

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

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

**S.C. (FR) Application No.237/2012.**

1. Graduate Employees' Union, No.12/2,  
Weera Mawatha, Subhuthipura,  
Battaramulla.
2. W. P. Sunith Jayasena, President,  
Graduate Employees' Union, No.12/2,  
Weera Mawatha, Subhuthipura,  
Battaramulla.
3. Chandana Sooriyarachchi, General  
Secretray, Graduate Employees' Union,  
No.12/2, Weera Mawatha, Subhuthipura,  
Battaramulla.
4. W. P. Sumith Jayasena, Development  
Assistant, (Ministry of Irrigation and  
Water Management) "Jayanthi",  
Porasankulama, Galgamuwa.
5. L. D. Thusara, Social Development  
Assistant (Department of Social Services),  
41/B,59, Kalamuthukatiyawatta,  
Wataraka, Meegoda.
6. N.H.K. Dilip Kumara, Cultural Promotion  
Officer, (Ministry of Cultural Affairs and  
National Heritage) 14A, Lane,  
Wickramasinghapura Battaramulla.

7. Madara Darshani Samaranayake, Science and Technology Officer, (Ministry of Science and Technology) No. 12/71, Jayanthipura Road, Baladaksha Mawatha, Kurunegala.
8. S. B. Kandauda, Early Childhood Development Assistant, (Ministry of Women's Employment and Social Welfare) No.72/2, Gramodaya Mawatha, Kalalgoda Pannipitiya.
9. G.I.D. Mewan, Human Resource Development Assistant, (Ministry of Labour Relations and Manpower, NO.17, Danwattagoda, Dharga Town.
10. T. Wanniarachchi, Development Assistant, ( Southern Provincial Council) No.221, Ratmalwala, Tangalle.
11. H.K.S. Priyankara, Development Assistant, (Western Provincial Council ) No.25, Grinear Road, Borella.
12. W.A.S. Warnasooriya, Cultural Officer, (North Western Provincial Council), No.5/A25, Refinery Housing Scheme, Makola South, Makola.
13. W. H. D. Warusha Witharana, Investigation Assistant, (Ministry of Health), No.76/1, Sri Dalada Mawatha, Delgamuwa, Kuruwita.

**Petitioners**

**-Vs.-**

1. Secretary, Ministry of Public Administration and Home Affairs, Independence Square, Colombo 7.
- 1A. Secretary, Ministry of Public Administration and Management, Independence Square, Colombo 7.
- 1B. Mr. K. D. N. Ranjith Asoka, Ministry of Public Administration and Management, Independence Square, Colombo 7.
2. Mrs. Godakanda, Director General, Department of Management Services, Ministry of Finance and Planning, The Secretariat, Colombo 01.
- 2A. Mrs. Godakanda, Director General, Department of Management Services, Ministry of Public Administration and Management, Independence Square, Colombo 7.
- 2B. Mr. S. Aloka Bandara, Director General of Combined Services, Ministry of Public Administration and Management, Independence Square, Colombo 7.
3. The Secretary, Ministry of Finance and Planning, The Secretariat, Colombo 01.
- 3A. The Secretary, Ministry of Finance, Colombo 01.
- 3B. Mr. K. M. Mahinda Siriwardana, The Secretary, Ministry of Finance, Colombo 01.
4. M.N. Junaid, Co-Chairman, National Salaries and Cadres Commission.
5. C. N. C. W. Mathews, Co-Chairman, National Salaries and Cadres Commission.

6. B. Wijerathna Secretary, National Salaries and Cadres Commission.
7. Ariyapala de Silva, Member,
8. S. C. Mannapperuma, Member,
9. Deshabandu M. Mackey Mohomed, Member
10. Prof. Carlo Fonseka, Member,
11. Soma Kotakadeniya, Member,
12. Jerry Jayawardena, Member
13. Dr. Lionel Fernando , Member
14. Leslie Devendra, Member,
15. V. Kanagasabapathi< Member
16. Gunapala Wickramarathna, Member

The 3<sup>rd</sup> to 15<sup>th</sup> Respondents are of ; National Salaries and Cadres Commission, No.130, Block 02, BMICH, Colombo 07.

- 11A. Don. Herbert Nebille Piyadigama,  
11AA) Mr. W.J.L.U. Jayaweera, Chairman
- 12A. Jayalath Ranasinghe Wimalasena  
Dissanayake,  
12AA) Mr. Gotabhaya Jayaratne, Member
- 13A. Gunasekara Liyanage Wimaladasa  
Samarasinghe  
13AA) Mrs. Sujatha Cooray, Member,
- 14A. Ginigaddarage Piyasena,  
14AA) Dr. Madura Wehalla, Member,

- 15A. Ranatunga Appuhamilage Dona Rupa Malini Peiris,  
15AA) Mr. M. S. D. Ranasiri, Member,
- 16A. Dayananda Widanagamachchi  
16AA) Dr. Ananda Hapugoda, Member,
- 17A. Sembakuttige Swarnajothi,  
17AA) Mr. Sanjeewa Somaratne, Member,
- 18A. Benedict Karunajeewa,  
18AA) Mr. Ajith Nayanakantha, Member,
- 19A. Sujeewa Rajapakse,  
19AA) Dr. Ravi Liyanage, Member,
- 20A. Harsha Warnakuula Fernando,  
20AA) Mr. Sanath Ediriweera, Member,
- 21A' Prof. Sampath Amaratunga,  
21AA) Prof. Ranjith Senarathna, Member,
- 22A. Dr. Ravi Liyanage,  
22AA) Eng. R. M. Amarasekara, Member
- 23A. Wegapitiya Kattadiyalage Hemachandra Wegapitiya,  
**23AA) Major Gen. (Rtd.) Siri Ranaweera, Member,**
- 24A. Keerthi Kotagama,  
24AA) Mr. W.H. Piyadasa, Member,
- 25A. ReyazMihular
- 26A. Priyantha Fernando
- 27A. Leslie Shelton Devendra

- 28A. Wijesinghe Wellappili Don Sumith  
Wijesinghe
- 29A. Don Somaweera Chandrasiri
- 30A. Walgama Hewamaluwage Piyadasa
- 31A. Secretary, National Pay Commission
- 31AA) Mrs. Chandrani Senaratne Secretary  
Substituted Members of National Pay  
Commission.
- All of Room NO.130, 2B, B.M.I.C.H.,  
Colombo 8.
20. Vidyajothi Dr. Dayasiri Fernando,  
Chairman, Public Service Commission.
- 20A. Mr. Dharmasena Dissanayake,  
Chairman , Public Service Commission.
- 20B) Mr. Sanath J. Ediriweera, Chairman ,  
Public Service Commission.
21. Secretary, Public Service Commission.
- 21B) Mrs. W.H. M. M. C. K. Dayaratne,  
Secretary, Public Service Commission.
22. Mr. Palitha M. Kumarasinghe PC, Member
- 22A Mr. A. Salam Abdul Waid.
- 22B) Mrs. S. M. Mohamed, Member, Public  
Service Commission.
23. Mrs. Sirimavo A. Wijeratne, Member,
- 23A. Ms. D. Shirantha Wijeratne,
- 23B) Mr. N.H.M. Chitrananda, Member,  
Public Service Commission.

24. Mr. S. C. Mannapperuma, Member,  
24A. Dr. Prathap Ramanujam  
24B) Prof. N. Selvakkumaran, Member,  
Public Service Commission.
25. Mr. Ananda Seneviratne, Member  
25A. Mrs. V. Jegarasasingam  
25B) Mr. B. R. Pushpakumara, Member,  
Public Service Commission
26. Mr. N.H. Pathirana, Member  
26A. Mr. Santi Nihal Seneviratne,  
26B) Dr. A.D.N. de Zoysa, Member,  
Public Service Commission
27. Mr. S. Thillanadarajah, Member,  
27A. Mr. S. Ranugge,  
27B) Mrs. R. Nadarajapillai, Member,  
Public Service Commission.
28. Mr. M. D. W. Ariyawansa, Member,  
28A. Mr. D.L. Mendis,  
**28B) Mr. C. Pallegama, Member,**  
Public Service Commission.
29. Mr. A. Mohamed Nahiya, Member,  
29A. Mr. Sarath Jayathilaka.  
29B) Mr. G. S. A. de Silva, PC, Member,  
Public Service Commission.

The 16<sup>th</sup> to 25<sup>th</sup> Respondents are of ;

Public Commission, ,

No117, Nawala Road, Narahenpita.  
Colombo 05.

Substituted Members of the Public Service  
Commission.

All of No.177, Nawala Road, Narahenpita.  
Colombo 05.

The 20B to 29B Respondents are of; Public  
Service Commission, No.1200/9,  
Rajamalwatta Rod, Battaramulla.

30. W.D. Somadasa, Director General of  
Establishment, Ministry of Public  
Administration and Home Affairs,  
Independence Square, Colombo 07.

30A. W.D. Somadasa, Director General of  
Establishment, Ministry of Public  
Administration and , Managements  
Independence Square, Colombo 07.

30B) Mr. H. A .Chandana Kumarasingha, Director  
General of Establishment, Ministry of Public  
Administration and , Managements  
Independence Square, Colombo 07.

**31.** Director General of National Budget,  
Department of the Natonal Budget,  
Ministry of Finance and Planning ,  
Colombo 01.

31A. Director General of National Budget,  
Department of the Natonal Budget,  
Ministry of Finance, Colombo 01.

31B) Mr. S. D. J. Nilukshan, Director General of  
National Budget, Department of the

National Budget, Ministry of Finance,  
Colombo 01.

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

**Respondents,**

**BEFORE** : S. THURAIRAJA, PC., J.  
ACHALA WENGAPPULI, J.  
ARJUNA OBEYESEKERE, J.

**COUNSEL** : Saliya Peiris P.C. with Thanuka Nandasiri instructed by  
Manjula Balasuriya for the Petitioner.  
Rajitha Perera DSG instructed by Sonali Collure SA for  
the 32<sup>nd</sup> Respondent.

**ARGUED ON** : 04<sup>th</sup> December, 2024

**DECIDED ON** : 25<sup>th</sup> February, 2026

**ACHALA WENGAPPULI, J.**

The 1<sup>st</sup> Petitioner, the *Graduate Employees' Union*, along with the 2<sup>nd</sup> to 13<sup>th</sup> Petitioners, who are members of that trade union, have invoked the jurisdiction of this Court conferred under Articles 17 and 126(1) of the Constitution on an allegation of an infringement of fundamental rights by the executive and administrative actions of the Respondents.

When this petition was supported for the consideration of leave to proceed on 06.08.2012 by the learned President's Counsel who appeared on behalf of the Petitioners, this Court thought it fit to grant Leave to Proceed in respect of the alleged violation of fundamental rights guaranteed to them under Article 12(1) of the Constitution.

In the said application, it is stated that the 2<sup>nd</sup> to 13<sup>th</sup> Petitioners were recruited to the Public Service under the Government Graduate Scheme Program during the intakes of 1999, 2004 and 2009. They were so recruited upon a policy decision taken to implement "*priority activities of the Government.*" They were initially appointed as Graduate Trainees and assigned randomly to various public entities. In 2006, with the issuance of Public Administration Circular No. 06/2006, those who have been recruited under the said Scheme were categorised as "*Associate Officers*" and placed under salary scale MN-4.

The 2<sup>nd</sup> to 13<sup>th</sup> Petitioners claim that, upon representations being made to that effect, the Department of Management Services has prepared a draft Service Minute for these graduates, who are similarly circumstanced as the Petitioners and to place them in a suitable salary scale. Further discussions on the said draft Service Minute were conducted from time to time with various agencies of the executive and when the 3<sup>rd</sup> Petitioner lodged his protest for the continued failure on the part of the administration to publish a Service Minute on 10.09.2007, the then Director General (Establishments) by his letter dated 04.10.2007 conveyed that certain actions have been taken to approve the Service Minute.

Therefore, the Petitioners alleged that the Respondents, despite repeated requests made to that effect, have failed to publish a Service Minute and made the career prospects of those Graduate employees very bleak. In this regard, the

1<sup>st</sup> Petitioner has filed an application in this Court (SCFR 183/2009) seeking a direction of Court on the Respondents who are named in that application to finalise and publish a Service Minute for Graduate employees who were recruited in the years 1999 and 2004 within a reasonable time.

When the Petitioners have learnt that the Cabinet of Ministers have approved a Service Minute for Graduate employees on 18.01.2012, they raised objections to the same on the basis that it failed to introduce an acceptable salary scale and acceptable promotional prospects as there was no provision for their eligibility to apply for Sri Lanka Administrative Service. The Petitioners expected themselves to be placed in the salary scale of MN-5, instead of current salary scale MN-4.

On 14.02.2012, the Ministry of Public Administration and Home Affairs published a Service Minute titled "*Minute of the Programme Officers Service*" in the Government Gazette No. 1745/11 for all Graduates, who have been recruited to the Public Service under the Government Graduate Scheme Programs of 1994, 1999, 2005 and 2009 (P23). Once again, in the said Service Minute, they were placed in the salary scale MN-4. The Petitioners did not accept the said Service Minute and made representations to the relevant authorities as in terms of the said Minute there are only grade promotions, commencing from Grade III, which is the recruitment Grade and then to Grade II and Grade I. Since there was no positive response, the Petitioners have made a complaint to Human Rights Commission of Sri Lanka on 12.03.2012.

In these circumstances, the Petitioners seek *inter alia* a declaration that their fundamental rights under Article 12(1) are violated by the Respondents and "[D]eclare that the *Minute of the Programme Officers Service*" dated 14.02.2012, marked

as P23, is null and void and no force in law” and the additional relief of cancelling P23. They also sought an order of Court for a direction on the Respondents to formulate a Service Minute.

The 1<sup>st</sup> Respondent, being the Secretary to the Ministry of Public Administration, resisted the application of the Petitioners, and denied the allegation made by them that, in the process of formulating the *Minute of the Programme Officers Service* and in granting approval thereto by the Public Service Commission, the Respondents have infringed their fundamental rights.

In paragraphs 41(b) and (c) of the Statement of Objection, the 1<sup>st</sup> Respondent averred that letter P22, makes it abundantly clear that the 1<sup>st</sup> Petitioner Union and its office bearers were fully aware of the contents of the said *Minute of the Programme Officers Service* by 13.02.2012 and therefore the instant application filed has been filed out of time by the Petitioners and as such it should be dismissed *in limine*.

The Petitioners, in paragraph 31 of their counter affidavit, denied the averments contained in the 41<sup>st</sup> paragraph of the 1<sup>st</sup> Respondent’s Statement of Objections and stated that they made two complaints to the Sri Lanka Human Rights Commission on 12.03.2012 (P24).

When this application was taken up for hearing on 04.12.2024, learned DSG who represented the Respondents, reiterated the objection which the 1<sup>st</sup> Respondent has taken in his Statement of Objections to the effect that the application of the Petitioners is time barred. It was contended by the Respondents, that the Petitioners, in paragraph 55 of their petition have averred that the 1<sup>st</sup> Respondent Union, by her letter dated 13.02.2012 (P22), conveyed the objection of its membership to the 1<sup>st</sup> Respondent and other relevant authorities

on the then finalised *Minute of the Programme Officers Service*. Learned DSG therefore contended that the Petitioners were fully aware of the Service Minute, which was formulated by the Respondents to cover all Graduates who were recruited to the Public Service under the Government Graduate Scheme Program in the years 1994, 1999, 2005 and 2009 but have filed the instant application before this Court out of time. Therefore, he moved that the instant application be dismissed *in limine*.

Perusal of the reliefs sought by the Petitioners in the instant application revealed that the primary relief sought from this Court by them is to nullify the *Minute of the Programme Officers Service*. Paragraphs "C" and "D" specifically framed with a view of nullifying the said *Minute of the Programme Officers Service*, which was tendered along with their petition, marked as P23.

It is also evident from the narrative of the Petitioners that during the past so many years they were continuously making representations to the relevant authorities demanding that a Service Minute for them should be formulated. That did eventually take place with the publication of the *Minute of the Programme Officers Service* in the Government Gazette No. 1745/11 on 14.02.2012, by the Director General of the Combined Services, Ministry of Public Administration and Home Affairs. P23 also indicates that the Public Service Commission has approved the said Service Minute on 21.12.2011.

The instant application was filed by the Petitioners only on 10.05.2012.

Article 126(2) sets out a time limit within which an alleged infringement of fundamental rights should be brought before the Supreme Court, by invoking its jurisdiction conferred under Articles 17 and 126(1). That time period is considered as mandatory. The period of one month is obviously exceeded by the

Petitioners in filing this application. In view of the objection taken on the basis that their application is time barred, the Petitioners heavily relied on the document marked as P24.

The document P24 is a form issued by the Sri Lanka Human Rights Commission setting out the format in which the complaint of any infringement of a human right, should be lodged with that Commission. The details contained in P24 relates to a complaint made by the Secretary of the 1<sup>st</sup> Petitioner Union, *S.C. Sooriyarachchi*, the 3<sup>rd</sup> Petitioner, regarding a formulation of a Service Minute without adopting a consultative process. The relief sought therein relates to the salary structure implemented by P. A. Circular No. 6/2006, by which the applicant is placed in the salary scale of MN-4. He also sought to implement a new Service Minute. The document P24 is dated 12.03.2012. However, there is no supporting documents to indicate that complaint was in fact lodged at the Commission office as no receipt issued by that Commission confirming the acceptance and the number allocated to the complaint was produced by the Petitioners.

Along with P24, the Petitioners have tendered a receipt issued by the said Commission indicating that his complaint was accepted on 12.03.2012, and allocated reference No. HRC 110/2012. But the person who made that complaint is one *W.P. Sumith Jayasena* and not the 3<sup>rd</sup> Petitioner, who authored P24. The name of *W.P. Sumith Jayasena* appears in the caption of the Petitioners application as the 4<sup>th</sup> Petitioner. But the said receipt does not indicate the nature of the complaint he has lodged at the Commission. In the counter affidavit, despite the specific objection taken in the Statement of Objections by the 1<sup>st</sup> Respondent, the Petitioners have failed to make any reference to the said receipt issued by the Commission or in respect of which type of a complaint it was issued. It is

probable that the 3<sup>rd</sup> and 4<sup>th</sup> Petitioners have lodged different complaints to the said Commission, as they were office bearers of the 1<sup>st</sup> Petitioner Trade Union. This fact is evident from the document 1R4, which is a certified copy of proceedings of S.C. Application No. 183/2009, where the 1<sup>st</sup> Petitioner and the 3<sup>rd</sup> Petitioner in the instant application have filed that application alleging infringement of fundamental rights. The said application was withdrawn by the petitioners of that application, along with the 1<sup>st</sup> and 3<sup>rd</sup> Petitioners, on 14.05.2012, after stating to Court that they reserved their right to take action whatever they deem as necessary to get their demands. Thus, it is not that the publication of the *Minute of the Programme Officers Service* was done in secrecy. The 1<sup>st</sup> Petitioner Union was very much active in strongly maintaining the demand of placing themselves in the salary scale of MN-5, during the formulation of the said Service Minute and P22 indicated that the Petitioners were fully aware that demand was not met by the Service Minute which has been finalised by the Respondents and sent for publication.

When the 1<sup>st</sup> Respondent has specifically taken up the time bar objection the Petitioners ought to have taken an effort to counter that objection by adducing relevant factual matters, which they have totally neglected to. Thus, the Petitioners cannot derive any support from the provisions contained in Section 13 (1) of Human Rights Commission of Sri Lanka Act No. 21 of 1996 to ward off the effect of the preliminary objection. Thus, in my view the objection raised by the 1<sup>st</sup> Respondent, that the instant application filed by the Petitioners is time barred, should succeed.

The objection that the 1<sup>st</sup> Petitioner, being a Trade Union, has no status to invoke jurisdiction of this Court need not be considered by this Court, in view of the conclusion reached on the time bar objection raised by the learned DSG.

The petition of the Petitioners dated 09.05.2012 is accordingly dismissed. I make no order as to costs.

**JUDGE OF THE SUPREME COURT**

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

I agree.

**JUDGE OF THE SUPREME COURT**

**ARJUNA OBEYESEKERE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**