

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

*In the matter of an Application under
and in terms of Article 17 and 126 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

- SC/ FR Application No. 285/2012***
1. R.D.M.K.K. Wimalachandra.
"Isuru Sevana",
Bandarawela Road,
Dambawinna,
Welimaa.
 2. K.A. Mallawarachchi.
No.197, Koskandawela, Yakkala.
 3. D.P.K. Yapa.
"Kumarawasa", Atale, Kegalle.
 4. P.W.U.B. Palipana.
37/34, Eragoda, Gampola.
 5. D.L.G. Tillakaratne.
Panawela, Eheliyagoda.
 6. D.D. Weerakoon.
Udugalkanda, Bulathsinghala.
 7. G.I.K. Zoysa.
No.40, Mulgampola Road, Peradeniya.
 8. H.L.K. Liyanage.
Temple Road, Kowdawatta, Kurunegala.

9. W.M.K.A. Wickramasinghe.
A, Muththettuwa Watta, Kuliyaipitiya.
10. M.A.W. Malkanthi.
363/1, Udupila North, Delgoda.
11. A.R.M.N. Rathnayake.
135, Doragamua, Waththegama.
12. K.C. Wasalathanthri.
No.23, Saddhammawasa Mawatha,
Kaluthara South.
13. S.H.N. Jayawickrema.
No. 42/19, East Lane, Kiriwella,
Kadawatha.
14. N.M.G.D.N. Menika.
Sirikotha, Kawudupelella, Matale.
15. P.K.D. Nilmini Deepika.
No.89, Kirinda, Hondiyadeniya,
Gampaha.
16. D.M.M.C.K. Nawarathne.
113A, Moladanda, Kiribathkumbura.
17. L.H.D. Kulathunga.
Othanapitiya, Nelumdeniya.
18. G.A. Ariyasena.
"Uthuru Sevana", Girambe, Nugathalawa.
19. G.L.S.N. Liyanage.
515/2, Ranmuthugala, Kadawatha.

20. R.M. Sarath.
Rohana Nivasa, Badulla Road, Welimada.
21. S.M.C.P. Siriwardena.
"Sanduni", Udanaluwela, Balangoda.
22. K.P.K.K. Pathirana.
126/3, Panawela, Nittambuwa.
23. All island Agriculture Monitoring
Officers Union.

Of Regional Agriculture Research and
Development Centre,
Diyathalawa Road,
Bandarawela.

PETITIONERS.

V.

1. Mahinda Yapa Abeywardena.
Minister of Agriculture,
"Govijana Mandiraya",
80/5, Rajamalwatte Lane,
Battaramulla.
- 1A. Hon. Duminda Dissanayake.
Minister of Agriculture,
Ministry of Agriculture,
"Govijana Mandiraya",
80/5, Rajamalwatte Lane,
Battaramulla.
- 1B. Hon. P. Harrison,
Minister of Agriculture, Rural
Economic Affairs, Livestock

Development, Irrigation and
Fisheries & Aquatic Resources
Development,
Ministry of Agriculture, Rural
Economic Affairs, Livestock
Development, Irrigation and
Fisheries & Aquatic Resources
Development,
No.288, Sri Jayawardhanapura
Mawatha, Rajagiriya.

2. W. Sakalasooriya.
Secretary, Ministry of Agriculture,
"Govijana Mandiraya",
80/5, Rajamalwatte Lane,
Battaramulla.

2A. B. Wijayarathne.
Secretary, Ministry of Agriculture,
"Govijana Mandiraya",
80/5, Rajamalwatte Lane,
Battaramulla.

2B. Mr. K.D.S. Ruwanchandra,
Secretary,
Ministry of Agriculture, Rural
Economic Affairs, Livestock
Development, Irrigation and
Fisheries & Aquatic Resources
Development,
No.288, Sri Jayawardhanapura
Mawatha,
Rajagiriya.

3. K.G. Sriyapala.
Director General of Agriculture,
Department of Agriculture,
Sarasaviya Mawatha, Peradeniya.

3A. Dr. Rohan Wijekoon.
Director General of Agriculture,
Department of Agriculture,
Sarasaviya Mawatha,
Peradeniya.

3B. Dr. W.M.W. Weerakoon.
Director General of Agriculture,
Department of Agriculture,
Sarasaviya Mawatha,
Peradeniya.
4. D.P.S. Abeygunaratne.
Director General of Combined Services,
Ministry of Public Administration and
Home Affairs,
Independence Square,
Colombo 7.

4A. K.V.P.M.J. Gamage.
Director General of Combined
Services,
Ministry of Public Administration and
Management,
Independence Square,
Colombo 7.
5. Saliya Mathew.
Chairman,
National Salaries and Cadre Commission,

Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

5A. D.H.N. Piyadigama.
Co-Chairman,
National Pay Commission,
Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

5B. S. Ranugge,
Chairman,
National Salaries and Cadre
Commission,
Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

6. M.N. Junide.
Chairman,
National Pay Commission,
Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

6A. J.R.W. Dissanayake.
Co- Chairman,
National Pay Commission,
Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

7. B. Wijeratne.
Secretary,

National Salaries and Cadre Commission,
Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

7A. B. Wijeratne.

Secretary,
National Pay Commission,
Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

7B. Anura Jayawickrama,

Secretary,
National Salaries and Cadre
Commission,
Room No.2G 10, BMICH,
Buddhaloka Mawatha,
Colombo 7.

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

RESPONDENTS

BEFORE : **PRASANNA S. JAYAWARDENA, PC, J.**
MURDU N.B. FERNANDO, PC, J. and
S. THURAIRAJA, PC, J.

COUNSEL : Faiz Musthapha, PC with Faisza Marker for the Petitioners, instructed
by Gowry Thawarasa.
Rajiv Goonetilleke, SSC for the AG.

ARGUED ON : 28th March 2019.

WRITTEN

SUBMISSIONS : Respondents on 28th June 2019.

DECIDED ON : 26th July 2019

S. THURAIRAJA, PC, J.

The Petitioners have filed this Application alleging that their fundamental rights guaranteed by Articles 12(1) and 14(1)(g) have been violated by the Respondents.

The brief facts of the case, in the chronological order are as stated below.

All Island Agriculture Monitoring Officers Union i.e. the 23rd Petitioner is a duly registered Trade Union and has made this application on behalf of its members i.e. the 1st to 22nd Petitioners (hereinafter collectively referred to as the 'Petitioners'). The Petitioners are employed as Agricultural Monitoring Officers under the Ministry of Agriculture and hold bachelor's degree in science/agriculture and some of them hold a master's degree in science.

The 1st, 3rd and 4th Petitioners, in terms of a cabinet decision in 1994, were inducted into the Department of Agriculture as 'Graduate Trainees' on a probationary basis between 1994-1995 and 1995-1996. After two to three years of training, the said Petitioners were absorbed into the Department of Agriculture as 'Research Assistants' (in Sri Lanka Technical Service) to the permanent cadre on or about 15.01.1998. Simultaneous to the recruitment/appointment of 'Research Assistants', the Department of Agriculture also recruited/appointed 'Economic Assistants', for which the eligibility criteria was a Degree in Arts with Economics being offered as a subject.

The 2nd Petitioner and the 5th to 22nd Petitioners were recruited in 1999 under the Graduate Trainees Scheme and later, some of the graduates were confirmed as 'Graduate Agricultural Development Officers' in the year 2000. Thereafter, the 1st, 3rd and 4th

Petitioners along with several others filed an application bearing No. SC (FR) 528/2000, alleging that their fundamental rights had been violated and that they be appointed to the post of 'Graduate Agricultural Development Officers'. Subsequently, the said Petitioners were appointed to the said post of 'Graduate Agricultural Development Officers'. Later, the Petitioners were assigned a new designation as 'Agriculture Monitoring Officer', which was approved with effect from 04.03.2004.

By virtue of discussions that ensued between the Petitioners and the then Minister and Secretary of Agriculture regarding the non-implementation of Recruitment and Promotional Schemes, a Cabinet Memorandum bearing No 1452 dated 21.10.2004 (marked as 'P-14') was submitted to the Cabinet of Ministers for the creation of a new Recruitment and Promotional Scheme for Agricultural Monitoring Officers.

On 01.11.2004, the cabinet sub-committee on establishment matters decided that the proposal in the said Cabinet Memorandum be referred to the Department of Management Services for examination and report. The Department of Management Services did not recommend the proposed salary scale for Agriculture Monitoring Officers and proposed an alternative grading system on the existing salary scale for Agriculture Monitoring Officers. (marked as 'P-15'). Thereafter, the Cabinet Memorandum was approved on 06.01.2005.

Pursuant to the above events, the then Director General of Agriculture, on account of representations made by some of the Petitioners before the Secretary, Ministry of Agriculture, issued a recruitment/promotion scheme for Agriculture Monitoring Officers [marked as 'P-17(b)'] in terms of letter dated 15.02.2005 [marked as 'P-17(a)'].

The then Deputy Director of Agriculture addressed a letter dated 28.02.2006 to the Secretary, Ministry of Agriculture, stating that the holding of the efficiency bar examination was delayed since the Scheme of Recruitment had not been approved. Thereafter, the 23rd Petitioner filed a case bearing no. SC (FR) 61/2006 alleging that the

rights of its members have been violated since their promotional prospects were being affected. The proceedings of the application were terminated since the parties arrived at a settlement and a new Service Minute was drafted.

On the issuance of Public Administration Circular No. 06 of 2006, the Petitioners were placed in the salary scale of MN-4. The Petitioners objected to being placed in the said salary scale of MN-4, while Economic Assistants were placed in the salary scale of MN-6 (which is two grades higher than the salary scale of the Petitioners). Thereafter, the Petitioners made an application bearing SC (FR) No. 474/2009 seeking that they be placed in the salary scale of MN-6 and when the matter came up for support, leave was refused.

Thereafter, the Service Minute of the Sri Lanka Agriculture Service was amended by Gazette notification bearing no. 1619/25, (marked as 'P28') enabling the Petitioners to sit for a limited competitive examination, with view to entering a named Public Service with promotional prospects. The Petitioners were not in agreement with the purported criteria, speculated in P28 for the determination of their seniority and the Petitioners claim that they had filed an FR Application, in this regard, for which leave to proceed was refused.

Thereafter, the Minute of the Programme Officers' Service (hereinafter referred to as the 'Service Minute') dated 14.02.2012 was published in the Gazette-Extra Ordinary bearing No. 1745/11 (marked as 'P-30'). Clause 14 of the said Minute provides that officers who had been recruited under different designations in line with the government policy of providing employment for the unemployed graduates from 1994 till the date of implementation of the service minute i.e. 01.08.2011 and are in the salary scale MN 4-2006(A) were entitled to be absorbed as Programme Officers in accordance with the provisions laid down in Clause 14. In order to give effect to the said Clause 14, Public Administration (PA) Circular No. 10/2012 (hereinafter referred to as 'PA Circular') dated 08.05.2012 (marked as 'P-33') was issued.

The Petitioners have filed the present application before this Court alleging that their fundamental rights under Article 12(1) has been violated by the Service Minute (marked as 'P30') and the PA Circular (marked as 'P33') relating to the implementation of the said service minute. On 12.07.2012, leave was granted to proceed on the alleged infringement of Article 12(1) of the Constitution.

Having referred to the facts of this application as submitted by the learned Counsel for the Petitioners and agreed to by the learned Counsel for the Respondents, I now turn to consider the grievance of the Petitioners and the corresponding contentions of the Respondents.

In the present application, the Petitioners, *inter alia*, have prayed that the Court declare the Service Minute (marked as 'P30') and the PA circular (marked as 'P33') relating to the implementation of the said service minute null and void. The contention of the Petitioners *vis-à-vis* the said Service Minute and PA Circular is two-fold-

Firstly, according to the Petitioners, as stated in Paragraph 39 of the Petition dated 07.06.2012, in the event that they are absorbed to the Program Officers' Service in terms of the Service Minute, *inter alia*, their designations would change and they would not be eligible to sit for the aforementioned limited competitive examination.

I find that, Paragraph 17.2 of the Service Minute (marked as 'P30') provides that officers who do not elect to be absorbed to the Programme Officers' Service can continue to serve in their respective posts, thereby imposing no mandatory absorption into that service, on the Petitioners. Therefore, the Petitioners have the option to sit for the limited competitive examination by remaining in their respective posts.

Secondly, according to the Petitioners, in the event that they choose not to be absorbed, there exists the possibility of a transfer with a change in their designations and they would then not be eligible to sit for the limited competitive exam, as a result of which they would

not be eligible for promotions. The Petitioners have on the contrary, also stated in paragraph 44 of the Petition dated 07.06.2012 that, if they were to remain in their present posts without a transfer, they would be affected since there exists no scheme of recruitment for them in relation to their present posts

In response to the above contention, in the affidavit of the 3rd Respondent dated 24.11.2014, it has been stated in paragraph 31 that, promotions can be granted for officers who are not willing to be absorbed into the Programme Officers' Service once a scheme of recruitment is approved. Therefore, I find that, efforts are in place to facilitate promotions in the event that the petitioners choose not to be absorbed into the Programme Officers' Service.

The Petitioners, in furtherance of their contentions, had stated in paragraph 46 of the Petition dated 07.06.2012, that, the said Service Minute (marked as 'P30') and PA Circular (marked as 'P33') are *inter alia* arbitrary and in violation of the Petitioners' rights under Article 12(1). I find it crucial to properly provide the meaning of arbitrariness with regard to the principles enumerated in Article 12(1). The concept of arbitrariness under Article 14 of the Indian Constitution, which is the equivalent of Article 12(1), has been interpreted in several decisions.

In the case of ***Sharma Transport v. Government of A.P. (2002) 2 SCC 188***, it was observed-

*"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."*

(Emphasis added)

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 re-iterated in the case of **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."

Therefore, deducing the interpretation from the above cases, it is clear that reasonableness is an essential element of non-arbitrariness or in other words, an arbitrary action lacks reasonableness.

In the case of **Perera v. Monetary Board of the Central Bank and Ors. (1994) 1 Sri L.R 152**, with regard to promotion/recruitment in the public sector, it was observed that-

"Persons are entitled to complain ... if they were invidiously or arbitrarily treated by or in the selection process"

In the present case, the absorption into the Programme Officers' Service, in terms of the Service Minute (marked as 'P30') and the PA Circular (marked as 'P33') is at the option of the Petitioners. The absence of a mandatory imposition of absorption makes the said Service Minute and the PA Circular reasonable. On account of the presence of reasonableness, I find that the terms and conditions set out in the said Service Minute (marked as 'P30') and PA Circular (marked as 'P33') are not arbitrary and not violative of Article 12(1) of the constitution.

In addition to the above, I find it pertinent to make the following observations.

I find that that the Petitioners have, since their recruitment, filed at least three FR applications prior to the present application before us, namely, SC (FR) 528/2000, which resulted in their appointment to the post of 'Graduate Agricultural Development Officers'; SC (FR) 61/2006, on account of which they arrived at a settlement for a new service minute to be drafted and SC (FR) No. 474/2009, seeking that they be placed in the salary scale of MN-6, for which leave was refused when the matter came up for support.

In the present application before us, the Petitioners, in clause (e) of the Prayer in the Petition dated 07.06.2012, had pleaded that the Court direct the Respondents to place the Petitioners in an appropriate salary scale commensurate with their qualifications and their service. With regard to the said relief sought in clause (e), I am of the view that, the petitioners have already invoked the Jurisdiction of this Court in SC (FR) No. 474/2009, for which leave was refused, as enumerated above. Therefore, I find that the Petitioners are estopped from seeking the same relief from this Court.

Moreover, the Petitioners, while alleging that their fundamental right under Article 12(1) had been violated, had stated in paragraph 46(e) of the Petition dated 07.06.2012, that, the Petitioners being degree holders were placed in the salary scale of MN-4 whereas Diploma holders attached to the Technical Service have been placed in the salary scale of MN-3. The Petitioners had also stated in paragraph 27 of the Petition dated 07.06.2012, that, 'Economic Assistants' who joined under the Graduate Scheme along with the Petitioners have been placed in the salary scale of MN-6. I find that, these contentions are baseless for the following reasons.

The Diploma holders attached to the Technical Service have been placed in a salary scale of MN-3, which in any case, is below the salary scale of the Petitioners. In Page 7 of the written submissions on behalf of the Respondents, it has been submitted that the 'Economic Assistants' had been recruited in terms of the Sri Lanka Technical Service

Minute after a competitive recruitment procedure while the Petitioners were not recruited on a competitive examination but on the basis of a Cabinet Decision to recruit unemployed graduates.

I am of the view that, the Petitioners have not made out that they have been treated differently from persons similarly placed but have rather contended that they be given similar treatment as provided to those who belong to a different class/category. Therefore, I find that, there exists no differential treatment.

I find that, there is no violation of the fundamental right of the Petitioners under Article 12(1), for the reasons already enumerated by me.

Accordingly, I dismiss the Application and order the Petitioners to pay a cost of Rs. 10,000/- each to the Secretary, Ministry of Agriculture.

Application dismissed.

JUDGE OF THE SUPREME COURT

PRASANNA JAYAWARDENA, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

MURDU N.B. FERNANDO, PC, J.

I agree.

JUDGE OF THE SUPREME COURT