

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

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

Alankarage Dona Chaturika Silva,
No. 52, Pepiliyana Mawatha,
Pepiliyana.

Petitioner

Case No: SC/FR/222/2018

Vs.

1. Sunil Hettiarachchi,
Secretary – Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

1A. Pathmasiri Jayamanne
Secretary – Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

1B. N H M Chitrananda
Secretary – Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

Added 1B Respondent

2. Hon. Akila Viraj Kariyawasm,
Minister of Education,
Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.

2A. Hon. Dallas Alahapperuma,
Minister of Education,
Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.

Added 2A Respondent

3. W.M. Jayantha Wickramanayake,
Director – National Schools,
Department of Education,
Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.

4. Judicial Service Association,
Chief Magistrate's Court Premises,
Colombo 12.

5. R.S.A. Dissanayake,
President – Judicial Service Association,
Chief Magistrate's Court,
Colombo 12.

5A. Hasitha Ponnampereuma
President – Judicial Service Association
District Court,
Matale.

Added 5A Respondent

6. M. M. M. Mihal
Secretary – Judicial Service Association
Magistrate’s Court,
Mount Lavinia.

6A. Prasanna Alwis
Secretary – Judicial Service Association
Magistrate’s Court,
Kaduwela.

Added 6A Respondent

7. Hon. Attorney General
Attorney General’s Department
Colombo 12.

Respondents

AND

Case No: SC/FR/223/2018

Wellawalage Dakshika Chanima Wijebandara,
No. 52, Pepiliyana Mawatha,
Pepiliyana.

Petitioner

Vs.

1. Sunil Hettiarachchi,
Secretary – Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

1A. Pathmasiri Jayamanne,
Secretary – Ministry of Education,

‘Isurupaya’, Pelawatta,
Battaramulla.

1B. N H M Chitrananda

Secretary – Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

Added 1B Respondent

2. Hon. Akila Viraj Kariyawasm,
Minister of Education,
Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

2A. Hon. Dallas Alahapperuma

Minister of Education,
Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

Added 2A Respondent

3. W.M. Jayantha Wickramanayake

Director – National Schools,
Department of Education,
Ministry of Education,
‘Isurupaya’, Pelawatta,
Battaramulla.

4. Judicial Service Association,

Chief Magistrate’s Court Premises,
Colombo 12.

5. R.S.A. Dissanayake
President – Judicial Service Association,
Chief Magistrate’s Court,
Colombo 12.

5A. Hasitha Ponnampereuma,
President - Judicial Service Association,
District Court,
Matale.

Added 5A Respondent

6. M. M. M. Mihal
Secretary – Judicial Service Association
Magistrate’s Court,
Mount Lavinia.

6A. Prasanna Alwis,
Secretary – Judicial Service Association,
Magistrate’s Court,
Kaduwela.

Added 6A Respondent

7. Hon. Attorney General
Attorney General’s Department
Colombo 12.

Respondents

Before: Priyantha Jayawardena PC, J
Vijith K. Malalgoda PC, J
E.A.G.R. Amarasekara, J

Counsel: Romesh de Silva, PC with Sugath Caldera and Harith de Mel for the Petitioners
Sanjeeva Jayawardena, PC for the 4th – 6th Respondents.

Viraj Dayaratne PC, ASG with Ms. Sureka Ahmad, SC for the 1st, 2nd, 3rd and 7th respondents.

Argued on: 17th June, 2019

Decided on: 18th June, 2020

Priyantha Jayawardena, PC, J

Facts of the Application

SC/FR Application No. 222/2018

The petitioner stated that at the time of filing the instant application, she was serving as the Additional District Judge of Mathugama. Subsequent to her appointment as a Judicial Officer in 2010, the petitioner had been transferred to various parts of the island in the years 2013, 2014, 2015 and 2017 to function as a Judge.

The petitioner had filed the instant application in her personal capacity as well as on behalf of her child, as the petitioner's child had been denied admission to Grade 1 of Visakha Vidyalaya for the year 2017 and for the benefit of all Judicial Officers. Thus, this application will fall within the scope of private and public interest litigation regimes.

The petitioner alleged that the acts referred to in the petition constitute executive and administrative action which resulted in the violation of the Fundamental Rights of the petitioner and her child.

The 1st respondent is the Secretary to the Ministry of Education and the 2nd respondent is the Hon. Minister of Education. The 3rd respondent is the Director of National schools and the 4th respondent is the Judicial Service Association. The 5th and 6th respondents are the President and the Secretary of the Judicial Service Association, respectively.

The petitioner stated that as per the Circular No. 17/2016 issued by the Ministry of Education applicable for the year 2017 school admissions, the children belonging to 'various categories' were entitled to apply for Grade 1 of State Schools.

Moreover, the petitioner stated that the aforesaid scheme for admissions to Grade 1 of State Schools requires a stipulated criterion to be fulfilled. However, Judicial Officers are unable to

fulfill the said criterion due to the nature of the work that they have to perform and the office held by them.

Further, the children of persons in the staff of institutions directly involved in school education, the children of persons arriving after living abroad with the children and the children of officers in the Public Sector, State Corporations and State Banks who have received transfers on exigency of service have been included in the said Circular for admission to Grade 1 of State Schools.

Furthermore, the petitioner stated that the Department of Education had recognized that the members of the Three Armed Forces and the Police were unable to comply with the said stipulated criterion in the Circular and thus, a special criterion had been formulated for the admission of the children of the members of the Three Armed forces, to a State School.

However, there is no such special criterion stipulated in the said Circular applicable for admission of the children of Judicial Officers to Grade 1 of State Schools.

Therefore, from the years 2011 to 2016, the following practice had been followed when admitting the children of Judicial Officers to a State School:

Judicial Officers seeking to admit their children to State Schools would forward their applications indicating the school of first preference to the Judicial Service Commission through the Judicial Service Association. If the admission of the children was warranted, the Judicial Service Commission would forward the applications to the Ministry of Education. Thereafter, the Ministry of Education would admit those children to the preferred school of the Judicial Officers.

However, the said practice had not been followed in the year 2017.

The petitioner stated that in the circumstances, the Ministry of Education had accepted and acknowledged that Judicial Officers are a separate category for the purpose of admitting their children to State Schools and accordingly, admitted the children of Judicial Officers to a school of their preference, including to Grade 1.

Further, over the years Judicial Officers had applied to admit their children to various schools in different parts of the island such as Visakha Vidyalaya in Colombo, Royal College in Colombo, Darmashoka Vidyalaya in Ambalantota, D.S. Senanayake College in Ampara, Maliyadeva Girls' College in Kurunegala, Swarnapali Girls' School in Anuradhapura, Bandarawela Central College in Bandarawela, Viharamaha Devi Balika Vidyalaya in Kiribathgoda and Ferguson High School

in Ratnapura, etc. and their requests had been entertained by the Ministry of Education by following the said practice.

The petitioner stated that in the year 2017, there were 27 applications for admission of the children of Judicial Officers to various grades of different schools. However, out of the 27 applicants, only 6 applicants had been admitted to the school of their preference.

Moreover, out of the 5 applicants who had applied to Visakha Vidyalaya for Grade 1, only one applicant had been granted admission to the said school.

The petitioner further stated that there were 7 applications from Judicial Officers for the school admission of the year 2018. All these applicants had received admission to their school of preference, except one child. Later, he too had been admitted to the school of his preference consequent to litigation.

The petitioner stated that in view of the said practice that was in existence for several years, she had a legitimate expectation that it would be followed by the Ministry of Education and the Department of Education with respect to the admission of children to Grade 1 for the year 2017 which would have enabled her to admit her child to Visakha Vidyalaya, Colombo.

Hence, complying with the said practice, the petitioner had made an application to admit her daughter to Grade 1 of Visakha Vidyalaya for the year 2017, through the Judicial Service Association for admission.

The petitioner further stated that the Judicial Service Association had submitted her application to the Judicial Service Commission, which had thereafter forwarded the same to the Ministry of Education with a recommendation to admit the child to Grade 1 of Visakha Vidyalaya.

The petitioner stated that the failure on the part of the Ministry of Education and the Department of Education to follow the aforementioned practice in the year 2017, violated her legitimate expectation.

Moreover, the petitioner stated that the Ministry of Education and the Department of Education had reverted to the said practice applicable to Judicial Officers once again in the years 2018 and 2019.

The petitioner further stated that, the Director of National Schools had sent a letter dated 12th April, 2017 to the Secretary of the Judicial Service Commission, requesting the petitioner and the other

Judicial Officers referred to in the said letter to participate in a meeting presided over by the Minister of Education on 18th April, 2017 in order to admit their children to State Schools.

However, the petitioner had refused to participate at the said meeting as she was of the view that it was inappropriate for a member of the judiciary to meet with officials of the Ministry of Education to admit their children to schools.

The petitioner further submitted that on 18th April, 2017 the petitioner's child was granted admission to St. Paul's Milagiriya which however, is not the school preferred by the petitioner.

The petitioner stated that subsequently she became aware that certain judges who had met the Minister of Education were able to admit their children to schools of their preference.

In the circumstances, the petitioner stated that she could not get her child admitted to a school of her choice as she declined to meet the Minister of Education and due to the failure of the Ministry of Education and the Department of Education to follow the longstanding practice of admitting the children of Judicial Officers to a school of their preference.

The petitioner stated that in the circumstances, the respondents have violated the Fundamental Rights of the petitioner and her child, guaranteed by Article 12(1) of the Constitution.

SC/FR Application No. 223/2018

In addition to the above stated facts, the petitioner in SC/FR Application No. 223/2018 stated that she is also a Judicial Officer and at the time of filing the application, she was serving as the Magistrate of Nugegoda.

Subsequent to her appointment as a Judicial Officer in 2007, the petitioner had been transferred to courts in various parts of the island in the years 2008, 2010, 2013, 2016 and 2018 to function as a Judge of those courts.

In accordance with the practice followed by the respondents to admit the children of Judicial Officers to State Schools, the petitioner had submitted her application through the Judicial Service Association for the admission of her daughter to Grade 1 of Visakha Vidyalaya.

The petitioner stated that the Judicial Service Association had submitted the said application to the Judicial Service Commission which had thereafter forwarded the same to the Ministry of Education with a recommendation to admit the child to Grade 1 of Visakha Vidyalaya.

Thereafter, on 17th April, 2017 the petitioner had been informed by the Judicial Service Commission that a meeting was convened by the Minister of Education on 18th April, 2017 to discuss the issues relating to admission of the children of Judicial Officers to State Schools.

The petitioner stated that when she attended the said meeting along with the other judges, the officials of the Ministry of Education informed that they had taken into consideration the recommendations made by the Judicial Service Commission, seniority and transfers as their selection criteria, and handed over a letter of admission to Sirimavo Bandaranayake Vidyalaya for her child. However, since it was not the school of first preference of the petitioner, she had not admitted her child to the said school.

Subsequently, the petitioner found out that the child of a Judicial Officer who is junior to her, had been given admission to Visakha Vidyalaya, while her child was not granted admission to the same.

Accordingly, the petitioner stated that overlooking her request over a junior officer's is discriminatory and inconsistent with the said practice followed by the Ministry of Education to admit the children of Judicial Officers to State Schools.

Further, in addition to the application sent through the Judicial Service Association, the petitioner had made an application for the admission of her child to Visakha Vidyalaya (1st preference) and Sirimavo Bandaranayake Vidyalaya. However, the said application had not been entertained as the petitioner could not fulfil the admission criterion stated in the said Circular applicable for admission to Grade 1.

In the circumstances, the petitioner stated that the respondents have violated the Fundamental Rights of the petitioner as well as her child guaranteed under Article 12(1) of the Constitution.

After both applications were supported, the Court granted Leave to Proceed for the alleged violation of Article 12(1) of the Constitution.

Objections of the 3rd respondent

Re: SC/FR/222/2018

The 3rd respondent filed objections and denied the allegations made by the petitioner and stated that the Ministry of Education is unable to admit all children to schools of their choice as the capacity to accommodate students into more popular schools is limited.

He stated that, every year the Ministry of Education issues a Circular with regard to admissions to State Schools in order to ensure that there is no discrimination, and that parents are afforded an equal opportunity to admit their children to schools.

The 3rd respondent further stated that the Ministry of Education had made every effort to accommodate the requests of Judicial Officers with regard to school admissions in the past. However, as the year 2017 had twenty seven (27) applications, the Ministry of Education had introduced the following new criterion to admit the children of Judicial Officers to State Schools having a greater demand;

- “(a) where the transfer of the Judicial Officers has been between two Districts and the school, that had been requested was situated within the District to which the Judicial Officer had been transferred to, then taking into consideration the distance between the two stations, admission was granted to either the school that had been requested or a school of similar standing,
- (b) where the transfer of the Judicial Officers has been between two Districts but the school that had been requested was situated in a different District, then the permanent residence of the Judicial Officer was taken into consideration when granting admission to schools. However, in such instances only requests for admissions to Grade 1 were considered,
- (c) where the transfer was within the same District or in the case of a promotion, then the distance between the stations were considered when allocating a school. However, in such instances only requests for admissions to Grade 1 were considered, and
- (d) in one instance where the Judicial Officer had passed away, the child was given admission to the school that had been requested”.

Furthermore, the petitioner’s child had been given admission to St. Paul’s Milagiriya which is a school of similar standing to Visakha Vidyalaya.

The 3rd respondent further stated that the Circular issued by the Ministry of Education provides different categories under which a person could admit a child to a State School. Thus, the petitioner’s claim that the nature of her office prevented her from applying to a State School under the said Circular, is incorrect.

The 3rd respondent claimed that the petitioner had not been treated unequally and the said Circular does not provide for a special procedure to be adopted in favour of the children of Judicial Officers.

Re: SC/FR/223/2018

The 3rd respondent stated that the petitioner in application No. SC/FR/223/2018 had submitted an application privately requesting both Visakha Vidyalaya (1st preference) and Sirimavo Bandaranayake Vidyalaya (2nd preference) under the said Circular in addition to the application that was sent through the Judicial Service Association.

The 3rd respondent stated that the petitioner's daughter was granted admission to Sirimavo Bandaranayake Vidyalaya, which was the petitioner's second preference. Thus, the petitioner is now estopped from stating that the said school is not her choice of preference.

The 3rd respondent further stated that, a Judicial Officer is not barred from applying to a State School under the categories provided in the Circular applicable for ordinary citizens.

Objections of the 5th respondent

SC/FR/222/2018 and SC/FR/223/2018

The 5th respondent filed an affidavit and stated that a few Judicial Officers who had met the Minister of Education personally had got their children admitted to schools of their choice for Grade 1 in the year 2017 and Grade 2 in the year 2018.

Further, it was stated that the Judicial Service Commission had made every effort to prevent any interaction between the Judicial Officers whose children seek admission to State Schools and the officials of the Ministry of Education.

Furthermore, the 5th respondent stated that the Judicial Service Association had forwarded the applications of the petitioners to the Judicial Service Commission, which had thereafter forwarded the same to the Ministry of Education with a recommendation.

Submissions of the petitioners

Both applications were taken up together for hearing as the issues involved in the applications are similar.

At the hearing of the instant applications, the learned President's Counsel for the petitioners submitted that the instant Fundamental Rights applications consist of two aspects:

- (a) securing and preserving the independence of the Judiciary as a matter of public interest, and
- (b) the grievance of the petitioners, their children and the children of the Judicial Officers in general.

He further submitted that except for the year 2017, all applications for school admissions forwarded by the Judicial Service Commission for the years 2011 to 2019 had been entertained by the Ministry of Education except for one child. Thus, in view of the past practice pertaining to the admission of the children of Judicial Officers to State Schools, the petitioners entertained a legitimate expectation to admit their children to a school of their preference.

Moreover, the learned President's Counsel drew the attention of court to the stipulated criterion in the Circular for the admission of children to Grade 1 of State Schools and submitted that the said criterion is arbitrary and capricious as it does not include the children of Judicial Officers.

The learned President's Counsel further submitted that the petitioners' children were not admitted to their preferred schools because they had declined to meet the Minister of Education personally.

Further, the petitioners' children were denied admission to Visakha Vidyalaya on the ground that there were too many applicants in the year 2017. However, there was no evidence before court to suggest that Visakha Vidyalaya was unable to accommodate the petitioners' children.

Moreover, it was submitted that a Judicial Officer takes on an onerous duty of administration of justice and upholding the independence of the judiciary. Hence,

- (a) the personal life of a Judicial Officer is restricted,
- (b) the professional requirements of office are demanding and often subject to great personal sacrifice,
- (c) Judicial Officers cannot meet persons and interview persons or seek appointments with officials;
- (d) Judicial Officers cannot engage in social activities in the ordinary course organized by Past Pupils Associations, School Development Societies etc.

Further, the learned President's Counsel submitted that Judicial Officers are a separate category and thus, cannot be compared with the officers of the Executive. In this regard, the attention of this court was drawn to Article 170 of the Constitution where the definition of a Judicial Officer explicitly excludes a Public Officer.

He contended that only the Judicial Service Commission is vested with the discretion of deciding whether a Judicial Officer is entitled to a benefit or not. Thus, the Executive is precluded from deciding such matters.

In the circumstances, a child of a Judicial Officer should be entitled to a State School of their preference. Hence, the State has an obligation to provide a separate criterion to enable the children of Judicial Officers to obtain an education from a State School of their preference.

Submissions of the respondents

The learned Additional Solicitor General submitted that the doctrine of legitimate expectation is not an absolute notion and has to be balanced against the need to ensure the adaptability of the administrative authorities to meet the changing needs of society.

During the course of his submissions, the learned Additional Solicitor General cited the case of *Hughes v Department of Health and Social Security* (1985) AC 776 HL where Lord Diplock held that: “Administrative policies may change with changing circumstances, including changes in the political complexion of governments. The liberty to make such changes is something that is inherent in our form of constitutional government.”

He further cited the judgment in *Ginigathgala Mohandiramlage Nimalsiri v Colonel P.P.J. Fernando* (SC/FR Application No. 256/2010, SC minutes 17th September, 2015) which held that: “Where an expectation is founded on a policy and later a relevant change of policy is notified, the expectation founded on the previous policy cannot be considered as legitimate.”

Furthermore, the practice which the petitioners are relying upon, has not been stipulated in any circular or any other document. Thus, even though the Ministry of Education had followed a practice with regard to school admissions referred to by the petitioners in the past, that does not give rise to a legitimate expectation as no formal undertaking has been given that the said practice would continue without any changes.

In support of his submissions, the learned Additional Solicitor General cited the case of *Desmond Perera v Commissioner of National Housing* [1997] 1 SLR 149.

He contended that it was not only the petitioners’ children who were not granted their school of preference, but there were many other children of Judicial Officers who were not given admission to their preferred school.

It was further contended that the respondents were compelled to adopt a special formula for the year 2017, in order to cope with the requests of all Judicial Officers applying to get their children admitted to State Schools which have a higher demand.

The learned Additional Solicitor General submitted that the instant applications pertain to personal matters involving the private life of Judicial Officers and do not have any bearing on their official functions as Judicial Officers. Thus, the hardships faced by Judicial Officers in their personal life cannot be interpreted as an interference with the Judiciary.

Furthermore, it was submitted that the refusal to admit the children of the petitioners and other Judicial Officers is not arbitrary and therefore, is not a violation of fundamental rights guaranteed under Article 12(1) of the Constitution.

Have the Petitioners' Fundamental Rights Enshrined in Article 12(1) of the Constitution Been Infringed?

One of the matters that needs to be considered in this application is whether the new criterion applied for the admission of the children of Judicial Officers to State Schools in the year 2017 violates the equal protection of the law guaranteed under Article 12(1) of the Constitution.

(a) The admission criterion applicable to the children of Judicial Officers

In order to consider the above, it is necessary to examine the criterion set out in the aforementioned Circular applicable for the admission of children to State Schools for the year 2017.

Section 6.0 of the Circular No. 17/2016 which is applicable for the admission of children for the year 2017 states that the children of the following categories were entitled to apply for Grade 1 of State Schools:

- “ (i) Children of residents in close proximity to the school,
(ii) Children of parents who are Past Pupils of the school,
(iii) Brothers / sisters of students already studying in the school,
(iv) Children of persons in the staff of Institutions directly involved in school education,
(v) Children of officers in Public Sector / State Corporations / State Banks receiving transfers on service exigency,

- (vi) Children of persons arriving after living abroad with the child” (the details specified in paragraph 6.6 of the said Circular includes persons who have travelled overseas on State service as well as for personal requirements).

Further, Section 12.0 of the said Circular provides a separate category for the admission of the children of the members of the Three Armed Forces and the Police who are/were engaged in operational duties. In terms of the said Section, firstly five children are selected for each parallel class in a State School by the Secretary of the Ministry of Defence and the Secretary of the Ministry of Public Order. Then, a list of the selected children is forwarded to the Ministry of Education which would thereafter refer such children to the relevant school.

Are Judicial Officers included in the said Circular?

In terms of Article 170 (b) of the Constitution a ‘Judicial Officer’ means:

“... any Judge, presiding officer or member of any other Court of First Instance, tribunal or institution created and established for the administration of Justice or for the adjudication of any labour tribunal or other dispute but does not include a person who performs arbitral functions or a public officer whose principal duty or duties is or are not the performance of functions of a judicial nature.”

[Emphasis added]

Further, Article 111M (a) of the Constitution defines a ‘Judicial Officer’ as:

“... any person who holds office as judge, presiding officer or member of any Court of First Instance, tribunal or institution created and established for the administration of Justice or for the adjudication of any labour or other dispute, but does not include a Judge of the Supreme Court or of the Court of Appeal or of the High Court or a person who performs arbitral functions, or a public officer whose principal duty is not the performance of functions of a judicial nature.”

[Emphasis added]

A careful consideration of the Circular applicable for the admission of children to State Schools shows that the categories referred to in the said Circular do not include Judicial Officers and their children.

In view of the above, the Ministry of Education had been adopting the following practice in the years 2011 to 2016, 2018 and 2019 for the admission of the children of Judicial Officers to State Schools:

- (i) A Judge seeking admission of a child to Grade 1 would forward an application indicating the school of preference to the Judicial Service Association,
- (ii) The said Association would forward the said application to the Judicial Service Commission,
- (iii) The Judicial Service Commission would then consider the application and forward it to the Ministry of Education with a recommendation, if it warrants admission of the child,
- (iv) Thereafter, the Ministry of Education would admit the child to the preferred school of the Judicial Officer.

(b) Changing the admission criterion applicable to the children of Judicial Officers for the year 2017

The 3rd respondent stated that as there were twenty seven (27) applications from Judicial Officers in the year 2017, the Ministry of Education introduced the new criterion stated in the Objections filed by the 3rd respondent, when allocating schools to the children of Judicial Officers for the year 2017.

Old practice v New criterion

According to the old practice, the children of Judicial Officers were admitted to State Schools based on the recommendation of the Judicial Service Commission as the said Circular issued by the Ministry of Education did not provide for the admission of the children of Judicial Officers to State Schools.

However, the new criterion introduced by the Ministry of Education; for the admission of the children of Judicial Officers for the year 2017, was applicable only for judges who got transfers during that year.

Thus, the said new criterion is a departure from the past practice. Particularly, as the said criterion did not provide for the admission of the children of all Judicial Officers to State Schools on a general basis but on a transfer basis.

Further, the new scheme has done away with the past practice followed by the Ministry of Education to admit the children of Judicial Officers to State Schools since the year 2011.

Circular v New criterion

As stated above, the aforementioned Circular did not provide for the admission of the children of Judicial Officers to State Schools. Thus, the Ministry of Education had introduced and followed the aforementioned past practice to admit the children of Judicial Officers, which is similar to the admission of the children of the members of the Three Armed Forces and the Police who are/were engaged in operational duties and the staff of institutions directly involved in school education.

However, the new criterion introduced by the Ministry of Education for the year 2017 for the admission of the children of Judicial Officers is different to the criterion stipulated in the said Circular for other categories provided for the children of other officers in the Public sector, State Corporations, State Banks, the staff of institutions directly involved in school education, the members of the Three Armed Forces and the Police who are/were engaged in operational duties.

Moreover, the said new criterion introduced to admit the children of Judicial Officers in the year 2017 was only restricted to Judicial Officers who were transferred from one district to another and it did not contain a criterion to admit the children of Judicial Officers other than those who got transfers.

Is the new criterion arbitrary?

The 3rd respondent contended that since there were twenty seven (27) applicants in the year 2017, the Ministry of Education had followed the said criterion when allocating schools to the children of Judicial Officers.

Further, the 3rd respondent contended that the petitioners' children were denied admission to Visakha Vidyalaya on the ground that there were twenty seven (27) applicants for the year 2017.

However, as per the document produced and marked as '3R3' by the 3rd respondent, there were only 5 children out of the 27 applicants seeking admission to Grade 1 at Visakha Vidyalaya in the year 2017 whereas the other applicants had applied to various other schools in the island. This matter is discussed in detail later in the judgment.

Therefore, I hold that the introduction of the new criterion is arbitrary and not warranted by the circumstances that prevailed at the time of admissions.

(c) School admissions made after the stipulated date

The 3rd respondent stated in his Objections that the petitioners' children could not be admitted to Visakha Vidyalaya as there were no vacancies available for the said school. However, the 3rd respondent did not produce any material to show that Visakha Vidyalaya could not accommodate the petitioners' children.

Consequent to an Order made by the court, the 1st to 3rd respondents filed a detailed list of admissions, to Grade 1 for the year 2017 and Grade 2 for the year 2018 to Visakha Vidyalaya, made after the admissions were finalised.

Name of the applicant	Date of Admission	Admitted Grade	Admission No.	Reason
Vaishnavi Alexandra Ramanayake	10/01/2017	1	39630	Based on the letter dated 18/04/2017 by the Secretary of the Ministry of Education
Nilasi Devsadi Senanayake	07/12/2017	1	39881	Based on the letter dated 14/11/2017 by the Secretary of the Ministry of Education
A.N. Maligaspekorale	23/01/2018	2	40218	Based on the letter dated 04/01/2018 by the Secretary of the Ministry of Education
K.P.M. Bihansa Kathriarachchi	01/02/2018	2	40222	Based on the letter dated 22/01/2018 by the Secretary of the Ministry of Education
U.S. Dulanya Wijetunga	02/05/2018	2	41226	Based on the letter dated 06/04/2018 by the Secretary of the Ministry of Education
V.G.N. Chethara Karunathilaka	26/06/2018	2	40454	Based on the letter dated 20/06/2018 by the Secretary of the Ministry of Education
K.M.J. Ehansa Kodithuwakku	21/05/2018	2	40315	Based on the letter dated 24/04/2018 by the Secretary of the Ministry of Education

(The details produced above were taken directly from the document produced by the 3rd respondent marked as '3R3.')

However, the 3rd respondent failed to explain as to how the aforementioned children were admitted to Visakha Vidyalaya after the admissions were finalised.

Further, the above details show that the respondents have violated the said Circular issued by the Ministry of Education by granting admission for the above children to Visakha Vidyalaya.

Moreover, the admission of the aforementioned children to Visakha Vidyalaya shows that the explanation given by the 3rd respondent for the failure to follow the longstanding practice and for the introduction of a new criterion for the admission of the children of Judicial Officers to State Schools for the year 2017 is untenable.

(d) Does the Ministry of Education have the power to convene a meeting to admit the children of Judicial Officers?

On 12th April, 2017 the Director of National Schools who is the 3rd respondent in the instant application had sent a letter to the Secretary of the Judicial Service Commission, requesting the Judicial Officers referred to in the said letter to participate in a meeting presided over by the Minister of Education on 18th April, 2017 to admit the children of Judicial Officers to State Schools notwithstanding the fact that there had not been such a practice on previous occasions.

Further, other parents who had applied under the said Circular had not been requested to participate in the said meeting or in any other similar meeting. Moreover, the said Circular applicable for the admission of children to State Schools does not provide for the convening of such meetings.

Hence, I am of the view that the Ministry of Education had no power or authority to convene such a meeting. Moreover, convening the meeting with Judicial Officers to admit their children to schools is illegal and arbitrary to the said Circular.

Is there a violation of Article 12(1) of the Constitution?

In the circumstances, denying admission to the children of the petitioners to State Schools, by introducing the said new criterion for the year 2017, admitting children to State Schools after the admissions were closed and convening a meeting for Judicial Officers to admit their children to State Schools by the Ministry of Education, is a violation of the petitioners' Fundamental Right to equal protection guaranteed by Article 12(1) of the Constitution by the 1st to 3rd respondents.

Did the Petitioners Entertain a Legitimate Expectation to Admit their Children to State Schools?

In order to seek redress under the doctrine of legitimate expectation, a person should have a legitimate expectation which was based on a promise, practice or a policy by the authority that is said to be bound to fulfil the expectation. However, such a practice need not be published or incorporated in a written document.

An expectation reasonably entertained by a person is considered legitimate if the person has justifiable reasons to form such an expectation. However, the applicability of the said doctrine is based on the facts and circumstances of each case.

In *Ginigathgala Mohandiramlage Nimalsiri v. Colonel P.P.J. Fernando* (SC/FR Application No. 256/2010, SC Minutes 17th of September 2015) it was held that the doctrine of legitimate expectation could arise by “believing an undertaking or promise given by a public official or by taking into consideration of established practices of an authority”. [Emphasis added]

In this context, it is necessary to examine whether the practice of admitting the children of Judicial Officers to State Schools gave rise to a legitimate expectation.

It is pertinent to note that the said Circular applicable for the admission of children to State Schools did not provide for the admission of the children of Judicial Officers to State Schools. The said void had been filled by admitting the children of Judicial Officers to State Schools on the recommendation of the Judicial Service Commission from the years 2011 to 2017 as a practice. Further, even after the year 2017, the same practice has been followed once again by the Ministry of Education to admit the children of Judicial Officers for the years 2018 and 2019.

The petitioner submitted that the following details pertaining to the applications from Judicial Officers to admit their children to Visakha Vidyalaya since the year 2015.

Year	School	Grade	No. of Applicants
2015	Visakha Vidyalaya	1	3
2016	Visakha Vidyalaya	1	2
2017	Visakha Vidyalaya	1	5
2018	Visakha Vidyalaya	1	0
2019	Visakha Vidyalaya	1	2

Hence, I am of the view that, the expectation formed by the petitioners is within the powers of the decision-maker, and the said practice is not contrary to the Circular applicable for the admission of children to State Schools.

In *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2008] 61, [2009] 1 AC 465 it was held that:

“The legitimate expectation may entail either (1) no more than that the decision-maker will take his existing policy into account, or (2) an obligation on the decision-maker to consult those affected before changing his policy, or (3) an obligation for the decision-maker to confer a substantive benefit on an identified person or group. Those categories represent an ascending hierarchy which must be reflected in the precision, clarity and irrevocability of any alleged representation or promise on which the expectation is said to be based. To rely successfully on a substantive expectation a claimant must be able to show that the promise was unambiguous, clear and devoid of relevant qualification, that it was made in favour of an individual or small group of persons affected; that it was reasonable for the claimant to rely on it; and that he did rely on it generally, but not invariably, to his detriment”.

A careful consideration of the practice followed by the Ministry of Education to admit the children of Judicial Officers shows that there was no ambiguity or uncertainty of the said practice. On the contrary, the said practice was precise and filled a void in the admission criterion stipulated in the Circular.

In the aforesaid circumstances, I hold that the past practice of the Ministry of Education, pertaining to the admission of the children of Judicial Officers to State Schools, gave rise to a legitimate expectation as it had admitted the children of Judicial Officers upon the recommendation of the Judicial Service Commission, since the years 2011 to 2016.

Did the Change of the Practice Breach the Legitimate Expectation?

When a public authority intends to deviate from an established practice, which has been in operation for a considerable period giving rise to a legitimate expectation, it is essential that the persons affected by such deviation are given advance notice of the proposed change except in situations where the authority is unable to continue with the relevant practice due to circumstances which warrant such a deviation.

A similar approach was taken in the case of *Dayaratne v. Minister of Health and Indigenous Medicine* (1999) 1 SLR 393 where it was held that “when a change in policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably”. [Emphasis Added]

Moreover, the need to give notice to affected persons from a change in practice or policy was also discussed in *Hughes v Department of Health and Social Security* (1985) AC 776 HL, where Lord Diplock stated that:

“When a change in administrative policy takes place and is communicated in a departmental Circular to, among others, those employees in the category whose age at which they would be compulsorily retired was stated in a previous Circular to be a higher age than 60 years, any reasonable expectations that may have been aroused in them by any previous Circular are destroyed and are replaced by such other reasonable expectations as to the earliest date at which they can be compelled to retire if the administrative policy announced in the new Circular is applied to them.”

In the instant application, it is important to note that the respondents have deviated from the said practice, only in the year 2017 and have reverted to the same practice in the years 2018 and 2019.

Moreover, as stated above the reasons given by the respondents for changing the admission criterion applicable for the admission of the children of Judicial Officers are not warranted by the circumstances that prevailed at the time of admission for the year 2017.

Further, I am of the view that the cases cited by the learned Additional Solicitor General in support of his contentions are not applicable to the instant applications.

In the circumstances, I hold that, the Ministry of Education and the Department of Education have changed the practice applicable for the admission of the children of Judicial Officers for reasons which were not justified by the respondents. Further, introducing the new criterion is violative of the established procedure applicable for the admission of the children of Judicial Officers to State Schools. Moreover, the material produced by the 3rd respondent shows that seven (7) students had been admitted to Visakha Vidyalaya after the applications were closed. This contradicts the position taken by the 3rd respondent for introducing the said new criterion.

Moreover, if a practice is introduced and followed to fill a lacuna in a particular Circular or criterion which led to a legitimate expectation, such practice shall not be changed without

introducing an alternative criterion to fill such a lacuna unless there are compelling reasons to deviate from such a practice.

Hence, I am of the opinion that changing the past practice without giving prior notice and introducing the said new criterion for the year 2017 violated the legitimate expectation of the petitioners.

Orders of Court

Judges are an essential part of the administration of justice. They are required to maintain the honour and dignity of their profession, at all times. It is the responsibility of the judge to adjudicate a dispute honestly and impartially on the basis of the judge's assessment of the facts and in accordance with the conscientious understanding of the law.

Conflicts of interest occur where there is a conflict between the public duty and the private interest of a judge, in which the judge's private interest could improperly influence the performance of their official duties. This needs to be avoided, at all times. In the circumstances, a judge is required to maintain a form of life and conduct more severe and restricted than that of other people.

The Constitution of Sri Lanka has provided the necessary framework for the judiciary to maintain the aforementioned standards and to protect the independence of the judiciary. This position was held in *Jathika Sevaka Samgamaya v Sri Lanka Handabima Authority* (SC Appeal No. 15/ 2013 SC Minutes 16th December, 2015) where it was held:

“Article 111C of the Constitution is a manifest intention to ensure the judiciary is free from interferences whatsoever. Thus, there is a clear demarcation of powers between the judiciary and the other two organs of the government, namely, the executive and the legislature.”

Article 27 of the Constitution states:

“27(2) The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include –

...
...
...

(h) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.”

In the case of *Watte Gedera Wijebanda v Conservator General of Forests and Other* (2009) 1 SLR 337, it was held that although Directive Principles are not specifically enforceable against the State, they provide important guidance and direction to the various organs of State in the enactment of laws and in carrying out the functions of good governance.

Hence, all children including the children of Judicial Officers are entitled to equal access to education and it is incumbent upon the State to have a proper mechanism to secure the said right. As stated above, the Department of Education and the Ministry of Education had been following the practice referred to above to give effect to the State Policy of equal access to education. Hence, the said practice has led to the formation of a legitimate expectation among the Judicial Officers to admit their children to State Schools.

Thus, such a practice introduced and followed to fill a lacuna in the admission criterion applicable to State Schools cannot be varied or abolished without introducing an alternative criterion to fill the said lacuna.

An underlying principle of natural justice, upon which the principle of legitimate expectation is based, is the right to be heard.

As such, the Ministry of Education and the Department of Education was under a duty to give advance notice if it intended to replace the said established practice which had given rise to the legitimate expectation.

A similar position was held in *Dayaratne v. Minister of Health and Indigenous Medicine* (1999) 1 SLR 393 where it was held that;

“when a change of policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatments arbitrarily, invidiously, irrationally, or otherwise unreasonably dealt out by the Executive”.

In the circumstances, I direct the respondents not to change the aforementioned practice followed in the years 2011 to 2016 and 2018 to 2019 without formulating a criterion in consultation with the relevant stakeholders for the admission of the children of Judicial Officers to State Schools.

Further, for the reasons stated above, I direct the Principal of Visakha Vidyalaya and the other respondents to take immediate steps to admit the petitioners' children, Minuwanpitiyage Senoli Yunaya Peiris and Chanima Ranalee Jayaratne, to Visakha Vidyalaya forthwith and place them in an appropriate grade.

I order no costs.

Judge of the Supreme Court

Vijith K. Malalgoda, PC, J

I agree

Judge of the Supreme Court

E.A.G.R. Amarasekera, J

I agree

Judge of the Supreme Court