

**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

1. D. H. B. Edirisinghe  
2/57, Melpati watta, Kotawala, Kaduwela.
2. P. M. Ratnapala  
87, Bellantara Road, Dehiwala.
3. M. D. S. A. Perera  
Pahala Kosgama, Kosgama.
4. N. M. A. Amaradewa  
232/6, Imaduwa Road,  
Kurunduwatte, Ahangama.
5. W. P. S. K. Fernando  
Mount Pleasant, Hapugala, Wakwella.
6. L. P. S. Kumara  
62-3, Ginthota Road, Kalegana, Galle.
7. P. Ariyasena  
1<sup>st</sup> Lane, Kalutara Road, Moranthuduwa.
8. Sri Lanka Accountants' Service Association,  
335-3/1, Olcott Mawatha, Colombo 10.

**Petitioners****SC /FR/ Application No. 187/2014****Vs,**

1. B. M. S. Batagoda  
Former Deputy Secretary to the Treasury,  
Ministry of Finance and Planning  
the Secretariat, Colombo 01.
2. Dayasiri Fernando  
Former Chairman,  
Public Service Commission,  
No, 177, Nawala Road,  
Narahenpita, Colombo 05.

3. Palitha M. Kumarasinghe  
Former Member of the Public Service Commission, No, 177, Nawala Road, Narahenpita, Colombo 05.
4. Sirimavo A. Wijerathne  
Former Member of the Public Service Commission, No, 177, Nawala Road, Narahenpita, Colombo 05.
5. M. D. W. Ariyawansa  
Former Member of the Public Service Commission, No, 177, Nawala Road, Narahenpita, Colombo 05.
6. Sathya Hettige  
Former Chairman,  
Public Service Commission,  
No, 177, Nawala Road,  
Narahenpita, Colombo 05.
7. S. C. Mannapperuma  
Former Member
8. Ananda Seneviratne  
Former member
9. N. H. Pathirana  
Former Member
10. S. Thillei Nadarajaa  
Former Member
11. S. A. Mohomed Yahiya  
Former Member
12. Kanthi Wijetunga  
Former Member
13. Sunil A. Sirisena  
Former Member

14. I. N. Soyza  
Former Member  
  
7<sup>th</sup> to 14<sup>th</sup> Respondents  
Above; all at  
Public Service Commission,  
No, 177, Nawala Road,  
Narahenpita, Colombo 05.
15. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.
16. Dharmasena Dissanayake  
Chairman, Public Service Commission,  
No, 177, Nawala Road,  
Narahenpita, Colombo 05.
- 16A. Hon. Justice Jagath Balapatabendi  
Chairman, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
17. A. Salam Abdul Waid  
Former Chairman
- 17A. Hussain Ismail,  
Member
- 17B. Mrs. Indrani Sugathadasa,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
18. D. Shirantha Wijayatilake,  
Former Member
- 18A. Sudharma Karunaratne,  
Member

- 18B. Mr. V. Shivagnanasothy,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
19. Prathap Ramanujam,  
Member
- 19A. Dr. T. R. C. Ruberu,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
20. V. Jegarasasingam  
Member
- 20A. Mr. Ahamod Lebbe Mohomed Saleem,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
21. Santi Nihal Seneviratne,  
Former Member
- 21A. G. S. A. D. Silva PC  
Member
- 21B. Mr. Leelasena Liyanagama,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
22. S. Ranugge  
Member
- 22A. Mr. Dian Gomes,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.

23. D. L. Mendis  
Member
- 23A. Mr. Dilith Jayaweera,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
24. Sarath Jayathilaka  
Member
- 24A. Mr. W.H. Piyadasa,  
Member, Public Service Commission,  
1200/9, Rajamalwatta Road,  
Battaramulla.
25. J. J. Rathnasiri  
Former Secretary  
Ministry of Public Administration  
and Management,  
Independent Square, Colombo 07
- 25A. S. Hettiarachchi  
Secretary, Ministry of Public Administration,  
Home Affairs, Provincial Counsel and Local  
Government, Independence Square,  
Colombo 07.
- 25B. Mr. J. J. Rathnasiri,  
Secretary, Ministry of Public Services,  
Provincial Councils and Local Government,  
Independence Square, Colombo 07.

## **Respondents**

**Before:**     **Justice Vijith K. Malalgoda PC**  
                  **Justice Janak de. Silva**  
                  **Justice M. A. Samayawardhena**

**Counsel:**     Manohara de. Silva PC with Ms. Nadeeshani Lankatilleka for the Petitioners,  
                  Ms. S. Barrie, SSC, for the Hon. Attorney General

Argued on: 10.02.2021

**Judgment on: 09.07.2021**

### **Justice Vijith K. Malalgoda PC**

Out of the eight Petitioners before this court, the 1<sup>st</sup> to the 7<sup>th</sup> Petitioners were employed in Grade 1 of the Sri Lanka Accountants' Service at the time the Public Administration Circular No. 06 of 2006 was issued but among them the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners were retired when they filed the instant application before this court. The 8<sup>th</sup> Petitioner before this court is the Sri Lanka Accountants' Service Association a duly registered trade union.

As observed by this court, this is yet another application filed by another category of Public Service with regard to the implementation of the Public Administration Circular 06 of 2006 issued by the Ministry of Public Administration and Home Affairs (hereinafter referred to as "the circular") which was introduced to re-structure and to have a common structure in service as well as in salary in the Public Service. As submitted by the Respondents before this court, "the circular" had provided for restructuring the salaries, service grades and promotional procedure.

This court on several occasion had held that registered trade unions have no *locus standi* to come before the Supreme Court for alleged violation of the fundamental Rights of its membership. In this

regard I am mindful of the decision in ***Ceylon Electricity Board Accountants' Association V. Ranawaka SC FR 18/2015*** SC minute dated 03.05.2016 where *Sripawan CJ* held;

“In the absence of a provision permitting a Trade Union to institute action on behalf of its members, the Petitioner Union cannot have and maintain this application on behalf of its members in terms of Article 17 read with Article 126 (2) of the Constitution.”

However, in the said decision in ***Ceylon Electricity Board Accountants' Association (Supra)*** *Sripawan CJ* had observed the difference in the decision in the said case with the decision in ***the Public Services United Nurses Union Vs. Jayawickrema and Others (1988) 1 Sri LR 229*** as follows;

“I do not find myself able to accede to the argument advanced by Mr. .... for two reasons. Firstly, no objection was taken by the Respondents in the said application that the Public Services United Nurses Union had no *locus standi* to institute an application under Article 126 of the Constitution and the Court did not have the benefit of any argument of the learned Counsel on that issue. Secondly, in any event, the second Petitioner was a Nurse and the Secretary of the First Petitioner Union, whose fundamental right of equality guaranteed under Article 12 had been violated. Furthermore, the second Petitioner is a “person” within the meaning of Article 126 (2) of the Constitution. Thus, the case could have proceeded even if the first Petitioner, namely Public Service United Nurses Union was struck down.”

The Respondents raised several objections with regard to the *Locus Standi* of some of the Petitioners before this Court including the 8<sup>th</sup> Petitioner namely the Sri Lanka Accountants' Service Association. However as observed in the case of *Ceylon Electricity Board Accountants' Association (Supra)* first to the seventh Petitioners being members of the said Association and the Sri Lanka Accountants' Service, who claimed that their fundamental right to equality guaranteed under Article 12 (1) of the

Constitution had been violated, the said Petitioners are entitled to peruse the instant application before this court.

The objection with regard to the *locus standi* of the 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners namely, D.H.B. Edirisinghe and P.M. Ratnapala was that they were retired from the service, when the instance application was filed before this court.

However, as observed by this court the said two Petitioners were retired from the service on dates subsequent to 01.01.2006, on which date “the Circular” had come into effect, and the said Petitioners were entitled to claim the benefits of “the circular” for their pension rights.

In the said circumstances, I see no merit in the said objection raised on behalf of the Respondents.

According to the 1<sup>st</sup> to the 7<sup>th</sup> Petitioners, they all were belonging to an All- Island Service namely the Sri Lanka Accountants’ Service, when “the circular” was issued and except for the 1<sup>st</sup> and the 2<sup>nd</sup> Petitioners, all the other Petitioners were in Class I of the said service when the instant application was filed before this court.

The Petitioners have explained their service structure, prior to 01.01.2006 as follows;

Structure of the service-

- a) Class I
- b) Class II Grade I
- c) Class II Grade II (recruitment level)

Promotions within the service-

- a) 10 years of satisfactory service in Class II Grade II is required for an officer to be eligible for promotion to Class II Grade I

- b) 5 years of satisfactory service in Class II Grade I is required for an officer to be eligible for promotion to Class I

(P2a)

As submitted by the Petitioners, there need to be an amendment to the above structure, with the issue of “the Circular”, but due to the delay in implementing “the Circular” 3<sup>rd</sup> Petitioner along with few other Petitioners belonging to different All-Island Services, instituted proceedings before the Supreme Court to compel the authorities to implement the provisions of “the Circular”

The said application, SC FR 312/2008 was settled between the parties when the Respondents agreed in court for the relief prayed in paragraph ‘C’ be granted, i.e.

- “C. Direct the 1<sup>st</sup> to the 14<sup>th</sup> Respondents to amend the service minutes of the Sri Lanka Engineering Service, Sri Lanka Animal Production and Health Service, Sri Lanka Planning Service, Sri Lanka Accountants’ Service and the Sri Lanka Agriculture Service as required by the promotional procedure set out in Clause 4 of annexure II of Public Administration Circular 06/2006 with effect from 01.01.2006”

As revealed before us, “the Circular” had provided for a four-tier structure for All- Island Services and the structure proposed by “the Circular” was;

- a) Special Grade
- b) Grade I
- c) Grade II
- d) Grade III (recruitment level)

The main grievance of the Petitioners before this court was based on the appointments made to the Special Grade referred to above and the Petitioners rested their entire case to the Service minute, that

was introduced in September 2010, by publishing on 10<sup>th</sup> September 2010 in the Gazette extraordinary 1670/33. The said service minute replaced the existing service minute which was published in the Gazette (extraordinary) No 1194/26 dated 27<sup>th</sup> July 2001 and was issued in order to implement the recommendations of “the Circular.”

The Petitioners have taken up the position that, an officer belonging to the Grade 1 of the Sri Lanka Accountants’ Service as at 01.01.2006 is entitled under Clause 19.1 of the new service minute which is the transitional Provision, read with Clause 10.3 to be appointed to the Special Grade if he fulfills the requirements referred to in those provisions.

For the convenience of reference, I will now re-produce the above clauses in my Judgment.

**10.3** Promotion form Grade 1 to Special Grade

**10.3.1** Promotion to Special Grade will only be made by a designated officer authorized by the Public Services Commission or by Cabinet of Ministers from the officers in the Grade I of the Service who fulfill following requirements.

Accordingly, an officer-

- i. Should have completed satisfactory period of service in the Grade I during the preceding five (5) years of gaining eligibility for promotion and should have earned all salary increments on due dates;
- ii. Should not have undergone any punishment as a result of disciplinary inquiry taken place for an offence committed during the preceding five (5) years of gaining eligibility for promotion (excluding warnings);

- iii. Should have achieved above satisfactory performance during the five (5) years preceding the date of promotion in terms of the approved performance evaluation scheme;
- iv. The promotions to the Special Grade shall be made based on recommendations of the board of interview appointed by the appointing authority to check whether the above qualifications have been fulfilled. Date of promotion will be the due date of gaining eligibility.

**10.3.2** Officers who fulfill all requirements stipulated in Section 10.2.1 1(v) and 10.3.1 above will be promoted to the Special Grade from the date of gaining eligibility,

**10.2.1.1(v)** Referred to above reads as follows;

**10.2.1.1(v)** Should have completed any one of the qualifications set out in Appendix 5

**Appendix 5** Referred to above gives a list of qualifications that are equivalent to post graduate degree qualification

**19** Transitional provision;

**19.1 (a)** Officers who are in Service on the effective date will be absorbed into the re-organized Sri Lanka Accountants' Service as follows;

**19.1.a (iv)** Absorption into Special Grade of the Service. Officers who are in Class I of the Sri Lanka Accountant's Service and have fulfilled qualifications set out in section 10.3.1 and having completed qualification as at the date of implementation.

- a) Possession of a Postgraduate Diploma or higher qualification from recognized university or from an institute approved by the University Grants Commission.

- b) Having passed Part I or higher level of the final examination of the Institute of Chartered Accountant's or Part III or higher level of Chartered Institute of Management Accountants.

Whilst relying on the above provision of the new service minute read with Clause 6.1, the learned President's Counsel for the Petitioners argued that there was no cadre assigned to the Special Grade by the service minute and according to the service minute the combined cadre of Sri Lanka Accountants' Service should be 1600. In the absence of an identified number of officers in any of the cadres including Grade III to Grade I and Special Grade, it was the position of the Petitioners, that the officers belonging to each Grade is entitled to be promoted to the next Grade when he/she fulfill the requirements identified in the service minute and the same principle will apply even to the promotions to Special Grade.

As further submitted by the learned President's Counsel, the post graduate requirement identified in Clause 10.2.1.1(v) is not applicable to the petitioners since Transitional Provisions in Clause 19 had reduced the said requirement to

- a) Possession of a Post Graduate Diploma or higher qualification from recognized University or from an institute approved by University Grants Commission.
- b) Having passed Part I or Higher level of the final examination of the Institute of Chartered Accountants' or part III or higher level of Chartered Institute of Management Accountants.

and the officers who possessed the said qualification and fulfill the other requirements identified in Clause 10.3.1 including the Petitioners, were entitled to be promoted to the Special Grade without any cadre restriction.

The Petitioners whilst submitting the above position, relied heavily on the Cabinet Memorandum and a decision which was produced marked P6a and P6 respectively. In the said Cabinet decision, it was decided;

- i. To implement the new minutes of the Sri Lanka Planning Service and the Sri Lanka Accountants' Service to be effective from 01.01.2006; and
- ii. To grant promotions to officers with requisite qualifications in accordance with the provisions of the relevant service minutes, without payment of arrears of salary up to 30.06.2010

By another Cabinet paper dated 23.02.2011 an Interview Panel was proposed to be appointed to check the qualifications of those who are eligible to be promoted to the Special Grade and the said paper was approved by the Cabinet on 31.03.2011 (P10a and P10b)

The grievance or the alleged violation, the Petitioners have complained before this court had emerged since then and the Petitioners have submitted several documents in support of their contention. Some of the documents the Petitioners relied in establishing their grievance is as follows;

**P-11** letter by Deputy Secretary Treasury addressed to the Secretary Public Service Commission dated 16.06.2011 seeking approval for the interview board (as per the Cabinet decision) to check the qualifications of 166 applicants for the Special Grade

**P-12** letter dated 07.07.2011 addressed to Deputy Secretary Treasury by the Senior Assistant Secretary to the Public Service Commission granting the approval to conduct the interview subject to submitting an explanation with regard to the approved cadre for the Special Grade, prior to conducting the interviews.

- P-13** letter dated 12.10.2011 by the Deputy Secretary Treasury to the Secretary Public Service Commission informing that a committee had been appointed to identify the cadre for the Special Grade and Grade I of the Sri Lanka Accountants' Service
- P-14** letter dated 4<sup>th</sup> November 2011 by the Senior Assistant Secretary to the Public Service Commission to the Deputy Secretary Treasury, informing not to conduct any interviews for the promotion of Grade I officers of the Sri Lanka Accusants' Service to the Special Grade until the cadre of the Special Grade is informed to the Public Service Commission
- P-15** letter dated 13.12.2011 by the Deputy Secretary Treasury to the Secretary Public Service Commission informing that the New Service minute for the Accountants' Service provides a Non-Cadre base promotion scheme and therefore seeking permission to conduct the interviews
- P-16** letter dated 31<sup>st</sup> January 2012 by Senior Assistant Secretary Public Service Commission to the Deputy Secretary Treasury re-iterating the requirement to finalize the cadre for the Special Grade of the Sri Lanka Accountants' Service prior to conducting the interviews.

Since then, several letters had been exchanged between the General Treasury and the Public Service Commission and the Public Service Commission had finally issued the impugned Gazette 1865/36 dated 6<sup>th</sup> June 2014 (P-25) making the following changes to the existing service minute.

- a. identifying the posts to be held by a Special Grade Officer as,
  - a) Deputy Chief Secretary (Financial)
  - b) Chief Financial Officer
  - c) Director General
  - d) Additional Director General

b. identifying the Joint Cadre for Grade I to Grade III of the Sri Lanka Accountants' Service as 1600.

c. replacing Clause 10.3.1. of the existing service minute to read as;

**10.3.1** Appointment to Special Grade is approved by the Public Service Commission only by promoting officers of the Grade 1 who have fulfilled the following requirements.

- i. Should have obtained a Post Graduate Degree in relevant field
- ii. Should have completed five (5) years of active and satisfactory service in Grade I of the Executive Service Category and should have earned five increments after promotion to Grade I as to the date of gaining eligibility for promotion.
- iii. Should have completed not less than 18 years of active service period in the Executive Service Category of the related service category/posts as at the date of gaining eligibility for promotion
- iv. Should have attained a performance at satisfactory level or above within the period of 05 years immediately preceding to the date gaining eligibility for promotion.
- v. Should have a satisfactory service period and should not have been subjected to disciplinary punishment within the period of 05 years immediately preceding to the date of gaining eligibility for promotion.

According to the Petitioners the effect of the amendments introduced to the existing service minute was to;

- a) Limit the entire cadre of 1600 personnel of the Sri Lanka Accountants' Service only to Grades I, II and III

- b) Insist that all promotions to the Special Grade (and/or absorption as the case may be) irrespective of whether they be ordinary promotions and/or transitional period promotions and/or transitional period absorptions be granted only to officer who *inter alia* possess “a Postgraduate Degree in the relevant field” and
- c) Determine that promotions to the Special Grade will be made only to fill vacancies in the Special Grade,

Petitioners have further submitted that, based on the amendments made to the service minute, the Public Service Commission had permitted to hold the interview for the promotion and/or adsorption of Grade I officers of the Sri Lanka Accountants’ Service to the Special Grade and 82 handpicked officers were called to face the interview but, none of the Petitioners who were eligible to face the interviews based on the earlier Cabinet decision were among the 82 officers summoned to face the interview.

Based on the above submissions placed before this Court, the Petitioners argued that, the amendment made to the Service minute of the Sri Lanka Accounts’ Service by the Public Service Commission (P-25) without obtaining the permission of the Cabinet of Ministers and without consulting the Director General Management Services, National Salaries and Cadre Commission and the relevant stake holders including the 8<sup>th</sup> Petitioner, is arbitrary, illegal and in violation of the Fundamental Rights of the Petitioners guaranteed under Article 12.1 of the Constitution.

Whist raising a preliminary objection on *locus standi* of some of the Petitioners, which I have already considered in this judgment, the Respondents resisted the granting of any relief in the instant application. The in-cumbent Chairmen of the Public Service Commission, the 16<sup>th</sup> Respondent, filed an affidavit along with several documents to explain the steps taken by the Public Service Commission in

this regard, but before analyzing the same, this court would prefer to consider some of the documents the Petitioners have submitted along with papers already filed before this court.

The Petitioners produced marked P2a, the service minute which existed at the time “the Circular” was issued on 25-04.2006, but as per “the Circular” it was operative since 01.01.2006. Therefore, P2a was operative only up to 31.12.2005. According to P2a, there were only 3 Grades in the Sri Lanka Accountants’ Service Namely Class II Grade II, Class II Grade I and Class I. Clause 5 (a) of the said service minute identified the Cadre of the said service as follows;

|                   |   |       |
|-------------------|---|-------|
| Class I           |   | -122  |
| Class II-Grade I  | } | -1224 |
| Class II-Grade II |   |       |

As observed by this court, the highest grade under the previous service minute was Class I, and Cadre of 122 was identified for the said Grade separate of the combine cadre of 1224 for the balance two grades including the recruitment Grade. In these circumstances, it is not correct for the Petitioners to argue that the promotions in the Sri Lanka Accountants’ Service is not cadre base but it is automatic within the combine cadre.

The new service minute introduced in year 2010 (effective from 01.01.2006) provided for four Grades and Clause 6.1 and 6.2 identified the cadre as follows;

### 6.1

|               |   |      |
|---------------|---|------|
| Grade III     | } | 1600 |
| Grade II      |   |      |
| Grade I       |   |      |
| Special Grade |   |      |

**6.2** No of Combined Officers :1600 (Grade III, II and I)

When consider the above provisions in the new service minute, it is once again clear, that the three lower grades in the service had put together to a combine cadre of 1600 keeping the Special Grade separately but no cadre had been identified for the Special Grade under the new service minute.

In these circumstances, I cannot agree with the argument placed before this court by the learned President's Counsel for the Petitioners, that the new service minute had also provided a non-cadre base promotion scheme based on a combine cadre of 1600 for the Sri Lanka Accountants' Service. As further observed by this court, the combine cadre of 1600 is only for Grade I, II, and III of the said service and not for the Special Grade.

As revealed during the argument before us, the Public Service Commission was not in operation when the service minute of the Sri Lanka Accountants' Service was published by the Secretary to the Ministry of Finance and Planning in the Government Gazette Extra Ordinary 1670/30 dated 2010.09.10

The Minister in charge of the Subject of Finance and Planning had submitted a Cabinet Memorandum in order to obtain the approval to the service minute and to grant promotions to officers who are entitled for promotions to higher Grades. (P6a) The Cabinet of Ministers by its decision dated 23.03.2010 had approved the said request as follows; (P6)

- i) To implement the new service minute of the Sri Lanka Planning Service and the Sri Lanka Accountants' Service to be effective from 01.01.2006; and
- ii) To grant promotions to officers with requisite qualifications in accordance with the provisions of the relevant service minutes, without payment of arrears of salary up to 30.06.2010

When going through the above documents it is clear, that the approved service minute did not have the cadre for the Special Grade and therefore the approval granted cannot be implemented without

an amendment to the service minute. Even though the learned President's Counsel for the Petitioners argued that the Public Service Commission is bound to implement the policy decision of the Cabinet of Ministers and therefore any amendment made to the service minute by the Public Service Commission is *ultra vires* and arbitrary, this court cannot agree with the said argument for the simple reason that the Public Service Commission being the Appointing Authority since it is re-constituted on 12.06.2011, will not be able to appoint anybody to a Grade which does not have a cadre identified in its creature itself. In the said circumstances, it is the duty of the Public Service Commission to amend the service minute in consultation with the relevant stake holders.

When P10 was submitted by the Secretary to the Ministry of Finance and Planning requesting to nominate an interview panel, to conduct interviews to promote Grade I officers belonging to the Sri Lanka Accountants' Service to the newly established Special Grade of the said Service, the said memorandum was considered and approved under sub-heading 59.07 by the Cabinet under the main heading 59; "Institutional work that has to be carried out by the Cabinet of Ministers until the Public Service Commission is appointed."

In the said circumstances, it is clear, that the approval granted by the Cabinet of Ministers to hold interviews as proposed by the Secretary to the Ministry of Finance and Planning does not come within the "Policy Decisions" taken by the Cabinet of Ministers.

The Public Service Commission was re-constituted on 12<sup>th</sup> June 2011 and since then all appointments, transfers, dismissal and disciplinary control of Public Servants and all matters relating to the same, including work entrusted to the Public Service Commission by its procedural rules, was to be carried out by the Public Service Commission.

The steps Public Service Commission has taken with regard to the appointments to the Special Grade of the Sri Lanka Accountants' Service has been explained by the Respondents as follows;

- a) Special Grade is a grade created by "the circular" for officers in All Island Services and in all such services, the appointment to the Special Grade is not automatic but based on Cadre Vacancies.
- b) In the Service minute of the Sri Lanka Accountants' Service, which was published by the Secretary to the Ministry of Finance and Planning in 2010, a separate cadre for Special Grade was not identified
- c) Cabinet of Ministers had granted approval to conduct interviews to promote officers belonging to the Grade I to Special Grade of the Sri Lanka Accountants' Service, prior to Constitute the Public Service Commission, but the Commission approval was sought to continue with the interview by letter dated 16.06.2011.
- d) In the absence of a specific Cadre identified in the service minute, the relevant authority was instructed to identify the cadre for the Special Grade before conducting the interviews. These instructions were given to the Secretary to the Ministry of Finance and Planning who published the service minute and also obtained cabinet approval to conduct interviews for the promotion to the Special Grade, in order to maintain equal standard between the All-Island Services.
- e) Even though approval was sought to hold interviews subject to the identification of the cadre by a special committee appointed for that purpose, the said approval was not granted. However, prior to the approval being granted to conduct the interviews, several preliminary issues such as finalizing the qualifications required and the transitional provisions that will be applicable for the promotions to the Special Grade (R7, R8) were resolved.
- f) By letter dated 23.11.2012, Deputy Secretary to the Treasury wrote to the Public Service Commission informing that 45 posts had already been identified as posts for Special Grade Officer and submitted 33 approvals the Ministry received from the Department of

Management Service, and sought approval to conduct Interviews, after publishing the necessary advertisements.

- g) Subsequent to the conduct of the interviews by calling applications, summoning the 82 applicants who had applied with required qualification, 41 names were recommended to the Public Service Commission by the Deputy Secretary Treasury by letter dated 30.06.2014 (R-10).
- h) Even thereafter several letters were exchanged between the relevant stake holders to grant the maximum relief to all those who had the necessary qualifications to be promoted to the Special Grade and in this regard, the transitional period that has to be expired on 31.12.2014 was extended until 28.02.2015.
- i) The Department of Management Service had approved a cadre of 47, for the Special Grade and that too was published in the Gazette Extraordinary 1981/99 dated 27.08.2016.
- j) Whilst the interview process was commenced after following the due process and finalizing other matters such as applicability of the transitional provisions to those who had the requisite qualifications, the necessary amendments were made to the service minute of the Sri Lanka Accountants' Service in keeping with standard between All Island Services by publishing the amendments in the Government Gazette extraordinary 1856/36 dated 6<sup>th</sup> June 2014 but Clauses 19 and 20 were not subject to any amendment and continued to be in force until the end of the extended period referred to above.

During the argument before this court, the learned President's Counsel submitted that the relevant stakeholders such as Department of Management Services, Directors Establishment were not consulted by the Public Service Commission when amending the service minute but we cannot agree with the said argument since there is material before this court that, there were consultations between the Public Service Commission, Ministry of Finance and the Department of Management Service in identifying the cadre for the Special Grade of the Sri Lanka Accounts' Service.

Petitioners challenged the steps that has been taken by the Public Service Commission to amend the service minute already approved by the Cabinet of Ministers by its decision dated 23.03.2010 and argued that the Public Service Commission did not have the power to amend the service minute, to introduce cadre vacancy requirement, as P 5, constitute a policy decision of the Cabinet of Ministers.

When considering the above argument, it is necessary to refer to the relevant provisions of the Constitution which refers to the powers and functions of the Public Service Commission and the Cabinet of Ministers with regard to the Public Service.

At the time the service minute was approved by the Cabinet in the year 2010, the applicable text of the Constitution was the 17<sup>th</sup> Amendment and Article 55 (1) and 55 (4) of the 17<sup>th</sup> Amendments were as follows;

**Article 55 (1);** Appointment, promotion, transfer, disciplinary control and dismissal of public officer shall be vested in the Commission.

**Article 55 (4);** Subject to the provisions of the Constitution, the Cabinet Ministers shall provide and determine all matter of policy relating to public officers.

The above two Sub Articles were replaced in the 18<sup>th</sup> Amendment to the Constitution and subsequent to the said Amendment the relevant Sub Articles of the Constitution reads as follows;

**Article 55 (1):** The Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal.

**Article 55 (3);** Subject to the provisions of the Constitution, the appointment, promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the Public Service Commission.

Whilst referring to the difference between the two texts in the relevant Articles, on behalf of the Respondents it was argued that, in the text that was operative in 2010, the Cabinet's policy making power specially, with regard to appointments, promotions and transfers was narrowed in contrast to the broader policy making power introduced by the 18<sup>th</sup> Amendment.

However, I am not inclined to accept the above argument since the policy making power with regard to the Public Service was never entrusted to the Public Service Commission but was with the Cabinet of Minister, whatever the language used in the relevant Article, whether it was more elaborated by identifying specific functions or identified as "all matters of policy relating to public officers".

As further observed by me, the policy with regard to appointment to the highest grade of the Sri Lanka Accountants' Service is very much clear when perusing the two service minutes of the above service. As already observed in this judgement, the highest grade under the old service minute was Class I and a separate cadre of 122 was identified for this grade in the service minute. In the new service minute, a combine cadre of 1600 was identified for the three lower grades, i.e., Grade III, Grade II and Grade I but no cadre was identified for the Special Grade. If the Cabinet was to identify the Special Grade within the combine cadre, there was no restriction on the Cabinet to do so and include the Special Grade within the combine cadre.

Therefore, it is crystal clear that the Government Policy with regard to the appointments to the highest grade was to make it cadre base to an identified cadre but not within a combine cadre. Therefore,

identifying a specific cadre for the Special Grade cannot be considered as a violation of the Government Policy with regard to the appointments to the Sri Lanka Accountants' Service.

When a specific cadre is identified to a Specific Grade there is a competition to enter into the said Grade. Conducting a routine interview to check the qualifications will not be sufficient in such a situation. The amendments made to the New Service Minute by the Public Service Commission had further clarified this position and therefore that too cannot be considered as a violation of the Government Policy.

In the said circumstances, it is my considered view, that P-25 the amendments made to the service minute of the Sri Lanka Accountants' Service by Publishing in Gazette Extraordinary 1865/36 date 06.06.2014 is not in violation of the fundamental rights guaranteed under Article 12 (1) of the 1<sup>st</sup> to 7<sup>th</sup> Petitioners.

Application is accordingly dismissed.

I make no order with regard to the costs.

**Judge of the Supreme Court**

**Justice Janak de. Silva**

**I agree,**

**Judge of the Supreme Court**

**Justice M. A. Samayawardhena**

**I agree,**

**Judge of the Supreme Court**