

**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 & 126 of the  
Constitution of the Republic.

Sathkumara Pathirannehelage Sisira Senanayake,  
No.278, Thalapathpitiya Road,  
Nugegoda.

**PETITIONER**

**SC(FR) Application 190/2016**

**-Vs-**

1. Land Reform Commission,  
No.C81, Hector  
KobbakaduwaMawatha,  
Colombo 07.
2. Mr. SumanatissaThambugala,  
Chairman.
3. Mr. R.P.R. Rajapaksa, Member.
4. Mr. M.A.S. Weerasingha, Member.
5. Dr. RohanWijekoon, Member.
6. Mrs. N.B. HemaDharmawardhana,  
Member.
7. Mrs. K.D.R. Olga, Member.
8. Mrs. S.N. Atthanayake, Member.
9. Mrs. L.S.B. Alwis, Member.
10. Mrs. G.C.S. Thilakaratne, Member.
11. Mr. SenarathWanigathunga, Secretary.

The 2<sup>nd</sup> to 11<sup>th</sup> Respondents all of,

Land Reform Commission,  
No. 81, Hector  
KobbakaduwaMawatha,  
Colombo 07.

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

**RESPONDENTS.**

BEFORE: : **SISIRA J.DE ABREW, J**

**UPALY ABEYRATHNE, J &**

**K.T.CHITRASIRI, J**

COUNSEL : J.C. Weliamuna with SulakshanaSenanayake for the Petitioner.

Dr. S.F.A.Coorey for the 1<sup>st</sup> to 11<sup>th</sup> Respondents.

RajithaPerera SSC for the Hon. A.G ( the 12<sup>th</sup> Respondent)

ARGUED ON: : 27.09.2016

WRITTEN SUBMISSION

TENDERED ON : 5.10.2016 by the Petitioner  
15.11.2016 by 1<sup>st</sup> to 11<sup>th</sup> Respondents  
5.10.2016 by the 12<sup>th</sup> Respondents

DECIDED ON : 15.2.2017

SISIRA J. DE ABREW, J

The Petitioner by this petition seeks a declaration that his fundamental rights guaranteed by Article 12 and 14(1)(g) of the Constitution have been violated by the 1<sup>st</sup> to 11<sup>th</sup> Respondents. This court by its order dated 7.7.2016, granted leave to proceed for the alleged violation Article 12 and 14(1)(g) of the Constitution by

the 1<sup>st</sup> to 11<sup>th</sup> Respondents .

The Petitioner submits that pursuant to an advertisement published in a newspaper for the post of Director Finance of the Land Reform Commission (LRC), he submitted an application to the LRC for the said post; that after an interview, he was informed by letter dated 6.4.2016 (signed by the 2<sup>nd</sup> Respondent) that he would be appointed to the post of Director Finance of the LRC with effect from 15.5.2016; that he tendered letter of resignation to his earlier company as he got the said letter; that he informed the Chairman LRC (2<sup>nd</sup> Respondent) that he would accept the appointment; that the letter of appointment dated 22.4.2016 (P8) to the post of Director Finance with effect from 15.5.2016 was issued to him; that by letter dated 27.4.2016 (P9) he informed the 2<sup>nd</sup> Respondent that he would accept the appointment stated in P8; that on or about 5.5.2016 he received a letter dated 28.4.2016 marked P10 from the 2<sup>nd</sup> Respondent stating that his aforementioned appointment to the post of Director Finance had been temporarily suspended until further notice; that the letter marked P10 has not disclosed any reasons for the suspension of the said appointment; that he has not received any further communication from the Respondents regarding the above suspension; that he is in dire situation with regard to his employment having already given his resignation from his place of employment; and that his fundamental rights guaranteed by Article 12 and 14(1)(g) of the Constitution have been violated.

The 2<sup>nd</sup> Respondent, the Chairman of the LRC, in his affidavit filed in this court, states that the Petitioner was selected to the post of Director Finance as he was the best amongst the candidates who were present for the interview; that the letter marked P10 was sent to the Petitioner by the 1<sup>st</sup> the Respondent Commission (LRC); that the 1<sup>st</sup> Respondent received a letter sent by the Petitioner marked P9; that the reason for sending the letter marked P10 was the order received by the 1<sup>st</sup> Respondent by letter dated 22.4.2016 marked 1R3 from the Secretary to the Ministry of Lands to suspend all proceedings regarding the appointment of

Director Finance until proper investigation would be held.

The contention of learned counsel for the 1<sup>st</sup> to 11<sup>th</sup> Respondents (Dr.Sunil Cooray) was that the Minister had issued a directive to the Secretary to the Ministry of Lands to conduct an investigation/inquiry with regard to the appointment of Director Finance and as such the Secretary to the Ministry of Lands issued the letter marked 1R3 suspending all proceedings regarding the appointment of Director Finance. Dr.Cooray further submitted that the Minister has the power to do so under Section 47(1) and 47 (3) of the Land Reform Law; that the Minister should have been made a party; that the Minister is a necessary party; and that the petition should be dismissed as the necessary is not before court. I now advert to this contention. Has the Minister issued a directive to the Secretary to the Ministry of Lands to conduct an investigation/inquiry with regard to the appointment of Director Finance? On this question the 2<sup>nd</sup> Respondent relies on the document marked 1R3 which was signed by the Secretary to the Ministry of Lands. But the letter marked 1R3 does not refer to the appointment Director Finance. It refers to the appointment of an Accountant. Therefore it cannot be said that the Minister had issued a directive to the Secretary to the Ministry of Lands to conduct an investigation/inquiry with regard to the appointment of Director Finance. Further in my view, the 2<sup>nd</sup> Respondent has no authority to suspend the appointment of Director Finance acting under 1R3 since it refers to the appointment of an Accountant. It has to be noted here that the Petitioner's appointment is with regard to the Director Finance. I would further like to observe the following matters. According to 1R3 which is a letter signed by the Secretary to the Ministry of Lands, the 2<sup>nd</sup> Respondent has received it (1R3) on 22.4.2016. When the 2<sup>nd</sup> Respondent issued the letter dated 28.4.2016 marked P10, the 2<sup>nd</sup> Respondent had not referred to 1R3.

When I consider all the above matters, I am unable to agree with the contention of Dr. Sunil Cooray.

Article 12(1) of the Constitution reads as follows. “All persons are equal before the law and are entitled to the equal protection of the law.”

Article 14(1) (g) of the Constitution reads as follows. “Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.”

It appears from the above facts that the Petitioner has resigned from his employment in his earlier company since he was appointed to the post of Director Finance in the LRC. When I consider all the matters set out above, I hold that the letter issued on 28.4.2016 by the 2<sup>nd</sup> Respondent marked P10 temporarily suspending the appointment of the Petitioner to the post of Director Finance is illegal and violates Article 12(1) and 14(1)(g) of the Constitution and that therefore it cannot be permitted to stand.

For the above reasons, I hold that the 1<sup>st</sup> and the 2<sup>nd</sup> Respondents have violated the fundamental rights of the Petitioner guaranteed by Article 12 and 14(1)(g) of the Constitution. There is no strong evidence before court that the 3<sup>rd</sup> to 11<sup>th</sup> Respondents have violated the fundamental rights of the Petitioner.

For the aforementioned reasons, I declare that the said letter dated 28.4.2016 issued by the 2<sup>nd</sup> Respondent marked P10 to the Petitioner is null and void and direct the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent (the present holder of the office of the Chairman LRC) and the present members of the LRC to appoint the Petitioner to the post of Director Finance of the LRC on the same terms and conditions stated in the letter of appointment dated 22.4.2016 issued to the Petitioner marked P8. I further direct the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent (the present holder of the office of the Chairman LRC) and present members of the LRC to implement the letter of appointment issued to the Petitioner dated 22.4.2016 marked P8. They are further directed to implement the directions given in this judgment within one month from the date of this judgment. I do not make an order regarding compensation since I have ordered the implementation of P8. Considering all the

circumstances of this case, I do not order costs.

The Registrar of this Court is directed to send a certified of this judgment to all the respondents.

Judge of the Supreme Court.

Upaly Abeyratne J

I agree.

Judge of the Supreme Court.

KT Chitrasiri J

I agree.

Judge of the Supreme Court.