

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

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

S C (F R) Application No. 109/ 2015

1. Sri Lanka Nidahas Rubber

Inspectors' Union,

96/6,

Mollamure Avenue 2,

Kegalle.

2. Chaminda Pasqual,

No. 32,

Maddegoda Road,

Mathugama.

3. R M U B Rathnayake,

No. 22/8,

Uda-Peradeniya,

Peradeniya.

4. Sunanda Rajapakse

"Chandana",

Diyagaha,

Nawimana,

Matara.

5. J A A Dharmasiri Jayakody,

No. 181/1,

Bodinnwatta,

Koswathugoda,

Yakkala.

6. H K Jayatissa,
No. 121/4,
Gurukura road,
Mathugama.

7. W J Liyanage
"Nishani",
Pahala Gedera,
Algiliya,
Thelijjawila.

8. H R A A Jayathilleke Bandara,
No. 55/6/1,
Pirisyala,
Ambepussa.

9. P V M Rajakaruna,
Wathruwila,
Kahaduwa.

PETITIONERS

-Vs-

1. R B Premadasa,
Director General,
Rubber Development Department,
No. 55/75,
Vauxhall Lane,
Colombo 02.

2. Mrs. Sudharma Karunarathna,
Secretary,
Ministry of Plantation Industry,
No. 55/75,
Vauxhall Lane,
Colombo 02.

2A.Upali Marasinghe,
Secretary,

Ministry of Plantation Industry,
11th Floor,
Sethsiripaya,
2nd Stage,
Battaramulla.

3. Dharmasena Dissanayake,
Chairman,
Public Service Commission.

4. A Salam Abdul Waid,

5. Santi Nihal Seneviratne,

6. D Shirantha Wijayathilaka,

7. V Jegarasasingham,

8. S. Ranugge,

9. D L Mendis,

10. Sarath Jayathilake,

11. Dr. Prathap Ramanujam,

All Members of the Public Service

Commission,

No. 177,

Nawala road,

Narahenpita,

Colombo 05.

12. H M G Senevirathne,

Secretary,

Public Service Commission,

No. 177,

Nawala Road,

Narahenpita.

13. D Godakanda,

Director - General,

Department of Management Services,

Ministry of Finance and Planning,

General Treasury,

Colombo 01.

14. Neville Piyadigama,

Co - Chairman,

National Pay Commission.

15. J R Wimalasena Dissanayake,

Co - Chairman,

National Pay Commission.

16. Wimaladasa Samarasinghe,

Member,

17. V. Jegarasasingham,

Member,

18. G. Piyasena,

Member,

19. Rupa Malini Peiris,

Member,

20. Dayananda Widanagamachchi,

Member,

21. S. Swarnajothi,

Member,

22. B K Ulluwishewa,

Member,

23. Sujeewa Rajapakse,

Member,

24. H W Fernando,

Member,

25. Prof. Sampath Amaratunga,

Member,

26. Dr. Ravi Liyanage,

Member,

27. W K H Wegapitiya,

Member,

28. Keerthi Kotagama,

Member,

29. Reyaz Mihular,

Member,

30. Priyantha Fernando,

Member,

31. Leslie Shelton Devendra,

Member,

32. W.W.D.S. Wijesinghe,

Member,

33. G.D.S. Chandarsiri,

Member,

34. W.H. Piyadasa,

Member,

All of the National Pay Commission,

Room No 2 - 116,

B M I C H,

Buddhaloka Mawatha,

Colombo 07.

35. Hon. Attorney General,

Attorney General's Department,

Colombo 12.

RESPONDENTS

Before: Vijith K. Malalgoda PC J

P. Padman Surasena J

E. A. G. R. Amarasekara J

Counsel: Chamantha Weerakoon Unamboowe with O L Premaratne for the
Petitioners.

Rajiv Goonetillake SSC for the Attorney General.

Argued on : 2019 - 02 - 25

Decided on : 2019 - 09 - 25

P Padman Surasena J

The 2nd and 3rd Petitioners are respectively the president and the secretary of the 1st Petitioner trade union. The 4th to 9th Petitioners are also members of the said 1st Petitioner union.

The 2nd to 9th Petitioners are Rubber Development Officers in the Rubber Development Department. Out of them, the 2nd, 3rd, 4th and the 7th, Petitioners had joined the Rubber Development Department in the year 1996 as Rubber Development Officers having sat for the competitive examination held for the recruitment of officers to that post.

The 5th, 6th, 8th and the 9th Petitioners are those who had joined the Rubber Control Department as Rubber Inspectors in the years 1983, 1985 and 1986 and were thereafter absorbed into the Rubber Development Department.

The Rubber Development Department is the successor to the Rubber Control Department, which had been established to exercise the powers and functions stipulated by the Rubber Control Act No. 11 of 1956 as amended.

The Petitioners have produced their appointment letters marked **P 2(a)** to **P 2(h)**. They state that all the Petitioners were recruited in terms of the same scheme of recruitment. The said scheme of recruitment containing the recruitment procedures to grades II, I and a special grade has been produced marked **P 5(a)**, **P 5(b)**, and **P 5(c)** respectively.

In the year 1994, the Rubber Control Department and the Advisory Services Department of the Rubber Research Board were amalgamated by integrating all functional services of the Advisory Services Department of the Rubber Research Board into the Rubber Control Department. This had been done pursuant to a Cabinet decision produced marked **P 6(a)** and **P 6(b)**.

As the Rubber Control Department had ceased to exist with the establishment of the Rubber Development Department, the Petitioners had become employees of the newly established Rubber Development Department with effect from 1st July 1994, and their designations were changed to Rubber Development Officer Grade II. The Petitioners have produced marked **P 7**, the letter issued to the 9th Petitioner informing him of his changed designation.

As per the Cabinet decision (**P 6(a)** and **P 6(b)**) 'Extension Officers' of the Advisory Services Department of the Rubber Research Board were also given the option of joining the Rubber Development Department as 'Rubber Development Officers'. It is the complaint of the Petitioners that the said 'Extension Officers' were subsequently placed under a salary scale higher than the Petitioners consequent to a judgment pronounced by this

Court in the case SC FR 961/97. It appears that those 'Extension Officers' as per the said Cabinet decision are entitled to enjoy the salary and the other benefits as their counterparts in the Rubber Research Board to which they had originally joined.

In terms of the Public Administrations Circular No. 06/2006 (produced marked **P 9**) the Rubber Development Officers were placed in MN-1 Step 6 in the said circular.

Subsequently, upon representations being made by the Petitioners to the 1st Respondent who in turn made representations to the relevant Ministry and also to the National Salaries and Cadre Commission, Rubber Development Officers who were in Grade II were placed at MT-2, Step 6 while Rubber Development Officers who were in Grade I were placed at MT-2, Step 23.

The 1st Respondent by the newspaper advertisement dated 15-03-2015 produced marked **P 17**, had called for applications from persons with qualifications specified therein, for the post of Rubber Development Officers in the Rubber Development Department under a new scheme of recruitment approved by the Public Service Commission on 14-11-2014 produced marked **P 18**. According to the said new scheme of recruitment

the Petitioners have been placed in the category identified as "Supervisory Management Assistant - Technical" with the applicable salary code being MN 3 - 2006 A. the said circular has taken away the requirement of a degree as the threshold qualification. Said circular also has introduced a new grade called "grade III" as the recruitment grade.

Petitioners complain that the requirement of a degree as a threshold qualification had been deliberately taken away to justify the placement of the Petitioners in salary code MN 3 - 2006 A. Petitioners state that the said removal of the requirement of a degree as a threshold qualification for recruitment has resulted in making their post qualitatively inferior and had lowered their status. Petitioners claim that the categorization of the Petitioners as "Supervisory Management - Technical" is arbitrary, unreasonable and without any basis. Petitioners claim that in terms of the Public Administrations Circular 06/2006, their service category according to their qualifications and functions should be the category called "Field/Office Based Officers" itemized at 3.7.2 of the said circular and that accordingly they should be placed on the salary code MN 5 - 2006 A.

It is on the above basis that the Petitioners state that the scheme of recruitment approved by the Public Service Commission on 14-11-2014 (**P**

18) is unfair, unreasonable, discriminatory and arbitrary. Accordingly, it is their claim that the said circular has violated their fundamental rights guaranteed under Articles 12(1) and 14 1(g) of the Constitution.

It is on that basis that the Petitioners in this application have prayed inter alia, for following relief.

- I. A declaration that the Respondents have infringed the fundamental rights of the Petitioners and those whom they represent, guaranteed under Articles 12(1) and 14(1)(g) of the Constitution,
- II. A declaration that the new scheme of recruitment approved by the Public Service Commission on 2014-11-14 is invalid and / void and inoperative,
- III. A direction to the Respondents to place the Petitioners and Rubber Development Officers in a service category and salary code commensurate with their existing qualifications and functions.

This Court on 05-10-2015 having heard the submissions of the learned counsel for the Petitioner and the submissions of the learned Deputy Solicitor General for the Respondents had decided to grant leave to proceed in respect of the alleged violations of Articles 12(1) and 14(1) (g) of the Constitution.

The 1st Respondent in his affidavit has taken up the following positions.

1. It had taken over 7 years to finalize the impugned circular, as there were consultations, negotiations and discussions with the Petitioners from time to time. It is his position that what the Petitioners are seeking to challenge in the instant application is the new scheme of recruitment approved by the Public Service Commission on 14-11-2014 produced marked **P 18**, which is the outcome of the said consultations, negotiations and discussions.
2. Although the crux of the Petitioners' objection to the new scheme of recruitment is the removal of the degree as one of the alternate qualifications for recruitment, none of the 9 Petitioners of this application and 42 persons who are said to be similarly circumstanced as the Petitioners, were not graduates at the time of their recruitment. It is his position that few of them had subsequently obtained degrees while serving in the department.

Learned Senior State Counsel in addition to his arguments based on the merits of the case also raised the issue that the Petitioners have failed to file this application within the time frame specified by law.

In contradistinction to the above claim by the Respondents, the Petitioners have taken up the position that it was only when the newspaper advertisement was published on 15-03-2015 (**P 17**), they became aware that a new scheme of recruitment (**P 18**) has been approved by the Public Service Commission on 14-11-2014.

Thus, the first issue that this Court has to resolve is whether the Petitioners' application is out of time.

In order to ascertain whether the Petitioners' application is out of time, it would be opportune at this juncture to apply the principles laid down in the judgment of His Lordship Justice Prasanna Jayawardena PC in the case of Demuni Sriyani de Zoysa and others Vs Chairman, Public Service Commission and others.¹

When applying the aforesaid principles, one has to sequentially ask the following questions:

- (i) (a) When did the alleged infringement occur?; or, if Petitioners claim they became aware of the alleged infringement only sometime after

¹ SC FR 206 / 2008 decided on 09-12-2016.

it occurred, when did they become aware of it or when should they have become aware if it?

(b) If the alleged infringement is in the nature of a continuing one which the Petitioners were aware of, till when did it continue?;

(ii) If the application has been filed more than one month after the latest date determined when considering (a) and (b) above, have the Petitioners established that, they were unable to invoke the jurisdiction of this Court due to circumstances, which were beyond their control and that, there has been no lapse, fault or delay on their part?

(iii) If so, have the Petitioners filed this application within one month of any such disability ending?

As has been held in that judgment, 'the date determined in answer to the first subset of questions will determine the date on which the one month period stipulated in Article 126 (2) commences to run. Quite obviously, if the petition has been filed within one month of that date, it is within time'.

As has been stated before, the Petitioners are seeking to challenge in the instant application the new scheme of recruitment (**P 18**) which the Public Service Commission had approved on 14-11-2014. Thus, it is clear that the alleged infringement of the fundamental rights of the Petitioners had

occurred on 14-11-2014. However, the Petitioners have filed the instant application on 30-03-2015.

As the Petitioners claim that they became aware of the alleged infringement only when the newspaper advertisement (**P 17**) was published on 15-03-2015, this Court needs to ascertain next, as to when had the Petitioners indeed become aware of it or when should they have become aware if it?

The document produced by the 1st Respondent marked **1 R 4** , annexed to his affidavit dated 08-07-2015 shows clearly that the Petitioners had discussed with the 1st Respondent the possibility of making amendments to the approved new scheme of recruitment. This discussion had taken place on 25-11-2014 and the main aim of the Petitioners during the said discussion had been an attempt to place them on the salary code MN 5.

The contents of the letter dated 08-12-2014 (**1 R 4**) shows clearly that the 1st Respondent had taken whatever measures possible within his means to support the attempts of the Petitioners. This is further buttressed by the fact that the said letter has been copied to the Secretary of the 1st Petitioner association for its notice. The Petitioners in their joint counter

affidavit have denied being sent a copy of the said letter.² This Court while observing that the above denial is a mere statement in their counter affidavit, also observes that the Petitioners have indeed admitted that they had held the discussion on 25-11-2014 described in the said letter dated 08-12-2014 (**1 R 4**). The contents of paragraph 6 of the counter affidavit filed by the Petitioners are clearly against the 1st Respondent with an allegation that a wrong SOR was shown to them. In other words, what the Petitioners have stated is that the 1st Respondent had suppressed from them, the new SOR and misled them. However, this Court decides to reject the Petitioners above position as the 1st Respondent had done everything within his means to support the attempts of the Petitioners. Thus, this Court sees no reason as to why the 1st Respondent should have acted in the way alleged by the Petitioners.

Therefore, this Court rejects the position taken up by the Petitioners that they became aware of the alleged infringement only when the newspaper advertisement (**P 17**) was published on 15-03-2015.

The upshot of the above conclusion is that the Petitioners have failed to file the instant application within one-month time period specified in Article

² Paragraph 6 of the counter affidavit dated 07-08-2015.

126 (2) of the Constitution. For those reasons, this Court decides to uphold the issue raised by the learned Senior State Counsel that the Petitioners have failed to file this application within the time frame specified by law.

Therefore, this Court decides to dismiss this application without costs.

JUDGE OF THE SUPREME COURT

Vijith K. Malalgoda PC J

I agree,

JUDGE OF THE SUPREME COURT

E. A. G. R. Amarasekara J

I agree,

JUDGE OF THE SUPREME COURT