

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

***In the matter of an application under Article  
126 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka***

**SC/FRA/194/2021**

1. Kottewathth Hewage Dharmakeerthi  
No. 9/6, Mission road, Pitakotte
2. Upali Lokusooriya  
No. 112/12, Raja Samaranayake  
Mawatha, Kurusa Junction, Alubomulla
3. Abayaratne Pathirannahelage Nihal  
Ananda Abayaratne  
No. 23, Grenier Road, Colombo 08
4. Jasentu Liyana Harsha Kumar Jayatilake  
268/7, Rukmal Mayatha, Gothatuwa

**PETITIONERS**

-Vs-

1. Mr. P.B.S.C. Nonis  
Director General of Customs  
Customs House,

No. 40, Main Street,  
Colombo 11.

2. Hon. Justice Jagath Balapatabendi  
Chairman  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.
3. Mrs. Indrani Sugathadasa  
Member  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.
4. Mr. Suntaram Arumainayaham  
Member  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.
5. Dr. T.R.C. Ruberu  
Member  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.
6. Mr. Ahamod Lebbe Mohamed Saleem  
Member

The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.

7. Mr. Leelasena Liyanagama  
Member  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.

8. Mr. Dian Gomes  
Member  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.

9. Mr. Dilith Jayaweera  
Member  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.

10. Mr. W.H. Piyadasa  
Member  
The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.

11. The Secretary

The Public Service Commission  
1200/9, Rajamalwatta Road,  
Battaramulla.

12. The Secretary

Ministry of Finance  
The Secretariat  
Colombo 1.

13. H.M. Rajaratne

Director Passenger Services,  
Sri Lanka Customs, 6<sup>th</sup> Floor,  
Customs House, Colombo 11.

14. G.V.U.D. Silva

84, Wanawasala Road, Thorana Junction,  
Kandy Road,  
Kelaniya.

15. D.L. Bandutilake

Director Regional,  
Sri Lanka Customs,  
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Also at,  
22/5, Saman Uyana,  
Dambahena Road,

Maharagama.

16. K.N.L. Fernando

"Vairalin", 33, Chilaw Road,  
Negombo.

17. K.G. Jayawardane

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18. G.W.P. Wijayawardane

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Katuwawala,  
Boralesgamuwa.

19. M.R. Ranaraja

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Colombo 11.  
Also at,

559/1D, Laktharu Mawatha,  
Thalangama North,  
Battaramulla.

20. B.A.S.P.I. Balasooriya  
Director Cargo Examination,  
Sri Lanka Customs,  
Rank Container Terminal,  
Orugodawatte.

21. P.K.N. Siriwardane  
77/2E, Temple Road,  
Maharagama.

22. O.J. Obeysekara  
24/1, Circular Road,  
National Housing Scheme,  
Kiribathgoda.

23. A.M.K.D. Adikari  
Director Declaration,  
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2<sup>nd</sup> Floor,  
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Nawala, Rajagiriya.

24. S.K. De Silva

Kaluwadumulla,  
Ambalangoda

25. D.H.K. Bambarendage

Kaluwadumulla,  
Ambalangoda.

26. K.H.P. Kumarasiri,

33, Madala Place,  
Madiwela.

27. N.D.K. Seneviratne Banda,

386C, Dutugemunu Road,  
Thalangama North,  
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28. W.L.D.R. De Alwis

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Gurulana, Padukka.

29. R. Jayasinghe

Director Revenue Task Force,  
Sri Lanka Customs,  
Rank Container Terminal,  
Orugodawatte.

30. M.D.S. Gamini

Director Valuation,  
Sri Lanka Customs,  
Rank Container Terminal,  
Orugodawatte.

31. D.A.S. Chandrasiri

Director Specialized Services,  
Sri Lanka Customs, 3<sup>rd</sup> Floor,  
Customs House,  
Colombo 11.

32. Hon. Attorney General

Attorney General's Department  
Colombo 12.

### **RESPONDENTS**

**BEFORE:**            **S. THURAIRAJA, PC, J.**  
                             **Dr. SOBHITHA RAJAKARUNA, J**  
                             **SAMPATH K.B. WIJERATNE, J**



**COUNSEL:** Mahendra Kumarasinghe with Samanthi Dissanayake for the Petitioners

Rajitha Perera, DSG for 1<sup>st</sup> to 12<sup>th</sup> and 32<sup>nd</sup> Respondents

Uditha Egalahewa, PC with Thilini Payagala Bandara for 14<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> Respondents

**WRITTEN** Petitioners on 22<sup>nd</sup> November 2021

**SUBMISSIONS:** 14<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 21<sup>st</sup>, 22<sup>nd</sup>, 24<sup>th</sup>, 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> Respondents on 3<sup>rd</sup> March 2022

1<sup>st</sup> to 12<sup>th</sup> and 32<sup>nd</sup> Respondents on 25<sup>th</sup> October 2022

**ARGUED ON:** 20<sup>th</sup> June 2025

**DECIDED ON:** 3<sup>rd</sup> February 2026

**S. THURAIRAJA, PC, J.**

1. When the matter was taken up on 20<sup>th</sup> June 2025, parties in SC/FR/194/2021 and SC/FR/281/2021 agreed that this judgment would be binding on both matters. On 8<sup>th</sup> September 2021, leave to proceed was granted under Article 12(1) of the Constitution.
2. The Petitioners are citizens of Sri Lanka serving in the Department of Customs, acting full-time in the post of Director, Customs, belonging to the Grade II (Executive Grade) of the Sri Lanka Customs Department.
3. The four Petitioners, namely, Kottewatte Hewage Dharmakeerthi, Upali Lokusooriya, Abeyratne Pathirannahelage Nihal Abayaratne, and Jasentu Liayana Harsha Kumar Jayatilake, invoked the fundamental rights jurisdiction of this Court. They contend, *inter*

*alia*, that their rights guaranteed under Article 12(1) of the Constitution have been infringed by the manner in which the Public Service Commission (hereinafter referred to as the 'PSC') and the Department of Customs interpreted and applied the provisions of the Scheme of Recruitment 2009 (hereinafter referred to as the 'SOR'), particularly the requirements under Clause 10.2.1.2 and Clause 11, when making promotions from Grade II to Grade I of the Executive Grade.

4. On 9<sup>th</sup> December 2009, the Cabinet of Ministers approved the Recruitment Procedure for the Executive Service Category of Sri Lanka. Under this Scheme, the post of Director, Customs is classified as a Grade I position. Section 10.2.1.2 of the Scheme sets out the eligibility criteria for the promotion from Grade II to Grade I.
5. Clause 10.2.1.2 of the SOR stipulates four eligibility criteria for promotion from Grade II to Grade I. The same is reproduced below for ease of reference:
  - I. *A Postgraduate degree obtained from a University/institution recognized by the University Grants Commission or, in the alternative for those who have joined the service prior to 01.01.2006, a thesis of not less than 5000 words on a topic relevant to the Customs service approved by a board appointed for the purpose by the Director General of Customs;*
  - II. *Completion of seven (07) years of active service in Grade II, earning all salary increments;*
  - III. *Having a satisfactory period of service during the period of five (05) years immediately preceding without having received any punishment for any disciplinary reasons;*
  - IV. *Having received ratings of 'average' or 'above average' in appraisals during the immediately preceding five (05) years;*

6. The SOR contained an exception clause which provided that, where there were insufficient officers in Grade II who satisfied all the above criteria, vacancies in Grade I were to be filled based on seniority in Grade II together with active and satisfactory service. The same is reproduced below for ease of reference:

*"However, when there are vacancies in the post of Director, Customs and there isn't a sufficient number of officers appointed to Grade I of the SL1 salary scale, it should be regarded as there is no alternative to fill such vacancies and officers in Grade II of the SL1 salary scale qualify to be promoted to Grade I of SL1 salary scale based on their seniority and period of active and satisfactory service."*

7. An internal memorandum dated 25<sup>th</sup> July 2016 [marked "17R-1"] informed all staff officers, including the Petitioners, that a further grace period was being sought from the PSC to complete the Master's degree or thesis requirement under *Condition No (I)*. Officers were cautioned that if such grace period was not granted, those who had not completed *Condition No (I)* would be ineligible for promotion to Executive Grade I, and were urged to take steps to fulfil the requirement without delay.
8. Following a meeting with the PSC held on 12<sup>th</sup> October 2016, a further internal memorandum dated 17<sup>th</sup> October 2016 [marked "17R-2"] notified all staff officers that the requested grace period had been refused. It reiterated that only applications of officers who completed *Condition No (I)* would be forwarded for promotion and directed those intending to seek promotion to act immediately. This position was subsequently formalised by an amendment to the Scheme of Recruitment in 2017 [marked "17R-3(a)"], which exempted only the 1979 batch from *Condition No (I)*, rendering it mandatory for all subsequent batches, including the Petitioners. An additional internal memorandum dated 1<sup>st</sup> June 2017 [marked "17R-3"] again reminded officers performing duties as

Acting Directors of Customs who had not yet been promoted to complete the requirement promptly.

9. The Petitioners opted for the thesis route and submitted their theses between 2019 and 2020. They claim entitlement to Grade I promotion without loss of seniority, as no officers had completed seven years in Grade II at the time of their acting appointments, and they fulfilled the thesis requirement before juniors completed seven years.
10. On 11<sup>th</sup> June 2021, the PSC promoted the 13<sup>th</sup> to 31<sup>st</sup> Respondents (juniors to the Petitioners) to Grade I with effect from dates between 2017 and 2020 [marked "P6"]. The Petitioners allege that this overlooked their seniority, violating Article 12(1) of the Constitution by unequal treatment.
11. The Respondents contend that the promotions were made under the SOR exception, prioritising officers who first fulfilled the mandatory thesis/Master's condition (*Condition No (I)*), which the Petitioners delayed until 2020.
12. When this matter was taken up for hearing on 8<sup>th</sup> September 2021, the Respondents raised three preliminary objections on the maintainability of the application as follows:
  - a) The Petitioners' application is time-barred.
  - b) The Petitioners are guilty of suppression and misrepresentation of material facts and lacks the *uberrima fides*.
  - c) The Petitioners have failed to include necessary parties to this application, and therefore, the Petitioners' application should be dismissed *in limine*.
13. I will proceed to consider the second preliminary objection relating to suppression and misrepresentation of material facts, as it appears to be apparent on the face of the

record. If upheld, that alone would be a sufficient ground to dispose of the application *in limine*.

### **Suppression and Misrepresentation of Material Facts**

14. As noted, one of the objections taken by the Respondents was that the Petitioners have gravely misled the court through misrepresentation and suppression of facts.
15. As Hector Yapa, J. held in ***Jayasinghe v. National Institute of Fisheries and Nautical Engineering (NIFNE) and others [2002]***;<sup>1</sup>

*“When a litigant makes an application to this Court seeking relief, he enters into a contractual obligation with the Court. This contractual relationship requires the petitioner to disclose all material facts correctly and frankly. This is a duty cast on any litigant seeking relief from Court. In the case of Blanca Diamonds (Pvt) Limited v. Wilfred Van Els and Two Others [(1997) 1 Sri LR 360.] The Court highlighted this contractual obligation which a party enters into with the Court, requiring the need to disclose uberrima tides and disclose all material facts fully and frankly to Court. Any party who misleads Court, misrepresents facts. To Court or utters falsehood in Court will not be entitled to obtain redress from Court. It is a well-established proposition of law, since Courts expect a party seeking relief to be frank and open with the Court. This principle has been applied even in an application that has been made to challenge a decision made without jurisdiction. Further, Court will not go into the merits of the case in such situations. Vide Rex v. Kensington Income Tax Commissioners; Princess Edmond De Polignac [(1917) 1 KB 486.]. This principle of uberrima tides has been applied not only in writ cases where discretionary relief is sought from Court, but even in Admiralty cases involving the grant of injunctions.”*

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<sup>1</sup> [2002] 1 Sri L.R. 27, at p. 286.

16. In **King v. The General Commissioners for the Purpose of the Income Tax Acts for the District of Kensington – Ex parte Princess Edmond de Poignac [1917]**,<sup>2</sup> an application for a writ of prohibition was dismissed without consideration of the merits on the ground that the applicant had suppressed and misrepresented material facts. Scrutton L.J. emphasised the established practice of courts that when an applicant seeks relief, *"he should make a full and fair disclosure of all the material facts – facts, not law. He must not misstate the law if he can help it – the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts...."*<sup>3</sup>

17. When it was argued that this principle was confined to *ex parte* applications, Lord Cozens-Hardy M.R. observed that,

*"There are many cases in which the same principle would apply. The applicant must come in the manner prescribed and must be perfectly frank and open with the Court"*.<sup>4</sup>

18. In **Liyanage v. Ratnasiri [2013]**,<sup>5</sup> this Court affirmed the position that an application founded on such conduct is liable to be dismissed without entering into the merits. The Court, relying on earlier authority, reiterated the settled position that judicial relief will not be extended to a party who has failed to approach the Court in good faith. In this regard, reference was made to **Gas Conversions (Pvt) Ltd and 3 Others v. Ceylon Petroleum Corporation and Others**,<sup>6</sup> where it was held that:

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<sup>2</sup> (1917) 1 K.B. 486.

<sup>3</sup> *Ibid*, at p. 514.

<sup>4</sup> *Ibid*, at p. 506.

<sup>5</sup> [2013] 1 Sri L.R. 06, at p. 6.

<sup>6</sup> *Gas Conversions (Pvt) Ltd., and 3 others v. Ceylon Petroleum Corporation and others* SC FR/91/2002, SC Minutes of 13<sup>th</sup> January 2003, at p. 4; See also *W.S. Alphonso Appubamy v. L. Hettiarachchige and another*

*"A series of judgments of our courts have enunciated the requirement of complete disclosure and uberrima fides with regard to applications before Court. It is now a well-established principle that when an applicant has suppressed or misrepresented facts material to an application, and when there is no complete and truthful disclosure of all material facts, the Court will not go into the merits of the application but will dismiss it in limine..."*

19. Furthermore, as was held in **Liyanage v. Ratnasiri**,<sup>7</sup> *"it is the paramount duty of the petitioner to disclose all the relevant material facts truthfully."* The failure to discharge this duty is therefore fatal to the maintainability of the present application.
20. In **Abeywardene v. Inspector General of Police and Others [1991]**,<sup>8</sup> Justice Amerasinghe emphasised that a petitioner seeking just and equitable relief through the Supreme Court's fundamental rights jurisdiction must approach the Court with clean hands.
21. Moreover, as per Rule 3 of the Supreme Court Rules (1990), a Special Leave to Appeal application *"Shall contain a plain and concise statement of all such facts and matters necessary to enable the Supreme Court to determine whether the Special Leave to Appeal should be granted"*. By parity of reasoning, a fundamental rights application must similarly place all essential facts before the Court to allow a proper determination of the alleged infringement.

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77 NLR 131; *Fonseka v. Lt. General Jagath Jayasuriya and Five Others* [2011] 2 Sri. L.R. 372; *Ms. Kayleigh Frazer v. Priyantha Jayawardena* SC FR 399/2022, SC Minutes of 10<sup>th</sup> September 2015.

<sup>7</sup> [2013] 1 Sri. L.R. 06, at p. 17.

<sup>8</sup> [1991] 2 Sri L.R. 349, at p. 381.

22. Admittedly, some of the cases Yapa, J. has referred to in ***Jayasinghe v. National Institute of Fisheries and Nautical Engineering (Supra)***,<sup>9</sup> come from entirely different contexts with distinct jurisdictional bases. A party seeking injunctive relief supports such ex parte, and writ jurisdiction is exercised on a discretionary foundation. His Lordship has very clearly taken cognisance of this fact in the said judgment and gone on to hold that the principle of *uberrima fides* should similarly apply to applications under Article 126(2) of the Constitution.
23. In my view, the said conclusion of Yapa, J. most certainly stands to reason. In applications of this nature, this Court often relies entirely on the contents of affidavits submitted by the parties before us. Even where such other evidentiary material may be available for consideration, fundamental rights proceedings are still guided greatly by the initial pleadings set out in an application filed. This is why a party seeking to invoke such jurisdiction is required to file a corresponding affidavit, swearing or affirming the truthfulness of the material placed before this Court.
24. Where a petitioner deliberately approaches the Court with inaccurate, incomplete or distorted facts, with a view to advancing a personal advantage, such conduct risks miscarriages of justice and undermines the integrity of the judicial process. It must also be borne in mind that if this Court were to arrive at a decision that is fundamentally wrong on the strength of material so misrepresented, and without considering the material suppressed, a party aggrieved by such a decision has no right of appeal, however wrong that decision may be. Such an outcome, needless to say, would be neither just nor equitable.

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<sup>9</sup> *Jayasinghe v. The National Institute of Fisheries and Nautical Engineering (NIFNE) and others* [2002] 1 Sri L.R. 27, at p. 286.



25. It is for such reasons that a duty of utmost good faith is imposed upon a litigant who invokes the just and equitable jurisdiction of this Court in terms of Article 126 of the Constitution.
26. The Respondents contend that the Petitioners have suppressed an Internal Memorandum dated 25<sup>th</sup> July 2016, marked "17R-1", issued by the Director General of Customs to all staff officers—that would, of course, include the Petitioners. This memorandum explicitly informed officers that new recruitment schemes for Sri Lanka Customs had been in operation since 2010, with more than five years passed, and stressed that fulfilling *Condition No (I)* of section 10.2.1.2 of the SOR, i.e., the Master's degree or thesis requirement, was compulsory. It noted that a further grace period was sought from the PSC for this qualification, but if denied, officers failing to complete it would be ineligible for promotion to Grade I, urging immediate action. Had this document been presented to the Court their early awareness of the mandatory thesis requirement and the consequences of non-compliance, thereby undermining their claim.
27. Similarly, the Petitioners have withheld an Internal Memorandum dated 17<sup>th</sup> October 2016, marked "17R-2", which followed a PSC meeting on 12<sup>th</sup> October 2016 and notified all staff officers, including the Petitioners, that the PSC would only forward applications for Grade I promotions from those who had completed *Condition No (I)* of section 10.2.1.2. It conveyed the refusal of a further grace period and the need to fulfil this requirement as soon as possible.
28. The Petitioners have also suppressed the PSC's amendment to the SOR in 2017, marked "17R-3(a)", which declared that only the 1979 batch would be exempted from *Condition No (I)*, making it mandatory for all other batches, including the Petitioners'. This amendment formalised *Condition No (I)* as an indispensable requirement for promotion.

29. Furthermore, the Petitioners withheld disclosure of the Internal Memorandum dated 1<sup>st</sup> June 2017, marked "17R-3", circulated by the Director General of Customs to all staff officers, stated that the officers handling duties in the posts of Acting Director of Customs and those eligible for promotion must complete *Condition No (I)*. It reinforced that only the 1979 batch will be exempted per the PSC's decision.
30. The Petitioners failed to disclose the PSC's communication, marked "1R8", which outlines the PSC's interpretation of the exception clause in section 10.2.1.2 of the 2009 SOR. This document specifies that when there are insufficient officers who have completed 7 years in Grade II, promotions to Grade I can be made based on seniority and satisfactory service without regard to the 7-year requirement, provided the other conditions are fulfilled. This material directly contradicts the Petitioners' assertions that all eligibility criteria under Clause 10.2.1.2 of the SOR were of equal weight without prioritisation, and that the exception clause applied solely based on seniority when no officers had completed 7 years of service in Grade II.
31. The Petitioners have further suppressed a letter dated 17<sup>th</sup> June 2019, marked "17R4", which granted promotions to twelve officers, who were contemporaries and juniors of the Petitioners, to the post of Director of Customs (Executive Grade I) under the aforesaid exception, with effective dates ranging from 6<sup>th</sup> June 2017 to 18<sup>th</sup> May 2018. This document details that these promotions were made without considering the 7-year service requirement, as the officers had fulfilled *Condition No (I), (III) and (IV)* of section 10.2.1.2. Had "17R4" been disclosed, it would have undermined the Petitioners' case by demonstrating prior instances where the exception was applied precisely as in the impugned promotions, allowing juniors who prioritised *Condition No (I)* to advance over seniors like the Petitioners who delayed fulfilling it.

32. While the above mentioned elements of the suppression and misrepresentation relate to all the Petitioners, the Petitioners have also suppressed the letter of promotion of the 1<sup>st</sup> Petitioner to Grade II, marked "1R1". This letter accurately dates the 1<sup>st</sup> Petitioner's promotion to 8<sup>th</sup> September 2012, as opposed to 2<sup>nd</sup> April 2014, which is the date set out by the Petitioners in paragraph 3 of the Petition. Accordingly, he had completed 7 years in Grade II on 8<sup>th</sup> September 2019, not on 2<sup>nd</sup> April 2021 as falsely claimed in paragraph 13. The content of this document, if not withheld, would have been unfavourable by exposing the 1<sup>st</sup> Petitioner's ineligibility for earlier promotions due to his own delays, contradicting the collective claim that no one had 7 years.
33. Upon a careful consideration of the pleadings and the material placed before this Court, I am of the view that the Petitioners have suppressed various material documents and misrepresented various aspects relevant to the issues raised in this application. The manner in which the submissions were presented was such that, without careful examination, the Court could have easily been misled. This combined misrepresentation by all Petitioners and suppression of documents amounts to a breach of *uberrima fides*, as they systematically withhold and distort information essential for a fair judgment.
34. Accordingly, I uphold the preliminary objection raised by the Respondents on suppression and misrepresentation. In light of this finding, this Court need not consider the remaining objections raised by the Respondents.
35. Although it is not necessary to consider the merits of this application, as I have already considered the merits to a great extent in my reasoning thus far, I wish to briefly comment on the substance of their application as well.

### **Is there a violation of Article 12(1) of the Constitution?**

36. The Petitioners contended that the action of the PSC, in overlooking the Petitioners and promoting officers junior to the Petitioner to Grade I over and above the Petitioners, violates their fundamental rights under Article 12(1) of the Constitution. The Petitioners have contended that all conditions applicable to the selection process are required to carry equal weight and that no criterion can be treated as more significant than another.
37. I am not inclined to accept this contention as the law does not require a rigid or mechanical application of criteria devoid of regard to the nature and responsibilities of the post. In matters relating to promotion and recruitment, the appointing authority is entitled to determine the relative importance of applicable criteria, having regard to the nature, responsibilities and requirements of the post. Seniority does not confer an automatic right to promotion, and greater weight may legitimately be assigned to considerations of merit, ability and performance where the duties of the higher post so demand.<sup>10</sup> Furthermore, a scheme of recruitment is not immutable and may be modified or adjusted by the competent authority, provided such changes are reasonable classifications relevant to a legitimate objective, non-arbitrary and applied equally to those similarly situated.<sup>11</sup>

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<sup>10</sup> *Dharmaratne and another v. Sri Lanka Export Development Board and 13 others* [1995] 2 Sri L.R. 324; *State of Mysore and another v. Syed Mahmood and Others* [1968] AIR 1113; *Samarasekera v. Attorney-General and Others* SC FR 46/2021 (SC Minutes 23<sup>rd</sup> November 2022).

<sup>11</sup> *Jayasinghe Arachchilage Samantha Bandara Mangala Jayasinghe v. Pujith Jayasundara* SC FR 427/2018, SC Minutes of 5<sup>th</sup> May 2022; *Wasantha Dissanayake and Others v. Secretary, Ministry of Public Administration and others*, SC FR 611/12, SC Minutes of 10<sup>th</sup> September 2015; *A. H. Wickramatunga and three others v. H. R. de Silva and fourteen others* SC FR 551/98, SC Minutes of 31<sup>st</sup> August 2001; *Ramupillai v. Festus Perera, Minister of Public Administration, Provincial Councils & Home Affairs* [1991] 1 Sri. L.R. 11; *Palihawadana v. Attorney General* [1978] 1 Sri. L.R. 65

38. Accordingly, the assignment of differing weight to relevant criteria cannot, of itself, be characterised as arbitrary or unreasonable. In the present case, the assignment of differing weights to *Condition No (I)* and *(II)* of the SOR was expressly communicated to the Petitioners by letter prior to the implementation of the process.
39. The Respondents who were promoted completed *Condition No (I)* earlier, thus qualifying for promotions as vacancies arose from 2017-2020. In contrast, the Petitioners, while being fully aware of the mandatory status and absence of a grace period since 2017, still significantly delayed taking any meaningful action. They had waited until mid-2019 to submit their thesis proposals,<sup>12</sup> leading to thesis approvals only in 2020.<sup>13</sup> This protracted delay, despite repeated warnings and the clear deadline implications from 2016-2017, demonstrates a lack of diligence on the Petitioners' part, further distinguishing them from the Respondents who acted promptly. Acting appointments provided no substantive override to any of the applicable criteria for promotion, as the 1<sup>st</sup> June 2017 memorandum [marked "17R-3"] explicitly warned non-promoted acting Directors to complete requirements swiftly.
40. The temporal disparity in readiness creates a rational distinction. Article 12(1) requires equality among those who are similarly circumstanced and does not mandate identical treatment of persons who are not so placed.<sup>14</sup> Treating these unequals—i.e. the conscientious applicants who took prompt action to work on their qualifications as

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<sup>12</sup> 1<sup>st</sup> Petitioner on 17<sup>th</sup> July 2019; 2<sup>nd</sup> Petitioner on 18<sup>th</sup> August 2019; 3<sup>rd</sup> Petition on 09<sup>th</sup> July 2019; the 4<sup>th</sup> Petitioner on 10<sup>th</sup> July 2019.

<sup>13</sup> 1<sup>st</sup> Petitioner received the approval on 31<sup>th</sup> January 2020, and others received approval on 19<sup>th</sup> August 2020.

<sup>14</sup> SC FR Application No. 247/2016, SC Minutes of 05<sup>th</sup> August 2024, at p. 25.

opposed to the Petitioners who slept on it—differently reflects legitimate classification and not discrimination.

## **CONCLUSION**

41. I find that the Petitioners have suppressed and misrepresented material facts in their application before this Court, amounting to a breach of the duty of *uberrima fides* owed to this Court, and this application ought to be dismissed *in limine*.
42. I further find that Petitioners have not been able to establish any violation of the fundamental rights guaranteed under Article 12(1) of the Constitution.
43. The application is dismissed, and each Petitioner is directed to pay a nominal sum of Rs. 5,000/- as State costs within three months from the date of this judgment.

***Application Dismissed.***

**JUDGE OF THE SUPREME COURT**

**Dr. SOBHITHA RAJAKARUNA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**SAMPATH K.B. WIJERATNE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**