

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

*In the matter of an application under and in terms of
Articles 17 and 126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.*

SC/FRA/40/2016

W.M.L.V.G. Fernando
No.18/6, Dr. H.I. Fernando Mawatha,
Idama, Moratuwa

PETITIONER

Vs.

1. K. Sarath Gunathilake
Former Chairman

1A. Premadasa Kodituwakku
Former Chairman

1B. U. R. de Silva
Former Chairman

1C. W.H. Karunaratne
Chairman

2. A.W.C. Ariyadasa
Former Member

2A. S. Wethanage
Former Member

2B. Sunil Abeywardena
Former Member

2C. Chaturika Wijesinghe
Former Member

2D. Dr. A. H. Gamage
Member

3. J. Paranamana
Former Member

3A. Nizamudeen U. M. Ameen
Former Member

3B. R. Yasoja Hapuarachchi
Former Member

3C. S.H. Hewage
Member

4. K. Paramalingam
Former Member

4A. T. Muthukumarasamy
Former Member

4B. N. Sivakumaran
Former Member

4C. W. V. C. Chandrawansha
Member

5. Sunil Fernando
Former Member

5A. H. A. Mahendra Silva
Former Member

5B. Samsudeen Liyabdeen
Former Member

5C. A. S. Mohamed
Member

6. S.K. Liyanage
Former Member

6A. Kanthi Hemamali Wijetunge
Former Member

6B. N.C. Madurasinghe
Former Member

6C. Y. P. Sumanawathie
Member

1st to 6th Respondents are of:
Provincial Public Service Commission
- Western Province

10th Floor, Jana Jaya
Building, 268, Nawala Road,
Rajagiriya.

7. V. Rajapakse
Former Secretary to the Provincial
Public Service Commission-Western
Province

7A. M.G.A. Thilakarathne
Former Secretary to the Provincial
Public Service Commission-Western Province

7B. Thilak Senerath
Secretary to the Provincial Public Service
Commission-Western Province
10th Floor, Jana Jaya Building, 268,
Nawala Road, Rajagiriya.

8. Hon. K.C. Logeswaran
Former Governor-Western Province

8A. Hon. Dr. Hemakumara W. Nanayakkara
Former Governor-Western Province

8B. Hon. A.J.M. Muzammil
Former Governor-Western Province

8C. Hon. W.D.M.J. Roshan Goonetilleke,
Former Governor-Western Province,

8D. Hon. Hanif Yusoof
Governor - Western Province
Secretariat of the Governor
New Office of the Provincial Council
204, Denzil Kobbekaduwa Mawatha,
Battaramulla.

9. Colombo Municipal Council
Town Hall, Colombo 07.

10. V.K.A. Anura
Former Municipal Commissioner

10A. L.R.L. Wickramarathne
Former Acting Municipal Commissioner

10B. Palitha Nanayakkara

Former Municipal Commissioner

10C. Champika Roshanie Dissanayake
Former Municipal Commissioner

10D. Palitha Nanayakkara
Municipal Commissioner,
Colombo Municipal Council, Town Hall,
Colombo 07.

11. Dehiwela-Mount Lavinia Municipal Council
Galle Road, Dehiwela.

12. D. Muthugala
Former Municipal Commissioner

12A. W.T.A. Manel
Former Municipal Commissioner

12B. Chandana Mannapperuma
Former Municipal Commissioner

12C. A. A. B. Sampath
Municipal Commissioner
Dehiwela-Mount Lavinia Municipal Council
Galle Road, Dehiwela.

13. C. Samarakoon
Former Commissioner of Local Governor
(Western Province)

13A. Palitha Nanayakkara
Former Commissioner of Local Government
(Western Province)

13B. Kasun Epa Senevirathne
Former Commissioner of Local Government
(Western Province)

13C. A. D. P. I. Prasanna
Former Commissioner of Local Government
(Western Province)

13D. Sarangika Jayasundara
Commissioner of Local Government (Western
Province) Department of Local Government-
Western Province

New Office of the Provincial Council
204, Denzil Kobbekaduwa Mawatha
Battaramulla.

14. J.M.C. Jayanthi Wijetunga
Former Chief Secretary-Western Province

14A. M.A.B. Daya Senerath,
Former Chief Secretary-Western Province

14B. W.V.P.P. Yasarathne
Former Chief Secretary-Western Province

14C. K. G. P. Pushpakumara
Chief Secretary - Western Province
Office of the Chief Secretary
New Office of the Provincial Council, 204,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

15. M.A.B. Daya Senerath
Former Secretary to the Ministry of Local
Government-Western Province

15A. C. Samarakoon
Former Secretary to the Ministry of Local
Government-Western Province

15B. A.D.S. Sadheeka
Secretary to the Ministry of Local Government-
Western Province
Ministry of Local Government-Western Province
New Office of the Provincial Council
204, Denzil Kobbekaduwa Mawatha,
Battaramulla.

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

RESPONDENTS

***W. M. L. V. G. Fernando v K. Sarath Gunathilleke, Chairman, Provincial Public Service
Commission (Western Province) & others.
Case No. SC/FRA/40/2016***

Before: A. L. Shiran Gooneratne J.
Arjuna Obeyesekere J.
Dr Sobhitha Rajakaruna J.

Counsel: Saliya Pieris P C & Kaneel Maddumage for the Petitioner.

Ganga Wakishta Arachchi DSG for all the Respondents except the 9th, 10th,
11th and 12th Respondents
Senany Dayaratne, Nishadi Wickremasinghe, Janani Abeywickrema &
Maheshika Bandara for the 9th and 10A Respondents
Sulari Gamage for the 11th and 12th Respondents.

Written Submissions: Petitioner	– 30 April 2026
9th and 10th Respondent	– 30 November 2018
	17 March 2026
14th Respondent	- 05 January 2021

Argued on: 15 December 2025

Decided on: 10 September 2026

Dr Sobhitha Rajakaruna J.

The Petitioner submitted that she commenced her career in the Local Government Service on 25 May 1989 as a Middle Level Technical Officer (Civil) and, following a series of promotions, was absorbed into Grade I of the Sri Lanka Technological Service with effect from 1 July 1994. She was subsequently appointed to the Sri Lanka Engineering Service Class II Grade II with effect from 5 August 1997. The Petitioner claims that, as persuaded by the Colombo Municipal Council ('CMC'), she followed a Master's Degree in Town Planning on

no-pay study leave, subject to a bond requiring her to serve for twice the duration of the study leave.

In the amended Petition dated filed on 26 October 2017, the Petitioner challenges, inter alia, (a) the failure to adjust her salary for the period from May 2006 to April 2011; (b) the non-payment of her salary, together with the applicable salary increments, from May 2011 onwards; (c) the alleged continuous harassment suffered by her through the denial of appointments to the posts of Town Planner, Senior Town Planner, Chief Planning Officer, and Chief City Planner (Director – City Planning Division) of the CMC; and (d) the introduction of a new Scheme of Recruitment for the post of Director – City Planning Division of the CMC, which she alleges was designed to prevent her appointment to that post.

This Court granted Leave to Proceed with the instant Application in respect of the alleged infringement of Article 12(1) of the Constitution.

Synopsis of the Arguments advanced by the Petitioner

The Petitioner contended that, despite being academically and professionally qualified, she was repeatedly denied appointments and promotions within the CMC. She maintained that she was the only eligible candidate for the posts of Senior Planning Officer/Senior Town Planner in 2005 and 2006 but was overlooked, alleging that the Scheme of Recruitment ('P12a') was amended (by 'P24c') to accommodate another candidate. She further complained that, during her transfer to the Dehiwala-Mount Lavinia Municipal Council between 2006 and 2011, the CMC failed to forward her personal file, thereby preventing the proper computation of her salary.

The Petitioner further submitted that she applied for the post of Chief Planning Officer/Chief City Planner in 2006 and obtained the second-highest marks in the written examination (the relevant documents are marked as 'P12a' to 'P12e'). She alleged that the candidate who secured the highest marks did not satisfy the prescribed experience requirements and ultimately did not assume the post. According to the Petitioner, the Respondents misrepresented the candidate's appointment in order to deprive her of promotion and career advancement.

The Petitioner further alleged that upon her return to the CMC from the Dehiwala-Mount Lavinia Municipal Council, in May 2011, she was neither assigned duties nor provided with a workstation or salary. She maintained that, although vacancies subsequently arose in senior planning positions, she was overlooked in favour of officers whom she claimed were either unqualified or appointed contrary to the applicable Scheme of Recruitment. She also stated that, although she was temporarily transferred to the Provincial Council in 2015 and later returned to the CMC in 2018, the CMC failed to pay her salary for the period from 9 May 2011 to 8 March 2018 and thereafter paid her an incorrectly calculated salary without taking into account her increments and allowances. She further contended that the incorrect computation of her salary had resulted in the non-payment of her pension following her retirement in December 2022.

The Petitioner further relied on observations dated 5 May 2021 ('Y70a') of the Provincial Public Service Commission, which, according to her, granted substantially the relief sought in the present Application. She asserted that the Respondents failed to communicate that decision to this Court and that no objections had been filed challenging either the decision or the relief claimed.

The learned Counsel for the Petitioner submitted that the Petitioner had been subjected to a continuous course of arbitrary and discriminatory treatment by the Respondents throughout her career, resulting in the denial of promotions, appointments, salary, pensionary benefits, and career advancement, in violation of Article 12(1) of the Constitution.

It was contended that, although the Petitioner was academically and professionally qualified for the posts of Senior Planning Officer and Director – City Planning/Chief Planning Officer/Chief City Planner, she was repeatedly overlooked in favour of less qualified officers, while the applicable Scheme of Recruitment was allegedly amended to exclude her from consideration. The Petitioner further submitted that she was the only qualified officer for the post of Director – City Planning prior to the introduction of the impugned Scheme of Recruitment and that the new Scheme was devised solely to frustrate her legitimate expectation of promotion.

The Petitioner further argued that the observations of the Provincial Public Service Commission dated 5 May 2021 ('Y70a') recognised her entitlement to the posts of Senior Planning Officer with effect from 2002 and Director – City Planning with effect from 2007. However, according to the Petitioner, the Respondents failed to implement that decision, subsequently curtailed the relief granted, withheld her letter of appointment, and ultimately revoked the appointment by subsequent decisions, thereby perpetuating the alleged discrimination.

It was further submitted that the Respondents failed to pay the Petitioner's salary and salary increments correctly from 2006 onwards, failed to pay her salary altogether for substantial periods after May 2011, and thereby prevented the proper computation and payment of her pension following her retirement. The Petitioner attributed these failures to the Respondents' omission to forward her personal file to the Dehiwala-Mount Lavinia Municipal Council and their continued refusal to rectify her salary anomalies despite repeated requests and official recommendations ('P18').

The learned Counsel for the Petitioner further contended that the cumulative effect of the Respondents' conduct, including the appointment of allegedly unqualified officers to senior planning positions, the denial of equal opportunities for promotion, the failure to implement the decisions of the Provincial Public Service Commission, and the continued withholding of her salary and pensionary benefits, constituted arbitrary executive action and hostile discrimination contrary to Article 12(1) of the Constitution.

In support of these submissions, reliance was placed on the decisions in *Gunaratne and Others v Sri Lanka Telecom* [1993] 1 Sri L.R. 109, *Ariyawansa and Others v People's Bank* [2006] 2 Sri L.R. 145, *W.P.S. Wijerathna v Sri Lanka Ports Authority* (SC/FRA/256/2017, SC Minutes of 11 December 2020), and *Rienzie Perera and Another v University Grants Commission and Another* [1980] 1 Sri LR 128, to contend that arbitrary administrative action, discriminatory schemes of recruitment, and executive action defeating the legitimate expectations of similarly situated officers amount to infringements of the constitutional guarantee of equality.

Respondents' Case

The learned Counsel for the 14th Respondent submitted that the Petitioner was not entitled to the reliefs sought in respect of her appointment to the post of Director – City Planning Division, the challenge to the Scheme of Recruitment, or the alleged salary anomalies.

It was contended that, following the restructuring of the CMC, the post of Chief City Planner was redesignated as Director (City Planning) with effect from 1 January 2013, necessitating the formulation of a new Scheme of Recruitment in accordance with Management Services Circular No. 6/2006. The new Scheme was duly approved by the Governor of the Western Province on 2 December 2015, after which applications were called by the Provincial Public Service Commission. The 14th Respondent submitted that the Petitioner's application had been made prior to the approval of the new Scheme and was therefore not a valid application under the approved recruitment process. It was further contended that the qualifications prescribed under the impugned Scheme were lawfully formulated and that the Petitioner's qualifications would have been duly considered at the interview stage. The 14th Respondent maintained that the Petitioner's qualifications would be duly considered at the appropriate stage of the recruitment process, but that no further steps had been taken because of the pendency of the present Application.

With regard to the Petitioner's salary, it was submitted that the CMC had offered to settle the salary due for the relevant period, but that the Petitioner had declined to accept the payment. The 14th Respondent further stated that the Petitioner had also refused to participate in discussions convened to resolve her grievances and that disciplinary proceedings had been contemplated after she had allegedly travelled overseas without obtaining prior approval. It was therefore submitted that the 14th Respondent had acted fairly and reasonably throughout and that no violation of the Petitioner's fundamental rights had been established. Accordingly, the Application was liable to be dismissed.

The learned Counsel for the 9th and 10th Respondents raised a preliminary objection that the present application was not maintainable as it was barred by the time limitation prescribed by Article 126(2) of the Constitution. It was submitted that the Petitioner's principal complaints relating to the alleged non-adjustment of her salary, the non-payment of salary, and the denial

of promotions arose between 2006 and 2011, whereas the present application was instituted only on 5 February 2016. Relying on the decisions in *Ranaweera and Others v Sub-Inspector Wilson Siriwardane and Others* [2008] 1 Sri L.R. 260, *Gamethige v Siriwardane and Others* [1998] 1 Sri L.R. 384, and *Dr. Mario Gomez v University of Colombo and Others* [2001] (1) Sri L.R. 273, learned Counsel contended that an application alleging the infringement of fundamental rights must be filed within one month of the alleged violation and that the Petitioner's claims in respect of those events were therefore time-barred.

The 9th and 10th Respondents further submitted that the Petitioner had no legal entitlement to claim either the post of Director – City Planning Division or the salary and benefits sought from the CMC. It was contended that the Petitioner had not been absorbed into the relevant post within the CMC and, consequently, possessed neither a legal right to the office nor an enforceable claim for the reliefs sought in these proceedings.

It was further argued that the Petitioner had failed to establish that the impugned Scheme of Recruitment had been formulated with the object of preventing her appointment to the post of Director – City Planning Division. The Respondents denied the allegations that the Scheme had been designed to discriminate against the Petitioner or that she had been subjected to continuous harassment by officials of the CMC. According to the Respondents, the Petitioner's assertions of arbitrary treatment, discrimination, and denial of promotion were unsupported by evidence and did not disclose any infringement of Article 12(1) of the Constitution.

Accordingly, the 9th and 10th Respondents maintained that the Petitioner's challenge to the impugned Scheme of Recruitment, together with her claims relating to salary, back wages, promotions, and alleged discrimination, was devoid of legal and factual merit. They therefore invited this Court to dismiss the instant Application with costs.

Similarly, in his affidavit, the 14th Respondent denied all allegations of illegality and mala fides levelled against the Respondents, except those specifically admitted, and maintained that the actions of the Provincial authorities had at all times been lawful, fair, and in accordance with the applicable recruitment procedures.

The 14th Respondent set out the Petitioner's service history, demonstrating that since her appointment in 1989 she had served in several divisions of the Engineering Department and other institutions and was not attached exclusively to the City Planning Division, as suggested by the Petitioner. It was further asserted that the Scheme of Recruitment for the post of Director (City Planning), approved on 2 December 2015, had been formulated in conformity with Public Administration Circular No. 6/2006 and that all recruitments to posts in the City Planning Division had been carried out strictly in accordance with the relevant Schemes of Recruitment.

With regard to the Petitioner's failure to secure appointment as Senior Planning Officer (Senior Town Planner) in 2005, it was explained that she did not possess the prerequisite qualification of confirmation in service at the relevant time and that her application had therefore not been recommended by the Head of the Institution. Subsequently, the original recruitment process was cancelled pursuant to directions of the Governor so that the Scheme of Recruitment could be amended to comply with Public Administration Circular No. 6/2006. Thereafter, fresh applications were called under the amended Scheme, and the candidate obtaining the highest marks at the interview was appointed.

In relation to the appointment of Mr D.T.D. Perera as Senior Planning Officer in 2006, the 14th Respondent maintained that the selection process had been conducted lawfully and that a report called for by the Governor following the Petitioner's objections had disclosed no irregularity whatsoever in the recruitment process.

Regarding the recruitment to the post of Chief Planning Officer (Chief City Planner), the 14th Respondent asserted that the advertisement published in the Sinhala newspapers accurately reflected the qualifications prescribed by the applicable Scheme of Recruitment. It was stated that the Petitioner's omission to produce the Sinhala advertisement was deliberate. The said Respondent further explained that the competing candidate had obtained higher marks than the Petitioner at the written examination and was therefore the only applicant called for the interview, which was conducted solely for the purpose of verifying qualifications and certificates. The Petitioner's request for recorection of the examination papers was rejected by the Western Province Public Service Commission, and the Governor, having considered the report submitted by the Commission, did not interfere with that decision.

With respect to the appointment of an Acting Chief City Planner in 2012, it was stated that upon the secondment of the incumbent, the Municipal Commissioner recommended the most senior officer in the Colombo Municipal Council for the acting appointment, and the Public Service Commission acted on that recommendation. It was further explained that following the retirement of Mr. D.T.D. Perera as Senior Town Planner in 2012, he was temporarily re-engaged on a contract basis at the request of the Municipal Commissioner until the vacancy could be permanently filled.

The 14th Respondent further stated that the Petitioner's transfer to the Engineering Division of the Chief Secretary's Office in April 2015 was effected purely as an administrative solution pursuant to decisions reached at a meeting convened on the matter. It was explained that although the Petitioner reported for duty and was assigned responsibilities, practical difficulties arose because there was no corresponding cadre position within the Chief Secretary's Office to which she could be permanently attached. Consequently, her salary was temporarily computed on the basis of her last drawn salary. It was further averred that salary for the relevant period was offered to the Petitioner, but she refused to accept it.

The affidavit (14th Respondent's) also stated that, although the Petitioner's request to be absorbed into a suitable post in the City Planning Division could not be accommodated automatically under the applicable legal framework, the Chief Secretary nevertheless convened meetings to explore a solution to her grievances. According to the 14th Respondent, the Petitioner declined to participate in those meetings. It was further averred that a preliminary inquiry had revealed that the Petitioner had travelled abroad without prior approval and that, despite being afforded more than one opportunity to provide an explanation, she declined to do so.

Moreover, the 10th Respondent averred that in May 2006 the Petitioner assaulted the official driver assigned to her by the Colombo Municipal Council, resulting in an industrial action by all Municipal Council drivers which disrupted essential municipal services, including garbage collection and disposal. It was stated that, as a consequence of this incident, the Petitioner was initially transferred to the Sri Jayawardenapura Municipal Council. However, since that transfer was objected to by the receiving authority, she was subsequently transferred to the

Dehiwala–Mount Lavinia Municipal Council. The Respondent maintained that this transfer was solely attributable to the Petitioner's own conduct.

The Respondents further denied the Petitioner's allegations regarding her non-appointment to the posts of Senior Town Planning Officer in 2005 and 2006 and Chief City Planner, asserting that the recruitment processes had been properly conducted. It was pointed out that the Petitioner's complaints had previously been considered by the Public Petitions Committee of Parliament, which had concluded that the marks awarded to her were accurate, that a recorection of her examination paper did not alter her score, and that the examination and selection process had been conducted satisfactorily. Accordingly, it was contended that the Petitioner had failed to establish that any injustice had been occasioned to her in those recruitment exercises.

The 10th Respondent further stated that the Petitioner's subsequent request to be attached to the CMC was refused by the Special Commissioner of the Council. It was maintained that, following her transfer in 2006, the Petitioner had not held any office or post within the CMC and had never been duly attached to the Council thereafter. Consequently, the CMC was under no statutory or legal obligation to remunerate her or pay her salary, as she did not hold a post within its approved cadre.

The Respondents also denied the allegation that the CMC had acted with the intention of tarnishing the Petitioner's reputation. Finally, it was contended that the Petitioner had no legal right or exclusive entitlement to the post of Director (City Planning) or any other promotional post, and therefore lacked any legal basis to seek the relief claimed in the present application.

Analysis and Conclusion

The Petitioner's case is essentially founded upon the proposition that she was repeatedly deprived of promotions to the posts of Senior Planning Officer/Chief Planning Officer/Chief City Planner/Director (City Planning), and that these alleged denials gave rise to consequential salary anomalies and pensionary prejudice. However, the material placed before Court does not establish that the Respondents acted arbitrarily or discriminatorily in the recruitment processes concerned.

The evidence demonstrates that the relevant appointments were made pursuant to the applicable Schemes of Recruitment and the prescribed selection procedures. The Respondents have provided satisfactory explanations regarding the recruitment exercises conducted in 2005 and 2006; the qualifications required under the respective Schemes of Recruitment; the cancellation of the earlier recruitment process following administrative directions; the subsequent amendment of the Scheme in conformity with Public Administration Circular No. 6/2006; and the appointments ultimately made. The Petitioner has not produced cogent evidence demonstrating that those explanations are false or that the recruitment processes were manipulated solely to deprive her of appointment.

Indeed, the Petitioner's argument ultimately rests upon her own conviction that she was the most suitable candidate for the respective posts. Such a belief, however genuine, cannot by itself confer a legal entitlement to appointment. Eligibility to compete for a public office is fundamentally different from a legal right to be appointed thereto. The constitutional guarantee of equality does not require that every unsuccessful candidate be appointed, nor does it authorise this Court to reassess comparative merit in the absence of demonstrable illegality or arbitrariness.

The Petitioner's reliance upon 'Y70a' is equally misplaced. The Petitioner invited this Court to hold that the Provincial Public Service Commission, by 'Y70a', granted substantially all the relief claimed in the present Application and appointed her retrospectively to the posts of Senior Planning Officer and Director (City Planning). The document marked 'Y70a' consists only of an isolated page of what appears to be a larger document. More importantly, a careful reading of the relevant portion of the respective page discloses no decision appointing the Petitioner to either office. At the very most, the Commission merely observed that the Petitioner was suitable to be appointed to the two posts referred to therein. Suitability for appointment is plainly distinguishable from an actual appointment. Based on the material made available to this Court, I take the view that the observations contained in 'Y70a' cannot be elevated into binding decisions conferring substantive rights upon the Petitioner.

The Petitioner's argument is further undermined by the subsequent decision marked 'Y77', by which the Provincial Public Service Commission cancelled the Petitioner's appointment dated 18 August 2021. Thus, even assuming that subsequent administrative decisions had any

bearing upon the present proceedings, 'Y77' demonstrates that no final and operative appointment capable of supporting the Petitioner's constitutional claim remained in existence.

Equally untenable is the Petitioner's challenge to the new Scheme of Recruitment governing the post of Director (City Planning). The evidence before Court establishes that the restructuring of the Colombo Municipal Council resulted in the redesignation of the post of Chief City Planner as Director (City Planning), thereby necessitating the formulation of a fresh Scheme of Recruitment. The Respondents have explained that the new Scheme was prepared in accordance with the applicable circulars and procedural requirements and received the approval of the competent authority before recruitment commenced.

Beyond bare assertions, the Petitioner has failed to identify any provision of the new Scheme which is inconsistent with the governing law or administrative regulations. Nor has she demonstrated that the Scheme was designed with the object of excluding her from consideration. Courts cannot invalidate a Scheme of Recruitment merely because one individual considers herself adversely affected by its operation. In my view, there is no realistic or arguable challenge to the legality or validity of the impugned Scheme of Recruitment.

The Petitioner's complaints regarding salary likewise do not withstand careful scrutiny. Throughout these proceedings, the Petitioner's position concerning the alleged non-payment of salary has been marked by significant inconsistency. At one stage she asserts that she was not paid from 9 May 2011 until 8 March 2018. Elsewhere she alleges that no salary was paid until December 2022. Yet, she herself acknowledges that she received Rs. 3,048,592.39 in December 2021 as salary for the period from March 2018 to December 2021, although she disputes the manner in which that payment was computed. These inconsistent assertions render it difficult to ascertain with certainty the precise grievance advanced before this Court.

Furthermore, the Petitioner's own pleadings disclose that she served under a transfer to the Provincial Council between 22 April 2015 and 8 March 2018. Consequently, her broad assertion that the Colombo Municipal Council failed to pay her salary throughout that entire period cannot be accepted without qualification.

Upon an objective consideration of the pleadings, it appears that the Petitioner's true grievance is not the complete absence of salary but the alleged failure to calculate her salary

increments correctly, particularly during the period in which she served at the Dehiwala–Mount Lavinia Municipal Council. According to the Petitioner, this resulted from the failure of the CMC to forward her personal file. If that be so, the matter concerns the administrative computation of salary and increments rather than the total denial of remuneration.

Should any salary increments remain legally payable under the applicable statutory provisions, circulars or service regulations governing the Petitioner's employment at the respective Municipal Councils, it is incumbent upon the relevant authorities to compute and pay such increments in accordance with law. However, the existence of a possible administrative dispute regarding salary computation does not, without more, establish an infringement of Article 12(1) of the Constitution.

The conduct of the Petitioner during the relevant period also merits consideration. The Respondents have produced material indicating that salary payments were offered to the Petitioner but that she declined to accept them. That conduct is inconsistent with the broad allegation that the Respondents continuously refused to pay her salary. The Petitioner's refusal to accept the payments offered demonstrates that the dispute centred upon her dissatisfaction with the computation of salary and her continuing insistence upon promotions and appointments which had not been legally conferred. This circumstance significantly weakens the Petitioner's contention that the Respondents acted arbitrarily or discriminatorily.

Perhaps the most formidable obstacle confronting the Petitioner is the constitutional limitation prescribed by Article 126(2). The principal complaints regarding promotions, salary adjustments and alleged discriminatory treatment arose between 2005 and 2011. Nevertheless, the present application was instituted only in 2016, whilst the Amended Petition was filed on 26 October 2017. The constitutional limitation period is neither technical nor procedural; it is jurisdictional. A litigant seeking the extraordinary remedy available under Article 126 must invoke the jurisdiction of this Court within the time prescribed by the Constitution. The Petitioner's attempt to characterise the impugned conduct as a continuing violation cannot succeed. The alleged refusals of promotion, recruitment decisions, transfers and salary determinations were each distinct administrative acts completed at identifiable points in time. They cannot collectively be transformed into a continuing infringement for the purpose of avoiding the constitutional time bar.

The jurisdiction of this Court under Article 126 of the Constitution is confined to determining whether executive or administrative action has infringed a fundamental right guaranteed by the Constitution. It is not the function of this Court to substitute itself for appointing authorities, interview boards or administrative agencies merely because an employee believes that she ought to have been promoted or that another administrative decision would have been preferable. Unless the impugned action is shown to be arbitrary, unreasonable, discriminatory or actuated by mala fides so as to offend Article 12(1), this Court will not interfere with decisions taken by the competent authorities in the exercise of their statutory and administrative powers.

Having carefully considered the pleadings, affidavits, documentary material and the submissions of learned Counsel, I find that the Petitioner has failed to establish that the Respondents acted arbitrarily, irrationally, mala fide or discriminatorily. Equally, she has failed to establish any legal basis upon which this Court could invalidate the impugned Scheme of Recruitment, recognise retrospective appointments which were never in fact made, or convert administrative disputes relating to salary computation into constitutional violations.

However, the present Municipal Commissioners of the Colombo Municipal Council and the Dehiwala-Mount Lavinia Municipal Council are hereby directed, in consultation and due co-operation with the Petitioner, to inquire into and determine whether, under the applicable statutory provisions, circulars or service regulations governing the Petitioner's employment at the respective Municipal Councils, she was lawfully entitled to any salary increments which were not added to her salary during the period of her service at the Dehiwala-Mount Lavinia Municipal Council. If, upon such inquiry, it is found that the Petitioner was lawfully entitled to any such increments, the corresponding arrears shall be paid to her within four calendar months from the date of this Judgement. Further, if any such increments would have had an effect upon the salary drawn by the Petitioner at the time of her retirement, the Respondents are directed to take such appropriate steps as may be necessary, in accordance with law, to ensure that the consequential financial entitlement of the Petitioner is duly addressed.

This sequencing makes it clear that, while this Court dismisses the fundamental rights application, it nevertheless exercises its wide remedial jurisdiction under Article 126 of the

Constitution to ensure that no lawful entitlement to a salary increment is overlooked due to administrative inaction. Such a mechanism has been adopted in several fundamental rights judgements of this Court (e.g. *Noble Resources International Pvt Ltd v Hon. Ranjith Siyambalapitiya, Minister of Power and Renewable Energy and others*, SC/FR/394/2015, SC Minutes of 24 June 2016), where, notwithstanding a finding that no constitutional violation had been established, the Court considered it appropriate to direct the relevant administrative authority to inquire into and, where warranted, rectify an ancillary grievance.

In these circumstances, I hold that the Petitioner has failed to establish, on a balance of probabilities, any infringement of the fundamental right guaranteed by Article 12(1) of the Constitution. Accordingly, this Application is dismissed subject to the above direction issued by this Court.

Judge of the Supreme Court

A. L. Shiran Gooneratne J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere J.

I agree.

Judge of the Supreme Court