

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

In the matter of an application made in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka

SC FR 531/2011

1. Engineering Diplomates Association,
National Water Supply and Drainage Board,
Head Office, Ratmalana.
2. Technical Officer's Union,
National Water Supply and Drainage Board,
Head Office, Ratmalana.
3. E. D. Subadra,
Jayathilake Garden, Munagama, Horana.
4. M.W. Chandrani,
23/20, New Hospital Road, Pamunuwa,
Maharagama.
5. R.M. Piyadasa,
48/1, Udabowala, Kandy.
6. R.G.A. Ranatunga, 483/11, Jeramius Fernando
Mawatha, Rawathawatta, Moratuwa.
7. A.A.N. Dias,
58, Ganga Boda Road, Wewela, Piliyandala.
8. J.D.S.N. Karunathilake,
Asiri Uyana, Paltota, Katubedda.

Petitioners

Vs,

1. Mr. A. Abeygunasekara,
Secretary,
Ministry of Water Supply and Drainage,
“Lakdiya Medura”, New Parliament Road,
Pelawatta, Battaramulla.
- 1A. Mr. Sarath Chandrasiri Vithana,
Secretary,
Ministry of Water Supply and Drainage.
- 1B. Mr. M.P.K. Mayadunne,
Secretary,
Secretary to the Ministry of City Planning, Water
Supply, and Higher Education.
- 1C. Dr. Priyath Bandu Wickrama,
Secretary,
Ministry of Urban Development, Water Supply, and
Housing Facilities.
- 1D. W. Samaradiwakara
Secretary,
Ministry of Water Supply and Drainage,
“Lakdiya Medura”, New Parliament Road,
Pelawatta, Battaramulla.
2. National Water Supply and Drainage Board,
Head Office, Ratmalana.
3. N. Godakanda,
Director General, Department of Management
Services, Ministry of Finance and Planning, General
Treasury, Colombo 01.
- 3A. Mr. H. G. Sumanasinghe,
Director General, Department of Management
Services,

- 3B. Mrs. L. T. D. Perera,
Director General, Department of Management
Services,
- 3C. Mrs. Hiransa Kaluthantri,
Director General, Department of Management
Services, 3rd Floor, Ministry of Finance, General
Treasury, Colombo 01.
4. B. Wijeratne,
Secretary, National Salaries and Cadre Commission,
2G-10, BMICH, Bauddaloka Mawatha, Colombo 07.
- 4A. Mr. Asoka Jayasekera,
Secretary, National Salaries and Cadre Commission,
- 4B. Mr. Anura Jayawickrama,
Secretary, National Salaries and Cadre Commission,
- 4C. Mrs. Chandrani Senaratne,
Secretary, National Salaries Commission,
Room No. 2-116, BMICH, Colombo 07.
5. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

6. Engineer's, Union, [Reg: No 7139]
National Water Supply and Drainage Board, Galle
Road, Rathmalana.

Intervenient Petitioner Respondents

Before: **Justice Vijith K. Malalgoda PC**
Justice Achala Wengappuli
Justice Arjuna Obeyesekere

Counsel: Faiz Musthapa PC with Uditha Egalahewa PC, Ms. Thushani Machado, and N.K. Asjhokbharan instructed by Ms. Lilanthi De Silva for the Petitioners.

Ms. Indika Demuni De Silva PC, SG with I. Randeny SC for the 1st to 5th Respondents.

Razik Zarook PC with Rohana Deshapriya, Ms. Chankya Liyanage, and J.K. Wijesinghe for the Intervenient Respondent.

Argued on: 03. 03. 2023

Decided on: 20.07.2023

Vijith K. Malalgoda PC J

Petitioners to the instant case, two trade unions namely Engineering Diplomates Association and Technical Officers Union both from the National Water Supply and Drainage Board (hereinafter referred to as NWS&DB) along with six employees of NWS&DB who are members of the aforesaid two unions had come before this Court alleging the violation of the Petitioners Fundamental Rights guaranteed under Article 12 (1) of the Constitution by,

- a) Failure to implement the Board decision dated 26th May 2011 (P-8), the Board Circular No P2/3/EA(c)/Special dated 27th June 2011 (P-10), and the Memorandum of Understanding (MOU) signed between the NWS&DB and the 1st and the 2nd Petitioners on 8th June 2011 (P-9)
- b) Implementing the two decisions of the Department of Management Service (DMS) dated 1st June 2011 (P-11) and 3rd October 2011 (P-14)

This Court on 4th October 2012 granted leave to proceed for the alleged violation under Article 12 (1) of the Constitution.

When this matter was taken up for argument, the Solicitor General who appeared for the Respondents raised a preliminary objection with regard to the maintainability of the instant application on the ground that the 1st and the 2nd Petitioners being trade unions, cannot have maintained the application on behalf of its members in terms of Article 17 read with Article 126 (2) of the Constitution. The Solicitor General heavily relied on the decision in *Ceylon Electricity Accountants' Association V. Patali Champika Ranawaka and Others SC FR 18/2015* SC minute dated 11.03.2016 when raising the above objection.

Except for the first -two Petitioners six other Petitioners, also had come before this Court, when filing the instant application, and as revealed before us they are office bearers and members of the 1st and 2nd Petitioner Associations who were said to have affected with the impugned decisions of the 3rd Respondent.

In the case of *N.B. Krishantha Kumara and three others V. Dharmasena Dissanayake and Others SC FR 460/2017* SC minute dated 01.03.2023, this Court has considered several decisions of the Supreme Court including, the decisions in *Ceylon Electricity Board Accountants Association V. Patali Champika Ranawaka (Supra)*, *Public Services United Nurses Union V. Montague Jayawickrema Minister of Public Administration and Others 1988 1 Sri LR 229*, and *Environmental Foundation V. Urban Development Authority (2009) 1 Sri LR 123* had now concluded that “it is clear that the locus standi of an unincorporated body that comes before the Supreme Court in an application filed under Article 17 read with Article 126 (2) is now settled and the Court has permitted the members of the unincorporated body to pursue the application in the instances when their rights guaranteed under the Constitution has been violated by the conduct of the Respondent. Therefore, I see no merit in the first objection raised by the Respondents before this Court.”

Having considered the objection raised and the decision of this Court referred to above, I reject the objection raised before this Court.

As submitted by the Petitioners the 3rd to the 8th Petitioners are holders of National Level Engineering Diplomas awarded after full-time courses ranging from 3 to 3 ½ years, and such diploma holders were recruited to the NWS&DB to Board Grades 11 or 10 based on their qualifications. As per the Scheme of Recruitment (SOR) which was in operation at that time, officers who were recruited to Board Grades 11 and 10 were promoted to Board Grades 9 and 8. Once an officer reaches Board Grade 8 and obtained 3 years of experience as an Engineering Assistant CL-I Board Grade 8, he will

become eligible to be promoted to the position of Engineer Board Grade 7. However, only 25% of the total available number of cadre positions of Engineer CL-I, CL-II, and Senior Engineer were available for the promotion of Engineering Assistants CL-I Serving in Board Grade 8.

It was also the position of the Petitioners before this Court that, a total of 12 years, 17 years, or 21 years were required based on the Education Qualifications and the Board Grade an Officer was recruited, in order for the officers to become eligible to be promoted to the position of Engineer Board Grade 7.

Those who were not successful in entering Board Grade 7 as an Engineer Board Grade 7 due to the above restriction, the Officer will be stagnated as an Engineering Assistant (Special Grade) Board Grade 7 until their retirement from the service.

However, those who were recruited to Board Grade 11 as Quantity Surveyors and Draughtsmen with similar qualifications were entitled to be promoted beyond Board Grade 7 up to Board Grade 3, 4, or 5 during their carrier. In those circumstances, it was submitted that those who do not fall within the 25% slot as Engineer Class II in Board Grade 7 have a long period of stagnation without any prospect of promotion beyond Board Grade 7.

In those circumstances several discussions were held between the management of the NWS&DB and the 1st and the 2nd Petitioners and an agreement was reached between the two parties and a MOU was signed. The progress made during the discussion and thereafter has been summarized as follows;

- a) It was decided at the meeting held on 2nd December 2010 to take steps to enable the Engineering Assistant (Special Grade) Board Grade 7 to arrive at Board Grades 5 and 6.
- b) A Board paper titled "Promotional path for Engineering Assistants-Special Class up to Board Grade 6 and 5" dated 20th January 2011 was submitted to the NWS&DB Board. (P-6) In the said Board paper it was recommended that; "to create Board Grade 6 and 5 in the SOR of Engineering Assistants subject to the conditions contained in the Board paper."
- c) The said recommendation was approved by the Ministry of Water Supply and Drainage and by letter dated 27th April 2011 Secretary to the Ministry advised the 2nd Respondent, of the manner in which the recommendation is to be implemented (P-7)
- d) Special instructions were given in the said letter,

- i. To promote the Engineering Assistants- Special Grade, who had completed 6-10 years to Board Grade 6
 - ii. To promote the Engineering Assistants- Special Grade, who had completed more than 10 years to a Grade above Board Grade 6
 - iii. The promotions should be personal to the said officers
 - iv. To propose a suitable designation to those who were promoted under these instructions
- e) By Board decision dated 26th May 2011 the said instructions were adopted by the NWS&DB Board of Directors.
- f) Based on the above decisions MOU was signed between the 1st and 2nd Petitioners and the 2nd Respondent to give effect to the said decisions and it was further agreed between the parties that the agreement is only applicable to 362 officers only.
- g) Accordingly, by P-10 NWS&DB had called for applications by advertisement dated 27.06.2011 to give effect to the above agreement from those who were eligible i.e., Engineering Assistant – Special Grade completed more than 10 years in Board Grade 7 for the post of Assistant Engineer (this designation was decided by NWS&DB under (d)-IV above) Board Grade 6 and to place them at a salary scale of MM I-I and Engineering Assistant-Special Grade who has worked more than 6 years and less than 10 years in Board Grade 7 for the post of Assistant Engineer Board Grade 6 and to place them at a salary scale of JM I-2.

Whilst the above process was in progress Department of Management Service had forwarded new cadre recommendations to the NWS&DB by letter dated 1st June 2011. (P-11) As submitted by the Petitioners before this Court, in the said cadre recommendation a post was created as Assistant Engineer for those who belong to the cadre of Engineering Assistant-Special Board Grade 7 but placed them in the salary scale of JM I-2 which is contrary to the MOU already signed between the 1st and 2nd Petitioners and the 2nd Respondent. It was further observed that P-11 had not provided any promotional path for Engineering Assistants in Board Grade 7, those who do not fall within the 25% slot as the Engineer category, but provided positions in the MM category for Quantity Surveyors and Surveyors who were also recruited to Board Grade 10 and 11 along with the Petitioners.

During the same time, the Engineers' Union of the NWS&DB too had objected to P-10 specifically for the positions provided in Board Grade 5 and 6 for the Petitioners and naming those positions as Assistant Engineers instead of the remaining designation Engineering Assistants.

Since there were threats of Trade Union action by both parties, i.e., by the 1st, 2nd Petitioners and Engineers' Union, the 2nd Respondent decided to refer the matter to the Department of Management Services for their recommendation but continued in holding the interviews for Engineering Assistants Board Grade 7as per the applications called by P-10.

In the said circumstances, it was alleged that all attempts made to resolve the issues faced by the Engineering Assistants mainly with regard to their promotions beyond Board Grade 7, by

- a) Holding discussions with the Management of the NWS&DB and signing an MOU between the two parties
- b) The relevant Ministry and NWS&DB agreeing to grant promotions to the Engineering Assistants belonging to Board Grade 7 special to Board Grade 6 and above based on their experience
- c) Calling for applications from the qualified Engineering Assistants to implement the MOU signed between the two parties,

in order to resolve the stagnation of the Engineering Assistant failed, but holding the interviews without any assurance and/or without any final decision of resolving the main grievance i.e., granting promotions beyond Board Grade 7, was in violation of the Fundamental Rights of the Petitioners to equal protection of Law guaranteed under article 12 (1) of the Constitution.

In addition to the parties who were made as the Respondents to the instant application, including the Secretary to the Ministry of Water Supply and Drainage, the Director General of the Department of Management Service, and the Secretary of the National Salaries and Cadre Commission, Engineers' Union of the NWS&DB came forward to resist the application filed by the Petitioners before this Court. The Engineers' Union of NWS&DB filed papers before this Court and sought permission from this Court for intervention in the instant application. The application for intervention was also supported before this Court on 4th October 2012 when the main matter was supported for leave to proceed, and this Court permitted intervention by the Engineers' Union of NWS&DB to the instant case.

On behalf of the 2nd Respondent, the General Manager of the NWS&DB and the 3rd Respondent had filed affidavits explaining how the decisions that were challenged before this Court were arrived by the Respondents. In this regard, the position taken by the 3rd Respondent before this Court is very much material since the decisions that were challenged by the Petitioners were decisions made by the 3rd Respondent. In his affidavit filed before this Court the 3rd Respondent had submitted that;

- a) Pursuant to the Budget Speech 2006, the Government made a policy decision to implement a new salary structure for the Public Service, and the Public Administration Circular 6 of 2006 dated 25.04.2006 was issued containing the restructured salaries of the Public Service.
- b) With the introduction of the new salary structures, the Public Service needs to be re-structured to fit into the salary scales proposed by the circular.
- c) With the above proposal, it was also decided to revise the salaries of employees in public Corporations, Statutory Bodies, and Government own business undertakings except those whose salaries were determined by collective agreements
- d) In order to implement the above proposal and to restructure the organizational structures to implement the new salary structures, Management Service Circular 30 of 2006 dated 22.09.2006 was issued by the Department of Management Service (3R2)
- e) Consequent to the issue of the said circular, discussions were held with the institutions referred to in paragraph 'c' above including the NWS&DB with the participation of the officials of the Ministry of Finance, Ministry of National Water Supply and Drainage and National Salaries and Cadre Commission
- f) As a result of the said discussions regarding the NWS&DB it was agreed to implement the common management structure proposed in the said circular and to abolish the Board Grade system followed by NWS&DB
- g) The said decision was communicated to the 2nd Respondent by letter dates 23.05.2011 (3R5 and 3R5A) and the cadre based on the above structure relevant to NWS&DB was informed to the 2nd Respondent and the relevant Ministry by letter dated 01.06.2011 (3R6)
- h) As per the said decision the Cadre for Engineering Assistant Class III, II and I was 700 under MA 2-2 category and the Engineering Assistant (Special Grade) Board Grade 7 which existed in the 2nd Respondent was re-designated as Assistant Engineer and a cadre of 390 was approved under JM I-2 category.

As submitted by the 3rd Respondent, the said decision which was communicated to the 2nd Respondent and the Ministry of Water Supply and Drainage was in terms of the policy of the Government embodied in Public Administration Circular 6/2006 and Management Service Circular 30 of 2006 and the 3rd Respondent was unaware of any agreement reached between the 2nd Respondent and the Petitioners to the instant application outside the provisions of the circular. It was the position taken up by the 3rd Respondent before this Court that any agreement reached contrary to the provisions of the circulars referred to above is in violation of the policy of the Government.

On behalf of the 2nd Respondent Board, the General Manager of NWS&DB Liyanage Lal Premanath had submitted an affidavit before this Court. According to the said affidavit, on behalf of the 2nd Respondent, it was submitted that,

- a) At the time the Management Service Circular 30 of 2006 was issued, the Engineering Assistant (Special Grade) Board Grade 7 were eligible to apply for 25% of the vacancies in the cadre of Engineers provided they possess the requisite experience. Since the cadre of Engineers at NWS&DB was 418 at that time, 105 posts were available for Engineering Assistants.
- b) Similar to Quantity Surveyors and Draughtsmen who were provided with a promotional path up to Board Grade 5, the Engineering Assistants too had the opportunity to secure promotions to Board Grade 6, 5, 4, and beyond, depending on the availability of vacancies in the cadre of Engineers, Chief Engineer, and Senior Manager posts such as Deputy and Additional General Manager subject to the above restriction. At the time the affidavit was tendered to Court, there were 03 Additional General Managers, 02 Deputy General Managers, and 06 Chief Engineers who were initially recruited as Engineering Assistants to the NWS&DB.
- c) However, the 2nd Respondent was concerned with the grievance complained on behalf of the Engineering Assistants by their Trade Unions, and it was agreed after obtaining necessary approvals from the Ministry of Water Supply and Drainage and the Board of the NWS&DB to promote certain Engineering Assistants in the Special Grade as being personal to them in the following manner,

Engineering Assistants in Special Grade with 6 to 10 years of service are to be promoted to Board Grade 6 and placed on the initial of the applicable salary scale and,

Engineering Assistants with over 10 years of service are to be promoted to Board Grade 6 and to be placed on a higher step of the applicable salary scale.

- d) Steps were taken to implement the above decisions by advertising the above positions but the interviews to select the eligible candidates could not be held due to;
- i. Engineers' Union of the NWS&DB raised objections threatening Trade Union action
 - ii. A communication received from the Department of Management Service approving the New Cadre to NWS&DB implementing the Management Service Circular 30 of 2006.
- e) Subsequent to the issue of Management Service Circular 30 of 2006, the Department of Management Service wrote to the 1st and 2nd Respondents explaining the manner in which the above circular should be implemented at the 2nd Respondent Board.
- f) Several discussions were held between the stakeholders to implement the above Circular with the NWS&DB and the 2nd Respondent Board were granted a salary increase of 22% with effect from 01.01.2010, and a series of discussions were held thereafter to restructure the posts in keeping with the above Circular.
- g) Whilst the outcome of the said discussions was pending the 2nd Respondent engaged in some discussions with the 1st and the 2nd Petitioners as referred to in subparagraph (c) above, since the said unions complained of the grievance faced by its membership due to stagnation at Board Grade 7.

As revealed from the material submitted before this Court by the 2nd and the 3rd Respondents it is evident that the Engineers Union of the NWS&DB had objected to,

- a) Holding interviews as per the MOU signed between the 2nd Respondent and the two Petitioners to recruit Assistant Engineers from Engineering Assistant (Special Grade) Board Grade 7
- b) Re-designating Engineering Assistant (Special Grade) Board Grade 7 as Assistant Engineers under JM I-2 category as per the decision of the Department of Management Service which was communicated to the 2nd Respondent by letter dated 23.05.2011

As already referred to in this judgment, the Engineers' Unit of the NWS&DB had sought permission to intervene in the instant application and the said application too was supported before this Court

on the same day, the main matter was supported for leave to proceed. This Court granted permission for the Engineers' Union to intervene in these proceedings. As revealed from the material placed before this Court, the said Union had several reasons to object to the decisions of the 2nd and 3rd Respondents, with regard to the promotions proposed to the Engineering Assistants (Special Grade) Board Grade 7.

As submitted by the party sought permission to intervene, they had reasons to believe that;

- a) The promotions agreed by the MOU signed between the 2nd Respondent and the first- two Petitioners before this Court are contrary to the approved scheme of Recruitment of the NWS&DB.
- b) By promoting the Engineering Assistant to Board Grades 6 and 5 as agreed, will create an imbalance in the management structure since that will provide an additional path for the Engineering Assistant to get into the Higher Management of the NWS&DB.
- c) The creation of a cadre designated as Assistant Engineer for Engineering Assistants (Special Grade) Board Grade 7 is in violation of all accepted norms and principles in stating professional nomenclatures.

During the Arguments before this Court, on behalf of the Engineers of the NWS&DB, it was further submitted that the cadre for Engineers in the NWS&DB is only around 400 and the said 400 posts are divided as per their qualifications as follows;

- i. Holders of BSC Degree from a recognized University (240 at the time the papers were filed before the Court)
- ii. Those who joined NWS&DB with Diplomas and completed the Examination conducted by the Institute of Engineers of Sri Lanka (IESL) or equivalent (60 at the time the papers were filed before the Court)
- iii. 25% allocated for Engineering Assistants (Special Grade) Board Grade 7 (100-at the time the papers were filed before Court)

In those circumstances, it was submitted that grave prejudice would cause to the BSC Engineers of the NWS&DB by creating an additional path for the Engineering Assistants outside the approved scheme of recruitment of the NWS&DB.

At the time the Petitioners, including 5 Engineering Assistants of the NWS&DB complained about the violation of their Fundamental Rights guaranteed under Article 12 (1), the grievance complained by them was reflected in the matters that have already been discussed by me in this Judgment.

However, when the matter was taken up for argument, on behalf of the Respondents and the Intervient Petitioner- Respondents, it was submitted that the *status quo* is much different from what it was, and submitted that the grievance complained before this Court no longer exists, and that has now been resolved.

Even though the President's Counsel who represented the Petitioners before us does not fully agree with the above submission, it is my duty to consider the above position to come to a correct finding in this case.

The 3rd Respondent had explained the events that took place after communicating the decision of the Department of Management Service by letter dated 23.05.2011 and 01.06.2011, in the objections that were filed on 11th April 2012. As already referred to in this Judgment, the Engineers strongly objected to renaming the designation of Senior Engineering Assistant as Assistant Engineers and providing opportunities for promotions outside the scheme of recruitment to the relevant cadre. The Engineering Assistants (Special Grade) Board Grade 7 were also unhappy with the decision to implement the decision of the Department of Management Service ignoring the MOU already signed to provide promotions beyond Board Grade 7.

It is at this stage the 3rd to the 7th Petitioners and the Unions; the 1st and the 2nd Petitioners came before this Court seeking redress for their grievances. However, it appears that the parties to the instant case had continued with discussion in order to resolve the grievance complained by the Petitioners. It is important to note at this stage that the 2nd Respondent too had at one stage accepted that the Engineering Assistants (Special Grade) Board Grade 7 who were not successful to come within the 25% of the Engineers cadre had to stagnate in the same position until their retirement and therefore agreed to resolve the issue by signing a MOU between the parties.

During the said discussions with all the stakeholders, parties explored the possibility of renaming the designation of the post of "Assistant Engineer" which was proposed by the letter dated 01.06.2011 by the Department of Management Service, and also to resolve the issues of stagnation by placing them beyond the J.M Category which was the basis for the proposed management structure by the Department of Management Service under Management Circular 30 of 2006, since the Board Grade

structure was repealed by the Management structure proposed by the Department of Management Service (P-11).

Even though the parties before Court had not fully agreed, two proposals were made during those discussions, for the remaining cadre of Engineering Assistants (Special Grade)

- a) To create the posts of work superintendent with a cadre of 28 (MM I-I salary code),
Senior Engineering Assistant with a cadre of 362 (JM I-2 salary code (3R7))

- b) To create the posts as below instead of the posts referred to in (a) above

Senior Engineering Assistant (Supra) MM I-I

Senior Engineering Assistant JM I-2

with proposal (b) above it was further agreed to absorb Engineering Assistants (Special Grade) who have over 10 years of service to the post of "Senior Engineering Assistant (Supra)" in the employee category of "Middle Manager" and those with 6 to 10 years of service to the post of "Senior Engineering Assistant" in the employee category of "Junior Manager" and to make those appointments personal to those officers.

However, it is evident from the additional papers filed before this Court on behalf of the 2nd and 3rd Respondent with permission of the Court after concluding the oral submissions made on behalf of the Respondents including the Interventient Petitioner Respondent, that the second proposal referred to above had been given effect personal to those who were aggrieved from the SOR which was in operation prior to the SOR introduced in 2011, and those officers have been granted promotions even beyond the grades to which they were appointed with the implementation of the New SOR based on the Management Circular 30 of 2006.

As per the papers filed before this Court, out of the six Petitioners before this Court (Petitioners 3-8) five Petitioners were promoted to the post of "Senior Engineering Assistant (Supra)" Grade and the other was holding the position as "Senior Engineering Assistant" at the time he was retired in the year 2017. Among the five Petitioners who were promoted to "Senior Engineering Assistant (Supra)," three of them were promoted to Engineers in the NWS&DB with effect from March 2018.

Out of the Balance 309 Engineering Assistants (Special Grade) Board Grade 7, who were the subject matters in the MOU signed between the 1st and 2nd Petitioners and the 2nd Respondent, all officers were promoted as "Senior Engineering Assistants (Supra)" Grade and out of them 60 were promoted as Engineers. Out of the 309 officers, 80 officers are still in the Service holding the position either as

Senior Engineering Assistant (Supra) Grade or as Engineers, and the Balance had retired from the service as Senior Engineering Assistants (Supra).

At the time the Petitioners came before the Supreme Court, the Petitioners whilst challenging the Circular dated 01.06.2011 (P-11) requested to implement the agreement reached in the MOU (P-9). As observed by this Court the MOU too had categorized the Engineering Assistants (Special Grade) Board Grade 7, into two groups when implementing the agreement. i.e., those who serviced over 10 years and served between 6-10 years.

Even though there is no reference to these groups in P-11, the subsequent discussions had granted relief to the same two groups and as revealed from the documentation filed after arguments, all officers similarly circumstanced with the Petitioners were treated equally and promoted to Higher grades, even as Engineers under the New SOR.

On behalf of the petitioners, an affidavit from the 3rd and the 4th Petitioners was tendered along with a motion dated 18.05.2023, even after the preliminary draft judgment was circulated. However, it is observed that the grievance complained in the said affidavit must be considered within the remaining cadre of the NWS&DB, and as already observed in this judgment the matters had been resolved within the remaining framework.

This Court on numerous occasions had declared the powers vested with the Cabinet of Ministers in deciding the Policy, and Article 55 (4) of the Constitution (the text that was operative in the year 2000) and Article 55 (1) of the Constitution (the text that was operative after 9th September 2010) granted the Cabinet of Ministers the following powers;

- 55 (4) subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers.
- 55 (1) The Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policies relating to appointments, promotions, transfers, disciplinary control, and dismissal

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.”

As already revealed before us the two Circulars one with regard to the Public Service (Public Administration Circular No 6 of 2006) and the other with regard to the Public Corporations, Statutory Bodies, and state-owned Enterprises (Management Circular 30 of 2006) were issued to implement the Government Policy declared in the Budget Speech 2006 to introduce a new salary and service structures in the two sectors referred to above. The proposed structure to the Public Corporations, statutory bodies, and state-owned Enterprises was to implement irrespective of the structures in place at that time, and as a result, all Government Corporations, Statutory Bodies, and State-Owned Enterprises will have similar service and salary structures within those institutions. In the circumstances the Board Grade Promotions, that were identified in the SOR of the NWS&DB will have no force and any decision to implement the said scheme will be in violation of the State Policy.

The new structure had provided a scheme, based on the management responsibilities instead of any other categorization identified by the SOR of the respective Agency including the Board Grade system at the NWS&DB.

The MOU signed between the parties too had provided a scheme to categorize Engineering Assistants into two groups based on their service and to treat them separately under the remaining Board Grade system. As already discussed in this Judgment the same categorization has been applied under the new system and placed them in JM I-2 and MM I-I categories. In this regard the Petitioners

have failed to establish that they were differently treated as against the MOU signed between the two parties when implementing the State Policy declared in Management Circular 30 of 2006.

Even though the Petitioners were reluctant to admit the fact that the grievances they complained about were resolved by the New SOR with the amendments introduced after discussions with the stakeholders, the fact that 3rd to the 8th Petitioners as well as all other officers, similarly circumstanced at NWS&DB were granted promotions by the time the matter is taken up for argument is the best evidence that reveals the outcome of the document challenged before this Court.

Even though the amendments proposed had not specifically gone into the “stagnation” as complained by the Petitioners, the implementation of the proposals had given ample opportunities for the Engineering Assistants to be promoted as Engineers within the SOR introduced with the implementation of the state policy.

In these circumstances, we hold that the Petitioners have failed to establish the violation of their Fundamental Rights guaranteed under Article 12 (1) of the Constitution as alleged in their Petition filed before the Court.

The Application is therefore Dismissed.

We make no order with regard to costs.

Judge of the Supreme Court

Justice Achala Wengappuli,

I agree,

Judge of the Supreme Court

Justice Arjuna Obeyesekere

I agree,

Judge of the Supreme Court