

# 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  
Article 17 of the Constitution.*

Application No. SC FR 112/2021

1. D.S.R.D. Fernando  
No. 166B, St. Joseph Mawatha,  
Kaluwarippuwa East,  
Katana.
2. B.A.M.U. Bambaragoda  
No. 126, School Lane,  
Badalgama.
3. M.A.M.C. Muthugala  
No. 197, Molwaththa,  
Kithulwala,  
Mirigama.
4. H.T.N.M. Wickramarathne  
No. 699/12, Galle Road,  
Randombe,  
Ambalangoda.
5. G. Sagarika Lakmini  
Kandagoda Waththa,  
Nabadawa,  
Yakkalamulla.

And 290 others

**Petitioners**

**Vs.**

1. Hon. Chamal Rajapaksa,  
State Minister of Home  
Affairs,  
State Ministry of Home  
Affairs,  
“Nila Medura”,  
Elvitigala Mawatha,  
Colombo 5.
- 1A. Hon. Dinesh Gunawardena,  
Minister of Public  
Administration, Home  
Affairs, Provincial Councils  
and Local Government,  
Ministry of Public  
Administration, Home  
Affairs, Provincial Councils  
and Local Government,  
Independence Square,  
Colombo 7.
2. N.H.M. Chithrananda,  
Secretary,  
Ministry of Home Affairs,  
“Nila Medura”,  
Elvitigala Mawatha,  
Colombo 5.
- 2A. Neel Bandara Hapuhinne,  
Secretary,  
Ministry of Public  
Administration, Home  
Affairs, Provincial Councils  
and Local Government,  
Independence Square,  
Colombo 7.

3. B.P.C. Kularatne,  
Additional Commissioner  
(Legal and Investigations),  
Elections Commission of Sri  
Lanka,  
Elections Secretariat,  
Sarana Mawatha,  
Rajagiriya.

4. Honourable Mahinda  
Rajapaksa,  
Minister of Finance,  
Ministry of Finance,  
The Secretariat,  
Lotus Road,  
Colombo 1.

5. S.R. Attygalle  
Secretary to the Treasury,  
Ministry of Finance,  
The Secretariat,  
Lotus Road,  
Colombo 1.

5A. K.M. Mahinda Siriwardana,  
Secretary to the Treasury,  
Ministry of Finance,  
The Secretariat,  
Colombo 1.

6. Hiransa Kaluthantri  
Director General,  
Department of Management  
Services,  
3<sup>rd</sup> Floor,  
Ministry of Finance,  
The Secretariat,

Lotus Road,  
Colombo 1.

7. Honourable Justice Jagath  
Balapatabendi  
Chairman,  
Public Service Commission.
8. Indrani Sugathadasa  
Member,  
Public Service Commission.
9. V. Shivagnanasothy  
Member,  
Public Service Commission.
- 9A. Suntharam Arumainayaham,  
Member,  
Public Service Commission.
10. Dr. T.R.C. Ruberu  
Member,  
Public Service Commission.
11. A.L. Mohamed Saleem  
Member,  
Public Service Commission.
12. Leelasena Liyanagama  
Member,  
Public Service Commission.
13. Dian Gomes  
Member,  
Public Service Commission.

14. Dilith Jayaweera  
Member,  
Public Service Commission.

15. W.H. Piyadasa  
Member,  
Public Service Commission.

16. M.A.B. Daya Senarath  
Secretary,  
Public Service Commission.

16A. Thanuja Murugeson,  
Secretary (Acting),  
Public Service Commission.

7<sup>th</sup> to 16A Respondents of  
No. 1200/9,  
Rajamalwatta Road,  
Battaramulla.

17. Honourable Attorney-  
General,  
Department of the Attorney  
General,  
Colombo 12.

**Respondents**

**Before:**

**E.A.G.R. Amarasekara, J.  
Yasantha Kodagoda, PC, J.  
Mahinda Samayawardhena, J.**

**Appearance:**

Saliya Pieris, PC with Anjana Rathnasiri for the  
Petitioners.  
Fazly Razik, DSG for the Respondents.

**Argued on:** 22<sup>nd</sup> February 2024

**Written Submissions tendered on:** On 18<sup>th</sup> March 2022 and 21<sup>st</sup> February 2025 for the Petitioners.  
On 25<sup>th</sup> January 2022 and 27<sup>th</sup> February 2025 for the Respondents.

**Judgment delivered on:** 29<sup>th</sup> May 2025

### **Judgment**

**Yasantha Kodagoda, PC, J.**

#### **Introduction and background**

1. This is a judgment which relates to an Application filed in this Court invoking the jurisdiction conferred on it by Article 126 read with Article 17 of the Constitution.
2. The two hundred and ninety-five (295) Petitioners constitute a group of persons who sought (unsuccessfully) to join the public service and hold office as ‘Grama Niladhari’ (meaning ‘Village Officer’). They sought entry into Grade III of the Grama Niladhari Service. While the 2<sup>nd</sup> Respondent is the Secretary, Ministry of Home Affairs, the 2A Respondent is the Secretary, Ministry of Public Administration, Home Affairs, Provincial Councils and Local Government (the successor Ministry to the Ministry of Home Affairs). The 7<sup>th</sup> Respondent is the Chairman of the Public Service Commission and the 8<sup>th</sup> to 15<sup>th</sup> Respondents are the other members of the Public Service Commission. The 16<sup>th</sup> Respondent is the Secretary of the said Commission.
3. Following the support of this Application on 23<sup>rd</sup> June 2021, a differently constituted Division of this Court had granted *leave to proceed* against the 7<sup>th</sup> to 16<sup>th</sup> Respondents on the premise that *prima facie* it appeared to Court that the fundamental rights of the Petitioners guaranteed under Article 12(1) of the Constitution had been infringed.
4. On 1<sup>st</sup> December 2023, supporting a Motion dated 23<sup>rd</sup> November 2023, learned President’s Counsel for the Petitioners submitted that in view of certain recent

developments such as the Respondents calling for Applications for recruitment of persons to be appointed to Grade III of the Grama Niladhari Service, it became necessary for the Petitioners to move Court to grant interim relief. The nature of the interim relief sought was to stay the processes of calling for Applications afresh, conducting examinations and interviews, and selecting persons to be appointed to the Grama Niladhari Service. On an application made by the learned Deputy Solicitor General on behalf of the Respondents, time was granted for the filing of limited objections with regard to the afore-stated application for interim relief. However, thereafter, as an alternative step, the date fixed for argument was advanced, and the Court made an order directing parties to maintain the *status quo* till the date of hearing. That in effect was to halt the fresh process of selecting persons to be appointed to Grade III of the Grama Niladhari Service.

5. On 22<sup>nd</sup> February 2022, at the hearing, following the conclusion of argument, the order made for the maintenance of the *status quo* was lifted and the State was permitted to proceed with the fresh selection process. However, the Court directed that should the Petitioners be successful in obtaining judgment in their favour, the Respondents should ensure that the directives contained in the Judgment are given effect to, notwithstanding action that may have by that time been taken by the State to select persons to fill cadre vacancies in Grade III of the Grama Niladhari Service. To that extent, the Respondents were directed to reserve cadre vacancies in the said service or be ready to take other necessary steps to ensure that, should the Petitioners be successful, the Judgment of this Court relating to this Application is fully implemented and that thereby the purpose of the Petitioners in securing relief is not frustrated. In the circumstances, the action initiated by the Respondents to call for Applications, select persons and appoint the selected persons to fill cadre vacancies in Grade III of the Grama Niladhari Service was not stayed by this Court through the making of an interim order.

### **Recruitment to the Grama Niladhari Service**

6. The procedure to be followed in making appointments (Scheme of Recruitment - SOR) to the Grama Niladhari Service (Grade III) of the public service is laid down in a document captioned "The Procedure of Recruitment for Grama Niladharis - Segment I - multi duty, non-technical" dated 23<sup>rd</sup> December 2014, issued by the Ministry of Public Administration and Home Affairs. A copy of the Sinhala version of this scheme was produced by the Petitioner marked "P1" and the English version as "P2". As revealed in the Affidavit of the 16<sup>th</sup> Respondent

(Secretary of the Public Service Commission) dated 10<sup>th</sup> August 2021, the Scheme of Recruitment contained in “P1” had been approved by the Public Service Commission on 2<sup>nd</sup> December 2014.

7. According to “P1”, the appointing authority to the Grama Niladhari Service is the Secretary to the Ministry of Public Administration and Home Affairs, to whom the Public Service Commission has delegated such authority on 20<sup>th</sup> November 2015 (“16R1”).
8. In terms of “P1”, the key features of the Scheme of Recruitment for selection to be appointed to Grade III (entry point) of the Grama Niladhari Service can be summarised as follows:
  - 1) Nature of the selection: Open scheme of recruitment (open competitive).
  - 2) Required basic educational qualifications: Should have passed (in the manner stipulated) either the G.C.E. (O/L) or the N.C.G.E. Examinations and the G.C.E. (A/L) Examination.
  - 3) Residency: Should have a minimum of 3 years residency within the Divisional Secretary Division to which the applicant following recruitment seeks to be assigned to.
  - 4) Age: Between 21 to 30 years.
  - 5) Should be a citizen of Sri Lanka.
  - 6) Method of recruitment:
    - a) Should pass the written examination (comprising of two written tests) at which competency of language and the aptitude for the post are assessed. The pass-mark per each of the examination papers is 40 out of 100.
    - b) Should also pass the structured interview at which the following attributes will be assessed:
      - a. Leadership (out of 20 marks).
      - b. Sports skills (out of 10 marks).
      - c. Language proficiency (out of 10 marks).
      - d. Computer skills (out of 5 marks).
      - e. Skills displayed at the interview (out of 5 marks).[A total of 50 marks.]
  - 7) Method of calling for Applications: By a Notice published in the Gazette.
  - 8) Recruitment methodology:



- a) Recruitment will be at the level of each of the Divisional Secretariat Divisions, based on the number of vacancies available in each of such areas. (However, once recruited, a Grama Niladhari may be transferred from one Division to another.)
- b) Based on the results obtained at the written examination (having placed the candidates in order of merit), a number of candidates equal to twice the number of vacancies at each of the Divisional Secretariat Divisions will be called for a structured interview.
- c) Based on merit (performance at both the written examination and the structured interview) and the number of vacancies available in each Divisional Secretariat Division, the required number of candidates will be selected. Those selected shall be admitted to follow the three-months training programme conducted at the level of each of the Divisional Secretariat Divisions.
- d) Following successful completion of the training programme, those recommended by the respective District Secretary shall be appointed to Grade III of the Grama Niladhari Service. [For successful completion of the training programme, each trainee is required to put in 80% of attendance at the training programme and obtain a minimum of 50% of the marks at an examination to be held upon completion of the training programme.]

### **First round of recruitment**

9. By Notice dated 28<sup>th</sup> January 2016 published in the Gazette No. 1,954 dated 12<sup>th</sup> February 2016 ("P3"), the Secretary to the Ministry of Home Affairs published a Notice announcing the conduct of a 'competitive examination' for recruitment to Grade III of the Grama Niladhari Service. It stated that Applications are being called from those possessing the required qualifications to sit for the written examination being held to select qualified candidates for appointment to the post of Grama Niladhari in each of the Divisional Secretariat Divisions spread all over the island, where vacancies exist.
10. Following Applications being submitted by those interested in joining the Grama Niladhari Service (including the Petitioners), the Department of Examinations had conducted a written examination (as provided in the SOR) on 3<sup>rd</sup> September 2016. A total of approximately 110,000 candidates had sat for that examination.

11. Of the 110,000 candidates who had sat for the written examination, 3,568 candidates had passed both papers and obtained sufficient marks at the examination.
12. As at 30<sup>th</sup> April 2017, there had been 1,835 vacancies in the Grama Niladhari Service (total number of vacancies in all Divisional Secretariat Divisions). The Public Service Commission had granted approval to the 2<sup>nd</sup> Respondent (Secretary, Ministry of Public Administration and Home Affairs) to fill all such vacancies. In the circumstances, based on the vacancies available in each of the Divisional Secretariat Divisions and the marks obtained by the applicants (candidates) at the written examination, the Department of Examinations had released a list of 3,568 names of candidates who were to be called for the structured interviews. This would amount to nearly twice the number of vacancies available at the level of each of the Divisional Secretariat Division. [As to why a list of 3,670 candidates (exactly twice the number) were not released by the Department of Examinations, is not known.] Accordingly, the Ministry of Public Administration called the entirety of the 3,568 candidates for the structured interviews.
13. The structured interviews were held in October and November 2017. Of them, 715 had not presented themselves at the interviews. Of the remaining number of candidates (which would amount to 2,853) who presented themselves for the structured interviews, it had transpired that only 2,270 had the requisite basic qualifications.
14. Founded upon the aggregate of the marks obtained (at the written examination and at the structured interviews), 1,663 applicants being those who had obtained highest marks (out of the 2,270 candidates) had been selected to follow the training programme. Accordingly, they participated at the training programme that was held at the level of each Divisional Secretariat Division. Of them, only 1,412 candidates had received appointments as Grama Niladhari. They received their appointments on 4<sup>th</sup> June 2018. [While the exact reason as to why some who followed the training programme were not selected for the grant of appointments is not clear, it appears that, such remaining number of trainees had either dropped-off from the training programme or had not passed the examination held at the end of the training programme.] Be that as it may, that issue was not contested before this Court.

15. This situation resulted in 423 vacancies in the Grama Niladhari Service (Grade III) out of a total of 1,835 vacancies, not being filled.

### **Second round of recruitment**

16. In July 2018, the Public Service Commission had granted approval to the 2<sup>nd</sup> Respondent (Secretary, Ministry of Public Administration and Home Affairs) to take necessary steps to fill the remaining vacancies, which totaled to 939. [This shows that by that time (30/04/2018), the total number of vacancies at the level of the Divisional Secretariat Divisions had increased from 423 to 939. The reason for that could be vacancies arising out of retirements.] According to the SOR, filling these vacancies would have necessitated twice the number of candidates (amounting to a total of 1,878) being called for the structured interviews. Accordingly, structured interviews were held. However, it was not possible to fill all remaining vacancies, since only 378 candidates were eligible for selection for admission to the training programme. This was due to the fact that the other candidates had not passed the written examination. Be that as it may, this second round of selections resulted in appointments being granted on 23<sup>rd</sup> October 2018 to another 302 candidates as Grama Niladhari (Grade III).

17. Thus, at the end of the 2<sup>nd</sup> round of selections, 637 vacancies remained unfilled.

### **Third round of recruitment**

18. In the circumstances, in July 2018, the Secretary to the Ministry of Public Administration and Home Affairs sought the approval of the Public Service Commission to conduct another (3<sup>rd</sup>) round of structured interviews founded upon the written examination conducted in September 2016. In September 2018, the Public Service Commission granted approval for the said procedure to be followed to fill vacancies existing up to 30<sup>th</sup> April 2018.
19. By February 2019, the number of vacancies had grown to 1,143 [This is due to the carrying out of annual transfers of Grama Niladharies and further retirements]. Therefore, the then Secretary to the Ministry of Internal and Home Affairs (successor Ministry to the Ministry of Public Administration and Home Affairs) had in May 2019 sought approval from the Public Service Commission to take steps to fill all such vacancies, recommending that priority be given to 224 of the candidates who had sat for and passed the written examination held in September 2016. He had in his letter seeking approval indicated the following reasons as to

why he is not proposing the recruitment process to commence afresh by publication of a Notice calling for Applications and conducting a fresh written examination (strictly in terms of the SOR):

- i. Expenditure involved in the conduct of a fresh examination. (The payment that had to be made to the Department of Examinations for the examination held in September 2016 had been approximately Rs. 43 million. He had explained that for the year 2019, budgetary allocation had not been made for payment to be made for the conduct of a fresh examination.)
  - ii. Should the recruitment process commence afresh, a delay of more than a year would occur.
  - iii. The need for recruitments to be made soon, as several national elections were due to be held, and therefore Grama Niladhari vacancies had to be filled soon.
20. By a letter of June 2019, the Public Service Commission had notified its approval to fill the vacancies that existed up to February 2019 based on the results of the written examination held in September 2016.
21. By letter dated 27<sup>th</sup> September 2019 ("P4"), the 3<sup>rd</sup> Respondent (Additional Commissioner - Legal and Investigations, of the Elections Commission) wrote to the 2<sup>nd</sup> Respondent stating that since steps had been taken by the Elections Commission to conduct the Presidential Elections on 16<sup>th</sup> November 2019, it would be desirable that the afore-stated structured interviews be conducted after the conduct of the Presidential Elections.
22. Due to the afore-stated reason, the 5<sup>th</sup> Respondent (Secretary to the Treasury) by his letter dated 20<sup>th</sup> November 2019 temporarily suspended recruitments.
23. By another letter dated 31<sup>st</sup> May 2020 ("P6"), the 3<sup>rd</sup> Respondent notified the 2<sup>nd</sup> Respondent that the Elections Commission would no longer have any objection for the conduct of the afore-stated structured interviews. [This is presumably because by that time both the Presidential and General Elections had been conducted.]
24. Whether or not structured interviews had been held during this 3<sup>rd</sup> round of selections (abandoned) is in dispute. This is because the Petitioners allege that interviews had been conducted for all Petitioners on 22<sup>nd</sup>, 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup>

September 2020, meanwhile the Respondents deny the conduct of interviews on the 22<sup>nd</sup>, while admitting that interviews had been conducted on the 24<sup>th</sup>, 25<sup>th</sup>, and 26<sup>th</sup>, only for the 33<sup>rd</sup> to 295<sup>th</sup> Petitioners. However, the then Secretary, Ministry of Home Affairs by letter dated 10<sup>th</sup> November 2020 (“P9”) notified the District Secretaries of the selection of 732 applicant-candidates to follow a three-months training programme. The number of such applicant – candidates per district were included in the annexure to the said letter. Nevertheless, the training programme (at the District Secretariat level) was not conducted for any of the Petitioners in the 3<sup>rd</sup> round of recruitment.

25. However, the process of recruitment (3<sup>rd</sup> round) had not been completed and none of the candidates (including the 295 Petitioners) received letters of appointment.

### **Grievance of the Petitioners**

26. The Petitioners had in response to the Notice published in the Gazette (“P3”) applied to join the Grama Niladhari Service (Grade III). All of them had sat for and passed the written examination held on 3<sup>rd</sup> September 2016.
27. The 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners had been called for the structured interviews which were held in October and November 2017. However, none of them were selected to follow the training programme. As a result, none of the Petitioners were selected for appointment as Grama Niladhari during the 1<sup>st</sup> round of recruitment, which was in June 2018.
28. During the 2<sup>nd</sup> round of recruitments, once again, the 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners were called for the structured interviews that were held on 23<sup>rd</sup> October 2018. Once again, none of them were selected to follow the training programme. Therefore, they were not selected for recruitment in the 2<sup>nd</sup> round, which took place in October 2018.
29. Thereafter, according to the Petitioners, by “PA1” to “PA32” the 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners were called for structured interviews that were scheduled for 22<sup>nd</sup> September 2020 (It is noteworthy that the purpose contained in the letters was to ‘*call the Petitioners for consideration for selection for the post of Grama Niladhari*’ and no direct reference was made to a structured interview).
30. On 22<sup>nd</sup> September 2020, when the 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners called over at the Ministry of Public Administration, some amount of previously submitted

information (contained in the application forms) and some additional information had been obtained from them. They were also required to sign a declaration stating that they would accept appointment in any Divisional Secretariat Division to which they are appointed and would not make a request for transfer to any other Division.

31. On 22<sup>nd</sup> September 2020, some of the Petitioners out of the 1<sup>st</sup> to 32<sup>nd</sup> Petitioners who were from areas in which there were supposedly sufficient number of vacancies, had been verbally informed that they have been selected to fill such vacancies. As regards the others of this first category of Petitioners (1<sup>st</sup> to the 32<sup>nd</sup>), who belonged to Divisional Secretariat Divisions with a lesser number of vacancies than the number of candidates, they had been told that the requisite number of candidates will be selected to fill the vacancies of the remaining areas.
32. Similarly, by letters marked "PB1" to "PB263" the 33<sup>rd</sup> to the 295<sup>th</sup> Petitioners also received letters calling them for the 3<sup>rd</sup> round of structured interviews which were to be held on several days in September 2019, commencing on 19<sup>th</sup> September and ending on 1<sup>st</sup> October 2019. This was to facilitate the 3<sup>rd</sup> round of recruitment for which authorisation from the Public Service Commission had been received. Of them, some of the Petitioners had not previously been called for structured interviews which were held during the 2<sup>nd</sup> round of recruitment. However, these interviews were postponed by the Ministry of Home Affairs due to the general elections scheduled for this period.
33. In September 2020, by letters "PB1" to "PB263" the 33<sup>rd</sup> to 295<sup>th</sup> Petitioners were called for participation at some 'interviews' to be held at District Secretariat levels on 22<sup>nd</sup>, 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> September 2020. Whether in fact such interviews were the 'structured interviews' contained in the Scheme of Recruitment and whether such 'interviews' were held is in dispute. The Petitioners allege that they were called for the 'structured interviews' and that such interviews were held. However, the Respondents have taken up the position that on the 22<sup>nd</sup> they were called to gather some information and that structured interviews were not held, and has admitted that the 'interviews' were in fact held on the 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> September 2020.
34. Following the Petitioners having responded by some of them going to the Ministry of Public Administration and some others to Divisional Secretariat offices and

providing information that was sought from them, an announcement was not promptly published indicating the names of the applicant – candidates who had been selected to receive appointments to serve as Grama Niladhari (Grade III).

35. None of the Petitioners received notifications informing them that they had been selected for the three-months training programme.
36. By letter dated 31<sup>st</sup> December 2020 (“P12A”), exercising his Right to Information, the 155<sup>th</sup> Petitioner inquired from the Ministry of Home Affairs information pertaining to the recruitment as Grama Niladhari (Grade III). By letter dated 1<sup>st</sup> February 2021 (“P12B”), the Information Officer of that Ministry informed the 155<sup>th</sup> Petitioner that the Ministry was awaiting instructions from the Public Service Commission. Furthermore, the 155<sup>th</sup> Petitioner was informed specifically that no decision had been taken to cancel the 3<sup>rd</sup> round of recruitments.
37. Since there was no information regarding the selections, by his letter dated 24<sup>th</sup> February 2021, the 155<sup>th</sup> Petitioner made inquiries from the Public Service Commission (“P13”). In response, by letter dated 10<sup>th</sup> March 2021, the 155<sup>th</sup> Petitioner was notified that it had been decided not to make any further recruitments based on the written examination held in September 2016 (“P14”). To that letter had been attached a letter dated 3<sup>rd</sup> March 2021 sent by the 16<sup>th</sup> Respondent (Secretary, Public Service Commission) to the 2<sup>nd</sup> Respondent (Secretary, Ministry of Public Administration and Home Affairs) (“P14A”), notifying him of the Public Service Commission’s decision, that since a written examination had not been conducted during the first three months of 2020, a new written examination should be conducted to fill vacancies that existed in the Grama Niladhari Service (Grade III).
38. According to a statement (“P15”) made in Parliament on 23<sup>rd</sup> March 2021 by the 1<sup>st</sup> Respondent (State Minister of Home Affairs), though the Ministry of Home Affairs had sent to the Public Service Commission the names of approximately 900 persons as being successful candidates, the Commission had rejected those names as over 5 years had lapsed since the conduct of the written examination and had required the Ministry to conduct the written examination afresh.
39. The Petitioners have alleged that they were not afforded a hearing prior to the decision taken by the Public Service Commission to abandon the 3<sup>rd</sup> round of recruitments.



40. The Petitioners have further alleged that, they believe that the 3<sup>rd</sup> round of recruitment was abandoned since the relevant authorities were inclined to select individuals who were supporters of the government which had assumed power in 2019.
41. By Gazette notification dated 28<sup>th</sup> May 2021 bearing No. 2,230, the Secretary to the State Ministry of Home Affairs has called afresh Applications for recruitment to Grade III of the Grama Niladhari Service. That process was pending as at the time this matter was being argued.
42. The Petitioners have alleged that the decision of the Public Service Commission to halt the 3<sup>rd</sup> round of recruitment to the Grama Niladhari Service (Grade III) is unlawful, as it is unfair, discriminatory, illegal, unreasonable, irrational, arbitrary, tainted with *mala fides*, and is *ultra vires*. The Petitioners have also alleged that the conduct of the Respondents in abandoning the 3<sup>rd</sup> round of recruitment violates the legitimate expectations of the Petitioners. On the said footing, the Petitioners alleged that the impugned decision taken by the Public Service Commission infringes their fundamental right to equality, guaranteed by Article 12(1) of the Constitution and the fundamental right to engage in a lawful occupation, guaranteed by Article 14(1)(g) of the Constitution.
43. In addition to seeking a declaration from Court that the Petitioners' fundamental rights guaranteed by Articles 12(1) and 14(1)(g) of the Constitution have been infringed by one or more of the Respondents, the Petitioners have urged that the impugned order of the Public Service Commission to stop the 3<sup>rd</sup> round of recruitments be quashed, and the Public Service Commission and the Ministry of Public Administration be directed to continue with the 3<sup>rd</sup> round of recruitment based on the results of the written examination held in September 2016. The Petitioners have also urged that this Court directs the 7<sup>th</sup> to the 16<sup>th</sup> Respondents to appoint to Grade III of the Grama Niladhari Service candidates who have obtained high marks by adding the marks obtained at the written examination and at the structured interviews.

#### **Explanation provided by the Respondents**

44. According to the 16<sup>th</sup> Respondent, apart from the first time when recruitment took place (1<sup>st</sup> round of recruitment), on subsequent occasions when structured



interviews were held (for recruitment in the 2<sup>nd</sup> round), a written examination was not held. That was because conducting such an examination was time consuming and involved high cost.

45. As they were not qualified, the 33<sup>rd</sup> to the 295<sup>th</sup> Petitioners were not summoned for the structured interviews held in October and November 2017.
46. According to the 16<sup>th</sup> Respondent, by letter dated 3<sup>rd</sup> June 2019 ("16R5"), the Public Service Commission while giving approval for the recruitment of applicant – candidates during the 3<sup>rd</sup> round of recruitments, had issued instructions to the Ministry of Home Affairs to, thereafter take necessary action to conduct the written examination once in every two years. The Commission had also instructed that an examination should be conducted at least within the first three months of 2020. Further, the 16<sup>th</sup> Respondent had been informed that suitable suggestions to amend the Scheme of Recruitment to mitigate difficulties associated with future recruitments should be submitted by the Ministry of Public Administration and Home Affairs.
47. Though the 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners were required to attend the Ministry of Public Administration on 22<sup>nd</sup> September 2020, on that occasion, they were not subjected to a structured interview. In fact, on that date, no one was subjected to a structured interview. The 2<sup>nd</sup> Respondent has also denied that some out of the 1<sup>st</sup> to 32<sup>nd</sup> Petitioners were told that they were selected. The Respondents have admitted that some structured interviews (for the other Petitioners) were conducted on the 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> of September 2020 at the respective District Secretariat Offices. Therefore, the position of the Respondents is that, during the aborted 3<sup>rd</sup> round of recruitment, structured interviews were held only on the 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> September 2020 and that too only for some Petitioners excluding the 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners.
48. Further, the 2<sup>nd</sup> Respondent has denied that on or about the 23<sup>rd</sup> March 2021, the 1<sup>st</sup> Respondent submitted to the Public Service Commission names of approximately 900 candidates as being successful at the written examination and the structured interview, and that the Public Service Commission rejected those names.

49. The Respondents have emphasised that at no point of time were any of the Petitioners given an assurance that they will be recruited to be appointed as a Grama Niladhari (Grade III).
50. The 5<sup>th</sup> Respondent – Secretary to the Treasury has stated that the letter issued by him dated 20<sup>th</sup> November 2019 for the temporary suspension of recruitments was due to a policy decision taken by the government due to limitation of necessary finances.

**Key submissions made by learned counsel**

51. Learned President's Counsel for the Petitioners did not impugn the procedure followed relating to recruitment of applicant – candidates during the 1<sup>st</sup> and 2<sup>nd</sup> rounds of recruitment. Nor did he challenge the selection of candidates during those two rounds.
52. The core submission of the learned President's Counsel for the Petitioners was that the recruitments carried out during the 1<sup>st</sup> and 2<sup>nd</sup> rounds were based on the results of the written examination held on 3<sup>rd</sup> September 2016. He submitted that that procedure did not violate the Scheme of Recruitment, thereby is not *ultra vires*. He submitted that in the same manner, the 3<sup>rd</sup> round of recruitment could have been carried out. He emphasised that the Public Service Commission had not cited violation of the Scheme of Recruitment as the reason for abandoning the 3<sup>rd</sup> round of recruitment.
53. Learned President's Counsel for the Petitioners impugned the decision taken by the Respondents to abandon the 3<sup>rd</sup> round of recruitment in the backdrop of the written examination and structured interviews having been conducted. He submitted that the abandonment of the recruitment process during the 3<sup>rd</sup> round was arbitrary and was a violation of the Petitioners' legitimate expectations and fundamental rights that they will be selected during the 3<sup>rd</sup> round.
54. Learned counsel for the Petitioners alleged that the Petitioners were given 'assurances and promises' of recruitment due to the following conduct of the Respondents:
- a. The letter dated 10<sup>th</sup> November 2020, sent by the then Secretary, Ministry of Home Affairs ("P9") addressed to the District

Secretaries notifying them that the three-months training course shall be conducted for 732 applicant - candidates.

- b. The collection of police clearance reports from the Petitioners before the commencement of the three-months training. Upon inquiry of why the police clearance reports were obtained prior to the training (as the usual procedure is to collect such reports after completion of the training programme), the Petitioners were informed that such conduct was followed since they were to be appointed soon.
- c. The letter dated 25<sup>th</sup> November 2020, sent by the 6<sup>th</sup> Respondent informing the Secretary to the Ministry of Home Affairs to follow the Management Services circular No. 02/2020 for recruitments.
- d. The statement of the 1<sup>st</sup> Respondent in Parliament that the remaining Grama Niladhari appointments will be made during the year 2020.
- e. The statement of the then Minister of Highways in Parliament that the 3<sup>rd</sup> round of recruitment was in progress, and after the appointments are made, a fresh examination will be conducted to fill the remaining vacancies of the Grama Niladhari service.

55. Learned President's Counsel for the Petitioners submitted that the aforesaid conduct of the Respondents had given rise to a legitimate expectation in the Petitioners that during the 3<sup>rd</sup> round of recruitment they will receive appointments as Grama Niladhari (Grade III). He further stated that this legitimate expectation had also resulted in the Petitioners resigning from their places of employment, with the expectation that they will be appointed promptly to the Grama Niladhari service. Citing the cases of *Weerawarna Kurukulasooriya Madushika Hasanthi Kurukulasooriya v. Anura Edirisinghe, Commissioner General of Examinations and Others* [SC/FR No. 577/2009, SC Minutes 01.11.2011] and *Warahenage Pavithra Dananjanie De Alwis v. Anura Edirisinghe, Commissioner General of Examinations and Others* [SC/FR No. 578/2009, SC Minutes 01.11.2011], he submitted that in order to give rise to a legitimate expectation, an undertaking need not be given in writing and it would be sufficient if that could be gathered through the surrounding circumstances. He further stated that both a promise or even a regular procedure can give rise to a legitimate expectation. Furthermore, learned counsel cited the judgments of *Andiapillai Karuppannapillai and Others v. Raja Rajeswari Visvanathan and Others* [SC Appeal No. 10/2007, SC Minutes of 26.10.2010] and *Harshani S.*

*Siriwardana v. Malsiri J. Seneviratne and Others* [SC/FR No. 589/2009, SC Minutes 10.03.2011], and submitted that in the interest of good administration, it is necessary for the relevant authority to act fairly and implement its promises.

56. He further submitted that before a decision is taken to abandon a recruitment process, the applicants should have been given an opportunity of expressing their views at a fair hearing. He also cited the dicta in *Elizabeth Manel Dassanayake v. K. E. Karunathilake* [SC/FR No. 267/2010, SC Minutes of 09.02.2016] and *Dayaratne v. Minister of Health and Indigenous Medicine* [(1999) 1 SLR 393], that when a decision or change of policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity to be heard.
57. Learned counsel for the Petitioners responding to the position of the 16<sup>th</sup> Respondent that the continuous recruitment based on the 2016 examination would prevent younger and new candidates from entering the service, submitted that the retirement age of public sector employees had been raised to 65 years, and this raise thus negates the contention of the Public Service Commission in respect of younger candidates. He further emphasised that at present there are over 9,000 remaining vacancies in the Grama Niladhari Service, and that the Petitioners are not responsible for the delay/ failure to complete recruitments of the 3<sup>rd</sup> round.
58. Learned counsel for the Petitioners also emphasised that the 16<sup>th</sup> Respondent, by letter dated 3<sup>rd</sup> June 2019 had given approval to continue the 3<sup>rd</sup> round of recruitment, and that his subsequent letter dated 3<sup>rd</sup> March 2021 has not rescinded the above position.
59. Replying to the submissions of the learned President's Counsel for the Petitioners, learned Deputy Solicitor General for the Respondents submitted that the Petitioners were not eligible to be recruited during the 1<sup>st</sup> and 2<sup>nd</sup> rounds of the recruitment process, due to their performance at the written examination and at the structured interviews, and the absence of vacancies in their choice of station (the relevant Divisional Secretariat Division). He further submitted that if they were eligible, they would have been selected for recruitment during such rounds. Accordingly, he submitted that there was no carrying forward from recruitment processes of the first two rounds. For the 3<sup>rd</sup> round, it had been necessary to conduct new structured interviews. He also stated that if recruitments were to be made in the 3<sup>rd</sup> round from among the candidates who were unsuccessful in the

previous rounds, the State would lose the opportunity of recruiting the most suitable and competent persons to the Grama Niladhari service, and at the same time would deprive prospective younger candidates the opportunity to competitively enter the service through a fresh written examination. Thus, he stated that the decision taken by the Respondents to discontinue recruitments in the 3<sup>rd</sup> round was in the interests of the larger segment of the general public whose rights would have been affected.

60. Learned DSG emphasised that during the abandoned 3<sup>rd</sup> round, no structured interviews were held for the 1<sup>st</sup> to 32<sup>nd</sup> Petitioners, and that they were only called for a 'meeting' on the 22<sup>nd</sup> September 2020. He further stated that the 33<sup>rd</sup> to 295<sup>th</sup> Petitioners were called for structured interviews held on the 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup> September 2020, and that it was the first time they had faced a structured interview for recruitment to the Grama Niladhari Service. He also denied the position taken up by the Petitioners that they had resigned from their places of employment to take up appointments in the 3<sup>rd</sup> round, as the Petitioners have failed to tender proof of the same to this Court.

61. Learned DSG emphasised that the Petitioners have not alleged that their rights have been violated from the original (1<sup>st</sup> round) or the first additional round (2<sup>nd</sup> round) of recruitments. However, learned DSG in his submissions made reference to a justification on why conducting an additional round of recruitment (in addition to the first two) by the Respondents does not amount to a violation of the fundamental rights of the Petitioners. In this regard, he admitted that the 2<sup>nd</sup> round of recruitment was carried out by way of a deviation from the Scheme of Recruitment ("P1"), due to the time and high cost that would have been incurred in conducting a fresh examination at that point of time. He submitted that as per Rule 3 of the Procedural Rules of the Public Service Commission published in Gazette No. 1589/30 dated 20.02.2009 which states that "*Subject to Article 12(1) of the Constitution the Commission reserves to itself the right to deviate from rules, regulations and procedure laid down by the Commission under exceptional circumstances*", a deviation from the Scheme of Recruitment is permitted. He also submitted that the authority vested in the Public Service Commission by virtue of Rule 3 is a discretionary power vested on public authorities to achieve the purposes of vesting such power on them.

62. He submitted that the Petitioners have not prayed from this Court that a direction be made to the Respondents that after granting them a fair hearing a decision be

made in their favour, and that the documents tendered by the Petitioners marked PA1 – PA32 and PB1 – PB263 do not reveal that a party should be granted a hearing. In this regard, he submitted that there is no previous practice of the Respondents giving a hearing before arriving at an impugned decision, where the Petitioners have not proved the same.

63. Learned DSG further submitted that no selection list was finalised during the 3<sup>rd</sup> round of recruitment, thus the conduct of the Respondents had not created a legitimate expectation for the Petitioners that they will be recruited to the Grama Niladhari service. He also submitted that by carrying out the original recruitment that was a response to the Notice published in 2016 calling for Applications (“P3”), the legitimate expectation created by the Respondents was duly fulfilled.
64. Citing the cases of *Wickremaratne v. Jayaratne* [(2001) 3 SLR 161] and *Kaluarachchi v. Ceylon Petroleum Corporation* [SC Appeal No. 43/2013, SC Minutes 19.06.2019], learned DSG submitted that the concept of legitimate expectation should not be invoked blindly and habitually. Further, citing the cases of *M.R.C.C. Ariyaratne and Others v. N.K. Illangakoon, IGP and Others* [SC/FR No. 444/2012, SC Minutes 30.07.2019] and *Vavuniya Solar Power (Private) Limited v. Ceylon Electricity Board and Others* [SC/FR No. 172/2017, SC Minutes 20.09.2023] he submitted that the change of policy and corresponding action by agents of the State should be weighed in line with the decision taken by them in the wider interest of the public.

## Analysis

65. Time and again, this Court has highlighted the need for recruitment to the public sector to be carried out in a transparent manner and founded upon principles relating to meritocracy, so that the public service comprises of the most suitable persons recruited for each and every job. It is to ensure objectivity in selections and transparency, that the recruitment process should be regulated by a well-developed Scheme of Recruitment. Schemes for recruitment should be developed and implemented having due regard to the requisite knowledge, skills and experience necessary for each such job. Such schemes if implemented in terms of such scheme itself and objectively, would ensure that selections are based on merit and would be sans arbitrariness and discrimination. This Court, including in the cases of *W.P.S. Wijerathna v. Sri Lanka Ports Authority and Others* [SC/FR Application No. 256/2017, SC Minutes 11.12.2020] and *K.M.R. Perera v. Dharmadasa Dissanayake and Others* [SC/FR Application No. 55/2017, SC Minutes 21.01.2022],



has highlighted the need for formulation of Schemes of Recruitment (SOR) for every job and the need for consistent and objective application of the provisions of such schemes for the purpose of selecting suitable persons to fill vacancies in the public sector. In that regard, this Court has also referred to the right to equality with regard to gaining employment in the public sector, and the requirement for the process of selection to be void of any discrimination, favouritism, malice, prejudice, subjectivity and nepotism. The grant of employment in the public sector should not be founded upon personal or political favouritism or in return for monetary or other considerations. This Court has noted that for the purpose of protecting the fundamental right to equal protection of the law and equality recognised by Article 12(1) of the Constitution, the provisions of the applicable Scheme of Recruitment shall be recognised by Court as the 'applicable and governing law'. Thus, not only is a rational Scheme of Recruitment necessary, strict adherence to it is equally necessary.

66. I have previously stated in detail the applicable SOR for selection to Grade III of the Grama Niladhari Service. For the strict application of that approved Scheme of Recruitment, it must be noted that, for each wave or round of recruitment to the Grama Niladhari Service (Grade III), the process must commence with the publishing of a Notice calling for Applications. Furthermore, for each round of recruitment, there must be a written examination that corresponds to the Applications received in response to the Notice calling for Applications.
67. It would be noted that while the SOR was fully complied with for the purpose of the 1<sup>st</sup> round of recruitment, for the 2<sup>nd</sup> round of recruitment, a fresh Notice calling for Applications was not published. Nor was a written examination held. Instead, applicant – candidates were selected based on the written examination held on 3<sup>rd</sup> September 2016 without the SOR having been amended. Therefore, it would be seen that it was a violation of the SOR for the Public Service Commission to have granted approval in July 2018 to the 2<sup>nd</sup> Respondent (Secretary, Ministry of Public Administration and Home Affairs) to engage in a second round of recruitment, by calling another set of applicants to face the structured interviews based on their performance at the original written examination held in September 2016. Thus, in my view, the 2<sup>nd</sup> round of recruitment carried out in October 2018 was in violation of the SOR.

68. Furthermore, it is evident that for the second round of structured interviews, applicants amounting to twice the number of vacancies per each Divisional Secretary Division had not been called. This is seen by the fact that, notwithstanding the existence of 939 vacancies, only 378 candidates could be called for the structured interviews, as only that number of applicant – candidates had passed the written examination. Therefore, the recruitment of applicants in the 2<sup>nd</sup> round of recruitment had not been founded upon interviewing applicants constituting twice the number of vacancies. This is an additional reason for the 2<sup>nd</sup> round of recruitment being in violation of the Scheme of Recruitment.
69. It appeared from the submissions of the learned DSG, that he too had arrived at the finding that the procedure followed with regard to the 2<sup>nd</sup> round of recruitment and the 3<sup>rd</sup> round (till the process was abandoned) did not strictly comply with the applicable SOR. In defence, he drew the attention of this Court to certain Rules of the Public Service Commission published in Gazette No. 1589/30 dated 20<sup>th</sup> February 2009. Learned DSG relied on Rule 3 in an attempt to justify these deviations from the SOR. In terms of Rule 3, the PSC has conferred on itself the authority to deviate from the Rules, Regulations and Procedure laid down by the Commission, provided that such deviations are made under exceptional circumstances. Furthermore, the PSC has in the same Rule acknowledged that such deviations shall be subject to Article 12(1) of the Constitution. In other words, if a deviation were to be inconsistent with Article 12(1), such deviation would not be valid, even if carried out under exceptional circumstances. As held by this Court in the case of *N.C. Gajaweera and Others v. Prof. Siri Hettige and Others* [SC/FR Application No. 14/2017, SC Minutes 20.03.2024], “... deviation from the Procedural Rules is permissible in terms of Rule 3 which provides that, “Subject to Article 12(1) of the Constitution the Commission reserves to itself the right to deviate from rules, regulations and procedure laid down by the Commission under **exceptional circumstances**.” [Emphasis added by me.] “... Although a deviation from the Rules is permissible, it is duly recognised that such deviation cannot be violative of Article 12(1). Furthermore, deviation must not only be the exception but should only be done in exceptional circumstances. The reasons for such deviation demonstrating the existence of reasonable grounds for such deviation and the reasons for such deviation shall accordingly be recorded.” Justice Arjuna Obeyesekere in that judgment has further held that “the stated intention of the Public Service Commission in formulating the Procedural Rules ... is to create a level playing field thus affording an equal opportunity to those who are eligible for any appointment or promotion, as the case maybe, and to ensure the selection of the most suitable person through a transparent recruitment/promotion process ... in reality,



*this would generally be achieved if applications are called for once the vacancies arise and the due process laid down in the Procedural Rules are followed, and not where scores and ranks from old interviews are dug up in an arbitrary manner to fill vacancies that arose years after the date on which the initial vacancies had arisen, and well after the interviews and the selection procedure had been completed”.*

Thus, it would be seen that, a departure from the provisions contained in the applicable SOR cannot be justified under Rule 3 of the afore-stated Rules of the PSC, if it would amount to a violation of the ‘applicable law’. In any event, should there be such deviation, the altered SOR should be published prior to the process of recruitment re-commencing. In other words, the deviation should be decided upon well-founded reasons and in exceptional circumstances, announced to the public, and thereafter enforced, objectively.

70. Therefore, it is evident that both the 2<sup>nd</sup> round of recruitment and the 3<sup>rd</sup> round of recruitment (which was abandoned after the process of recruitment had commenced from a mid-point contained in the SOR) were contrary to the applicable SOR and thus were in violation of Article 12(1) of the Constitution.
71. The Petitioners’ position (in particular the 1<sup>st</sup> to the 32<sup>nd</sup>) that they entertained a legitimate expectation that they will be recruited to the Grama Niladhari Service, stems primarily from the following circumstances:
- (a) Having been allegedly called for structured interviews (by letters produced marked “PA1” to “PA32”) to be held at the Ministry of Public Administration and District Secretariat offices.
  - (b) Having participated at a meeting held at the auditorium of the Ministry of Public Administration and Home Affairs on 22<sup>nd</sup> September 2020 and having been required to submit information by perfecting a form that was distributed.
  - (c) Some of them (1<sup>st</sup> to 32<sup>nd</sup> Petitioners), having been allegedly told that they have been selected.
  - (d) The 33<sup>rd</sup> to the 295<sup>th</sup> Petitioners having been subjected to structured interviews.

The Respondents have denied that during the aborted 3<sup>rd</sup> round of recruitment, the 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners were subjected to structured interviews. In fact, the meeting held on 22<sup>nd</sup> September 2020 does not prove the position held by the Petitioners that they had participated at structured interviews. The Respondents deny that some of the Petitioners were told that they have been selected. Thus, it

is the word of the Petitioners contained in a joint affidavit of some of the Petitioners versus the word of the 2<sup>nd</sup> Respondent, also contained in his affidavit. Furthermore, without the conduct of a structured interview, the Petitioners could not have been told that some of them had been selected. In the circumstances, I conclude that the 1<sup>st</sup> to the 32<sup>nd</sup> Petitioners have failed to establish a proper factual basis for their assertion that the conduct of the Respondents has given rise to a legitimate expectation on the part of the Petitioners that they will be selected at the 3<sup>rd</sup> round of recruitment.

72. Let us assume that the process which commenced at a mid-point relating to the 3<sup>rd</sup> round of recruitment resulted in an 'expectation' in the minds of the 1<sup>st</sup> to the 33<sup>rd</sup> Petitioners, that they will be subjected to structured interviews and thereafter would be selected for the training programme and be recruited to Grade III of the Grama Niladhari Service. The issue then is to determine whether that 'expectation' amounts to a 'legitimate expectation' which would then serve as a basis for either substantive or procedural relief.
73. As for the 33<sup>rd</sup> to the 295<sup>th</sup> Petitioners, I am ready to accept that they were subjected to structured interviews during the aborted 3<sup>rd</sup> round of recruitment. However, there is no proof of their having been informed that they have been selected for the training programme to be conducted at the level of Divisional Secretariats. Merely by participation at a structured interview, the selection process is not successfully completed. Thus, they too cannot claim that they had a legitimate expectation of having been selected as Grama Niladhari (Grade III).
74. It is also necessary to place on record that the Petitioners have failed to establish that the 3<sup>rd</sup> round of recruitment was abandoned due to political or any other subjective or discriminatory reasons. There is no basis to conclude any *mala fide* intent on the part of any one or more of the Respondents.
75. Furthermore, the 5<sup>th</sup> Respondent (Secretary to the Treasury) by "P5" having issued a *dicta* that the 3<sup>rd</sup> round of recruitment be halted cannot be viewed as being arbitrary or as a decision orchestrated by a collateral motive, since this Court must take judicial notice of the reason given for such decision, that being the financial situation the country had encountered during that period of time.
76. It is pertinent to note that, this Court has consistently followed the view that both *ultra vires* representations and representations generated by unlawful conduct

does not give rise to a 'legitimate expectation' as recognised by our law. In *Ariyaratne and Others v. Inspector General of Police and Others* [(2019) 1 SLR 100] this Court has held that "*the law, as it presently stands, is that an assurance given ultra vires by a public authority, cannot found a claim of a legitimate expectation based on that assurance. But, it has to be recognised that there may be many instances where a petitioner who relies on an assurance given by a public authority or one of its officials, reasonably believed that the public authority or official who gave it to him was acting lawfully and within their powers. It is also often the case that an individual who deals with a public authority will find it difficult to ascertain the extent of its powers and those of its officials. In such cases, much hardship will be done to an individual who bona fide relies on an assurance given to him by a public authority or one of its officials and is later told the assurance he relied on and acted upon, sometime with much effort and at great cost to him, cannot be given effect to because of a flaw regarding its vires. In such instances, the principle of legality comes into conflict with the principle of certainty and, the law as it stands now, is that the illegality of the assurance will defeat the value of certainty which contends that the assurance should be given effect.*" Therefore, as the events associated with the 3<sup>rd</sup> round of recruitment (which commenced without a Notice calling for Applications and the conduct of a written examination corresponding to that round of recruitment) were contrary to the 'applicable or governing law' and thereby resulted in an assurance that is *ultra vires*, the conduct of the Respondents could not have given rise to a legitimate expectation for the Petitioners. Thus, even if an 'expectation' was generated in the minds of the Petitioners, such expectation in the view of this Court does not amount to a 'legitimate expectation' founded upon one or more lawful representations made by one or more Respondents or by the State as a whole. Furthermore, the present instance cannot be regarded as a situation where the Petitioners had reasonably believed that the Public Service Commission was acting lawfully well within their powers, as the Petitioners were soundly aware of the recruitment procedure contained in the Scheme of Recruitment. Therefore, the basis for the Petitioners' claim that their fundamental rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution fails.

77. Particularly since the Petitioners have claimed relief on the basis of the doctrine of substantive legitimate expectation as well, it is necessary to point-out that our courts would grant relief on that premise only in exceptional circumstances, where the grant of substantive relief based on cogent and clear public policy considerations would outweigh the need to respect a change of policy by the Executive. In fact, in this instance, public policy and what is in public interest would necessitate for each round of recruitment, there be strict adherence to the

Scheme of Recruitment, and the process is initiated by the publication of a fresh Notice calling for Applications and a written examination being held. That would be the only way of ensuring that those interested in being selected as Grama Niladhari and have acquired necessary qualifications to apply since the previous occasion when Applications were called for, would receive an opportunity of applying. It is through such fresh pool of applicants that the State could be assured that the most qualified candidates are selected as Grama Niladhari.

### **Conclusions and outcome**

78. Due to the foregoing reasons, I hold that the Petitioners have failed to establish that their fundamental rights guaranteed under Article 12(1) of the Constitution have been infringed by one or more of the Respondents.

79. Therefore, the Petitioners will not be entitled to any relief.

80. Accordingly, this Petition is dismissed.

81. No order is made with regard to costs.

**Judge of the Supreme Court**

**E.A.G.R. Amarasekara, J.**

I agree.

**Judge of the Supreme Court**

**Mahinda Samayawardhena, J.**

I agree.

**Judge of the Supreme Court**