

**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.

S.C. (FR) No. 165/2024

1. Padmasiri Navarathna
Rathnagiri, Ambagahawatta,
Baddegama.
2. G. D. Nirosha Perera,
300/11, Wackwalla Road,
Galle,
3. H. M. M. Farook
Yasin Bawa Road,
Madawachchiya,
Valachchanai.
4. M..K.D. Tharaka Munasinghe
No.100, Sisildiyalanda,
Kandagahawila,
Payagala.
5. H. M. S. Thamara Kumari
160, Palinguwa Junction,
Owala, Kaikawala, Matale.
6. A. M. C. Jayamini Adikari
84/3, Galahitiyawa,
Ganemulla.
7. S. A. D. Praveena
No.57, Awuandama,
Maspotha.

8. R. H. Ekanayaka
No.201, Jayasiripura,
Auradhapura.
9. H. M. Ajith Kumarasinghe
No.300, Leeniyawatta,
Narammala.
10. K. G. Indika Kumari
No.15, Vijithapura,
Thalawathugoda Road, Pitakotte.
11. A. S. Nandana Amarasinghe
"Subasiri", Kuliyaipitiya Road,
Hettipola.
12. H. C. N. De Silva
No.9/B, 82/8, N.H.S.,
Mattegoda.11
13. M.K. Kumaranayaka
No.1/31, Old Railway Mawatha,
Rathnapura Road, Kuruwita.
14. S. A. P. Kumari Suraweera
No.04, Katumana,
Nuwara Eliya.
15. M. A. A. G. J. N. Munasinghe
Medalanda Road,
Polpithigama.
16. R. D. Gnanathayalini
No.40/4, Vidan's, Chundukeili,
Jaffna.
17. W. A. C. Kumara Wickremasinghe
No.05, Agriculture Quarters,
Kanda Panaha,
Anuradhapura.

18.T. Kumuduni Wanniarachchi
No.175, Pataleerukkarama Road,
Pinawala,
Panadura.

19. L. D. R. Udayakanthi
No.021, Agriculture Quarters,
Batticaloa Road,
Kaduruwela.

PETITIONER

-Vs.

1. Mr. Pradeep Yasarathna
Secretary, Ministry of Public
Administration and Home
Affairs, Independence Square,
Colombo 07.
2. Hon. Dinesh Gunawardena
Minister of Public Administration and
Home Affairs,
Ministry of Public Administration and
Home Affairs,
Independence Square, Colombo 07.
3. Mr. Sanath J. Ediriweera
Chairman
Public Service Commission
4. Mr. N. H. M Chithrananda
Member
Public Service Commission
5. Mr. G. S. A. De Silva
Member
Public Service Commission
6. Dr. A. D. N. de Zoysa
Member
Public Service Commission

7. Mrs. S. M. Mohamed
Member
Public Service Commission
8. Mrs. Ranjani Nadarajapillai
Member
Public Service Commission
9. Mr. C. Pallegama
Member
Public Service Commission
10. Mr. M. B. R. Pushpakumara
Member
Public Service Commission
11. Prof. N. Selvakkumaran
Member
Public Service Commission

The 3rd to the 11th Respondents, all being
of the Public Service Commission,
No.200/09, Rajamalwatta Road,
Battaramulla.

12. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

13. Rasika Rathnayaka,
No:290E, Pathaha Road,
Udugampola.

Before : Janak De Silva, J
Menaka Wijesundera, J
K. M. G. H. Kulatunga J

Counsel : Sanjeewa Jayawardene, PC with Ranmalie Meepagala for the Petitioners.
Ms. Navodi De Zoysa, SC instructed by State Attorney for all the Respondents except the 13th Respondent.
Pradeep Perera, with Saman Kalubandara, instructed by Isuru Abeygunawardana for the 13th Respondent.

Written

Submissions : Written submissions on behalf of 13th respondent tendered on 26.03.2026.
Written submissions on behalf of the petitioner tendered on 06.04.2026.

Argued on : 02.02.2026

Decided on : 21.05.2026

MENAKA WIJESUNDERA J.

The petitioners in the instant matter have sought a declaration under Article 12(1) and Article 14 (1) g of the Constitution. When this matter was supported before this Court, leave had been granted under Article 12(1) of the Constitution.

The petitioners, in the instant matter, have sat for the Limited Competitive Examination 2010 held for the recruitment to Class III of the Sri Lanka Administrative Service (hereinafter referred to as the SLAS). The petitioners have completed the examination; they had applied for these vacancies based on the Gazette published on 11.04.2012 by the number 1754. According to the said gazette, there were 64 vacancies, and for these vacancies, the petitioners, have referred their applications and sat for the exam on 21.07.2012.

Upon successfully completing the examination, they had faced an interview on 28.12.2013, and 37 candidates, who had faced the exam in the same batch, had been successfully appointed on 21.04.2014 and the remaining vacancies had not been filled.

In SC/FR no. 479-2012, the petitioners, who sat for the exam in 2009 had challenged the marking scheme of the aforesaid interviews and had prayed for an interim order restraining the respondents from recruiting officers and this

Court had granted the interim relief which had prevented the respondents from filling the vacancies. The petitioners of this Court had intervened in the said application in 2014.

Thereafter, the 37 who had been successful, had been appointed with effect from 21.04.2014. The final judgment of the aforesaid matter (SC/FR/479/2012) had been pronounced on 09.08.2023, dismissing the entire application.

During the pendency of the application, 24 slots had been kept vacant; therefore, after the dismissal of the said application, the petitioners were appointed with effect from 19.02.2024. Therefore, the petitioners have claimed that their appointments should be backdated to 21.04.2014, along with the 37 other candidates who have been appointed from the same batch.

But the respondents had stated that under the Public Service Commission rules, backdating of appointments cannot be done, as per rule 37(1), which says as follows,

37. Antedating of an appointment will not be allowed on any ground whatsoever under any of the following circumstances.

I. If such antedating results in the officer concerned gaining seniority over an officer appointed before him or with him to the same grade or post or any disturbance in the seniority determined at the selection for such appointment.

Hence, as per the above rule, without contravening section 37(1) of the PSC rules the antedating of the appointments of the petitioners cannot be done.

The petitioners, while seeking to have their appointments antedated to 21.04.2014, have also requested that they be granted their due promotions from Class III to Class II. However, the respondents contend that such relief cannot be granted. They rely on the Service Minute of the Sri Lanka Administrative Service, which came into effect on the 1st of July, 2012, and stipulates that an officer must complete a minimum of ten years of active service in Class III and earn ten salary increments within that class to qualify for a promotion to Class II. Accordingly, the respondents argue that granting the requested antedating would create a difficulty, as the petitioners do not possess the requisite period of service or experience required for such promotion.

Leave has been granted in the instant matter under Article 12(1) of the Constitution on 06.08.2025.

Article 12(1) provides that, *"All persons are equal before the law and are entitled to the equal protection of the law."*

Amerasinghe J., in the case **Perera v Monetary Board of the Central bank (1994) 1 SLR 152,180** held that,

“...treating unequals equally [is] unjust and violative of Article 12(1) of the Constitution.”

The exercise of power may result in a violation of Article 12(1) in two general scenarios: first, when the power is exercised in a way that treats unequally those who are in similar circumstances; and second, when the power grants discretionary authority to an individual or body in such a manner that it can be used to treat unequally those who are similarly situated. With regard to the second type of situation mentioned above, it has been observed in the case of **Palihawadana Ralalage Wickremasinghe v Attorney General (1979) 1 FRD 1, 8-9**

“It is not a reasonable classification but an arbitrary selection where selection is left to the absolute and unfettered discretion of the executive Government, with nothing to guide or control its action' ... For in such a case, the difference in treatment rests solely on the arbitrary selection by the Executive. If the statute does not disclose any Government policy or object and confers on the Executive authority [discretion] to make a selection at pleasure, the statute would be held, on the face of it, to be discriminatory. If, however, the legislative policy is clear and definite and, as an effective method of carrying out that policy, a discretion is vested by the statute upon a body of administrators or officers.”

Therefore, in view of the above, obviously, the petitioners have been treated differently as opposed to the 37 other candidates, who have faced the same exam and the same interview, and were given appointments with effect from 21.04.2014.

In view of the foregoing, the petitioners have been subjected to clear and unjustified differential treatment in comparison to the 37 other candidates, who appeared in the same examination and interview and were granted appointments with effect from 21.04.2014.

The denial of the same benefit to the petitioners is solely attributable to the pendency of SC/FR/479/12, circumstances entirely beyond the petitioners' control.

The respondents have placed before this court that, under Rule 37(1) of the PSC rules, no appointments can be antedated, and also, the relevant qualifications to be granted promotions to Class II of the Sri Lanka Administrative Service.

However, these rules were made to ensure that all appointments are made without any bias toward any person or individual. In the matter at hand, the

petitioners had qualified themselves as per the candidates who had been appointed in 2014, but for some reason, the petitioners were not appointed.

Hence, this Court, in the exercise of its just and equitable jurisdiction, has the power to overcome great injustice due to no fault of any individual.

Therefore, although the petitioners have claimed that they have been equally circumstanced as the 37 candidates who were selected, I am unaware as to why the petitioners in the instant matter were not selected by the interview board. The respondents have not placed any material with regard to the performance by the petitioners at the interview, although it would have been the best material to place before this Court to contradict the position of the petitioners.

Hence, as there is no material to determine how the petitioners performed before the interview board, I can only infer that they also qualified at the interview stage, since they were at some point selected as suitable candidates, although their appointments were delayed.

Therefore, in view of the foregoing material, the only conclusion I can reach is that the petitioners were deprived of being appointed to the positions for which they were qualified, on par with the other candidates from the same batch. This deprivation arose due to the pendency of a fundamental rights application for well over ten years, and occurred due to no fault of the petitioners.

Therefore, I declare that there has been a violation of the fundamental rights of the petitioners under Article 12(1) of the Constitution. Notwithstanding the PSC rules, I further hold that, in the exercise of the just and equitable jurisdiction of this Court, the petitioners are entitled to the appointments sought in their pleadings. Accordingly, they should be granted relief and placed on equal footing with the 37 candidates who qualified for the aforementioned posts in 2014. However, such relief shall not extend to the promotions to Grade II that were subsequently granted to the candidates who entered service in 2014.

As such, the instant application is allowed, and the abovementioned relief should be granted to the petitioners within three months of the date of pronouncement of this judgement.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree

JUDGE OF THE SUPREME COURT

K. M. G. H. Kulatunga, J.

I agree

JUDGE OF THE SUPREME COURT