheme of recruitment.*

We observe that the Public Service Commission has made this decision after the Petitioners have filed the instant case. Thus, invariably the said decision to re-introduce the afore-said removed qualification has been taken by the Public Service Commission either because the Petitioners have challenged the said decision before Court or its own realisation of the inappropriacy of its decision. It is significant to note that the Public Service Commission has changed its mind even before this Court had granted Leave to Proceed to this Petition. The Public Service Commission is silent as to why they had decided to re-introduce the afore-said removed qualification. The said removal and later on re-introduction of the said qualification at two different times are contrary to each other in the absence of any plausible reason thereto. We observe that the reservation made by the Public Service Commission that the re-introduction of the removed qualification should not apply retrospectively, has no justification at all. The Public Service Commission has not given any reason thereto. Therefore, the decision of the Public Service Commission to apply the re-introduction of the said qualification only prospectively without prejudice to any action or decision taken by it earlier is arbitrary and therefore should not have any force in law.

The only reason submitted by the learned State Counsel in that regard is the fact that the Government has already spent some money to conduct the Examination as per **P 3**. We cannot permit an examination to be held on such unjustifiable/illegal basis merely because the Government has spent some money in that regard. If the removal of hitherto required educational qualifications for appointment to the Post of Demonstrator in Technical Colleges is wrong, then any subsequent conduct of any examination on that footing would also become wrong. In view of the above, we decide that the Petitioners are entitled to succeed.

For the foregoing reasons, we grant a declaration that the Fundamental Rights guaranteed to the Petitioners under Article 12(1) and 14(1)(g) of the Constitution have been infringed by the Public Service Commission. Therefore, we proceed to quash the decision to amend the Scheme of Recruitment for the post of Demonstrators under the service category of Management Assistants (Technical) of Grade III at **P 10(B)**. We also proceed to quash the decision published in Government Gazette, bearing No. 2,3501, by the 1<sup>st</sup> Respondent to call

for the applications for the post of Demonstrators under the service category of Management Assistants (Technical) Grade III contained in **P 13**.

For the purpose of clarity, we specify here what we have quashed: that is the decision of the Public Service Commission to permit the afore-said removal of the said qualification to remain effective for the previously held examination which was held on 10-12-2023 in terms of **P 3**. We direct the Public Service Commission and the relevant authorities to refrain from acting or taking any further steps on the results of the Examination conducted as per **P 3**.

Petition is allowed. No costs.

**JUDGE OF THE SUPREME COURT**

**A. L SHIRAN GOONERATNE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**MAHINDA SAMAYAWARDHENA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

PR/-