

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

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

S.C.F.R.A. No:
181/2021

1. Gamage Don Yasasvin
Hemantha Kumara Sudasinghe,
No. 430/2B, Sunethradevi Road,
Kohuwala, Nugegoda.

2. Iresha Menike Jayathilake
Banda,
No. 54, Samudrasanna Road,
Mount Lavinia.

3. Jayalath Arrachchige Dona
Hasanthi Jayalath,
Udaya, Halpita, Polgasowita.

4. Rathnayake Mudiyansele
Susantha Rathnayake,
No. 311/07, Hettiyadeniya Road,
Gampaha.

5. Mannapperuma Mudiyansele
Premasiri Anura Bandara,
No. 45/1, 1st Lane,
Pengirigaswatta Road,
Gangodawila, Nugegoda.

PETITIONERS

Vs.

1. S. H. Munasinghe,
Secretary,
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

1A. Janaka Sugathadasa,
Secretary,
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

1AA. Dr. P. G. Mahipala,
Secretary,
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

2. Ayanthi Karunaratne,
Acting Director/Tertiary Care,
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

3. Anver Hamdani,
Previous Acting Director/Tertiary
Care, Ministry of Health,
Suwasiripaya, No. 385,
Rev. Baddegana Wimalawansa
Thero Mawatha, Colombo 10.

4. Priyantha L. Atapattu,
Director Primary Care,
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

5. Asela Gunawardane,
Director General,
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

6. S. Sridharan,
Acting Director General,
Health Services,
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

7. Lal Panapitya,
Deputy Director General
(Medical Services),
Ministry of Health, Suwasiripaya,
No. 385, Rev. Baddegana
Wimalawansa Thero Mawatha,
Colombo 10.

8. Jagath Balapatabendi,
Chairman,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

9. M. A. B. Daya Senarath,
Secretary,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

10. Indrani Sugathadasa,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

11. V. Shivagnanasothy,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

12. T. C. R. Ruberu,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

13. Ahamod Lebbe Mohammed,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

14. Leelasena Liyanagama,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

15. Dian Gomes,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

16. Dilith Jayaweera,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

17. W. H. Piyadasa,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

18. H. L. D. S. Ariyaratne,
Consultant General Surgeon,
Base Hospital, Mulleriyawa.

19. W. U. P. C. Gunarathna,
Consultant General Surgeon,
Base Hospital, Tangalle.

20. M. A. Mallawatantri,
Consultant General Surgeon,
Base Hospital, Marawila.

21. N. A. Perera,
Consultant General Surgeon,
Base Hospital, Wathupitiwala.

22. D. A. K. N. Dunusinghe,
Provincial General Hospital,
Rathnapura.

23. D. Wickramasekera,
Consultant General Surgeon,
Base Hospital, Homagama.
24. P. K. K. H. Halpage,
Consultant General Surgeon,
Base Hospital, Panadura.
25. J. M. L. B. Jayasundara,
Consultant General Surgeon,
District General Hospital, Matale.
26. P. K. Ravindran,
Consultant General Surgeon,
Base Hospital, Akkaraipattu.
27. V. Y. Sabaratnam,
Consultant General Surgeon,
Teaching Hospital,
Anuradhapura.
28. N. W. Halpe Gamage,
Consultant General Surgeon,
Base Hospital, Wathupitiwala.
29. G. M. K. Bogamma,
Consultant General Surgeon,
District General Hospital, Kegalle.
30. B. Aathavan,
Resident Surgeon,
National Hospital of Sri Lanka,
Colombo 10.
31. J. A. V. R. Jayasinghe,
Consultant General Surgeon,
Base Hospital, Gampola.

32. H. R. Thambawita,
Consultant General Surgeon,
National Hospital of Sri Lanka,
Colombo 10.

33. E. G. K. M. Jayasuriya,
Consultant General Surgeon,
Base Hospital, Dambulla.

34. G. K. S. P. Premarathna,
Consultant General Surgeon,
Base Hospital, Balapitiya.

35. H. P. Dias,
Consultant General Surgeon,
Base Hospital, Embilipitiya.

36. W. A. T. M. N. Perera,
Consultant General Surgeon,
Base Hospital, Elpitiya.

37. W. R. M. Obayasekera,
Consultant General Surgeon,
District General Hospital,
Hambanthota.

38. R. G. Rajendran,
Consultant General Surgeon,
Colombo South Teaching
Hospital, Kalubowila.

39. S. J. Jayasinghe,
Consultant General Surgeon,
Colombo South Teaching
Hospital, Kalubowila.

40. J. M. A. D. Leelaratne,
Visiting Surgeon – OPD,
National Hospital of Sri Lanka,
Colombo 10.

41. R. P. N. Samarasekera,
Base Hospital, Balapitiya.

42. G. Kugarajh,
Consultant General Surgeon,
District General Hospital,
Polonnaruwa.

43. P. A. U. S. Samaraweera,
Consultant General Surgeon,
Provincial General Hospital,
Badulla.

44. K. C. Gamage,
Consultant General Surgeon,
District General Hospital,
Embilipitiya.

45. S. Saieswaran,
Consultant General Surgeon,
Base Hospital,
Puttalam.

46. B. J. R. Cooray,
Consultant Clinical Oncologist,
District General Hospital,
Kalutara.

47. C. R. B. Gunarathne,
Consultant Clinical Oncologist,
Provincial General Hospital,
Rathnapura.

48. M. Chenthuran,
Consultant Clinical Oncologist,
Provincial General Hospital,
Badulla.

49. R. M. A. Wijekoon,
Consultant Clinical Oncologist,
District General Hospital,
Chilaw.

50. H. S. N. Peiris,
Consultant Clinical Oncologist,
Provincial General Hospital,
Rathnapura.

51. N. M. T. E. K. Nawarathna,
Consultant Clinical Oncologist,
District General Hospital,
Monaragala.

52. G. D. B. J. Karunaratne,
Consultant Clinical Oncologist,
District General Hospital,
Hambanthota.

53. P. Sasikala,
Consultant Clinical Oncologist,
Teaching Hospital,
Batticaloa.

54. P. K. D. P. Alahakoon,
Consultant Clinical Oncologist,
Teaching Hospital,
Kandy.

55. Attorney General,
Attorney General's Department,
Colombo 12.

56. Sanath J. Ediriweera,
Chairman,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

57. S. M. Mohamed,

58. N. H. M. Chithrananda

59. N. Selvakkumaran

60. M. B. R. Pushpakumara

61. A. D. N. De Zoysa

62. R. Nadarajapillai

63. C. Pallegama

64. G. S. A. De Silva,

All of Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

RESPONDENTS

Before

: Achala Wengappuli, J.

: Menaka Wijesundera, J.

: Sampath B. Abayakoon, J.

Counsel

: Manohara De Silva, P.C. with Harithriya Kumarage
instructed by Gaithri De Silva for the Petitioners.

- : Sanjeewa Jayawardena, P.C. with Shantha Jayawardena instructed by Sanjeewa Kaluarachchi for the 18th, 22nd, 27th, 30th, 33rd, 35th, 37th, 38th, 44th, 45th Respondents.
- : K. G. Jinasena with Dulari Kahawaththa and Imalka Dissanayake instructed by Thouli Jayawardana for the 32nd Respondent.
- : Viveka Siriwardane, P.C. with Hashini Opatha, SSC for the 1st, 2nd, 4th to 17th, 55th Respondents.

Argued on : 08-09-2025

- Written Submissions** : 20-10-2022 (By the 1st to 5th Petitioners)
- : 08-10-2025 [Post-Argument] (By the 1st to 5th Petitioners)
- : 03-10-2025 (By the 1st, 2nd, 4th to 17th, 55th Respondents)
- : 08-10-2025 (By the 18th, 22nd, 27th, 30th, 33rd, 35th, 37th, 38th, 44th, 45th Respondents)
- : 26-10-2022 (By the 49th, 51st, 52nd Respondents)

Decided on : 05-03-2026

Sampath B. Abayakoon, J.

This is an application by the petitioners alleging that their fundamental rights guaranteed under the provisions of the Constitution have been infringed or would imminently be infringed by the 1st to 17th respondents mentioned in the petition.

On the said basis, they have sought several reliefs from the Court as prayed for in the prayer of the petition.

When this matter was supported for leave to proceed on 10-12-2021, this Court, having considered the submissions made by the parties in that regard, granted leave to proceed under Article 12(1) of the Constitution.

At the hearing of this application, the Court heard the submissions of the learned President's Counsel who represented the petitioners and the submissions of the learned Additional Solicitor General (ASG) who represented 1st, 2nd, 4th to 17th and 55th respondents, the 55th respondent being the Attorney General. The Court also heard the submissions of the learned President's Counsel who represented the 18th, 22nd, 27th, 30th, 33rd, 35th, 37th, 38th, 44th, and 45th respondents, as well as that of the learned Counsel who represented the 32nd respondent.

The parties were also allowed to file a synopsis of their submissions for the consideration of the Court.

The facts-

The five petitioners are specialist medical officers of the government health service and are specialists in the field of oncology.

This fundamental rights application relates to annual transfers of specialist medical officers of the government health service for the year 2021.

At the hearing of this application, the position of the learned President's Counsel on behalf of the petitioners was that;

1. There was no legally acceptable transfer scheme in place before the annual transfers were effected for the year 2021.
2. The scheme used was arbitrary.

He submitted that the transfer scheme that existed was one based on the marks given to the grades achieved by the applicants within the service, and it was changed by an amendment to the Service Minutes in that regard, which has resulted in the infringement of the fundamental rights of the petitioners.

Submitting further as to his contention that there was no legal transfer scheme during the relevant period, he pointed out that in terms of Article 55 of the Constitution and the relevant subsequent Articles, it is the Public Service Commission who has the authority to effect the transfers relating to the petitioners which can only be delegated by the said Commission.

He submitted that the Service Minute published in the Government Gazette Extraordinary No. 1883/17 dated 11-10-2014 (the document marked P-13), was the Service Minute applicable at that time in relation to the transfers of medical officers, and under 12.3 of the said Service Minute, it has been specifically stated that the transfers of all the medical officers, the category under which the petitioners fall, and the dental medical officers, will have to be effected according to the transfer procedure approved by the Public Service Commission. It was his position that there was no such approved transfer scheme when the transfers for the year 2021 were published. It was his position that is a fact that has been admitted by the 9th respondent, who is the Secretary of the Public Service Commission.

It was submitted that there was no basis for the respondents to follow the previous Service Minute gazetted in the year 2001, namely Gazette No. 1176/15 dated 22-03-2001 (document marked P-10), and it should not have been considered for the preparation of the transfer list based on the marks given under the said scheme, which was not a transfer scheme prepared and approved by the Public Service Commission. It was his position that any transfer effected under the said scheme for the year 2001 was something that had been done without jurisdiction.

It was pointed out that the Public Service Commission, by publishing the Gazette No. 1990/24 dated 27-10-2016, delegated its powers of transferring the officers of Sri Lanka Medical Service to the Health Service Committee appointed by the Public Service Commission (the document marked Y-3 along with the counter-affidavit of the petitioners). It was submitted that the document Y-3 has also laid down that the scheme needs to be approved by the Public Service Commission, to argue that the transfer effected for 2021 in relation to the petitioners has been done without authority.

In relation to his initial submission that the transfer scheme applied was arbitrary, it was the position of the learned President's Counsel that even if there is *ex facie* nothing wrong in the transfer scheme gazetted in the year 2001 (P-10), the application of it for the year 2021 was arbitrary.

He pointed out and compared the several Service Minutes which were applicable for the time relevant to this application relating to the transfers of medical officers, which include the Service Minute published in Gazette No. 662/11 dated 17 05-1991 (document marked P-8) and the two subsequent Service Minutes marked P-10 and P-13.

It was his position that until 2001 there was no issue as to the transfer of medical officers, but with the publication of the Service Minute marked P-10 in the year 2001, the scheme which used to give marks for the purpose of preparation of the transfer list was changed in relation to the time period taken to get the promotion from Grade II to Grade I.

It was his submission that under the previously applicable marking scheme P-10, a medical officer had to obtain both postgraduate qualifications mentioned in appendix 1 and 2 in the Service Minute. However, in the year 2014, the said requirement was changed to having one of those qualifications to move from Grade II to Grade I. Under the previous scheme, marks would be given up to a period of 10 years a qualified person was in Grade II when considering it for the purpose of transfer. He pointed out that since the then applicable requirement to be promoted to Grade I was fulfilling both the earlier mentioned postgraduate qualifications, the petitioners were unable to move to Grade I of the service. However, under the new Service Minute, a person who has fulfilled only one of the postgraduate qualifications could move to Grade I.

It was his submission that hence, the petitioners should be considered entitled to be allowed additional marks for the period they had to spend than the minimum years under which marks would be calculated in the said category as the said requirement has now been changed.

It was his position that because of this inequality, the petitioners could not obtain the marks they should have obtained, and that was arbitrary.

He further submitted that since the medical service officers are subjected to being transferred every four years, this new scheme only affected them when their transfers were due, which appears to be an explanation as to the delay in coming before the Court in order to challenge a Gazette Notification published in the year 2014.

He submitted that when the petitioners complained about the unreasonableness of the new marking scheme, the Secretary to the Ministry of Health recognized this, and the Board appointed by the Secretary to look into these provisions had recommended that corrective measures should be taken in this regard.

It was further submitted that the decision of the said Board (marked as 9R1 and also the document marked as R4) has clearly been recommended under paragraph No. 10 that the specialist medical officers who were promoted to Grade I during the interim period (2006-2013) should be given the same benefits as those who were promoted after 2013, in the calculation of marks.

It was his position that by the letter marked 9R2(a) dated 18-05-2021, the Public Service Commission has in fact communicated to the Secretary of the Ministry of Health that the said recommendation in paragraph 10 has been approved. However, the same commission has given a different interpretation to it subsequently by the letter marked 9R2(b) dated 31-05-2021, which has the effect of nullifying the said recommendation in paragraph No-10.

It was his contention that this was a mistake committed by the Public Service Commission.

The letter marked 9R3, which was a letter addressed to the Secretary of the Public Service Commission by the Secretary of the Ministry of Health, shows that as a result of the letter dated 18-05-2021, the Ministry has recalculated the marks given to two of the specialist doctors who were the persons who

appealed against the marking scheme to the Ministry, and due to that, an issue has arisen among the other specialist doctors who were not granted the same benefit.

As a result of the letter dated 31-05-2021 marked 9R2(b), the Ministry has reverted to the earlier transfer list, which has already been published by that time. It has also been proposed to appoint another committee to look into the matter until a scheme acceptable to everyone can be formulated and to allow the earlier transfer scheme to be maintained till then.

The letter marked 9R41 shows that the Public Service Commission has approved the said recommendations in writing to the Health Committee of the Public Service Commission.

Submitting that all these procedural faults and misinterpretations are arbitrary and have violated the fundamental rights guaranteed under the Constitution towards the petitioners, it was his position that since several years have passed from the year 2021, which was the year relevant to this application, he will only pursue reliefs sought under prayer (c) and (d) of his amended petition when new transfers are effected in the case of specialist medical officers.

He agreed that quashing the transfer list published for the year 2021 will not arise as of now.

The said two reliefs now pursued by the petitioners read as follows-

(c) Declare that transfers of all Specialist Medical Officers should be carried out under one uniform scheme of Transfer/Point Scheme, and accordingly, if the basis of the allocation of marks is seniority, allocation of marks for the officers' service should not be based on the Service Minute that was applicable to the respective Medical Officer in such a Grade but the actual service of the officer concerned,

(d) Declare that in the transfer scheme, every Specialist is entitled to be given equal number of marks for every year in service in Grade II

irrespective of whether the 1991 Service Minute was applicable or the 2014 Service Minute was applicable to such officer for the purpose of their promotion.

The objections as to the maintainability of the application-

The learned ASG who represented the 1st, 2nd, 4th to 17th, and 55th respondents in her submission before the Court took up three objections for the consideration of the Court as to the maintainability of the application.

The said objections are,

1. That the application is time-barred.
2. The petitioners have failed to name the necessary parties as respondents.
3. In any way, proceeding with the application is a futile exercise.

It was her contention that both the positions taken up by the learned President's Counsel on the basis that there was no legal transfer scheme and the applied transfer scheme was arbitrary should fail accordingly.

Submitting as to her position that the application was time barred, it was pointed out that the fundamental rights petition was filed on 30-06-2021 and if one is to go by the Service Minutes published in the Gazette marked P-10, which was published on 22-03-2001, the application would be belated by 10 years, and if the application is to be considered on the basis of the Gazette issued in the year the 2014, which was the Gazette marked as P-13, still the application would be 7 years out of time.

She drew the attention of the Court to Article 126(2) of the Constitution where a party who alleges that his fundamental rights were infringed, such a person should apply to the Supreme Court seeking relief in respect of such infringement within one month of the alleged violation.

Submitting as to the 2nd objection where it was contended that the necessary parties were not before the Court and the petitioners have failed to name them

in the petition, it was her position that the contentious transfer scheme applied for the year 2021 was in relation to all the medical specialists who were functioning under the Ministry of Health and eligible to apply for transfers, numbering 721 medical specialists. She pointed out that the petitioners are specialists in the field of oncology and they have only named other oncologists as 8th to 24th respondents while ignoring the other medical specialists who are similarly circumstanced and have a right to be heard in an application of this nature, for the simple reason that the marking scheme which was considered for transfers was one applicable across the board to all medical specialists.

Submitting as to the futility of the application, it was the position of the learned ASG that the petitioners had come before the Court to get the approval granted by the Public Service Commission in terms of the letter marked P-29 dated 18-05-2021 validated. (The letter marked 9R2(a) by the 9th respondent in his objections.)

It was her position that the Public Service Commission has rescinded the said approval by its letter dated 26-07-2021 marked as R-9 filed along with the objections tendered by the Secretary to the Ministry of Health, which is also the letter marked 9R-4, and hence, such a recommendation no longer exists.

Making submissions as to the concerns of the petitioners, she pointed out that the annual transfers of specialist medical officers for the year 2021 were commenced by the issuing of the letter marked P-20 dated 05-04-2021 by the Secretary to the Ministry of Health, which is a letter issued with the consent of the Health Service Committee of the Public Service Commission.

She pointed out paragraph 13 of the said letter, which stipulates the mode of awarding points, and was of the view that it has clearly stated that the transfers would be carried out as per the Gazette Notification 1176/15 dated 22-03-2021 (P-10) and 1883/17 dated 11-10-2014. It was her position that it was only in the Gazette dated 22-03-2001 the mode of awarding points has been spelt out and not in the Gazette published on 11-10-2014. It was

submitted that the contention of the petitioners in that regard was wrong and misleading.

It was stated that the petitioners, even before the said letter marked P-20 was published, knew very well that the applicable transfer scheme and the fact that marks would be calculated on the basis of the Gazette published in the year 2001, and that was the very reason why the 2nd and 3rd petitioners submitted an appeal to the Public Service Commission seeking the Commission to change the points awarding system.

It was contended that the petitioners do not maintain the position that there was no valid transfer scheme in the applicable 2021 scheme, and they have also agreed that it has not discriminated one against another, and that it was the transfer scheme that existed for around 25 years and successfully used up to date. She took up the position that it was the scheme applied to transfer all the medical specialists, which has not caused any prejudice or infringement of the fundamental rights of the petitioners.

On the other hand, it was her position that, if what the petitioners wanted were to be granted by the Court, it would infringe the fundamental rights of all the other medical officers who were transferred in the year 2021 based on the marking scheme considered for such transfers. It was also brought to the notice of the Court that the 4th petitioner was a person who never applied for a transfer for the year 2021, and therefore had no basis whatsoever to claim that his fundamental rights were infringed or would be infringed.

The learned President's Counsel who represented the 18th to 22nd, 27th, 30th, 33rd, 35th, 37th, 38th, 44th and 45th respondents, while agreeing with the submissions of the learned ASG, submitted that other than his clients who are also Consultant Surgeons, the petitioners have conveniently left out the other medical specialists who are necessary parties that should be brought before the Court. It was his position that by failing to name them as parties, the petitioners have deprived them of an opportunity of being heard.

He pointed out that in terms of the powers vested with the Public Service Commission under Article 57(1) of the Constitution, the Commission has delegated its power of transfers, including annual transfers of the officers of the Sri Lanka Medical Service for which the petitioners as well as his clients belong, to the Health Service Committee appointed by the Public Service Commission.

It was his view that therefore, the Health Service Committee of the Public Service Commission, who actually effected the transfers, shall be a necessary party, and not making the members of the committee as parties to this application would be fatal as to its maintainability.

To stress his point, he referred to the document marked P-20, which was the notice published with regard to the annual transfers of medical officers for the year 2021, which states that the said notification was published with the consent of the Health Service Committee of the Public Service Commission.

He was of the view that the real reason for the petitioners to come before this Court was to negate the effects of their failure to obtain the necessary specialist qualifications over a long period of time as against the other medical specialists who had gained the same qualifications within a short period, as reflected in paragraph 15 of the objections tendered on behalf of his clients by the 38th respondent.

The submissions of the learned Counsel who represented the 49th, 51st and 52nd respondents were also to the same effect, and all the learned Counsel submitted that the fundamental rights application should stand dismissed for want of any merit.

Consideration of the objections-

Having considered the above factual matrix and the submissions by the learned Counsel, I find it necessary to consider the objections raised as to the maintainability of this application before the Court at this point.

It is my view that if the objections succeed, considering the other factual matters would not arise.

The Applicability of the Time Bar-

In terms of Article 126(2) of the Constitution, an application in relation to any infringement of fundamental rights or an imminent infringement should be complained within one month thereof to the Supreme Court.

The relevant Article 126(2) reads as follows,

126(2). Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an Attorney-at-Law on his behalf, within one month thereof, in accordance with such rules of Court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement. Such application may be proceeded with only with leave to proceed first had and obtained from the Supreme Court, which leave may be granted or refused, as the case may be, by not less than two Judges.

In the case of **Edirisuriya Vs. Navaratnam and Others (1985) 1 SLR 100 at 105**, it was held:

“This Court has consistently proceeded on the basis that the time limit of one month set out in Article 126(2) of the Constitution is mandatory.”

In **SC/FR Application No. 542/2009 decided on 20-01-2021, Priyantha Jayawardena, P.C., J.** held:

“Article 126(2) of the Constitution states that an application for infringement or imminent infringement or fundamental rights can be filed ‘within one month’ thereof in the Supreme Court.

The word ‘within’ used in the said Article requires the period of one month to be calculated from the date of the alleged infringement, imminent infringement, or from the date on which the petitioner became aware of the alleged infringement, if knowledge on the part of the petitioner is required to be established the alleged infringement.”

The only exception to this requirement is the provisions of section 13 of the Human Rights Commission of Sri Lanka Act (HRCSL Act) No. 21 of 1996, which refers to the applicability of the time limitation in terms of Article 126(2) of the Constitution.

The said section reads as follows:

13 (1). Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126 (2) of the Constitution.

However, since there is no averment in relation to a complaint made to the Human Rights Commission by the petitioners, considering the applicability of the said provision would not be necessary.

In reply to the time bar objection, the petitioners in their additional written submissions have taken up the position that the final marks list for the annual transfer of the specialist medical officers was published only on 12-06-2021, whereas the application before this Court was filed on 30-06-2021, and thereby, they have come before the Court within the stipulated time period.

The petitioners have cited the judgment pronounced in **Dayaratne and Others Vs. National Savings Bank and Others (2002) 3 SLR 116 at 126** to argue that they have come before the Court not because of the imminent infringement, but after it had occurred, which is permissible under the law.

I find that the basis for the allegation of infringement of fundamental rights urged in the petition before this Court is not the actual transfer list for the year 2021 as claimed, but the basis upon which the said transfer list was formulated.

This becomes so clear when one looks at the reliefs sought by the petitioners from this Court. In the prayer, the petitioners are seeking relief while challenging the validity of the two Service Minutes published in the years 2001 and 2014. There cannot be any argument that the said two Service Minutes had been used thus far in deciding the transfers of the respective specialist medical grades across the board, which should be well within the knowledge of the petitioners at the time the applications were called upon for annual transfers by the relevant authority. I find no basis for the petitioners' argument that the said Service Minutes would become applicable to them only at the time they become eligible to be transferred from one station to another, which generally occurs every four years. Admittedly, one of the petitioners, namely the 4th petitioner, is not a person who was to go on transfer during the relevant year.

The notice dated 05-04-2021 issued by the Secretary to the Ministry of Health (the document marked P-20) notifying the specialist medical officers under different specialities in medicine about the call for applications for their transfers has clearly spelt out the mode of calculation of points under which the preferential list will be finalized.

Paragraph 13 of the said letter reads as follows-

13. The annual transfer of specialist medical officers for the year 2021 (effective from 01-01-2021) will be done as per Gazette Notification 1176/15 dated 22-03-2001 and 1883/17 dated 11-10-

2014. Points will be calculated up to 31-12-2020 for the annual transfers of the year 2021.

I find that the letter itself was self-explanatory as to the method that would be followed in calculating points in relation to the transfers.

Since this was a time-tested method, it should be well within the knowledge of all the medical specialists, that this was the method previously applied, and that it would be the same scheme that will be applicable when it comes to the annual transfers for the year 2021.

Hence, there cannot be any basis for the petitioners to claim that they waited until the publication of the list of transferred medical specialists to come before this Court claiming the violation of their fundamental rights guaranteed in terms of Article 12(1) of the Constitution under which leave to proceed with the application was granted by this Court.

Under the circumstances, I am of the view that the *ratio decidendi* of **Dayaratne and Other Vs. National Savings Bank and Others (Supra)** cannot be applied to the instant situation as the time has clearly begun to run several years before the institution of the petitioners' fundamental rights application.

For the reasons as considered above, I agree with the objection and hold that the application before this Court is clearly time-barred, and hence, the petitioners are not entitled to maintain the action before the Supreme Court.

The Petitioners have failed to name the necessary parties-

As pointed out correctly by the learned ASG, the petitioners have only named the specialist medical officers that fall under their category of specialization as respondents to the application.

However, the Service Minutes which the petitioners are now challenging before the Court and also the transfer list for the year 2021, are applicable not only to the petitioners and the specialist medical officers mentioned in the

petition as respondents, but also to all the other specialist medical officers serving under the Ministry of Health, who are eligible to apply for annual transfers. As the transfer list was out and in public domain at the time this application was preferred, there would have been no difficulty for the petitioners to find out the details of the other specialists who received transfers. In such a scenario, there may be several other specialist medical officers who are satisfied with their annual transfers and do not agree with the contentions of the petitioners. I find that by failing to name all the necessary parties as respondents to this application, the petitioners have deprived them of an opportunity to be heard.

As correctly pointed out by the learned President's Counsel who represented some of the specialist medical officers who have been named as respondents, and the learned Counsel who represented the other respondents, it is clear that it has been the Health Service Committee of the Public Service Commission under whose consent P-20 has been published.

All the other documents tendered to this Court also establish the fact that it was the Health Service Committee of the Public Service Commission that is responsible for deciding on the matters relating to the annual transfers of the specialist medical officers.

It is clear to me that apart from naming the members of the Public Service Commission as respondents, the petitioners have failed to name the members of the Health Service Committee of the Public Service Commission as respondents to this application.

Under the circumstances, I am of the view that the said Committee is also entitled to be heard in relation to this application.

In the case of **Don Shelton Hettiarachchi Vs. Sri Lanka Ports Authority and Others (2007) 2 SLR 307**, it was observed-

*“The need for having necessary parties before Court was considered by this Court in **Farook Vs. Siriwardhena, Election Officer and Others***

(1997) 1 SLR 145, where it was clearly stated that failure to make a party to an application of person/s whose rights would be affected in the proceedings is fatal to the validity of the application.

It was therefore an essential requirement that the parties who were necessary to this application should have been brought before this Court, and the petitioner had not adhered to this requirement.”

For the reasons as considered above, I agree with the above-considered objections raised by the respondents as to the maintainability of this application and conclude that the application is time-barred and also the petitioners have failed to name the necessary parties to this application.

Accordingly, I hold that the petitioners’ application should fail on the said grounds alone, and hence, considering the futility of the application would no longer be necessary.

The application is dismissed.

Having considered the facts and the circumstances, I order no costs.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.

I agree.

Judge of the Supreme Court