

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

In the matter of an application under Article 126 of
the Constitution of the Democratic Socialist
Republic of Sri Lanka.

SC (FR) No. 572/08

1. Sri Lanka Principals' Service Grade 1 Officers' Association, HUG,4, Gunasinghepura, Colombo
2. R.H.M.K.S. Bandara, 20/18, Samagi Mawatha, Yakkala.
3. H.M. Rajakaruna, 51, Weerasinghe Mawatha, Waragoda, Kelaniya.
4. P.G. Premadasa, 45/3, Railway Station Road, Kapuwatte, Ja-ela.
5. G.K.D. Dharmadasa, Kotahena Central College, Colombo 13.
6. Upali Liyanage 53, Foster Lane, Colombo 10.
7. K.K.D. Gamini Ranaweera, 19A, Siripura, Dodangoda.
8. W.M. Upali Seevirathna, 26/10, 1st Lane, Wickramarachchi Mawatha, Yakkala.
9. D.L. Padmasili, 253/3, Mudiyansege Watta, Dalugama, Kelaniya.
10. A.D. Karunasena, 95/4, 2nd Lane, Bandaranayakepura, Indigolla, Gampaha.
11. H.D. Somawathi, 43/1/A1, IDH Road, Shalamulla, Kolonnawa.
12. H.M.Chandrasiri, 57, Oruthota Road, Gampaha.
13. L.L.Thilakarathne 281, Hansagiri Road, Gampaha.

14. G.D.Ranjith Premasiri, Kudathuduwa, Horana.
15. D.W.M. Senarath Bandara 41/10, Ananda Mawatha, Gampaha.
16. G.D.Chandralatha, 102, Galthumbe, Bandaragama.
17. K.D.A. Dissanayake, 422/6/7, Parakrama Mawatha, Kirillawa, Kadawatha.
18. P.K. Jayasinghe, Araliya Watta, Andagoda, Dikkubura.
19. N.W.G.Sumeda 'Nipuna', Baddegama Road, Uluritike.
20. L.M.Sirisena, 142/1, School Road, Badalkumbura.
21. T.M. Nirmala Deshani, 105, Weliyaya, Monaragala.
22. K.G.S.K.Pathirana, Makulla Town, Dambagalla.
23. M.K.Senevirathne, M49, Pandulagama, Anuradhapura.
24. Jayasiri Gajaweera, 4, 'Bagya', Galle Road, Molligoda, Wadduwa.
25. H.K.Thilakarathne, 207, C.B.L. Gunasekera Mawatha, Horana.
26. S.A.S. Sooriyarachchi, 93/1, Artitage Hill, Wakwella, Galle.
27. S.M. Chandrika Silva, 15A, Araliya Uyana, Kaluthara South.
28. W.H.A. Rajawasam Abhayawasa, Thawalama.
29. H.M. Gunarathne, Meegahapitiya, Dambagalla.
30. D.M. Lokumanike, "Nadeesha", Meegahapitiya, Dambagalla.

31. W.P. Chandralatha, 40C, Oruthata, Gampaha.
32. K.K.D.P. Ranaweera Millagasmulla, Agalawatta.
33. Liyanage Thilkasiri, Guruniwasa, Edirisigha
Harischandra Vidyalaya, Anuradhapura
34. I.A. Usnar Guruniwasa, A A/Nachchaduwa
Viduhala, Anuradhapuraya.
35. K.M. Gunawardana Aluthwatta, Madikumbura,
Monaragala.
36. Mr. P.M. Piyadasa, 'Smpath Sewana', Keselwttta,
Marawa, Monaragala.
37. R.A. Nndawathi, 148, Magandanamull Road,
Kolengolla, Monaragala.
38. T.B.C. Mahath, 255A, Gothami Road,
Wellampitiya.
39. M.G. Kulathunga, Baduraliya West.
40. M.P. Premasiri, 2/14, Thewatta,
Uduthuththiripitiya.
41. L.A. Witharana, 323/1, Madawala Road,
Katugasthota.
42. Sumithra Block 35/15, Kimbulawala Road.
Alpitiya.
43. W.K. Upasena Praduwa Watta,
Batuwanthudawa, Wkwella, Galle.
44. N.G. Gunapal, 174/4, Higgahawatta,
Godakanda, Karapitiya, Galle.
45. M.S. Gunawardana 22 Post, Gangabada Road,
Nakkala.
46. L.H.S. Padmini de Silva, 172B. Bandaranayake
Mawatha, Asgiriya, Gampaha.

47. A. Jayathissa, 147A, Galahitiyawa, Ganemulla.
48. S.P. Jayawickhrama, 42/3. Galgampitiya, Kalagedihena.
49. Mr. D.A. Kulathunga, 211, Palawatta, Pituwalgoda, Yakkala.
50. R.N. Withanarachchi, 49A, 117, Hansahiri Road, Gampaha.
51. N.K.Y. Gunarathne 74, Silver Range, Panapitiya, Waskaduwa.
52. Mr. D.S.C. Weligama, 26/15/A, Bangalawatta, Massala, Beruwala.
53. B.D. Wimalasena, 11, Nagasena Mawatha, Anuradhapuraya
54. R.M.kumarihamy, 'Sameerana', Rupaha.
55. Mr. M.E. Dayananda, Guruniwasa, M/o. Dutugamunu M.M.V., Buttala.
56. Miss P.G. Wickramathilak 92A, New Gothatuwa Road, Kolonnawa, Wellampitiya.
57. Mr. P.A. Amarasinghe, 5/35, Dutugamunu Road, Monaragala.
58. Mr. D.M. Siriwardana, 520, Udaganawa Temple Road, Buttala.
59. Mr. U.G. Soamasiril, 20/1A, Mahanama Road, Walana, Panadura.
60. Mrs. J.M. Gnanawathi, ' Jayamini', Wepathariya, Hakmana.
61. Mr. G.W.S. Chandrasiri, 4, Assweddume Watta, Kahagolla, Diyathalawa.
62. Mr. A.A.W. Pathiraja, Kakullapokua, Weerapokuna.

63. Mr. P.K.A. Premisiri, 'Maheshi', Malana, Kamburupitiya.
64. Mr. M.M. Shelto Kularathne, 21, 'Lakmli', Donald Jane's Road, Bataganwila, Galle.
65. Mrs. M.G. Sriya Mathota, 11, 3rd Road, Ambathannawatta Road, Bandarawela.
66. Mr. R.M. Gunasekera, Rajagiriya, Kolathanna, Haputhale.
67. Mr. R.M. Indrananada, Guruniwasa, Halpe Central College, Elahalpe, Bandarawela.
68. Mr. Sellananda Karunasena Alwis, 288, Hirunukaduwa Road, Badulla.
69. Mrs. M. Ekanayake, 41/1, Station Junction, Payyagala North, Payyagala.
70. Mr. H.W. Sumanasena lhalawatta, Mapalagama, Galle.
71. Mr. H.M. Darmasena Wijethunga, 11, Udadikdarawa, Badulla Road, Bandarawela.
72. Mr. R.M.N. Sumathipala, Guruniwasa, Bandarawela Central College, Bandarawela.
73. Mrs. W.M. Dayani Shanthilatha, 'Nimali', Halpe, Elahalpe.
74. Mr. R.A. Justin Kahahena, Waga.
75. Mrs. E.A. Siriyawathi, 13/4AG, Gunarathne Mawatha, Maitipe, Galle.
76. Mr. M.M.M. Abeyrathne, Abeyraja Mawatha, Kadirandala, Mathugama.
77. Mr. M.D. Upali Premalal, 'Dilhani', Kaduruke, Bussa.
78. Mr. M.H. Wijesinghe, Singhewasee, Ambagahahena, Kirama.

79. Mr. W. Nimal Rupananda, 13/1, German Watta, Pepiliyawala.
80. Mrs. A.A. Mallika Jayanthi 41, Pehekam Niwasa, Punchi Bangahawa.
81. Mr. A. Gamini, 93, Maha Vidyalaya Road, Wathurugama.
82. Mr. W.A.J. Wickramasinghe, Makulwewa, Kuratihena.
83. Mr. J.M. Dharmasena, Agarauda, Morahena.
84. Mr. A.P. Douglas Sirisena, Dunukona, Bandarakoswatte.
85. Mr. C.S. Illangakoon, Rathmalla, Katupotha.
86. Mrs. E.S. Malani in front of Hospital, Bingiriya.
87. Mr. A.A. Somarathne, Wahumuwa, Pulikirindawa.
88. Mr. A.M. Karunasena, Weerambuwa, Kuliypitiya.
89. Mr. G.D. Senarathne Dalupotha, Hettipola.
90. Mr. S.A. Munidasa, Hanthihawa, Halmillawewa.
91. Mr. K.R. Upali, Meegahapelessa, Welipannagahamulla.
92. Mr. W.G. Dasanayake, Horagollawewa, Karanneluwa.
93. Mr. W.K.R. Stanly Fernando, Habarawewa, Dummalasuriya.
94. Mrs. S. Sarojani, 'Chathuraga', Kohonnawa, Kuliypitiya.
95. Mrs. P.M. Ariyawathi, Fonseka Watta, Ganangamuwa, Nakkawatta.

96. Mr. H.M. Piyasena, Pahala Haggamuwa,
Kuliyapitiya.

97. Mr. S.H.M.K. Chandrasena, Ihala Pihimbiya,
Pihimbiya, Ratnale.

98. N.G.R.G. Fernando, Galahitiyawa, Kuliyapitiya.

99. Mr. C.J. Gunrathne, 328/1, Kathagama Road,
JullaPllama, Thissamaharamaya.

Petitioners

Vs.

1. Justice P.R.P. Perera, Chirman
2. Prof. Dayasiri Fernando, Member
3. W.P.S. Jayawardene, Member
4. Palitha M. Kumarasinghe, Member
5. Prof. M.S. Mookia, Member
6. Prof. M. Rohanadheera, Member
7. Gunapala Wickramaratne, Member

8. S.A. Wijeratne, Member

9. Dr. Barnad Soyza, Member

All Public Service Commission, No. 356/B,
Galle Road, (Carlville Place), Colombo 03.

10. Nimal Bandara, Secretary, Ministry of
Education, Isurupaya, Battaramulla.

11. Hon. Attorney Genera, Attorney General's
Department, Colombo 12.

Respondents.

BEFORE : Amaratunga, J.
P.A. Ratnayake, J. &
Imam, J.

COUNSEL : J.C. Weliamuna with Maduranga Ratnayake and Pasindu
Silva for Petitioners.

N. Pulle SSC. With H. Hisbullah, SC. for 10th & 11th
Respondents.

ARGUED ON : 27-08-2010

**WRITTEN SUBMISSIONS
OF THE PETITIONER
TENDERED ON** : 23-09-2010

**WRITTEN SUBMISSIONS
OF THE RESPONDENT
TENDERED ON** : 06-09-2010

DECIDED ON : 24 -02-2011

P.A. Ratnayake, J

The 1st Petitioner in this application is a trade union registered under the Trade Unions Ordinance and the 2nd to 99th Petitioners are Grade 1 Officers in the Sri Lanka Principals' Service. Respondents are the members of the Public Service Commission, Secretary of the Ministry of Education and the Hon. Attorney General. Petitioners complain of a violation of

Article 12(1) of the Constitution by the Respondents, in not appointing the Petitioners to Class III of the Sri Lanka Educational Administrative Service (SLEAS)

Petitioners state that they are Class 1 Officers of the Sri Lanka Principals Service(A copy of the Sri Lanka Principals Service Minute has been produced annexed marked P3 to the Petitioner's petition). In accordance with the Sri Lanka Educational Administrative Service Minute of 1986 which they have annexed marked as 'P4' to the Petitioner's petition, selections to the vacancies in Class III of the SLEAS are to be made in the following manner;

1. 25% of the vacancies are to be filled by means of an open competitive examination to be conducted by the Commissioner of Examination.
2. 45% of the vacancies are to be filled by means of a limited competitive examination to be conducted by the Commissioner of Examination.
3. 30% of the vacancies are to be filled on merit, based on the results of an interview. .

Petitioner's complain that the vacancies referred to in category 3 have not been filled. Under this category an Officer of Grade I of the Sri Lanka Principals' Service who has a minimum of 3 years service in Grade I is eligible to be considered for promotion. Petitioners state that appointments were given to SLEAS Class III on several occasions under the first two categories mentioned above but upto the date of filing this application which is in December 2008 no appointments were made under the 3rd category (ie. Merit Based Promotions). Seniority of the Petitioners in Grade I in the Sri Lanka Principals' Service are given in the document annexed to the Petitioner's petition marked as 'P2' . According to this document all of them have more than 3 years experience in Grade I of the Sri Lanka Principals Service. Two Petitioners have become eligible to be appointed to Class III of the SLEAS on 1st June 1992, others have become eligible in 1994, 1996, 1997, 1999, and there are also a few who have become eligible only in 2005. They complain that they have still not been appointed to the SLEAS Class III and accordingly the Respondents have acted in violation of Article 12(1) of the Constitution.

Since 1-9th Respondents who were members of the Public Service Commission are not holding office as at present the 10th Respondent who was the Secretary to the Ministry of Education has

filed objections by way of an affidavit and has taken up the position that the Circular of 1986 annexed marked as 'P4' by the Petitioners to their petition is no longer in force and that it has been replaced by another Circular in 2002 and a copy of the said Circular is produced marked as 'R1' to the 10th Respondent's affidavit. He has stated that this is the presently applicable Minute of the Sri Lanka Educational and Administrative Service and all appointments to the said service are done since the year 2002 under the said Circular which was gazetted in the Gazette of the Democratic Socialist Republic of Sri Lanka NO. 1225 /32 dated 1st March 2002. It appears that 2nd -9th Respondents who are Grade I Principals in Principals' Service and who claim that their rights under a service minute have been deprived have not known that this service minute has been cancelled and replaced by another Service Minute more than 6 years prior to the filing of this application.

The Provisions in the new Service Minute are different to the 1986 Service Minute. Nevertheless appointments to Class III of the SLEAS are to be made under the 3 categories referred to above which are similar in both circulars and on the same ratio. Accordingly 30% of the vacancies in Class III SLEAS even at present are to be filled based on merit. But the wording of the two Clauses in the 1986 Circular and 2002 Circular in respect of appointments under the category of merit are different.

The 1986 Service Minute states as follows:-

“Appointments to not more than Thirty Percent (30%) of the vacancies of Class III of the service will be made by the Committee by promotion on merit, on the results of an interview.”

The 2002 Service Minute states as follows:-

“Appointments to not more than Thirty Percent (30%) of the vacancies of Class III of the service will be made by the Committee by promotion on merit .”

Accordingly the words “on the results of an interview” have been deleted in the 2002 Circular. Due to this fact under the new Circular the Authorities concerned have not held an interview but have held a written examination to decide on “merit”.

The 10th Respondent stated in his affidavit that applications to fill vacancies under the merit category have been called for soon after the promulgation of the new service Minute of 2002 in the year 2002 itself and has annexed a copy of the Gazette notification calling for applications under the merit category dated 14.06.2002 marked as 'R2' to his affidavit. This Gazette notification also contain the marking scheme. The 10th Respondent has stated that a total of 1975 candidates have sat for the examination. The total marks obtained by all the candidates on merit and also on seniority have been produced to Court by the document annexed marked 'R3' to the affidavit of the 10th Respondent. It is stated in the document marked 'R2' which contains the marking scheme that when evaluating seniority for any year of service above the 3 year service period 8 marks would be added up to a maximum of 100 marks. Accordingly, seniority of the Officers in Grade I of the Sri Lanka Principals Service have been given adequate recognition in allocation of marks. He also states in accordance with the 30% ratio to be applied in respect of the selections, under the seniority and merit category there had been 96 vacancies and due to the factors mentioned in the affidavit itself only 71 candidates have been recommended for promotion and steps have been taken to fill the balance vacancies in accordance with the marks obtained by the candidates and as stated in the document annexed marked as R3. It is also mentioned by him that the 55th Petitioner is one of the candidates who has been appointed to Class III of the SLEAS in terms of the recent selections. The Petitioners in their counter objection stated that the appointment of the 55th Respondent has been made only after they have filed this application in Court. Due to the above factors the Respondents contend that they have satisfactorily complied with the Provisions of the presently applicable service Minute which is the minute of 2002 which has been produced marked as R2.

The Petitioners do not dispute the above position that the 30% vacancies in terms of 2002 Circular are being filled by the Respondents. Nevertheless they have taken up the position in their counter affidavit that under the Circular of 1986, no appointments have been made to Class III of the SLEAS since 1986 under the category of merit. They have also given the details of the appointments made to the SLEAS since 1986. Details of the appointments made to the SLEAS since 1986 as given in paragraph 4(b) of the counter affidavit are as follows:-

No.	Year	Type of Recruitment	Appointments
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I	01.06.1987	Open	134
li	01.09.1988	Open	88
lii	01.06.1990	Limited	53
lv	1991	Limited	23
V	04.01.1999	Open	325
Vi	2002	Open	68
Vii	2005	Limited	498
Vii	2005	Open	236

It is common ground that the Circular under which appointments were made upto 2002 is no longer in operation. Although the percentage of appointments to be made in respect of the merit category is similar in both circulars, the manner of selection in the presently applicable circular is different ie. merit is considered by way of a written examination conducted by the Commissioner of Examinations.

In the circumstances, it is not possible to compel the authorities to make appointments under the old circular which is not in operation at present.

The old Circular (1986 Circular) was in operation for approximately 16 years until 2002. According to the Petitioners no appointments were made under the merit category during the said 16 years where the circular of 1986 was in operation. The selections were made under the other two categories ie. (1) based on open competitive examination 25% and (2) based on limited competitive examination 45%. There is no letter or any other communication submitted by the Petitioners to establish that at least a complaint was made against the none implementation of this method of recruitment to Class III of the SLEAS during the period the 1986 Circular was in operation. In accordance with the petition filed by the Petitioners the earliest complaint appears to be in the document annexed to the petition marked as 'P5a'. This is a letter written in the year 2006. All other documents annexed to the petition in respect of communications made complaining against non appointments to the SLEAS under the merit category appear to be documents in 2006 or thereafter. It appears that during the entire period where the previous circular had been in operation (16 years) or thereafter up to 2006 no

complaint has been made to the relevant authorities regarding none implementation of the merit category recruitment to the SLEAS.

Learned Senior State Counsel who appeared on behalf of the Respondents has strongly taken up the position that the Petitioner's application in respect of none implementation of the Provisions in the 1986 SLEAS Minute is time barred. In the circumstances mentioned above this objection is well founded and I uphold the said objection of the Learned Senior State Counsel.

In addition to the above, the Petitioners in their counter affidavit have taken up the position that in order to 'redress the grievance' of the Petitioners for non compliance with the 1986 Minute of SLEAS, all future appointments to the SLEAS should be made on merit basis until the 30% ratio is realized. Paragraph 4(d) of the Counter Affidavit, it is stated as follows:-

"I state that the only way the Petitioners' grievance could in the present circumstances be resolved is by first filling the present vacancies and the vacancies occurring in the next few years in Class III in SLEAS by appointing the Petitioners thereof (*in order of their seniority*) before any appointments are made under Open and Limited categories"

If the authorities are required to take steps as requested by the Petitioners all persons who are eligible to apply under the open competitive and limited competitive system of selection and who have become eligible in recent years could naturally be adversely affected.

The Learned Senior State Counsel has taken up the position that if this scheme as suggested by the Petitioners are implemented it would result in a gross violation of the service minute of 2002 as the Petitioners would be given priority over all others to fill the vacancies in Class III. This would deprive those eligible under the open and limited competitive examination categories of their opportunity to join the SLEAS. Due to the reasons mentioned above, I agree with the position taken by the Learned State Counsel.

In accordance with the reasons given above, I hold that there is no violation of Article 12(1) of the Constitution and the application of the Petitioners is dismissed. In all the circumstances of this case there will be no costs.

Judge of the Supreme Court

Amaratunga, J.

I agree.

Judge of the Supreme Court

Imam, J.

I agree.

Judge of the Supreme Court