

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

SC /FR/ Application 236-237/2008**SC FR 236/2008**

1. **C. Chethiyawardena,**
No. 195/7, 2nd Lane, Egodawatte Road,
Boralesgamuwa.
2. **Sanjaya Mudakige,**
No.05, Wijesekera Road, Dehiwala.
3. **D. D. Mataraarachchi,**
No. 255/1, Pelanwatte, Pannipitiya.
4. **Ajith Abeysekere,**
Pashionwatte, Wellavilmulla, Kal-Eliya.
5. **Anjalika Gunasekera,**
No. 19-J, Bandarawatte, Kadawatha.
6. **D.C.W. Hapugoda,**
Thalwate Estate, Kundasale.
7. **L.V.N. Preethika Kumudini,**
105 D, Millagahadeniya, Ankokkawala,
Galle.
8. **S.G.Vidura Prassanna,**
48/1, Paramulla Road, Matara.
9. **M. Gangadharan,**
No. 9/16A, Fernando Gardens, Off Bhatiya
Mawatha, Kalubovila, Dehiwala.
10. **M. Ramamurthi,**
No. 33/3/1, Sangabo Mawatha,
Hunupitiya, Wattala.
11. **S.H. Vijitha Kumara,**
No. 52/8, Walawatte, Ibbagamuwa.

12. **R.M. Wijesinghe Banda,**
No. 47/A, Kamburuadeniya, Hndessa.
13. **P.M.K. Hettiarachchi,**
“Sri Kirula”, Dampella Road, Kadduwa,
Thelijjavila.
14. **Sir Lanka Planning Service Association,**
9th Floor, “Sethsiripaya”, Battaramulla.

Petitioners

Vs,

1. Ranil Wickramasinghe
Minister of National Policies and
Economic Affairs, “Miloda” (Old Times
Building), 1st Floor, British Street,
Colombo 01.
2. Gamini Jayawickrema Perera
Minister of Buddha Sasana,
Ministry of Buddha Sasana, No. 135,
Sirimath Anagarika Dharmapala
Mawatha, Colombo 07.
And Minister of Sustainable Development
and Wildlife Department of Wildlife
Conservation, No. 811A, Jayanthipura,
Battaramulla.
3. Nimal Siripala de. Silva
Minister of Transport, No. 01, Dr.
Wijewardena Mawatha, Colombo 10.
4. S.B. Dissanayake
Minister of Social Empowerment and
Welfare and Kandyan Heritage, 1st Floor,
Second State, Sethsiripaya, Battaramulla.
5. W.D.J. Seneviratne
Minister of Labour and Trade Union
Relations and Sabaragamuwa
Development. 2nd Floor, Labour
Secretariat, Colombo 05.

6. A. Ibathul Rauff Hakeem
Minister of City Planning and Water Supply, “Lakdiya Medura” 35, Pelawatta, Battaramulla.
7. Anura Piyadarshana Yapa
Minister of Disaster Management, Vidyala Mawatha, Colombo 07.
8. Susil Premajayantha
Minister of Technology, Technical Education and Employment, No. 408, Galle Road, Colombo 03.
9. Jhon Anthony Emmanuel Amarathunga
Minister of Tourism Development and Christian Religious Affairs, 13th Floor, “Sethsiripaya” Stage II, Battaramulla.
10. Rajitha Senarathne
Minister of Health, Nutrition and Indigenous Medicine 385, “Suwasiripaya” Ven. Wimalarathna Thero Mawatha, Colombo 10.
11. Thilak Marapana P.C.
Minister of Foreign Affairs, Republic Building, Colombo 01.
12. Mahinda Samarasinghe
Minister of Ports and Shipping, No. 19, Chaithiya Road, Colombo 01.
13. Vajira Abeywardena
Minister of Home Affairs, Independence Square, Colombo 07.
14. S.B. Nawinna
Minister of International Affairs, Wayamba Development and Cultural Affairs, 8th Floor, “Sethsiripaya”, Battaramulla.
15. Abdul Rishad Bathiudeen
Minister of Industry and Commerce, No. 73/1, Galle Road, Colombo 03.

16. Achchige Patali Champika Ranawaka
Minister of Mega Polis and Western Development, 3rd Floor, "Sethsiripaya" Battaramulla.
17. Mahinda Amaraweera
Minister of Fisheries and Aquatic Resources Development and State Minister of Mahaweli Development, New Secretariat, Maligawatte, Colombo 10.
18. Navin Dissanayake
Minister of Plantation Industries, 8th, 10th and 11th floors, "Sethsiripaya II" Battaramulla.
19. Ranjith Siyambalapitiya
Minister of Power and Renewable Energy, No. 72, Ananda Coomaraswamy Mawatha, Colombo 07.
20. Duminda Dissanayake
Minister of Agriculture, "Govijana Mandeeraya" 80/5, Rajamalwatte Lane, Battaramulla.
21. Thalatha Athukorala
Minister of Justice, Superior Court Complex, Colombo 12.
22. Pelisge Harison.
Minister of Rural Economy, 780, Maradana Road, Colombo 10.
23. Mohamed Hashim Mohamed Kabir
Minister of Public Enterprise Development, 13th Floor, Western Tower, World Trade Center, Colombo 01.
24. Ranjith Madduma Bandara
Minister of Public Administration and Management, Independence Square, Colombo 07.

25. Gayantha Karunathilake
Minister of Parliamentary Reforms and Lands, No. 163, Kirulapana Mawatha, Polhengoda, Colombo 05.
26. Sajith Premadasa
Minister of Housing and Construction, 2nd Floor, "Sethsiripaya" Battaramulla.
27. Arjuna Ranatunga
Minister of Petroleum Resources Development, No. 80, Sri Earnest de Silva Mawatha, Colombo 07.
28. Thilak Janaka Marapana
Minister of Development Assignments, Miloda (Old times Building) 5th Floor, Bristol Street, Colombo 01.
29. Udeiappan Palani Thigambaram
Minister of Hill Country New Villages, Infrastructure and Community Development No. 45, St. Michael's Road, Colombo 03.
30. Chandrani Bandara
Minister of Women and Child Affairs, 3rd Floor, Stage II, "Sethsiripaya" Battaramulla.
31. Thalatha Athukorala
Minister of Foreign Employment, 12th Floor, Central Bank Building, Colombo 01.
32. Akila Viraj Kariyawasam
Minister of Education, "Isurupaya" Pelawatte, Battaramulla.
33. Abdul Haleem Mohomed Hasheem
Minister of Post, Postal Services and Muslim Affairs, 7th Floor, Postal Headquarters Building, 310, Dr, Wijewardena Mawatha, Colombo 10.

34. Chandima Weerakkodi
Minister of Skills Development and Vocational Training, No. 354/2, Elvitigala Mawatha, Colombo 05.
35. Dayasiri Jayasekara
Minister of Sports, No. 09, Gunawardena Mawatha, Colombo 07.
36. Sagala Gajendra Rathnayake
Minister of Law and Order Minister of Southern Development, No. 25, White Way Building, Sri Baron Jayathilaka Mawatha. Colombo 01.
37. Harin Fernando
Minister of Telecommunication and Digital Infrastructure, 5th Lane, Colombo 03.
38. Mano Ganeshan
Minister of National Dialogue, No. 40, Buthgamwa Road, Rajagiriya.
39. Daya Gamage
Minister of Primary Industries, No. 19/6A, Hospital Terrance, Sunandarama Road, Kalubowila.
40. Gamini Vijith Vijayamuni Zoysa
Minister of Irrigation and Water Resources Management, "Govijana Mandeeraya" 80/5, Rajamalwatte Lane, Battaramulla.
41. Faiszer Musthapha, PC
Minister of Provincial Councils and Local Government, 330, Union Place, Colombo 02.
42. Malik Samarawickrama
Minister of Development Strategies and International Trade, No. 76, Wester Tower, World Trade Center, Colombo 01.
43. Mangala Pinsiri Samaraweera
Minister of Finance and Mass Media, The Secretariat, Colombo 01.

44. D.M. Swaminathan
Minister of Rehabilitation and
Resettlement, No. 302, Galle Road,
Colombo 04.
45. Minister of Defence,
No. 15/5, Baladaksha Mawatha,
Colombo 03.
46. Minister of Mahaweli Development and
Environment, No. 500, T.B. Jaya
Mawatha, Colombo 10.
47. Minister of Environment, No. 82,
Rajamalwatta Road, "Sampathpaya"
Battaramulla.
48. Minister of National Integration and
Reconciliation, No. 21, 3rd Floor, Standard
Chartered Bank Building, Janadhipathi
Mawatha, Colombo 01.
49. Dharmasena Dissanayake
Chairman,
- 49A. Jagath Balapatabendi- Chiarman
50. A. Salam Abdul Waid, Member
50A. Indrani Sugthadasa, Member
51. Ms. D. Shirantha Wijeyathilaka, Member
51A. C.R.C. Ruberu, Member
52. Dr. Pradeep Ramanugam, Member
52A. A.I.M. Saleem, Member
53. Mrs. V. Jegarasasingham, Member
53A. Leelasena Liyanagama, Member
54. Santi Nihal Seneviratne, Member
54A. Dian Gomes, Member
55. S. Ranugge, Member
55A. Dilith Jayaweera, Member
56. D.C. Mendis, Member
56A. W.H. Piyadasa, Member

57. Sarath Jayathilake, Member

57A. Suntharam Arumallnayaham, Member

58. H.M.B. Seneviratne, Secretary

58A. M.A.S. Daya Senarath, Secretary

49A to 58A Respondents: All of Public Service Commission, No. 177, Nawala Road, Narahenpita, Colombo 05.

59. M.I.M. Rafeek, Secretary to the Ministry of National Policies and Economic Affairs, "Miloda" (Old Times Building), 1st Floor, British Street, Colombo 01.

59A. Thanuja Fernando

Secretary to the Ministry of National Police Commission

60. Dr. R.H.S. Samarathunga,

Secretary, Treasury, Ministry of Finance, Colombo 01.

60A. Mr. Attygalle, Secretary, Treasury, Ministry of Finance, Colombo 01.

61. Development Officers Association,

Level 15, Tower 5, Central Bank Building, No. 30, Janadhipathi Mawatha, Colombo 01.

62. Mr. W.M.N.J. Pushpakumara

Commissioner General of Examination, Department of Examination, Battaramulla.

62A. L.M.D. Dharmasena,

Commissioner General of Examination, Department of Examination, Battaramulla.

63. Hon. Attorney General,

Attorney General's Department, Colombo 12.

64. Mahinda Rajapaksa

Minister of Buddhasasana, Cultural and Religious Affairs, Minister of Urban Development and Housing, Minister of Economic Policies and Plan Implementation.

65. Nimal Siripala de Silva
Minister of Labour, Ministry of Labour,
Kirula Road, Colombo 05.
66. G.L. Peiris
Minister of Foreign Affairs,
67. Dinesh Gunawardena
Minister of Education, Ministry of
Education, "Isurupaya" Battaramulla.
68. Dilum Amunugama
Minister of Transport
69. Keheliya Rambukwella
Minister of Health, Ministry of Health,
385, Ven. Baddegama Wimalawansa
Thero Mawatha, Colombo 10.
70. Douglas Devananda
Minister of Fisheries, Ministry of
Fisheries, Maligawatte Road, Colombo 10.
71. Pavithra Devi Wanniarachchi
Minister of Power
72. Bandula Gunawardena
Minister of Trade, Ministry of Trade, No.
73/1, Galle Road, Colombo 03
73. C.B. Rathnayake
Minister of Wildlife and Forest Conservation,
Ministry of Wildlife and Forest Conservation,
No. 1090, Sri Jayawardenapura Mawatha,
Rajagiriya.
74. Janaka Bandara Tennakoon
Minister of Public Services, Provincial
Councils and Local Government, Ministry
of Public Services, Provincial Councils and
Local Government, Union Place, Colombo
02. No. 330, Dr. Colvin R. de. Silva
Mawatha Colombo.
75. Dullas Alahapperuma
Minister of Mass Media, Ministry of Mass
Media, Elvitigala Mawatha Colombo 05.

76. Chamal Rajapakse
Minister of Irrigation, Ministry of Irrigation, 11, Jawatta Road, Colombo 05.
77. Johnston Fernando
Minister of Highways, Ministry of Highways, No. 216, Kobbekaduwa Mawatha, Kowatte, Battaramulla.
78. S.B. Dissanayake
Minister of Industries, Ministry of Industries, 3, 73/1, Galle Road, Colombo 03.
79. Basil Rajapaksa
Minister of Finance, Ministry of Finance, Lotus Road, Colombo.
80. Mahinda Amaraweera
Minister of Environment, Ministry of Environment, "Sobadam Piyasa" No. 416/C/1, Robert Gunawardana Mawatha, Battaramulla.
81. S.M. Chandrasen
Minister of Lands, Ministry of Lands, "Mahikatha Madura" Land Secretariat, No. 1200/6, Rajamalwatta Road, Battaramulla.
82. Mahindananda Aluthgamage
Minister of Agriculture, Ministry of Agriculture, 80/5, "Govijana Mandiraya" Rajamalwatta Lane, Battaramulla.
83. Vasudeva Nanayakkara
Minister of Water Supply, Ministry of Water Supply, Lakdiya Medura, 35, New Parliament Road, Sri Jayawardenapura Kotte.
84. Gamini Lokuge
Minister of Energy, Ministry of Energy, No. 84, Sir Ernest de Silva Mawatha, Colombo 07.

85. Ramesh Pathirana
Minister of Plantation, Ministry of Plantation, 11th Floor, Sethsiripaya, 2nd Stage, Battaramulla.
86. Prasanna Ranatunga
Minister of Tourism, Ministry of Tourism, 2nd Floor, Asset Arcade (Pvt) Ltd, No. 51-E, York Street, Colombo 01.
87. Rohitha Abeygunawadhana,
Minister of Ports and Shipping, Ministry of Ports and Shipping, 19,1 Chaithya Road, Colombo.
88. Namal Rahapaksa
Minister of Youth and Sports Minister of Co-ordination, No. 09, Philip Gunawadhana Mawatha, Colombo 07.
89. Ali Sabry
Minister of Justice, Ministry of Justice, Superior Courts Complex, Colombo 12.
90. Sarath Weerasekara
Minister of Public Security, Ministry of Public Security, 14th Floor, "Suhurupaya" Battaramulla.

Respondents

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1. **Dimuthu Pradeep Kumara Ranasinghe,**
No. 40, Pepolgahadeniya, Yakkala.
2. **Godage Sumeda Chandrajith,**
No. 361/1, Lewduwa Meetiyagoda.
3. **Edippuli Arachchige Verangi Manulika Abeykoon,**
570, Narangodapaluwa, Batuwatta.
4. **Rajapakse Karunanayake Mudiyanseelage Niranga Nalin Palipana,**
No. 154/1, Weerangula, Yakkala.

5. **Piyadi Gamage Asanka Rohana de. Silva,**
“Samaya”, Haldummala.
6. **Kathrithanthrihewage Ajantha Ranjani Peiris,**
No. 178, Pahan Maligaduwa Road,
Galtude, Panadura.
7. **Yakgaha Hewage Nirmala Dhamayanthi Banduprema,**
No. 17/6, Shalawa Road, Mirihana,
Nugegoda.
8. **Weerasinghe Kankanamage Inoka Priyadarshanie,**
No.18 A, Lady Evlyn De Soysa Road,
Idama, Moratuwa.
9. **Witharanage Renuka Mala Malkanthi Perera,**
No. 74, Gonagaha, Makawita, Ja ela.
10. **Samantha Senanayake,**
No. 220/4B, Dimuthu Mawatha,
Gampaha Road, Yakkala.
11. **Kiriwattuwege Dona Sumeda Priadashanie Perera,**
No. 248/A, Botanic Watta, Weligoda,
Kaluthara North.
12. **Kandambige Nishantha Pushpakumara,**
Opposite School, Kithsiripura, Radawela,
Matara.
13. **Sudath Kumara Jayasinghe,**
No. 208/B/2. Alothiya Watta Road, 1st
Lane, Walimilla, Bandaragama.
14. **Renuka Manju Sri Athurusinghe,**
No. 235, Asgiriwalpola, Udugampola.
15. **Mapitiyage Kuloja Gamindi Peiris,**
No. 657, Athurugiriya Road, Kottawa,
Pannipitiya.

16. **Thalahitiye Withanage Shanika Iranthi,**
No. 210, Ranala Road, Habarakada,
Homagama.
17. **Dona Harshanee Ranawake Darmasiri
Wijayawardhana,**
Jayanthi, Yatawatura, Padukka.
18. **Kaluthunga Mudiyansele Pushpanjalee
Kumari Kulatunga,**
Ihalagoda Watta, Kewitiyagala,
Polgampala.
19. **Ranjith Gurusinghe,**
No. 27/50, Bangalawatta, Marapola,
Veyangoda.

Petitioners

VS,

1. Ratnasiri Wickramanayake
Former Prime Minister and Minister of
Internal Administration.
2. D.M. Dayaratne
Former Minister of Plantation Industries.
3. Nimal Siripala De Silva
Former Minister of Healthcare and
Nutrition.
4. A.H.M. Fawzy
Former Minister of Petroleum and
Petroleum Resources.
5. Maithripala Sirisena
Former Minister of Agricultural
Development
and Agrarian Services Development.
6. Susil Premajayantha
Former Minister of Education.
7. Karu Jayasuriya
Former Minister of Public Administration
and Home Affairs.

8. Arumugam Tondaman
Former Minister of Youth Empowerment
and Scio-economic Development.
9. Dinesh Gunawardene
Former Minister of Urban Development
and Sacred Area Development.
10. Douglas Devananda
Former Minister of Social Services and
Social Welfare.
11. Ferial Ashraff
Former Minister of Housing and Common
Amenities.
12. P. Chandrasekeran
Former Minister of Community
Development
and Social Inequity Eradication.
13. A.L.M. Athaulla
Former Minister of Water Supply and
Drainage.
14. Tissa Vitharana
Former Minister of Science and
Technology.
15. D.E.W. Gunasekera
Former Minister of Constitutional Affairs
and National Integration.
16. Abdul Risath Bathiyudeen
Former Minister of Re-settlement and
Disaster Relief Services.
17. P. Dayaratne
Former Minister of Plan Implementation.
18. R.M. Dharmadasa Banda
Former Minister of Supplementary
Crops Development.
19. M.M. Mohamed
Former Minister of Parliamentary Affairs.
20. G.L. Peiris
Former Minister of Export Development
and International Trade.

21. John Seneviratne
Former Minister of Power and Energy.
22. Sumedha Jayasena
Former Minister of Child Development and Women's Affairs.
23. Sarath Amunugama
Former Minister of Enterprise Development and Investment Promotion.
24. Milroy Fernando
Former Minister of Public Estate Management and Development.
25. Jeewan Kumarathunga
Former Minister of Land and Land Development.
26. Pavithra Vanniarachchi
Former Minister of Youth Affairs.
27. Anura Priyadharshana Yapa
Former Minister of Mass Media and Information.
28. Tissa Karaliyadda
Former Minister of Indigenous Medicine.
29. Athauda Seneviratne
Former Minister of Labour Relations and Manpower.
30. Gamini Lokuge
Former Minister of Sports and Public Recreation.
31. Bandula Gunawardene
Former Minister of Trade, Marketing Development, Cooperatives and Consumer Development.
32. Mahinda Samarasinghe
Former Minister of Disaster Management and Human Rights.
33. Rajitha Senaratne
Former Minister of Construction and Engineering Services.

34. Mahinda Wijesekera
Former Minister of Posts and
Telecommunication.
35. Milinda Moragoda
Former Minister of Tourism.
36. Keheliya Rambukwella
Former Minister of Foreign Employment
Promotion and Welfare.
37. Piyasena Gamage
Former Minister of Vocational and
Technical Training.
38. R.M.S.B. Navinne
Former Minister of Rural Industries and
Self-employment promotion.
39. Janaka Bandara Tennakoon
Former Minister of Local Government and
Provincial Council.
40. Felix Perera
Former Minister of Fisheries and Aquatic
Resources.
41. R.M.C.B. Rathnayake
Former Minister of Livestock
Development.
42. Rohitha Bogollagama
Former Minister of Foreign Affairs.
43. Mahinda Yapa Abeywardene
Former Minister of Cultural Affairs.
44. Wisva Warnapala
Former Minister of Higher Education.
45. Chamal Rajapakse
Former Minister of Irrigation and Water
Management.
46. Kumara Welgama
Former Minister of Industrial
Development.
47. Dallas Alahapperuma
Former Minister of Transport.

48. Amarasiri Dodangoda
Former Minister of Justice.
49. Champika Ranawake
Former Minister of Environment and
Natural Resources.
50. P.R.T. Perera
Former Chairman Public Service
Commission.
- 50A. Jagath Balapatabendi – Chairman
51. Dayasiri Fernando
Former Member Public Service
Commission.
- 51A. Indrani Sugathadasa, Member
Public Service Commission.
52. W.P.S. Jayawardena
Former Member, Public Service
Commission.
- 52A. C.R.C. Ruberu, Member
Public Service Commission.
53. Palitha Kumarasinghe P.C.
Former Member,
Public Service Commission.
- 53A. A.I.M. Saleem, Member
Public Service Commission.
54. M.S. Mookiah
Former Member, Public Service
Commission.
- 54A. Leelasena Liyanagama
Member, Public Service Commission.
55. Mendis Rohandhira
Former Member, Public Service
Commission.
- 55A. Dian Gomes
Member, Public Service Commission.

56. Bernard Soysa
Former Member, Public Service Commission.
- 56A. Dilith Jayaweera
Member, Public Service Commission.
57. Gunapala Wickremaratne
Former Member, Public Service Commission.
- 57A. W.H. Piyadasa
Member, Public Service Commission.
58. Sirimavo Atigala Wijeratne
Former Member, Public Service Commission.
- 58A. Suntharam Arumallnayaham,
Member, Public Service Commission.
59. H.D.L. Gunawardena
Former Secretary, Public Service Commission.
- 59A. M.A.B. Daya Senarath – Secretary
Public Service Commission,
All of No. 177, Nawala Road,
Narahenpita, Colombo 05.
60. Former Secretary,
Ministry of Plan Implementation, Level 12,
Tower 5 Central Bank Building, No. 30,
Janadhipathi Mawatha, Colombo 01.
Now:
Secretary, Ministry of Public Services,
Provincial Councils and Local Government,
No. 330, Union Place, Dr. Colvin R De Silva
Mawatha, Colombo 02.
61. Former Secretary,
Ministry of Finance and Plan
Implementation,
The Secretariat, Colombo 01.
Now:
Secretary- Treasury, Ministry of Finance,
The Secretariat, Lotus Road, Colombo 01.

62. Attorney General,
Attorney General's Department, Colombo
12.
63. Mahinda Rajapakse
Minister of Buddhasasana, Cultural and
Religious Affairs, Minister of Urban
Development and Housing, Minister of
Economic Policies and Plan
Implementation.
64. Nimal Siripala de Silva
Minister of Labour, Ministry of Labour,
Kirula Road, Colombo 05.
65. Prof. G.L. Peiris
Minister of Foreign Affairs.
66. Dinesh Gunawardena
Minister of Education, Ministry of
Education,
"Isurupaya" Battaramulla - Pannipitiya
Road,
Battaramulla.
67. Dilum Amunugama
Minister of Transport.
68. Keheliya Rambukwella
Minister of Health, Ministry of Health,
385, Ven. Baddegama Wimalawansa
Thero Mawatha, Colombo 10.
69. Douglas Devananda
Minister of Fisheries, Ministry of Fisheries,
Maligawatte Road, Colombo 10.
70. (Mrs.) Pavithra Devi Wanniarachchi
Minister of Power.
71. Bandula Gunawardena
Minister of Trade, Ministry of Trade, No.
73/1, Galle Road, Colombo 03.
72. C.B. Rathnayake
Minister of Wildlife and Forest
Conservation,
Ministry of Wildlife and Forest
Conservation,

No. 1090, Sri Jayawardenapura Mawatha,
Rajagiriya.

73. Janaka Bandara Tennakoon
Minister of Public Services, Provincial
Councils and Local Government, Ministry
of Public Services, Provincial Councils and
Local Government, Union Place, Colombo
02, 330 Dr. Colvin R De Silva Mawatha,
Colombo.
74. Dullas Alahapperuma
Minister of Mass Media, Ministry of Mass
Media, Elvitigala Mawatha, Colombo 05.
75. Chamal Rajapakse
Minister of Irrigation, Ministry of
Irrigation,
11, Jawatta Road, Colombo 05.
76. Johnston Fernando
Minister of Highways, Ministry of
Highways,
No. 216, 9th Floor, Denzil Kobbekaduwa
Mawatha, Koswatte, Battaramulla.
77. S.B. Dissanayake
Minister of Industries, Ministry of
Industries,
3, 73/1 Galle Road, Colombo 03.
78. Basil Rajapakse
Minister of Finance, Ministry of Finance,
Lotus Road, Colombo.
79. Mahinda Amaraweera
Minister of Environment, Ministry of
Environment, "Sobadam Piyasa" No.
416/C/1, Robert Gunawardana Mawatha,
Battaramulla.
80. S.M. Chandrasena
Minister of Lands, Ministry of Lands,
"Mihikatha Madura", Land Secretariat,
No. 1200/6, Rajamalwatta
Road, Battaramulla.
81. Mahindananda Aluthgamage
Minister of Agriculture, Ministry of

Agriculture,
80/5, "Govijana Mandiraya" Rajamalwatta
Lane, Battaramulla.

82. Vasudewa Nanayakkara
Minister of Water Supply, Ministry of
Water Supply, Lakdiya Medura, 35 New
Parliament Road, Sri Jayawardenepura
Kotte.
83. Gamini Lokuge
Minister of Energy, Ministry of Energy,
No. 84, Sir Ernest de Silva Mawatha,
Colombo 07.
84. Ramesh Pathirana
Minister of Plantation, Ministry of
Plantation,
11th Floor, "Sethsiripaya" 2nd Stage,
Battaramulla.
85. Prasanna Ranatunga
Minister of Tourism, Ministry of Tourism,
2nd Floor, Asset Arcade (Pvt) Ltd., No. 51-
E, York Street, Colombo 01.
86. Rohitha Abeygunawardhana,
Minister of Ports and Shipping, Ministry of
Ports and Shipping, 19, 1 Chaithya Road,
Colombo.
87. Namal Rajapakse
Minister of Youth and Sports, Minister of
Development Co-ordination, No. 9, Philp
Gunawardhana Mawatha, Colombo 07.
88. Ali Sabry
Minister of Justice, Ministry of Justice,
Superior Courts Complex, Adhikarana
Mawatha, Colombo 12.
89. Sarath Weerasekara
Minister of Public Security, Ministry of
Public Security, 14th Floor, "Suhurupaya",
Battaramulla.

Respondents

Before: **Justice Vijith K. Malalgoda, PC**
 Justice Murdu N. B. Fernando, PC
 Justice Yasantha Kodagoda, PC

Counsel: Manohara de Silva, PC with Harithriya Kumarage and Sasiri Chandrasiri for the Petitioners in SC FR 236/2008 and SC FR 237/2008
 Chamantha Weerakoon Unamboowa with Tersha Abeyratne for the 54th, 55th and 56th Intervenient Respondents in SC FR 460/2017
 Sanjeewa Jayawardena, PC with Milhan Mohamed for the 61st Respondent in SC FR 236/2008
 Shaheeda Barrie, DSG with Rajitha Perera, SSC for the Respondents other than the 54th to 56th Respondents in SC FR 460/2017 and 61st Respondent in SC FR 236/2008 in all three matters

Argued on : **01.04.2022, 17.05.2022**

Judgment on : **01.03.2023**

Vijith K. Malalgoda PC J

Out of the two Fundamental Rights Applications argued before us, in SC FR 236/2008 the Petitioners were the then President, Vice President, Secretary and Several Members of the Sri Lanka Planning Service Association and in SC FR 237/2008 the Petitioners were 19 successful candidates who got through the open competitive examination to be recruited to Class II Grade II of the Sri Lanka Planning Service (hereinafter referred to as SLPS).

Petitioners in both applications in common had challenged a decision of the Public Service Commission dated 28th May 2008, communicated to the Secretary Finance and Planning (P-10 and P-6 respectively) In addition to the above, guide lines attached to the above letter (P-11) was also challenged in SC FR 236/2008 and a Cabinet Decision (P-5) dated 24.10.2007 was challenged in SC FR 237.

Since the Petitioners in both applications had challenged the appointments made to Class II Grade II of the SLPS on supernumerary basis, based on the above documents, parties agreed to argue both matters together and to abide by one judgment.

As submitted by the Petitioners, SLPS was established by Government Gazette Extraordinary No. 345/40 of 19.04.1985 with effect from 01.01.1985. The service minute for the said service was amended a few times and the service minute that was relevant to the instant case was published in the Government Gazette Extraordinary 1134/5 dated 30th May 2000. According to the said service minute, SLPS is an all-Island service and its structure consists of Class II Grade II (recruitment Grade) Class II Grade I, and Class I officers. Recruitments to SLPS are made to Class II Grade II and it can only be made except as provided in the service minute consequent to the Relevant Competitive Examinations.

According to Clause 6.4, not more than 75% of the recruitment made to Class II Grade II of SLPS will be made on the results of an Open Competitive Examination conducted by the Commissioner of Examination, and Clause 6.5 provides for appointment not more than 25% of the vacancies in Class II Grade II be made by the results of a Limited Competitive Examination.

In addition to the above, Clause 9 of the service minute provided certain categories of officers to be absorbed into the SLPS at a different level. Clause 9.1 provides the absorption as follows;

9.1 Officers holding non-combined service posts of planning officer, Assistant Director, Deputy Director, Advisor, Additional Director, and Director and incomparable grades engaged in planning functions in Ministries where the Planning Service is effective will be absorbed into Class 1, Class II Grade I and Class II Grade II of the Planning Service in the following manner

9.1.1. Into Class I of the Planning Service will be absorbed officers in the categories referred to in paragraph 9.1 appointments on the salary scale Rs. 72,000-10x3600-108,000 per annum.

9.1.2. Into Class II Grade I of the Planning Service Will be absorbed officers in the categories referred to in paragraph 9.1. above who on the prescribed date hold appointments on the salary scale Rs. 48,000-4x1,800-7x2,400-72,000 per annum.

9.1.3. (i) Officer in categories referred to in paragraph 9.1 above who hold appointments on the salary scale Rs. 40,800-11x1,200- Rs. 54,000 per

annum. (Such officers will be allowed to retain the same salary scale as personal to them on absorption into the Planning Service).

(ii) Officers in the categories referred to in paragraph 9.1 above, who hold appointments on the salary scale Rs. 36,000-15x1,200-54,000 per annum (Such officers will rank lower in seniority to those officers who are absorbed into Class II Grade II under subparagraph 9 (1) above).

However, officers referred to in Appendix 'E' to the service minute including the Development officers are not entitled to the absorption referred to in Clause 9 above but are entitled to sit for the Limited Competitive Examination of the SLPS.

The 60th Respondent, Secretary to the Ministry of Plan Implementation by letter dated 23.02.2007 called for applications from officers who are eligible for absorption under Clause 9.1 of the service minute of the SLPS but, the heading of the said letter referred to as "Absorption of Development Officers attached to the Ministry of Plan Implementation to the Sri Lanka Planning Service."

Even though Clause 9.1 of the service minute had provided for the absorption of certain categories of officers into the SLPS as referred to above, the service minute had not provided for the absorption of the Development Officer as referred to in the above letter. Some of the Petitioners before this court had challenged the vires of the said decision before the Court of Appeal in CA Writ 329/2007 and the proceedings of the said application were terminated on certain undertakings given to courts by the Respondents. Proceeding before the Court of Appeal on 16.06.2007 reads thus;

"Learned Senior State Counsel appearing for the 1st, 2nd and 4th Respondents informs the court that according to the instructions received from the Public Service Commission, the Commission will not make any appointments based on the document marked P-8 and decides to follow the procedure laid down in the service minute. In view of the said undertaking given by the learned Senior State Counsel, Counsel for the Petitioner states that no purpose would be served in proceeding with this application. Proceedings are therefore terminated."

However, a Cabinet Memorandum dated 14th August 2007 was submitted to the Cabinet of Ministers by the then Minister of Plan Implementation recommending that,

"A special examination be conducted by SLIDA to the Development Officers who were eligible under the service minute of the SLPS to sit for the competitive examination, in

order to assess their suitability for absorption of those officers into SLPS and to absorb those who were successful at the said examination to Class II Grade II of SLPS on the supernumerary basis,”

and the said memorandum was approved by the Cabinet of Ministers at the Cabinet meeting held on 15.08.2007.

Since the said Cabinet Decision was contrary to the undertaking given before the Court of Appeal, that, “steps would only be made under the service minute of SLPS to recruit Development Officers,” the said Cabinet Decision was challenged before the Supreme Court under SC FR 317/2007 by some of the Petitioners’. The proceedings before the Supreme Court in the said application were also terminated since the learned Deputy Solicitor General who represented the Respondents before the court informed that “on the basis of the representation made, a note had been submitted to the Cabinet of Ministers to reconsider the decision made on the memorandum P-6. Thus, no firm decision has been made in regard to the special examination that is complained in the application.”

As submitted by the Petitioners in 237/2008, while the above process to absorb Development Officers was pending, 75% of the remaining vacancies in the SLPS (i.e., 300 vacancies out of 400 vacancies) were to be filled under Clause 6.4 of the service minute by an Open Competitive Examination and the said examination was held on 05.05.2007. Applications were also called from those who were eligible under the service minute of SLPS, by Government Gazette 1513 dated 31.08.2007 to sit for the Limited Competitive Examination to fill the balance vacancies and the said examination was held in 08.03,2008.

Whilst the results of the said examination were pending, the Petitioners (in both applications) came to know of a decision by the Public Service Commission communicated to the Secretary to the Ministry of Finance and Plan implementation by letter dated 23rd May 2008 directing him to absorb the category of officers who are eligible to sit for the Limited Competitive Examination as at 01.01.2007 under the schedule to the service minute of SLPS, to the post of planning officer Class II Grade II on the supernumerary basis on the results of a special examination held by the Commissioner of Examination.

The letter and guidelines issued by the Public Service Commission were marked as P-6 to the Petition in SC FR 237/2008. As per the said guidelines;

“All the officers referred to in Schedule “E” to the service minute of the SLPS who are eligible to sit for the Limited Competitive Examination as at 01.01.2007 were eligible to

sit for a paper on “plan implementation and assessment of projects” at an examination conducted by the Commissioner of Examination and obtain 40 marks, for the said candidate to be appointed to the Post of Planning Officer Class II Grade II on the supernumerary basis personal to the officer.

An officer who is appointed to the above post is only entitled to the salary of the Class II Grade II officer but not entitled to any other privileges or promotions and to obtain such privileges or promotions the officer should follow the service minute and sit for the Open or Limited Competitive Examination.

The number of posts available for the above scheme is 526.”

The Petitioners in SC FR 237/2008 were able to find the Cabinet Decision with regard to the above direction by the Public Service Commission and produced marked P-5. As observed by this court the said decision has arrived at the meeting of the Cabinet of Ministers held on 24.10.2007 based on a note to Cabinet dated 23.10.2007 and the said decision reads thus;

“Cabinet having considered the report of the Committee of officials appointed by the Cabinet decision of 10.10.2007 decided to grant approval to the following promotional scheme recommended by the officials’ committee, to be implemented through Public Service Commission.”

- a) These officers be granted the opportunity which they have been deprived of, i.e., to be recruited to Class II Grade II of the SLPS, and for this purpose, a special examination be held at which their suitability will be tested;
- b) This opportunity be made available to officers who qualified to sit the Competitive Limited Examination referred to in the SLPS minute, as of January 1st, 2007; and,
- c) The successful candidates be recruited to the SLPS on a supernumerary basis.

The Petitioners before this court, including the members of the Sri Lanka Planning Service Association and a group of candidates selected through the Competitive Examination to Class II Grade II of the SLPS who were dissatisfied and aggrieved by the said Cabinet Decision to which they had no access until the directive of the Public Service Commission in implementing the said decision was communicated by its letter dated 23rd May 2008, had invoked the jurisdiction of this court challenging the Cabinet Decision dated 10.10.2007 and the Directive issued by the Public Service Commission on 23rd May 2008, had further submitted that;

As per the service minute of the SLPS, 25% of the vacancies are to be filled by a Limited Competitive Examination which is open to the category of officers identified in Appendix ‘E’ to

the service minute, and an examination was held on 08.03.2007 to fill 100 vacancies which is 25% of the remaining vacancies and therefore conducting a special examination after conducting the Limited Competitive Examination had provided for,

- i) An opportunity for those who failed the Limited Examination to enter the SLPS in violation of the service minute of the SLPS
- ii) To conduct an examination in violation of the provisions of the service minute of the SLPS when the service minute had identified the areas under which the Competitive Examination should conduct, but the guidelines provided by the Public Service Commission had only provided to conduct the special examination with one subject on “Plan implementation and assessment of projects” in contravention of the provisions of the service minute.
- iii) To create an imbalance in the service by allowing 526 Class II Grade II officers to be recruited to the SLPS when in fact only 100 vacancies were available for those who come within Appendix ‘E’ of the service minute and a Competitive Examination had already being conducted to fill those 100 vacancies.
- iv) To create an excess of Class II Grade II officers when the cadre for Class II Grade II is only 553 officers island-wide.
- v) An opportunity that would result in a parallel group of officers outside the approved cadre carrying out the same functions as the officers holding substantive cadre positions, which will have an adverse impact on the functioning of SLPS.

and argued that it would violate and continue to violate the Fundamental Rights of the Petitioners guaranteed under Article 12 (1) of the Constitution.

Petitioners in both applications had moved for interim relief to suspend the implementation of the Cabinet Decision/ directive by the Public Service Commission pending the applications before this court but when both matters were supported for leave to proceed on 02.09.2008, leave to proceed for alleged violation of the Fundamental Rights guaranteed under Article 12 (1) was granted by this court without granting any interim relief as prayed for.

On behalf of the Respondents, the 17th and 50th Respondents in SC FR 237/2008, the Minister of Plan Implementation and the Chairman Public Service Commission respectively had submitted the following before this Court.

- a) Post of Project Officer was created in the year 1996 with a Cabinet approval granted on 20th November 1996 in order to recruit unemployed graduates. In the year 1997, and in

1998, the Post of Development Assistant was created and two batches were recruited under the Graduate Scheme Officers.

- b) The designation of the Development Assistant was changed to Development Officer in the year 2000 on a Cabinet Decision that was taken based on a Cabinet Memorandum dated 15.09.2000.
- c) Subsequent to the said decision, a scheme of recruitment was also approved for the Post of Development Officer and in the said Scheme of recruitment, Efficiency Bar and Promotional aspects had been identified under Clause 6 and under note (iii) to the said clause, promotional aspects had been referred to as follows;

iii. වසර 05 ක සතුවූදායක සේවා කාලයකින් පසුව ශ්‍රී ලංකා ක්‍රමසම්පාදන සේවයේ II/II තනතුරු සඳහා ඉල්ලීම් කිරීමට හැකිවන පරිදි කටයුතු කරනු ලැබේ

- d) In the meantime, the minute on the Sri Lanka Planning Service was approved and published in the Government Gazette Extraordinary 1134/5 dated 30.05.2000, and Clause 6.5.1 of the said minute had provided for the appointment of not more than 25% of the vacancies in Class II Grade II of SLPS by way of a Limited Competitive Examination conducted among the officers identified in Appendix 'E' to the minute and as already noted in this judgment, Post of Development Officer is included to Appendix 'E'
- e) Even though the service minute for the SLPS had provided for the Limited Competitive Examination as referred to above, the said examination was not conducted for several years and the Development Officers who completed 05 years of service were agitating for their promotions by the year 2007
- f) The secretary to the Ministry of Plan Implementation in consultation with some authorities decide to absorb Development Officers who had completed 05 years satisfactory service to SLPS Class II Grade II considering the provisions in the scheme of recruitment of the Development Officers (P-7)
- g) The said decision was challenged before the Court of Appeal in CA 329/2007 and in the meantime Secretary to the Ministry of Plan Implementation wrote to the Public Service Commission seeking approval for the absorption 349 Development officers to Class II Grade II of SLPS
- h) However, by letter dated 4th June 2007, the Public Service Commission refused to consent the above request and also informed its decision to the Court of Appeal

- i) A Cabinet Memorandum titled “strengthening the Sri Lanka Planning Service with special emphasis to plan implementation” dated 14th August 2007 was submitted to the Cabinet by the 17th Respondent
- j) In the said Cabinet Memorandum, it was recommended that,
 - a) a special examination be conducted (by the Sri Lanka Institute of Development Administration) for these officers to assess their suitability for absorption;
 - b) the examination focuses primarily on an assessment of applying knowledge relating to field-level experience in planning and plan implementation.
 - c) those who are successful at the examination be absorbed into supernumerary Class II Grade II posts in the SLPS with effect from a prospective date, provided they have completed five years of continuous active service, been confirmed in the post, and have passed the first Efficiency Bar examination specified in the scheme of recruitment;
 - d) those who are successful at the examination but have not passed the first Efficiency Bar examination at that time, but complete that examination subsequently, be absorbed as set out above, with effect from a prospective date after they pass the First Efficiency Bar Examination;
 - e) such number of supernumerary posts as are equivalent to the number of successful candidates be specially created at Class II Grade II level to enable these appointments to be made and that simultaneously the posts currently held by those officers are suppressed;
- k) The Cabinet of Ministers had approved the said recommendation and the said decision was communicated to the Public Service Commission in order to grant relief as proposed in the Cabinet Memorandum
- l) By letter dated 28th September 2007 the Public Service Commission had voiced its disagreement to the implementation of the said Cabinet Decision
- m) On 10th October 2007 the Cabinet of Ministers rescinded its earlier decision and appointed an official committee comprised of the Secretary to the Ministry of Finance, Secretary to the Ministry of Plan Implementation, Secretary to the Ministry of Urban Development, Director General Management Services, Director General Department of Establishment and Director General (Administration) Ministry of Finance and Planning to formulate a common promotional scheme and the report of the said committee recommending;

- a) that these officers be granted the opportunity which they have been deprived of, i.e., to be recruited to Class II Grade II of the SLPS, and that, for this purpose, a special examination be held at which their suitability will be tested.
- b) that this opportunity is made available to officers who qualified to sit the Limited Competitive Examination referred to in SLPS minute as of January 1, 2007.
- c) that the successful candidates be recruited to the SLPS on a supernumerary basis.

was submitted to the cabinet on 23.10. 2007 along with a note to Cabinet by the 17th Respondent.

- n) The said note to Cabinet and the recommendation of the official committee, were once again considered by the Cabinet of Ministers on 24.10.2007 and approved the said recommendations (P-5) and referred to the Public Service Commission for its implementation.
- o) Public Service Commission having considered the said decision, had issued necessary instructions to the Secretary to the Ministry of Finance and Plan Implementation to implement the said Cabinet Decision (P-10 and P-5) along with guidelines from the Public Service Commission (P-11 and P-6) which is challenged before this court
- p) The Public Service Commission, has emphasized the fact that appointments to the Public Service are vested with the Public Service Commission, had taken up the position that it is for the Cabinet of Ministers to decide the policy behind recruitment to the Public Service and therefore its decision to implement the Cabinet Decision dated 24.10.2007 was not in violation of Article 55 (1) of the Constitution.

As further submitted by the Respondents, Article 55(4) of the Constitution which reads as, “subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters of policy relating to the public officers” had provided for the Cabinet of Ministers to decide the policy relating to public officers.

However, with regard to the Cabinet Decision dated 24.10.2007 which was carried out by the Public Service Commission by its letter dated 28th May 2008 the Petitioners argued that, in the absence of an amendment to the service minute the Cabinet of Ministers cannot take a policy decision contrary to the provisions in a service minute, that has been properly adopted and in force at a given time.

In this regard the Petitioners relied on the observation of Prasanna Jayawardena J in the case of ***K.W.S.P. Jayawardena V. Gotabhaya Jayarathne and Others SC FR 338/2012*** SC minute dated 30.01.2018 to the effect that “..... the Cabinet of Ministers would be expected to act in terms of the existing service minute marked P-2 other than in instances where a lacuna in P-2 is detected that and the Cabinet of Ministers act specifically for the purposes of addressing that lacuna....”

However, it is observed, that the said observation was made by His Lordship in obiter, since His Lordship had made the following observation prior to his conclusion referred to above.

“Therefore, the aforesaid question of whether the Public Service Commission and the Ministry of Education are entitled to implement the aforesaid proposal and act outside the scheme set out in the service minute marked ‘P-2’ on the basis of giving effect to a ‘policy decision’ taken by the Cabinet of Ministers, does not arise for consideration.”

Whilst referring to Article 55 (1) of the Constitution his Lordship had further observed in the said Judgment that;

“Authorize the Cabinet of Ministers to direct that a Service Minute be amended or scrapped altogether and replace with another or to direct that a specific procedure be adopted to meet the needs of specific circumstances, which are outside the compass of a service minute or are not met by the provisions of a Service Minute. In ***Hettiarachchi V. Senevirathne [1994 3 SLR 290]*** Fernando J in a very brief judgment, expressed the view that the Cabinet of Ministers is not necessarily bound to act in terms of Service Minutes such as “P2” (emphasis added)

Petitioners further relied on the judgment in ***Public Services United Nurses Union V. Montague Jayawickrema 1988 1 SLR 229*** and argued that the Cabinet Decision granting an *ad hoc* promotion to a limited class of officers violates the equality provisions contained in Article 12 of the Constitution.

Since a Cabinet Decision to grant an addition salary increment to a class of officers was declared as violation of the Fundamental Rights of the Petitioners in the said case it is my duty to consider the relevancy of the said Judgment to the instant case.

In the said case a proposal was made to the Cabinet of Ministers to pay a group of non-striking workers;

- a) Two increments to all nursing personal who worked during the full period of the strike

- b) One increment to those nursing personal who reported for duty at various stages before 16.04.1986

The said proposal was approval by the Cabinet of Ministers but was challenged before the Supreme Court.

When considering the matter before the Supreme Court, Wanasundera J whilst referring to the decision by Sharvananda CJ in the case of ***Abeywickrema V. Pathirana (1986) 1 Sri LR 120*** had observed the following,

“Although one cannot altogether rule out a few matters in which, *ad hoc* determinations may be made by the Cabinet, it is however essential, as Sharvananda, C.J, states, that “provisions as to salary increments, leave, gratuity, pension and of super annuity, promotion and every termination of employment and removal from service” should be in the form of rules “which are general in operation though they may be applied to a particular class of public officers.” Further, when existing general rules are sought to be altered, this too must be done in the same manner and following the identical procedure as for their formulation, namely, by enacting an amending rule. Could one say that this procedure has been followed in the present case?

When the proposal for the payment of the increments came up for consideration, two Ministers- the Minister of Finance and the Minister of Public Administration (the two Ministers most connected with this subject)- were against it. Their views are informative. The Minister of Public Administration observed:

- i) While some recognition may be called for, for reporting for duty and doing their normal quote of work, it would not be justifiable to pay extra increments with its continuing cumulative benefit.
- ii) An ex-gratia payment of an extra day’s wage to each, in respect of each such day could be more “appropriate.”

The Minister of Finance was of the view that the proposal was wrong in principle. He stated;

“The payment of additional increments, as proposed would set a precedent which would have to be followed in future by all Government Departments and Corporations. The payment of increments would also involve additional remuneration to the officers concerned for many years until they reach the *maxima* of their salary scales. I would suggest that instead of paying additional increments, these nurses should be paid a once-

and-for-all honorarium. The quantum of the honorarium should be determined in consultation with the Ministry of Public Administration, and the honorarium should be paid from savings in the votes of the Ministry of Health.”

These perceptive comments point to the basic objections that lie in the way of such a proposal. When Article 55 of the Constitution vests authority over public affairs in the Cabinet and makes it mandatory for the Cabinet to formulate schemes of recruitment, and codes of conduct for public officers, the principles to be followed in making promotions and transfers etc., The Constitution contemplates fair, and uniform provisions in the nature of general rules and regulations and not an action that is arbitrary or *ad hoc* or savoring of bias discrimination.”

As observed by this court the basis for the above decision was the arbitrary nature, the Cabinet had decided to grant an *ad hoc* increment to a group of public servants when the proposal was objected to by the most important Ministers, the Minister of Finance and Minister of Public Administration.

However, the circumstance under which the Cabinet of Ministers reached a decision to conduct the special examination for those officers who are qualified to sit for the Limited Competitive Examination and to make the appointments to those who got through the special examination on a supernumerary basis was different to the decision referred to in the said case. In this regard, the court is further mindful of Article 55 (4) of the Constitution (the text that was operative at the time the Cabinet of Ministers took the decision) which I have already referred to in this judgment.

As already referred to in this judgment, the Public Service Commission had initially turned down the recommendation to recruit the Development Officers to the SLPS Class II Grade II by the Secretary to the Ministry of Plan Implementation and once again voiced its disagreement with the Cabinet of Ministers when the Cabinet of Ministers approved a Cabinet Paper to recruit Development Officers to Class II Grade II of SLPS based on the results of a special examination on supernumerary basis. The Cabinet of Ministers considered the matter further on 10th October 2007 and appointed an “official committee,” comprising three Ministry Secretaries and the Director General of Management Services to reconsider the recommendation already before the Cabinet and thereafter gave the approval to the recommendations made by the official committee. In these circumstances, it is clear that the decision of the Cabinet of Ministers reached on 24.10.2007 was a well-considered decision by the Cabinet of Ministers and the said decision comes well within Sub-Article 4 to Article 55 of the Constitution. Therefore, the policy

on the absorption of Development officers to Class II Grade II of SLPS was resolved by the Cabinet Decision dated 24.10.2007. (P-10)

In the case of ***Samastha Lanka Nidahas Grama Niladhari Sangamaya and Others V. D. Dissanayake, Secretary, Public Administration and Ministry of Home Affairs, and Others SC Appeal 158/2010*** SC minute 14.06.2013 this court observed;

“The first substantive question that has to be determined on appeal, in this case, is purely one of the *vires* and arises in the context of certain constitutional provisions which seek to distinguish between two categories of decisions that can be made by the executive arm of Government. The first of these are decisions relating to “the appointment, transfer, dismissal and disciplinary control” of public officers, which was vested in the Public Service Commission by Article 55 (1) of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as “the Constitution of Sri Lanka”) as amended by the Seventeenth Amendment thereto, which was in force at the time of the pronouncement of the impugned judgment of the Court of Appeal the second of these categories are decisions pertaining to policy, which in the context of the public service are exclusively vested in the Cabinet of Ministers by Article 55 (4) of the Constitution of Sri Lanka, as amended by the Seventeenth Amendment.”

In the case of ***Jathika Sevaka Sangamaya V. Sri Lanka Hadabima Authority SC Appeal 15/2013*** Supreme Court minute 16.12.2015 this court further observed that;

“As pointed out earlier under Article 42 and 55 of the Constitution, the Cabinet of Ministers are performing executive functions under the Constitution and their decisions can be either policy decisions or administrative decisions or both. Accordingly, the decisions of the Cabinet of Ministers other than the policy decisions are amenable to judicial review.”

In ***Deawoo Engineering and Construction Co. Ltd V. Amarasekera (2006) 2 Sri LR 232*** it was observed that;

“Equally, the court is ill equipped to pronounce that the decision of the cabinet is Arbitrary, illegal or unreasonable unless there is concrete evidence to establish that the cabinet in taking such a decision has violated and acted contrary to the laws of the land.”

When considering the material that has already discussed in my judgment and the decisions referred to above, I see no merit in the two applications considered by me in this judgment. The

Petitioners in both applications have failed to establish the violation of their Fundamental Rights guaranteed under Article 12 (1) of the Constitution.

Both Applications are accordingly dismissed. I make no order with regard to costs.

Applications are dismissed.

Judge of the Supreme Court

Justice Murdu N. B. Fernando, PC

I agree,

Judge of the Supreme Court

Justice Ysantha Kodagoda, PC

I agree,

Judge of the Supreme Court