

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

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

1. W.K. Samarakoon,
316, Vidyala Mawatha,
Kothalawala,
Kaduwela.
2. K.S. Ranasinghe,
85, Ihalaaluthela Road,
Tholabogawatta,
Badulla.
3. N.W.P. Deshabandu,
02, Kajugahawatta,
Gotatuwa New Town.
4. K.A.P. Perera,
No. 472/2, Bunt Road,
Dutugemunu Mawatha,
Thalangama North,
Baththaramulla.
5. K.E.G.F. Kulasooriya,
62, Goodshed Road,
Aluthgama.
6. P. Abeyshantha,
100/41, City Gate,
Katana North,
Katana.
7. R.M.C.N.K.Madawala,
NWSDB Quarters,
Water Supply Scheme,
Ampitiya.

Petitioners

SC FR No.284/2013

Vs.

1. National Water Supply and Drainage Board,
Galle Road,
Rathmalana.

2. General Manager,
National Water Supply and Drainage Board,
Galle Road,
Rathmalana.
3. Additional General Manager,
(Human Resources and Industrial Relations),
National Water Supply and Drainage Board,
Galle Road,
Rathmalana.
4. Deputy General Manager,
(Human Resources),
National Water Supply and Drainage Board,
Galle Road,
Rathmalana.
5. K.L.L. Premanath,
No. 21,/3, P.B. Alwis Perera Mawatha,
Katubedda,
Moratuwa.

Formerly

General Manager,
National Water Supply and Drainage Board,
Galle Road,
Rathmalana.

6. H. Ariyasena,
“Senani”, Jalthara,
Ranala.

Formerly

Deputy General Manager,
(Human Resources),
National Water Supply and Drainage Board,
Galle Road,
Rathmalana.

7. The Secretary,
Ministry of Water Supply and Drainage,
35, New Parliament Road,
Pelawatta,
Battaramulla.

8. Sarath Chandrasiri Vithana,
Additional Secretary
(Administration and Finance)

Ministry of Water Supply and Drainage,
35, New Parliament Road,
Pelawatta, Battaramulla.

9. Commissioner General of Labour,
Labour Secretariat,
Narahenpita.
10. D.A.Y. Wickramanayake,
Regional Support Centre, (Western-South)
of the National Water Supply & Drainage Board,
Galle Road, Mt. Lavinia.
11. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

12. A.L.P. Mohomed,
No. 151, Allen Avenue,
Dehiwala,
NWS & DB Scheme,
Dehiwala.
13. D.A.D.V. Duwearachchi,
No. 83, Main Road,
Athurugiriya.
14. R.D. Gunapala,
"Pawan",
Goyambokka,
Tangalle.
15. S.U.K. Wijeweera,
No. 53/9,
Polgahawela Road,
Kegalle.
16. C.J. Gamage,
100/C,
Railway Avenue,
Diyathalawa.
17. U.L. Geeganage,
No. 52, Weda Mawatha,
Gorakana,
Keselwatta, Panadura.
18. P.P. Samarathunga,
No. 2/7/59, Shanthi Mawatha,

- Bandarawatta,
Gampaha.
19. M.A.D. Gajanayake, “Gajamini”,
Agarawela Junction,
Akuressa, Matara.
20. P. Gunasinghe,
No. 63,
Gemunu Mawatha,
Bangalawatta,
Kottawa, Pannipitiya.
21. H.E.A. Fernando,
No. 63/14,
Kadawatha Road, Ragama.
22. P.V.H. Suranga,
“Gunadam Sewana”,
Siyambalagahawatta, Pepiliyawela.
23. U.W.S.K. Nawarthna, No. 29/1,
Aluwiharayagama Para,
Aluwiharaya, Matale.
24. C.U.A. Anthony,
No. 375, Hekitta Road,
Hekitta, Wattala.

Added Respondents

BEFORE : K. Sripavan, C.J.
E. Wanasundera, P.C., J.
Priyantha Jayawardene, P.C., J.

COUNSEL Saliya Pieris with Anjana Ratnasiri for Petitioners
Rajiv Goonethilake, SSC. for 1st, 2nd Respondents and
Attorney General.
J.C. Weliamuna for 13th – 24th Added Respondents.

ARGUED ON : 10.06.2016
WRITTEN SUBMISSIONS
FILED ON : 31.08.2016 by the Petitioners.
08.07.2016 by the Added Respondents
DECIDED ON : **23.09.2016**

K. SRIPAVAN, C.J.,

The Petitioners are presently functioning as the “Senior Engineering Assistants (Civil)” of the National Water Supply and Drainage Board (hereinafter referred to as the “Board”). The Petitioners state that in the year 2010, the First Respondent Board called for applications for

the post of "Engineer Class II (Civil)" from the Engineering Assistants Special (Civil). The Petitioners and the 10th Respondent were among the applicants and according to the mark sheet issued by the Board of Interview for the post of "Engineer Class II (Civil)" all of them secured 86 marks. Thus, the Petitioners and the 10th Respondent were placed in the merit order of 40. The Petitioners alleged that after the marks were released, the First Respondent decided to grant priority to candidates who had obtained a qualification in Government Technical Officers Third Examination and those candidates were given Five marks in addition and promoted to the post of "Engineer Class II (Civil)". Some of the candidates who were promoted to Engineer Class II (Civil) were in fact obtained less marks than the Petitioners at the interview. The Petitioners at Paragraph 12 of the Petition state that all the candidates who were promoted in the first batch by 15.09.2011 were candidates who received five preferential marks in addition to the marks given by the Board of Interview. The Petitioners, however, did not challenge the promotion of the said candidates at the appropriate stage. On the same day, "Engineer Class II (Civil)" was abolished and replaced by the post of "Engineer Class I (Civil)".

The Petitioners claim that a Second Batch of candidates were promoted in January 2012 based on the marks of the same interview. Thereafter, a Third Batch of candidates were promoted to the post of "Engineer Class I (Civil)" in March 2012 based on the marks of the same interview. Thus, pursuant to the interview held in December 2010/January 2011, three batches were promoted in September 2011, January 2012 and March 2012. The Petitioners did not make any complaints to Court regarding the promotions of these candidates on three different occasions.

The Petitioners contend in Paragraph 15 of the Petition that on 29.11.2012, the 10th Respondent and the Petitioners made a complaint to the Department of Labour regarding the grave injustice caused to them by the Second Respondent, depriving their promotions to the post of "Engineer Class I (Civil)". However, on a previous occasion, the 10th Respondent had lodged a separate complaint to the Commission of Labour and based on the said complaint, it was recommended to the Second Respondent that the 10th Respondent should be promoted to the Rank of "Engineer Class I (Civil)" without causing any prejudice to her seniority.

The Second Respondent, in his affidavit dated 02.03.2015 states that the Commissioner of Labour having considered the fact that the 10th Respondent had covered up the position of “Engineer Class I (Civil)” for a period of three years made a recommendation dated 15.10.2012 to place the 10th Respondent in the post of “Engineer Class I (Civil)”. Thus, the 10th Respondent was so placed on 10.07.2013 on the directive of the line Ministry and on the decision of the Board of Directors of the First Respondent based on the recommendation of the Commissioner of Labour.

It was thereafter, the Petitioners filed this application seeking a direction on the First to Fourth Respondents, to promote the Petitioners to the post of “Engineer Class I (Civil)” with effect from 10.07.2013 together with arrears of salary and other benefits with effect from 10.07.2013, on the basis that the Petitioners and the 10th Respondent obtained the same marks at the interview, namely 86 Marks, and placed at 40 in the Order of Merit.

Learned Counsel for the 13th -24th added Respondents as averred in Paragraph 20 of the affidavit of the 13th Respondent dated 06.11.2014 argued that the Petitioners cannot, seek promotions based on the applications called in 2010 and interviews held in 2011. The Circular No. 58/2001 dated 03.12.2001 marked as **13R(4)(a)** relating to the validity period of an interview/written test/trade test for recruitments/promotions has been repealed by Circular No. 12/2012 dated 10.14.2012 marked as **13R(4)(b)**.

Thereafter, the Board of Directors of the 1st Respondent has taken a decision to keep the waiting list for a period of one year with the date of approval obtained from the Secretary of the Ministry/Board of Directors or the Chairman of the Board. The said Board Paper and decision of the Board have been produced marked as **13R(4)(c)**. The said Board decision confirms the decision contained in the said circular marked as **13R(4)(b)**.

Counsel further submitted that the Petitioners were well aware of such one year validity period as borne out by Paragraph 5 of their document marked as **P16** and annexed to the Petition. It is on this basis, Counsel submitted that any promotions of the Petitioners to “Engineer Class I (Civil)” would violate the documents marked as **13R4(b)**, **13R4(c)** and **P16** and argued that any vacancies that may have arisen after the one year validity period be

filled holding fresh interviews. This averment of the 13th Respondent contained in Paragraph 20 of his Affidavit dated 06.11.2014 has been denied by the Petitioners in Paragraph 3 of their Counter Affidavit dated 27.04.2015. No satisfactory explanation has been offered by the Petitioners in respect of the several circulars issued by the Board and referred to in Paragraph 20. The Petitioners did not seek to set aside the promotion of the 10th Respondent.

While I agree that a Government Authority or a Statutory Board will have to deal with all persons with regard to their appointment, promotion, transfer or dismissal in conformity with the standard norms which are not arbitrary, irrational, capricious or unreasonable, it should not act illegally violating its own circulars in order to avoid discrimination.

If the Board has shown some favour to the 10th Respondent then, this Court cannot compel the Board to commit another illegality to show favour to the Petitioners in the same way on the ground that both the Petitioners and the 10th Respondent obtained same marks at the interview. This would amount to violating the Circulars of the Board restricting the validity period of results of an interview for a period of one year only. Considering the applicability of Article 14 of the Indian Constitution, which is corresponding to Article 12 of our Constitution, in the case of **Ram Prasad Vs. Union of India AIR 1978 Raj 131**, it was observed that *“the guarantee under Article 14 cannot be understood as requiring the authorities to act illegally in one case because they have acted illegally in other cases. No one can contest that a wrong must be extended to him as well in order to satisfy the provisions of Article 14”*.

Sharvananda, C.J. considering the application of Article 12, in the case of *C.W. Mackie & Co. Ltd. Vs. Hugh Molagoda, Commissioner General of Inland Revenue and Others* (1986) 1 S.L.R. 300 held that Article 12 of the Constitution guarantees equal protection of the law and not equal violation of the law. Thus, the learned Chief Justice was of the view that :-

“The equal treatment guaranteed by Article 12, is equal treatment in the performance of a lawful act; via Article 12, one cannot seek the execution of an illegal act. Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, founded in law in contradistinction to an illegal right which is invalid in law.”

An identical view was taken by G.P.S. de Silva, J. (as he then was) in *Jayasekera Vs. Wipulasena* (1988) 2 S.L.R. 237 that the authorities cannot act illegally in one case because they have acted illegally in other cases.

On a careful consideration of the material placed before this Court, it is apparent that the promotion of the 10th Respondent was made violating the Circulars issued by the Board that the validity period for purposes of promotion is limited for a period of one year. The Board cannot be compelled to act illegally and to promote the Petitioners violating the provisions of its own Circulars.

This application is accordingly dismissed in all the circumstances without costs.

CHIEF JUSTICE

E. WANASUNDERA, P.C.,J.

I agree.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENE, P.C.,J.

I agree.

JUDGE OF THE SUPREME COURT