

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

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

S.C.FR Application No. 160/2016

1. W.M.D.B. Abeyratne,
No.11,P.C. 20,000,
Uduwella Road,
Ampitiya.
Kandy.

Petitioner

Vs.

- | | |
|---|---|
| Ceased to hold office
Ceased to hold office | <ol style="list-style-type: none">1. Sri Lanka Council for Agricultural
Research Policy, 114/9,
Wijerama Mawatha, Colombo 07.2. S.S.B.D.G. Jayawardena,
2A. D.T. Kingsley Bernard,
2B. Gamini Senanayake
Chairman,
Sri Lanka Council for Agricultural
Research Policy, 114/9,
Wijerama Mawatha, Colombo 07.3. Jayaratna Dias Samarasinghe
Former Chairman,
Sri Lanka Council for Agricultural
Research Policy, 114/9,
Wijerama Mawatha, Colombo 07. |
| Ceased to hold office
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Ceased to hold Office | <ol style="list-style-type: none">4. N.D.R. Weerasinghe5. A. P.Heenkenda,6. H.G. Sumanasinghe7. K. Samarasinghe,8. N.S.H. Dalpadadu |

- Ceased to hold Office 9. D.M.J.K. Dissanayake
Ceased to hold Office 10. D.V. Bnadulasena,
Ceased to hold Office 11. A.R. Ariyaratna,
Ceased to hold Office 12. Rizvi Zaheed,
Ceased to hold Office 13. R.P.R. Amarasinghe,
Ceased to hold Office 14. Priyantha Ratnayake,
14A. Prabath Wimal Kumara
14A1. S.H.S. Ajantha De Silva,
14A2 H.M.P.Kithsiri
14A3. W.M.W.Weerakoon,
14A4. G.A. Gunawardena,
14A5. K.M.A. Bandara,
14A6. L.S.K.Hettiarachchi
14A7. J.M.T. Jayasundara,
14A8. P.D.S.H. Kumara,
14A9. Chitthral Jayawarna,
4th to 14A9, Directors
Sri Lanka Council for Agricultural
Research Policy, 114/9,
Wijerama Mawatha, Colombo 07.
Ceased to hold Office 15B. B. Wijayaratne,
15A. Sumedha Perera
Secretary,
Ministry of Agriculture,
Govijana Mandiriya,
Rajamalwatta Road,
Battaramulla.
16. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

BEFORE : ACHALA WENGAPPULI, J.
K. PRIYANTHA FERNANDO, J.
DR. SOBHITHA RAJAKARUNA, J.

COUNSEL : Manohara de Silva, PC with Hirosha
Munasinghe for the Petitioner.
Rajitha Perera, DSG for the Respondents.

ARGUED ON : 17th October, 2025

DECIDED ON : 07th May, 2026.

ACHALA WENGAPPULI, J.

The Petitioner, by presenting two amended petitions to the Registry on 13.09.2016, in respect of the two original petitions in SCFR No. 160 /2016 and SCFR No. 22 /2018, by which he already invoked the jurisdiction conferred on this Court in terms of Articles 17 and 126 of the Constitution, alleged therein of an infringements of fundamental rights guaranteed to him under Article 12(1) of the Constitution, by the executive and administrative actions that are attributed to the 1st to 15th Respondents.

The Petitioner, in his original petition of SCFR No.160 /2016 dated 11.05.2016, sought to quash the decision made by the 1st Respondent Council to interdict him acting on the report prepared by the Investigator appointed by that Council to inquire into his conduct in obtaining a salary increment. The Petitioner challenged the said decision by alleging that it was made by the 1st Respondent Council; based upon a preliminary investigation conducted by one "*Rohan De Alwis*", who in turn had no valid authority to conduct such an investigation against him. However, the said petition was amended at a later stage of the proceedings as he was issued with a Charge Sheet, based on that report and a formal disciplinary

inquiry too has commenced, while the said application was pending before this Court for consideration of leave.

This Court, having considered the said application, in its amended form, decided to grant leave to proceed on 24.03.2017 to the Petitioner. However, the Court refused to issue any interim orders and directed the Respondents to expedite the pending inquiry against the Petitioner.

Similarly, the original petition in SCFR No. 22/2018 was filed by the Petitioner on 15.01.2018, after he was found guilty to the charges by the Inquirer. Therefore, the Petitioner sought to quash all the decisions taken by the 1st Respondent Council; commencing from the decision to launch an investigation, the inquiry that proceeded and finally the decision to dismiss him from the post, all taken by that Council, acting on the findings made by the investigator and the inquirer. The petition of the SCFR No. 22 /2018 was amended to reflect the changes that had taken place from time to time. On 23.10.2019, this Court granted leave to proceed to the Petitioner in SCFR No. 22 / 2018. Once more, this Court made no order as to any relief in the interim.

At the hearing of the SCFR No. 160 /2016 and SCFR No. 22/2018 on 17.10.2025, learned President's Counsel for the Petitioner as well as the learned DSG, who represented the 1st to 15th Respondents have moved this Court to consolidate the proceedings of these two applications and indicated their willingness to be bound by one judgment that covers the range of issues that were raised in these two applications. Hence, this Court proceeds to determine the two petitions, namely, SCFR No.

160/2016 and SCFR No.22/2018 with the pronouncement of one consolidated judgment.

During the time period relevant to the instant two petitions, the Petitioner was serving as the accountant of the 1st Respondent Council, which is a statutory body incorporated under Section 3 of Sri Lanka Council for Agricultural Research Policy Act No. 47 of 1987. It was his contention presented to this Court that his interdiction, the disciplinary action taken and the eventual decision taken to dismiss him from the said post were all decisions of the 1st Respondent Council and they were made arbitrarily, unreasonably and in violation of Article 12(1).

Learned President's Counsel, during his submissions before this Court, strenuously challenged the validity of some of the factual findings made by the inquirer, who, acting on those findings, concluded that the Petitioner is guilty to all five charges contained in the Charge Sheet. The determination of guilt of the Petitioner to the five charges was the primary factor which the 1st Respondent Council had taken into consideration in arriving at the decision to terminate his employment.

It is evident from that submissions that; what lies at the very core of Petitioner's contention of the infringement of his fundamental right to equal protection of law, was the finding of fact made by the inquirer that it was him, who had tendered the document (P7) that contained his salary particulars for the month of October 2012. Apparently, this is the document on which the 1st Respondent Council was informed of the Petitioner's last drawn salary before it decided to approve a salary

enhancement to him and thus resulting in paying much more than what he was actually entitled to as his salary.

In order to consider the validity of the said contention in its proper context, it is necessary to refer to the factual background in which the said salary particulars became an important consideration for the 1st Respondent Council to grant the salary increment requested by the Petitioner.

The Petitioner was serving as one of the Deputy Internal Audit Officers to the State Timber Corporation until the end of November 2010. He was attached to the Regional Office of that Corporation in *Kandy* at that point in time. Responding to a notice published in the newspapers, announcing of the vacancy for an Accountant in the 1st Respondent Council, the Petitioner submitted his application for consideration. He was interviewed and the 1st Respondent Council had decided to recruit him as the Accountant on 10.12.2010 (P3).

He was issued with a Letter of Appointment (P1) on 15.12.2010 by the 1st Respondent Council, offering the appointment to the post of Accountant. However, the said appointment was made w.e.f. 29.12.2010 by the 1st Respondent Council. One of the conditions stipulated in P1 was the Petitioner to serve a period of one year on probation in the new post. After the expiration of the said probation period, the Petitioner was confirmed in the post of Accountant by the 1st Respondent Council w.e.f. 29.12.2010 by its letter dated 09.08.2012 (P4).

In terms of the Letter of Appointment (P1), the Petitioner was placed at the salary scale of MM 1-1. The said letter P1 also indicates that an appointee to Grade II would receive a Salary of Rs. 25,640.00 with increments of 665 x 3 - 735 x 7 - 925 x 15 whereas an appointee to Grade I would receive a Salary of Rs. 33,705.00 with increments of 925 x 15. The Petitioner was appointed to Grade II and was therefore entitled to receive a salary of Rs. 25,640.00, in addition to any annual increments that he might earn. This placement was made in terms of the Scheme of Recruitment (X15 of P20B) which was in force at the time of his recruitment and applicable to that particular post. One of the conditions stipulated in the said Scheme of Recruitment was (clause 5.8) that any person recruited externally “... will be placed at the initial step of the salary scale”. The Petitioner was recruited as an external candidate and hence the said clause is applicable to him.

After serving the 1st Respondent Council for over one year, the Petitioner tendered a written request (P5) addressed to the Secretary to the Council. This undated request was made by the Petitioner on 11.01.2012 as stated in paragraph 8 of his Show Cause (A8). In that letter the Petitioner made two requests. First, he sought the confirmation of his post. Second, he requested for an increased salary, at least to be in par with the basic salary (“මූලික වැටුප”) he had drawn from the State Timber Corporation.

The 1st Respondent Council considered the said request of the Petitioner at its 164th meeting held on 13.01.2012 (2R6a) under item 166.14 and decided to refer same to the Audit and Management Committee for its recommendations. It appears from the minute that reads “As stated in the

last Audit & Management Committee, Council requested to table this paper first at the Audit & Management Committee ..." that the P8 is not the first of such requests made by the Petitioner in this regard. After two days, the Petitioner once again had written to the Secretary of the 1st Respondent Council on 15.01.2012 (P6). This time he made three requests. First, he requested for confirmation of his post. Second, he requested that he be promoted to Grade I from current Grade II. Third, the Petitioner requests that he be given at least five increments in Grade I, in order to equate the gross salary paid to him by the State Timber Corporation.

The Petitioner had given a description of the details of his salary received from that Corporation in P6 as follows;

“Basic Salary	27,475.00
Cost of Living Allowance	5,250.00
Adjustment Allowance	1,190.00
<u>Added</u>	
E.P.F. 15%	4,121.25
E.T.F. 3%	<u>824.00</u>
Total :	38,860.25.”

Once more, the 1st Respondent Council, at its 166th meeting held on 05.03.2012, decided (Annex II to 2R9) to refer the request made by the Petitioner to the Audit and Management Committee for its recommendation, despite the direction it already made to that effect. The said Committee considered the request of the Petitioner on 27.02.2012 at its 32nd meeting and had “... *in principle agreed to the request. Committee*

requested CARP Management to submit a paper (with recommended salary revision of Mr. Abeyratne) to the next A&M Committee for recommendation."

The 5th Respondent prepared the Committee Paper No. 33.3 (Annex V to 2R9) addressed to the Audit & Management Committee, and stated that the Petitioner is *"requesting salary MM1- 1 33,705 + (3*925) = 36,480.00"*. This reflects the expected salary revision sought by the Petitioner in terms of his request P6. On 15.05.2012, the said Committee, at its 33rd meeting, considered the request of the Petitioner. The relevant minute (Annex I to 2R9) reads *" ... Committee discussed the proposal in detail and decided to recommend it for Council approval."* It is interesting to note that the Petitioner too was present at this meeting on *"invitation"* and there is nothing to indicate in the minutes that he had excused himself when his own request for salary enhancement was taken up for consideration. Thus, it could reasonably be inferred that the Petitioner was fully aware of the exact amount of salary that would be presented for approval before the 1st Respondent Council in terms of the proposed salary revision, based on the premise that he did receive Rs. 36,480.00 as his *"previous salary"*.

The other factor that should be noted here, in relation to the minutes of the Audit and Management Committee (Annex I to 2R9), is that there is no definite recommendation made by that Committee in terms of the specific amount that may be payable to the Petitioner in its recommendation, as the enhanced salary. Neither there is any reference in that decision of the Committee as to the amount of the increased salary nor a recommendation made as to the salary step along with the exact number of annual increments the Petitioner should be placed at. Strangely, in

Council Paper: CP 8/168/12 (attached to 2R9) conveying the decision of the Audit and Management Committee to the 1st Respondent Council carried specific details of the proposed increment, which the relevant minute of the Committee did not reflect.

The said Council Paper informed the 1st Respondent Council that *“Mr. D.B. Abeyratne (Accountant) is requesting to consider his previous salary and place him on Grade I and increase by adding increments which will be equal to his previous salary”*. The paper also had the following documents attached along with the recommendation of the Audit & Management Committee:

- i. Minutes of the Audit & Management Committee held on 15.05.2012 and 27.02.2012
- ii. Minutes of the 1st Respondent Council of 164th and 166th meetings held on 13.01.2012 and 05.03.2012 respectively,
- iii. Request of the Petitioner,
- iv. Request to consider to place the Petitioner at a higher salary point,
- v. The Petitioner’s request.

Despite the seemingly innocuous absence of any specific salary scale in the minutes of the Audit and Management Committee or to a document that confirmed that the *“previous salary”* paid to the Petitioner, the said Council Paper carried the following details;

<i>“Existing Salary MM 1-1</i>	<i>26,305.00</i>
<i>Previous Salary</i>	<i>36,480.00</i>
<i>Requesting Salary</i>	<i>33,705.00 + (3 x 925) = 36,480.00”</i>

The request of the Petitioner seeking a salary enhancement was included in the agenda of the 1st Respondent Council's 168th meeting held on the 13.07.2012 under item 6: "*Any Other Matters*" ((2R9), and at item 168.6 of its minutes, it was resolved by the Council (2R10) that it had "... *approved the A&M Committee recommendation to place Mr. Abeyratne's salary higher point, referring to the salary recommended by the A&M Committee.*" The Petitioner admits in paragraph 17 of his Show Cause letter (A8) that since June 2012, he was paid the enhanced salary in terms of the said decision made by the 1st Respondent Council. However, perusal of the Salary Slips of the Petitioner for the Months of June and July 2012 (2R11 (a) to (b)) issued by the 1st Respondent Council, indicate that he was in fact paid the enhanced salary only from the month of July 2012.

The 1st Respondent Council confirmed the appointment of the Petitioner in the post of Accountant, w.e.f. 29.12.2010, by its letter dated 09.08.2012 (P4).

The generous salary increment granted to the Petitioner by the 1st Respondent Council along with a promotion to Grade I, granted within a period of less than three years, a general condition applicable to all employees in the State sector, attracted attention elsewhere. The Secretary to the Ministry of Agriculture, by his letter dated 01.04.2013 (2R2) directed the then Chairman of the 1st Respondent Council to take immediate action in rectifying the irregularities that were brought to his attention over the recruitment of the Petitioner and the grant of a salary increment.

It was noted that the probation period of the Petitioner is limited to one year in terms of the Letter of Appointment, whereas it should have

been for a period of three years, in terms of the Scheme of Recruitment. The Secretary also noted that the Petitioner was promoted to Grade I without having passed the Efficiency Bar Examination, which identified by the Secretary as another decision taken by the 1st Respondent Council contrary to the established procedure. The letter also referred to a discussion already held in the Ministry in this regard.

On 07.06.2013, the Secretary to the Ministry of Agriculture once more writes to the Chairman of the 1st Respondent Council rejecting the explanations offered by the latter by his reply dated 30.04.2013, which was sent in relation to the points the Secretary had noted in letter 2R2. He also highlighted that the grant of an enhanced salary is contrary to the Scheme of Recruitment and PA Circular No. 30, as these decisions were made without having formal approval. The Secretary also stressed the point that when an officer is paid a sum of money as salary, which he is not entitled to draw, not only the payment of such amounts but its acceptance as well could be taken as acts of misappropriation of State funds. The Secretary then issued a prior warning that appropriate action would be taken against the officers involved in this instance, in terms of the provisions of the Establishment Code.

On 02.07.2013, the Auditor General's Department, too had raised an Audit Query (2R1) over certain deviations from the established procedure that were noted by its officers in relation to the appointment of the Petitioner as well as in relation to the decision to grant the said salary increment. The query observed that the Petitioner was paid each month in excess of Rs. 12,006.50 over and above what he actually is entitled to since

2012. It also raised a query over the grant of salary increment of Rs. 925.00, instead of Rs. 665.00, which is the amount specified in the applicable Scheme of Recruitment.

These concerns were noted by the 1st Respondent Council and by Council paper: CP17/181/14 (2R14a) it had decided to grant approval to conduct a Preliminary Inquiry against the Petitioner. This decision was initially to be taken up by the Council on 01.10.2014, at its 181st meeting but put it off same to the next meeting (2R14b) which was to be held on 05.11.2014. Once more it was put it off to the next meeting (2R15). Only at the 183rd meeting, held on 03.12.2014, did the 1st Respondent Council decide to conduct a preliminary investigation against the Petitioner and to act upon its findings. In 2R14a, the 5th Respondent included the details of an Investigating officer annexed to the Council paper, namely a person identified as *K.G. Rohana Alwis*.

The said Investigator was notified by the 5th Respondent by letter dated 12.01.2015 to conduct the investigation (2R17), who after recording statements, and physically examining the relevant documents, submitted an interim report on 20.05.2015 (2R18). The Investigator refers in that report to a document containing salary particulars of the Petitioner, issued by the State Timber Corporation on 13.07.2012, and reports that when he cross checked with that Corporation, it was confirmed that the last drawn salary of the Petitioner had been Rs 27,475.00 and not Rs. 36,480.00 and the material available points that the said document cannot be a genuine one. The Investigator, further noted that the Petitioner had opted to evade the repeated opportunities made available to him to present his side of the

narrative to the Investigator. The Investigator observed in his interim report that the Petitioner had accepted a sum of Rs. 335,775.00, over and in excess of what he is actually entitled to. The 5th Respondent directed the Investigator to submit his final report on 18.01.2016 (2R20).

The 1st Respondent Council, at its 185th meeting held on 06.11.2015 and the 186th meeting held on 04.12.2015, resolved to interdict the Petitioner from his services pending a formal disciplinary inquiry. The said decision was notified to the Petitioner by letter dated 11.12.2015 (P11). The Investigator submitted his final report on 18.02.2016 (2R21) and the Petitioner was served with a Charge Sheet on 31.03.2016 (2R22), based on the findings made by the said Investigator.

The relevant segment of the Charge Sheet served on the Petitioner contained the following including the charges.

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ඩබ්ලිව්. එම්. ඩී. බී. අබේරත්න මහතා

නො. 11, උඩුවෙල පාර,

අම්පිටිය.

ඔබ ශ්‍රී ලංකා කෘෂිකාර්මික පර්යේෂණ ප්‍රතිපත්ති සභාවේ ගණකාධිකාරීවරයා වශයෙන් සේවය කරමින් සිටියදී ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ පළමු උපලේඛන යටතට ගැනෙන පහත සඳහන් වෝදනාවන්හි අඩංගු වන රාජකාරී පැහැර හැරීම හා/හෝ විෂමාවාරයන්හි යෙදීම යන වැරදි එකක් හෝ කිහිපයක් හෝ සියල්ලම හෝ සිදුකිරීම හේතුකොට ගෙන ඔබ සේවයෙන් පහ නොකිරීමට හෝ වෙනත් අයුරකින් ඔබට දඬුවම් නොපැනවීමට හෝ හේතු ඇතොත් මෙම වෝදනා පත්‍රය ලැබී දින තිහ (30) ක් ඇතුළත මා වෙත ලිඛිතව ඉදිරිපත් කරන ලෙසට ආයතන සංග්‍රහයේ XL VIII වන පරිච්ඡේදයේ 6:3 උප වගන්තිය යටතේ මෙයින් ඔබට නියෝග කරමි.

වෝදනා

- I. ඔබ ශ්‍රී ලංකා කෘෂිකාර්මික පර්යේෂණ ප්‍රතිපත්ති සභාවේ ගණකාධිකාරීවරයා ලෙස 2010.12.29 දින සිට 2015.12.11 දින දක්වා සේවය කරමින් සිටියදී, ඔබගේ පත්වීම් ලිපිය සහ ආයතනයේ බඳවා ගැනීම් පරිපාටියට අනුව ඔබට මාසික වැටුප වූ රුපියල් 26,305.00 හෝ ආසන්න මුදල ඉක්මවා මසකට රුපියල් 36,480.00 හෝ ආසන්න මුදලක් මාසික වැටුප් වශයෙන් 2012 ජූලි මස සිට 2015 දෙසැම්බර් මස දක්වා ලබාගෙන රුපියල් 587,418.00 හෝ එයට ආසන්න මුදලක් රජයට වංචා කිරීම
- II. ඔබ ශ්‍රී ලංකා කෘෂිකාර්මික පර්යේෂණ ප්‍රතිපත්ති සභාවේ ගණකාධිකාරීවරයා ලෙස පත්වීමට පෙර රාජ්‍ය දැව සංස්ථාවේ මහනුවර ප්‍රාදේශීය කාර්යාලයේ සහකාර අභ්‍යන්තර විගණක ලෙස සේවයේ යෙදී සිටියදී අවසන් වශයෙන් රුපියල් 36,480.00 ක මාසික වැටුපක් ලබාගත් බවට ව්‍යාජ ලියකියවිලි ඔබ ශ්‍රී ලංකා කෘෂිකාර්මික පර්යේෂණ ප්‍රතිපත්ති සභාවේ අධ්‍යක්ෂ මණ්ඩලය වෙත ඉදිරිපත් කිරීමට කටයුතු කිරීම තුළින් අධ්‍යක්ෂ මණ්ඩලය නොමග යැවීමෙන් වංචා ලෙස කටයුතු කිරීම
- III. රජයේ වාහනයක් පැදවීම සඳහා අමාත්‍යාංශ ලේකම් වරයාගේ පුද්ගලික අනුමැතියක් ලබාගත යතුව තිබියදී එසේ අනුමැතිය ලබාගැනීමකින් තොරව ශ්‍රී ලංකා කෘෂිකාර්මික පර්යේෂණ ප්‍රතිපත්ති සභාවට අයත් WP KX 5466 දරන වාහනය ඔබ විසින් ආයතනයෙන් බැහැරට පදවාගෙන යාම තුළින් රාජ්‍යපරිපාලන වකුලේඛ 22/99 සහ ආයතන සංග්‍රහයේ විධි විධාන උල්ලංඝනය කිරීම
- IV. විධිමත් ලෙස පත්කරන ලද මූලික විමර්ෂන නිලධාරී රෝහණ අල්විස් මහතා ඔබට මූලික විමර්ෂනය සඳහා ප්‍රකාශයක් ලබාදීමට පැමිණෙන ලෙස කරන ලද නිල දැනුම් දීම ප්‍රතික්ෂේප කිරීම තුළින් ආයතන සංග්‍රහයේ 13:10 වගන්තිය උල්ලංඝනය කිරීම සහ මූලික විමර්ෂන නිලධාරීගේ කටයුතු වලට බාධා වන අයුරින් හැසිරීම
- V. ඉහත චෝදනා එකක් හෝ කිහිපයක් හෝ සියල්ලම හෝ සිදුකිරීම මගින් රාජ්‍ය සේවය අපකීර්තියට පත්කිරීම”

In response to the allegations contained in all the charges contained in the Charge Sheet, the Petitioner primarily maintained position of a total denial of any wrong doing. It was his position that the 1st Respondent Council itself had decided to increase his salary subsequent to a request made by him. When the Council decided to grant his request, he accepted the enhanced salary, which he claims as his entitlement after the 1st

Respondent Council decided so. In addition, the Petitioner levelled an accusation against the 5th Respondent, who was serving at that time as the Secretary/Director of the 1st Respondent Council, as the person who is responsible for presenting a “*forged document*” (ඔහු ලේඛනයක්) to the said Council, which purportedly reflected the particulars of the last salary, paid to the Petitioner by his previous employer, the State Timber Corporation.

The Petitioner further alleged that the document containing his salary particulars (2R23(a)) was fabricated by the 5th Respondent and made it available to the Investigator, in order to substantiate an otherwise a totally false allegation.

The formal disciplinary inquiry on the Charge Sheet (A8) commenced before the Inquirer, a retired administrative officer, on 24.08.2016 (P26) and continued until 26.10.2017. The Petitioner gave oral evidence before the inquirer on his behalf. During his evidence, the Petitioner merely reproduced extracts from his Show Cause and did not offer any alternative narrative to contradict the witnesses who gave evidence presenting a particular narrative, which the Inquirer had decided to act on. The Final Report of the inquiry was presented to the 1st Respondent Council by the said Inquirer on 22.11.2017 (4R1). The Inquirer had found the Petitioner guilty of all five charges that contained in A8.

Upon receipt of the Inquiry Report and findings, the 1st Respondent Council, by its 207th meeting held on 28.11.2017, resolved to dismiss the Petitioner from the post of Accountant of that Council, w.e.f. 11.12.2015 (2R28). The Petitioner was further directed to repay a sum of Rs. 587,418.00.

Returning back to the primary question of fact that had been wrongly decided by the inquirer (as contended by the Petitioner); whether it was the Petitioner who tendered the forged document depicting a higher gross salary said to be paid by State Tiber Corporation (2R23(a)) as his last salary and the effect of that document had in the decision making process, it is necessary to examine the oral evidence of the 5th Respondent, as the Inquirer had based his findings primarily on that evidence. The proceedings before the inquiry that contained the oral evidence of certain important witnesses to the disputed facts in issue were tendered by the Petitioner as an annexure to his amended petition (P26).

Priyani Perera who was in charge of personal files of the employees of the 1st Respondent Council said that a letter dated 13.07.2012 (2R23(a)) said to be issued by the accountant of State Timber Corporation, *Kandy* office is filed of record, annexed to a two-page letter written by the Petitioner dated 11.01.2012 (P5), addressed to the 5th Respondent Council seeking an enhancement of his salary. The Petitioner stated in that letter he had attached a salary slip that confirms his last drawn Gross Salary. The 1st Respondent Council considered P5 on 13.01.2012 (2R6a) and directed that the Audit and Management Committee should make its recommendations on that request. Thus, the document P5 must have physically existed in January 2012.

In contrast, a comparison of the dates the letter P5 and letter 2R23(a) in itself indicates that if the date, as appear on the document, is assumed to be genuine, it could not have been presented to the 1st Respondent Council marked as "P5" as it bears the date of issue 13.07.2012. But it is found in

the personal file of the Petitioner annexed to letter P5, which stated that the salary slip is attached. The Petitioner claims that the said letter is in fact a forgery and had been inserted by the 5th Respondent into his personal file at a later stage, to put Petitioner into trouble. In spite of the said position taken up by the Petitioner during inquiry, the Inquirer opted to accept the 5th Respondent's evidence to arrive at the finding that the Petitioner is guilty to the 2nd charge. Before proceeding to review the validity of the said finding, it is important to make a reference to the evidence of the 5th Respondent, which the Inquirer had acted on.

The 5th Respondent, *Induka Prabhath Wimal Kumara*, was the Secretary/ Director to the 1st Respondent Council during the relevant time period. Referring to P5, the witness said in his oral evidence that despite the declaration of the Petitioner that a salary slip is annexed to the said request, he did not find any such document attached. This request was considered by the Council, and due to several defects of the said request, decided to refer same to the Audit and Management Committee. However, the request had been presented before the Council once more, despite the said direction and for the 2nd time also it was referred back to the said Committee calling for its recommendation.

It was the duty of *Wimal Kumara* to prepare Committee Papers for the Audit and Management Committee as well as the Council Papers to be submitted to the 1st Respondent Council. On the request of the Petitioner for a salary enhancement, the witness prepared the Committee Paper for the Audit and Management Committee. Despite repeated requests made to the Petitioner to make available his salary particulars that should be

tendered along with the Committee Paper for the consideration of the Audit and Management Committee, the Petitioner failed to provide any.

Based on verbal information, provided by the Petitioner, in relation to his last drawn salary at State Timber Corporation, the witness had included the set of figures that appear on the Committee Paper No. 33.3 (Annex V of 2R9) depicting the salary at present, the “previous salary” and the expected salary. He then presented same before the Audit and Management Committee. The witness asserts that he did so, acting on the firm undertaking given by the Petitioner that he would provide with a document forthwith. The 5th Respondent and the Petitioner were serving the 1st Respondent Council at its senior most level and had known to each other for longer period of time.

The Committee Paper No. 33.3 that was presented to the Audit and Management Committee on 15.05.2012 had no document to substantiate the last drawn salary of the Petitioner. Nevertheless, the Committee had “... discussed the proposal in detail and decided to recommend it to for Council approval”. This was done in spite of the absence of any formal document to satisfy the Committee of the exact component of the basic salary in the last drawn salary of the Petitioner, whilst serving at the State Timber Corporation. The witness candidly admitted in his evidence that on behalf of the 1st Respondent Council neither he nor any other official of the Council had made an official request from the State Timber Corporation, in order to ascertain any information regarding the last drawn salary of the Petitioner. The 5th Respondent opted to rely on the mere oral declaration made by the Petitioner, when he inserted Rs. 36,480.00 in Committee Paper

No. 33.3 (Annex V of 2R9) against the reference "*Previous Salary*" drawn by the Petitioner from the State Timber Corporation.

Earlier on in this judgment, I have already referred to the fact that the Petitioner was present during the deliberations of the Audit & Management Committee, when it considered "*in detail*" the Committee Paper No. 33.3 and resolving to recommend the proposed revision to the 1st Respondent Council. The Petitioner, being an invitee to the Committee, may or may not have participated actively in the discussions when his request was being considered in detail, but he was fully aware that the Committee, in recommending the proposed salary revision, had acted on the information that contained in Committee Paper No. 33.3 that the last salary he received from State Timber Corporation was "Rs. 36,480.00". The Petitioner was fully aware that information was not correct as he did receive only Rs. 27,475.00 as the "consolidated salary" from that Corporation for the month of November 2012. In fact, this is borne out by a document the Petitioner had relied on during the inquiry.

The 5th Respondent, by his letter dated 30.07.2014, tendered the October 2012 salary particulars of the Petitioner to the Secretary to the Ministry of Agriculture, to be forwarded to the Treasury officials to consider the entitlement of the Petitioner to import a vehicle under concessionary terms. This document was tendered during cross-examination of the 5th Respondent, marked "V4" by the Petitioner. This is the amount the Petitioner himself had inserted in the request made to the 1st Respondent Council marked P6 and dated 15.01.2012, to have his salary revised.

In P6, the Petitioner proposed to promote himself to Garde I and, in addition, requested the 1st Respondent Council to award him five annual salary increments in that Grade to make up to his expected salary of Rs. 38,330.00. The Petitioner also relied on the description of his salary in October 2012, said to be issued by the accountant of the *Kandy* branch of the State Timber Corporation in SC FR No.22 /2018, marked as "P7" with the date 04.11.2010. In that document also the basic salary of the Petitioner for the month of October is indicated as Rs. 27,475.00. After adding the Cost-of-Living Allowance and Adjustment Allowance to the basic salary, his gross salary amounted only to Rs. 33,950.00.

It was noted above that the Petitioner was fully aware of the "*last salary*" he received from the State Timber Corporation, but allowed the Audit and Management Committee to accept Rs. 36,480.00 as his last salary and with its recommendation, he further allowed that said false claim to be submitted to the 1st Respondent Council for its approval by that Committee.

With the recommendation of the Audit and Management Committee to pay him a salary of Rs. 36,480.00, which it did on the premise that the Petitioner was in fact paid Rs. 36,480.00 in October 2012, the 1st Respondent Council had blindly approved the proposed salary revision. The Council apparently was content to approve the recommendation since the Audit and Management Committee had already considered the proposal "*in detail*", and therefore it need not once more verify the information contained in Committee Paper No. 33.3, as copied on to Council Paper: CP 8/168/12 (P9).

The uncontradicted evidence of the 5th Respondent that the amount of the basic salary was orally conveyed to him by the Petitioner at the late stage just before he tendered to the Committee Paper. No verification done by the Committee as to its accuracy either prior to the submission or during the deliberations of the Committee. The Petitioner who was present during the Committee meeting, in all probability, would have vouched for the accuracy of that amount. It should also be noted that the Committee, for some undisclosed reason, did not approve the five annual increments, as requested by the Petitioner, but decided to limit same only to three.

The Petitioner was clearly unhappy of the salary offered by the 1st Respondent, even when he was first offered the post of accountant. In P6, the Petitioner specifically refers to an undertaking given to him during the interview that a higher salary would be paid to him. He refers to that in paragraph 3 of letter P6. With the completion of probation period, he renewed his efforts to have his salary revised. After the recruitment, the Petitioner was placed at the basic level of the salary scale of Grade II employee of a salary category MM -1. The basic level salary, in terms of the Letter of Appointment, was Rs 25,640.00. The Petitioner did receive Rs. 27,475.00 as basic salary at State Timber Corporation, where he served as a Deputy Internal Audit Officer. Of course, he had drawn a higher salary at the State Timber Corporation. But the post he accepted under the 1st Respondent Council was the post of accountant to that Council, clearly a senior management position in the said Council, when compared with the one he held at the Corporation.

It is evident from letters P5 and P6, the Petitioner was promised by the interview panel of a higher salary, but it was to be considered on his performance. Despite the claim of the Petitioner in P5 of the completion of certain tasks entrusted to him, when he made requests by P5 and P6, the 1st Respondent Council did not want to take a decision favourable to him on the basis of his performance. Instead, the Council referred the two requests to the Audit and Management Committee for its recommendation.

In terms of Section 14((1)(b) of Sri Lanka Council for Agricultural Research Act No. 47 of 1987, the Council is conferred with the power to “*fix the rate at which such officers and servants shall be remunerated.*” The Council could do so subject to the Scheme of Recruitment, applicable to the post of accountant. But the Council did not consider an enhancement of salary by adopting a performance-based approach. Twice the Council turned down the Petitioner’s requests and delegated the task to the Audit and Management Committee to make a recommendation.

The Audit and Management Committee simply acted on the basis of last drawn salary and not on the performance of the Petitioner in his post as it was bound by the direction issued by the 1st Respondent Council. Thus, the determinant factor on the question of enhancement of salary was the basic salary paid to the Petitioner, before he joined the 1st respondent Council and not his performance as its accountant.

If the Petitioner was able to satisfy the Committee that he did receive Rs.36.480.00 as “*last salary*”, it could have decided to make a recommendation favourable to the Petitioner on that basis. For that purpose, the 5th Respondent repeatedly requested the Petitioner to tender

some documentary proof of the said fact. In the Show Cause, the Petitioner states in paragraph 22 that the promotion was granted by the Council in appreciation of his services and performance and not due to his request to pay his previous salary. The factors referred in the preceding paragraphs indicate that the said claim has no validity at all.

Even after the preparation of the Committee Paper No. 33.3 and before the meeting of the Committee, the Petitioner was reminded of the requirement of proof of his salary. At that stage, the Petitioner pleaded with the 5th Respondent to present the paper to the Committee, despite the nonavailability of any proof of his "*previous salary*" which he would make available soon. Due to the nature of the relationship that existed between the Petitioner and the 5th Respondent (who knew each other from their Timber Corporation days), the latter had proceeded to present the said paper to the Committee, which thereupon deliberated on the request, although it was not substantiated. The false oral information thus provided by the Petitioner as to his previous salary had crept into Committee Paper No. 33.3, which then influenced the 1st Respondent Council to approve the request, which it would not have done, if it was informed of the actual salary previously paid by the Timber Corporation.

The 2nd charge refers to an act of submitting forged documents to reflect the position the Petitioner did receive Rs. 36,480.00 as his last salary. The reference made to the same amount in Committee Paper No. 33.3 on 15.05.2012 and copied to the Council Paper: CP 8/168/12, which was presented and considered by the Council on 13.07.2012 in the absence of any formal proof, but reflected in the letter 2R23(a), dated 13.07.2012,

incidentally the same day the Council sat, which found its way into the personal file of the Petitioner could not be mere co-incidences.

The Petitioner too claims that 2R23(a) is a forgery. He accused the 5th Respondent for creating same with the intention of putting the Petitioner into a difficult situation. The suggestions made by the Petitioner to the 5th Respondent during the inquiry to this effect were flatly denied by the said Respondent. The Petitioner in his evidence did not offer any alternative narrative as to how the Committee arrived at the figure Rs. 36,480.00, or to the fact that 2R23(a) was found along with his request for a salary enhancement, filed in his personal file. The 5th Respondent said the Petitioner had undertaken to provide documentary proof that he did receive Rs 36,480.00 as his salary and the finding made by the Investigator of this document in the personal file, supports that claim.

Other than the Petitioner, no other person was interested in the salary revision to the post of accountant. It was made solely on the Petitioner's request and no other employee of the 1st Respondent Council would have benefited from the enhancement. Hence, the Petitioner remains the sole beneficiary of the said salary revision and as such it is not reasonable to assume that there was a third-party involvement in the insertion of 2R23(a) into his personal file. The Petitioner was fully aware that it was purely on his word that the 5th Respondent and the Audit and Management Committee had acted in making the recommendation, that he drew his last salary of Rs. 36,480.00 from State Timber Corporation. Being a former Internal Auditor, the Petitioner should know better than

any of his colleagues at the 1st Respondent Council of the importance of substantiating a claim.

The maintainability of the 1st charge against the Petitioner is dependent on the finding of the inquirer on the 2nd charge, which in turn was founded on his complicity in the presentation of forged documents. In view of the factors enumerated in the preceding section of this Judgment, the conclusions as to the guilt of the Petitioner, as reached by the inquirer, could not be termed as perverse findings in view of the evidence presented at the inquiry. This position applies to the third charge as well, in spite of the fact that the Petitioner claimed that the use was duly "*authorised*".

The Petitioner, challenged the interdiction by alleging that the decision of the 1st Respondent Council made consequent upon a preliminary investigation conducted by one "*Rohan De Alwis*", who in turn had no valid authority to conduct such an investigation against him. The 1st Respondent Council, at its 188th meeting held on 03.12.2014 (2R20), decided to initiate and investigation and act on its report, by approving the Council Paper CP17/181/14 (2R14g). The fact that *Rohana Alwis* was appointed to conduct that investigation does not appear in that minute is correct but the 5th Respondent had annexed the said Investigator's credentials along with the relevant Council Paper and made available for the information of the said Council.

After the preliminary report submitted by the Investigator, a set of new members to the 1st Respondent Council was appointed by the Government that came to power after the general elections held in 2015. The newly constituted 1st Respondent Council, also thought it fit to

approve the Council Paper presented by the 5th Respondent and to continue with the investigation already commenced, as it had the contents of the interim report before it. The said decision was conveyed to the Investigator directing him to continue with the already commenced investigation and to submit the final report (2R20).

The allegation of the Petitioner that the 5th Respondent was instrumental in the initiation of an investigation and personally directed the manner in which the investigation conducted to *Rohana Alwis* cannot be accepted as the said Investigator, in his final report accused the 5th Respondent of aiding and abetting the Petitioner to fraudulently obtain the salary enhancement based upon a fraudulent act. In addition, the Investigator had recommended that disciplinary action taken against the 5th respondent for his complicity in the commission of the instant fraudulent act. The succeeding Council's determination to continue with the investigation and to await the final report, indicates that despite the change in the administration, the Council had considered the increment given to the salary of the Petitioner was obtained by fraudulent means.

The Investigator found fault with the 5th Respondent on his failure to verify the last salary paid to the Petitioner by directly communicating with the State Timber Corporation and observes that the senior management of the 1st Respondent Council appears to have offered special treatment and adopted a very favourable approach in dealing with the requests made by the Petitioner to have his salary revised is the way he wanted. It is an undisputed fact that the Petitioner received the enhanced salary from July 2012, until he was interdicted. Since the Petitioner had

accepted the increased salary knowing very well of the manner how it was sanctioned, justifiably made him liable to be found guilty to charge No. 1.

Throughout the process of making the series of decisions made by the 1st Respondent Council; commencing with the decision to initiate an investigation against the Petitioner, to interdict him pending a formal inquiry and finally to dismiss him from the post of Accountant, it had acted on the findings made by the Investigator and of the Inquirer, who, after the conclusion of a protracted proceedings, found the Petitioner guilty to all charges. The long duration of time taken to conclude the formal inquiry, despite the direction made by this Court to expeditiously conclude same, was partly due to certain actions attributed to the Petitioner as well. The 1st Respondent Council, thus acted well within its powers conferred by Section 14(1)(a) of the Act No. 47 of 1987, as it states that the Council may “... *exercise disciplinary control over such officers and servants; ...*”, but exercised that power after following the established procedure which ensured a reasonable opportunity to the Petitioner to defend himself of the allegations levelled against him.

The 1st Respondent Council approved the investigation on 03.12.2014. The fact that an investigation has commenced against him was known to the Petitioner as he had confronted the Investigator and abusively demanded that he leaves the premises of the 1st Respondent Council, as referred to in the report. The 1st Respondent Council decided to initiate an investigation against the Petitioner on 05.11.2014 and an Investigator was appointed on 12.01.2015. The interim report of the said Investigator is dated 20.05.2015. The Petitioner was interdicted on

11.12.2015. The final report of the Investigator was submitted on 18.02.2016. The Petitioner was served with a Charge Sheet on 31.03.2016. The inquiry commenced on 24.08.2016 and concluded on 26.10.2017. The inquiry report is dated 22.11.2017 and the Petitioner was dismissed on 12.12.2017. SCFR No.160/2016 was filed on 11.05.2016. As such, the challenge of the Petitioner in that application made against all these significant steps taken against him are time barred.

The filing of this application has taken place before the said dismissal and as such could not have been included in that petition as a ground for infringement. The SCFR No.22/2018 was filed on 15.01.2018 and the dismissal was made on 12.12.2017 but the Petitioner states in the original petition (at para 35) that he received the letter informing him of his dismissal only on 15.12.2017. Thus, only his challenge to the dismissal from his services is within time. But with the petitions being amended from time to time and with the manner in which the alleged infringement evolving all the time parallel to such amendments, in spite of the time bar issue, both parties have rightly or wrongly invited this Court to review the legality of the procedural steps taken by the 1st Respondent Council in its entirety.

It is natural for an employee to expect that he be remunerated adequately by his employer. But that expectation must be fulfilled by the employee and the employer through a legally valid process and following the established procedure. The reasonable expectation entertained by the Petitioner of receiving his last drawn salary from the 1st Respondent Council and making a request in that regard is a perfectly justifiable act on

his part. The issue of legality arises only from that point onwards. Instead of having a proper verification of the last drawn salary of the Petitioner, the 5th Respondent had deliberately acted on the Petitioner's mere oral claim on the amount, in the presentation of relevant Committee Paper and the consequential Council Paper. The Petitioner could not substantiate his claim he made over the amount of his last drawn salary before the Committee meeting. Quite strangely, he had the benefit of a forged letter indicating a salary, very much higher to the one he did in fact receive from the State Timber Corporation, inserted into his personal file, which had been purported to be issued on a date that coincides with the date on which the Council had approved the increment by acting on the false claim, after it was recommended by the Audit and Management Committee. Thus, the personal file reflected the artificial position that the Petitioner had tendered his salary particulars along with his request to pay him at least the basic salary (P5), which he referred to in that request, at the time when the 1st Respondent Council made its decision to approve same.

In *Dissanayake v Priyal De Silva* (2007) 2 Sri L.R. 134, this Court ruled (at p. 140) that "... it is abundantly clear that the provisions in terms of Article 12(1) of the Constitution would provide only for the equal protection of the law and shall not provide for the equal violation of the law." This is now a well settled principle and whether the illegal omissions on the part of the Audit and Management Committee, either deliberately or otherwise, in the process of recommending a salary enhancement to the Petitioner and the 1st Respondent Council blindly approving that illegal recommendation simply cannot be equated giving rise to a valid legal right, as equal treatment required such a right "... should be referable to the exercise of a valid

right, founded in law in contradistinction to an illegal right which is invalid in law” (vide Sharvananda CJ in C.W. Mackie and Company Ltd v Hugh Molagoda, Commissioner of Inland Revenue and Others (1986) 1 Sri L.R. 300, at p. 309).

It was for the Petitioner to establish the disputed fact in issue; whether he was denied of the equal protection of law by the actions of the 1st to 15th Respondents on a balance of probability. I am of the considered view that the Petitioner has failed to discharge that burden and therefore is not entitled to any of the reliefs prayed for in the two petitions.

The amended petitions in SCFR No.160 /2016 and SCFR No. 22 /2018 are accordingly dismissed. I make no order as to costs.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT

DR. SOBHITHA RAJAKARUNA, J.

I agree.

JUDGE OF THE SUPREME COURT