

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

*In the nature of a Fundamental Rights
Application invoking the jurisdiction of the
Supreme Court under Articles 126 read
with 17 of the Constitution.*

SC FR Application No. 23/2014

1. D.D. Matharaarachchi
No. 189/1, 2nd Lane,
Daham Mawatha, Palenwatta,
Pannipitiya.
2. Sri Lanka Planning Service
Association
Ministry of Highways,
9th Floor, "Sethsiripaya",
Battaramulla.
3. Hewa Gamage Piyarathna
No. 40/1/1, 2nd Lane, Gemunupura,
Pelawatte,
Pannipitiya.
4. Rajaye Ayurveda Waidya
Niladareenge Sangamaya
No. 130/10A, Samanala Place,

Navinna,
Maharagama.

5. W.A.K. Karunathilaka
Research Officer,
Nature Resource Management
Centre,
P.O. Box 52,
Peradeniya.

6. Epa Kankanamge Premasiri
Assistant Director,
Ministry of Education,
Isurupaya,
Battaramulla.

Petitioners

vs.

1. P.B. Abeykoon
Secretary,
Ministry of Public Administration,
Independence Square,
Colombo 7.

1A. J. Dadellage
Secretary,

Ministry of Public
Administration and Local
Government,
Independence Square,
Colombo 7.

1B. J.J. Rathnasiri
Secretary,
Ministry of Public
Administration and Local
Government,
Independence Square,
Colombo 7.

1C. N.M.P.K. Mayadunne
Secretary,
Ministry of Public
Administration and Home
Affairs, Provincial Councils and
Local Government,
Independence Square,
Colombo 7.

1D. N. Bandara Hapuhinne
Former Secretary,
Ministry of Public
Administration and Home

Affairs, Provincial Councils and
Local Government,
Independence Square,
Colombo 7.

1E. Pradeep Yasaratna

Secretary,
Ministry of Public
Administration and Home
Affairs, Provincial Councils and
Local Government,
Independence Square,
Colombo 7.

2. Dayasiri Fernando

Former Chairman
The Public Service Commission,
No. 177, Nawala Road, Narahenpita.

2B. Sathya Hettige

Former Chairman
The Public Service Commission,
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2C. Dharmasena Dissanayake

Former Chairman
The Public Service Commission,

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Narahenpita.

2D. Jagath Balapatabendi

Former Chairman

The Public Service Commission,
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2E. Sanath J. Ediriweera

Chairman

The Public Service Commission,
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Former Member

The Public Service Commission,
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3B. Kanthi Wijetunga

Former Member

The Public Service Commission,
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Narahenpita.

3C. A. Salam Abdual Waid

Former Member

The Public Service Commission,
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Narahenpita.

3D. Indrani Sugathdasa

Former Member

The Public Service Commission,
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Narahenpita.

3E. N.H.M. Chithrananda

Member

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4. Ananda Seneviratne

Former Member

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4B. Sunil A. Sirisena

Former Member

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4C. D. Shirantha Wijayatilaka
Former Member
The Public Service Commission,
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Narahenpita.

4D. V. Sivagananasothi,
Former Member
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4E. G.S.A. de silva
Member
The Public Service Commission,
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5C. Prathap Ramanujam,
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5D. V. Sivagananasotji
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6A. V. Jegarasasingam,
Former Member
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6B. Ahammed Lebbe Mohammed
Saleem,
Former Member
The Public Service Commission,
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6C. S.N. Mohomed
Member
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7. Sirimavo A. Wijeratne,
Former Member
The Public Service Commission,
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7A. Santi Nihal Seneviratne,
Former Member
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7B. Leelasna Liyabagama
Former Member
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7C. Ranjani Madarajapillei
Member
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8. Thillanadarajah,
Former Member
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8A. S. Ranugge
Former Member
The Public Service Commission,
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8B. Dian Gomas
Former Member
The Public Service Commission,
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8C. C. Pallegam

Member

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9. A. Mohomed Nahhiya

Former Member

The Public Service Commission,
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Narahenpita.

9A. D.L. Mendis

Former Member

The Public Service Commission,
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9B. Dilith Jayaweera

Former Member

The Public Service Commission,
No. 177, Nawala Road,
Narahenpita.

9C. M.B.R. Pushpakumara

Member

The Public Service Commission,
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10. M.D.W. Ariyansa,

Former Member

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10A. A. Sarath Jayathilak

Former Member

The Public Service Commission,
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10B. W.H. Piyadasa

Former Member

The Public Service Commission,
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10C. N. Selva Kumaran

Member

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

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

Respondents

Before: Justice Yasantha Kodagoda, PC
Justice A.H.M.D. Nawaz
Justice Kumudini Wickremasinghe

Appearance: Manohara de Silva, PC with Hirosha Munasinghe,
Harithriya Kumarage, Sasiri Chandrasiri and Senal
Kariyawasam instructed by Anusha Perusinge for the
Petitioners.

Dr. Avanti Perera, Deputy Solicitor General for the
Respondents.

Written Submissions: For the Petitioners: Pre-argument written submissions on 4th
July 2024, and post-argument written submissions on 28th
November 2024.
For the Respondents: Pre-argument written submissions on
21st October 2021 and post-argument written submissions on
4th November 2024.

Argued on: 29th August, 2024

Decided on: 25th February, 2026

JUDGMENT

Yasantha Kodagoda, PC, J.

Preliminaries

1. This Judgment relates to an Application filed invoking the jurisdiction of this Court vested in it by Articles 126 read with 17 of the Constitution. Following the Application having been Supported, a differently constituted Bench of this Court had granted Leave to Proceed under Article 12(1) of the Constitution.
2. This Application has been filed on behalf of four (4) groups of public servants who belong to the following All-Island services of the public sector:
 - i. Sri Lanka Planning Service
 - ii. Sri Lanka Ayurvedic Medical Service
 - iii. Sri Lanka Agriculture Service
 - iv. Sri Lanka Education Administrative Service
3. The cause for the institution of this Fundamental Rights Application is the publication of a *Gazette* notification by T.M.L.C. Senaratne, the then Secretary of the Public Service Commission who had acted pursuant to a directive issued by the Public Service Commission (of which the 2nd Respondent had been the Chairman and the 3rd to 10th Respondents had been Members of the said Commission at the time of filing the Application). The notification is captioned “Minute of the Sri Lanka Administrative Service”. This ‘Service Minute’ is contained in the *Gazette* of the Democratic Socialist Republic of Sri Lanka, No. 1842/2 dated 23rd December 2013 (“P11”).
4. The afore-said Service Minute of the Sri Lanka Administrative Service (“P11”) states that it shall come into operation with effect from 1st July 2012 and would

replace the Service Minute of the Sri Lanka Administrative Service dated 28th October 2005. This Service Minute (“P11”) contains *inter-alia* a list of 381 posts (listed in its Appendix marked “A”) which only officers of the Sri Lanka Administrative Service shall be entitled to hold. These posts have been classified under different Grades of officers of the Sri Lanka Administrative Service who would be entitled to hold such posts. Furthermore, the list contains a reference to which State sector institution in which the relevant post shall exist and whether the respective post is attached to the Government or to a Provincial Council.

5. The grievance of the Petitioners pertaining to this Service Minute of the Sri Lanka Administrative Service (“P11”) stem from the following reasons:
 - i. That certain posts previously assigned to certain other All-island Services, such as the All-Island Services being represented by the Petitioners, have by “P11” been exclusively assigned to officers of the Sri Lanka Administrative Service.
 - ii. That a similar provision has not been made identifying posts in the public sector to be exclusively assigned to be held by officers of the other All-Island Services such as those being represented by the Petitioners.
 - iii. That posts which the All-Island Services, being represented by the Petitioners, should be entitled to hold, have now been exclusively assigned to officers of the Sri Lanka Administrative Service.
 - iv. That the identification of posts to be exclusively held by officers of the Sri Lanka Administrative Service had been decided upon in an arbitrary or unreasonable manner.

Due to these reasons, the Petitioners have impugned this (presently operative) Service Minute of the Sri Lanka Administrative Service (“P11”) issued in December 2013.

Preview of the Judgment

6. This Judgment initially considers the factual basis for the allegation of the Petitioners in respect of the impugned Service Minute of the Sri Lanka Administrative Service and the explanation provided in that regard by the Respondents. It also considers the nature, manifestations and the requirements imposed by the Fundamental right to Equality recognized by Article 12(1) of the Constitution and views the impugned Service Minute (“P11”) in the light of those legal requirements. Finally, the Judgment contains a finding on whether by the issuance of the impugned Service Minute (“P11”) of the Sri Lanka Administrative Service, the Fundamental rights of the Petitioners guaranteed by Article 12(1) have been infringed.

The complaint of the Petitioners

7. The Petitioners claim that the decision contained in the afore-stated *Gazette* notification (“P11”) infringe their Fundamental right to Equality and Equal protection of the law, guaranteed by Article 12(1) of the Constitution.
8. Giving contextual background to the complaint presented to this Court, the Petitioners have provided, albeit brief, the following narrative:
- i. In the public sector, primarily, staff officer level (Executive Grade) appointments are held by (i) officers of ‘All-island Services’, (ii) officers of certain ‘Closed Services’ and by (iii) officers of ‘Combined Services’.
 - ii. The following eleven (11) Services have been recognized and nomenclated as ‘All-Island Services’:
 - a) Sri Lanka Engineering Service
 - b) Sri Lanka Administrative Service
 - c) Sri Lanka Planning Service
 - d) Sri Lanka Scientific Service

- e) Sri Lanka Agriculture Service
 - f) Sri Lanka Accountants Service
 - g) Sri Lanka Education Administrative Service
 - h) Sri Lanka Animal Production and Health Service
 - i) Sri Lanka Medical Service
 - j) Sri Lanka Architecture Service
 - k) Sri Lanka Ayurvedic Medical Service
- iii. Appointments, emoluments receivable, Grades and promotions of officers belonging to each of these All-Island Services are governed by their respective Service Minutes.
- iv. A large number of positions including almost all senior managerial, administrative and other high positions in the public sector (excluding posts of heads of government departments who unless otherwise provided are appointed by the Cabinet of Ministers and certain other posts allocated for officers of 'Closed Services') are held by officers of these 'All-Island Services'. These top positions in the public service include those with designations such as Additional Secretaries, Senior Assistant Secretaries and Assistant Secretaries to Ministries, Commissioners, and Directors.
- v. In November 2005, the 1988 Service Minute of the Sri Lanka Administrative Service was repealed and a new Service Minute was introduced. By the new Service Minute, a 'Special Grade' was introduced above 'Class I'. This new Service Minute of the Sri Lanka Administrative Service was published as a *Gazette* notification in *Gazette Extraordinary* dated 14th November 2005 ("P4").
- vi. This new Service Minute of the Sri Lanka Administrative Service ("P4") provided under the caption 'Schedule of SLAS Posts' a list of posts which officers of the Sri Lanka Administrative Service could aspire to hold. That list included posts which only officers of the 'Special Grade' were entitled

to hold. These were very high posts in the public sector, and these were posts which previously officers of 'Grade I' of all the All-Island Services could aspire to hold (independent of the All-Island Service to which they belonged). This in effect prevented officers of 'Grade I' of the other All-Island Services from holding such higher posts listed under the 'Special Grade' of the 'Schedule of SLAS Posts' in "P4".

- vii. Either parallel or soon after the issue of "P4", the Service Minutes of the other All-Island Services were not revised, introducing a 'Special Grade' to each of those Services. This resulted in only some officers of the Sri Lanka Administrative Service (as opposed to senior officers of the other All-Island Services) being appointed to the 'Special Grade'.
- viii. In April 2006, Public Administration Circular No. 6/2006 ("P3") was issued by the Secretary to the Ministry of Public Administration and Home Affairs, which inter-alia provided for the following:
 - a) Recategorization of Grades III, II and I.
 - b) Introduction of a 'Special Grade' over and above 'Grade I' to which officers who had completed five (5) years in 'Grade I' of any of the All-Island Services were entitled to be promoted to. (This was to prevent stagnation in Grade I.)
 - c) Introduction of a two-fold promotion scheme for officers of the All-Island Services to rise up the several Grades. This scheme provided for (a) an exceptional performer to be eligible to earn his first promotion at the end of the sixth (6th) year following recruitment, based on passing a competitive examination, and (b) an officer whose performance is judged to be average at the afore-stated process of appraisal, to be promoted at the end of the tenth (10th) year following recruitment.

- ix. Public Administration Circular No. 06/2006 ("P3") necessitated the revision of the Service Minutes of the several All-Island Services. This was particularly due to the introduction of the 'Special Grade'.
- x. In this backdrop, most of the All-Island Services represented in this Application jointly filed Fundamental Rights Application No. 17/2006 complaining that "P4" caused injustice to them, as by that time only some of the officers of the Sri Lanka Administrative Service were in the 'Special Grade' and therefore only such officers were entitled to hold the high posts contained in "P4". On 3rd December 2008, proceedings relating to that Application was terminated, as the Public Service Commission undertook to the Supreme Court to amend "P4" so as to address the concerns of the Petitioners in that Application.
- xi. Consequent thereto, "P4" was revised by the inclusion of the following averment at the end of the list of posts that had been assigned for officers of the 'Special Grade' of the Sri Lanka Administrative Service:
"Notwithstanding anything to the contrary in the SLAS Minute, posts already approved for the All-Island Services would continue to be held by the respective Services."
Revised "P4" was published in *Gazette Extraordinary* No. 1773/23 dated 28th August 2012 ("P7").
- xii. However, the Service Minutes of the other All-Island Services were not amended in line with Public Administration Circular No. 06/2006. This resulted in none of the officers of the other All-Island Services being entitled for promotion to the 'Special Grade' in their respective services. This led to some of the Petitioners in this Application together with some others of the All-Island Services not represented in this Application filing Fundamental Rights Application No. 312/2008, seeking revision of their respective

Service Minutes as required by Public Administration Circular No. 06/2006 (“P3”).

- xiii. Following a consideration of submissions made by the State Counsel who represented the Respondents to that Application, on 6th March 2009, the Supreme Court made the following order:

“State Counsel who appears for the 1st to 14th Respondents has no objection to granting relief prayed for in paragraph (c) of the prayer to the Petition. In view of this, the 1st to 14th Respondents are directed to implement what is requested in prayer (c) within 3 months.” Accordingly, proceedings were terminated. [By prayer (c), the Petitioners sought a direction to amend the Service Minutes of the Sri Lanka Engineering Service, Sri Lanka Animal Production and Health Service, Sri Lanka Planning Service, Sri Lanka Accountants Service and the Sri Lanka Agriculture Service in the manner required by the afore-stated Public Administration Circular.]

- xiv. Consequent to this Order of the Supreme Court, the Service Minute of the Sri Lankan Planning Service was amended so as to make it compliant with Public Administration Circular No. 06/2006 by the recognition of a ‘Special Grade’ and the inclusion of senior officers of ‘Grade I’ to the ‘Special Grade’. It was published in *Gazette Extraordinary* No. 1670/32 dated 10th September 2010. (“P10a”). However, none of the Service Minutes of the other All-Island Services were revised.
- xv. It is in this backdrop that in December 2013, the Public Service Commission issued “P11” which inter-alia contains a list of high posts in the public sector which could be held only (exclusively) by officers of the Sri Lanka Administrative Service.
- xvi. Furthermore, neither the revised Service Minute of the Sri Lanka Planning Service (“P10a”) issued on 10th September 2010, nor the Service Minutes of the Sri Lanka Ayurveda Medical Service (“P10b” issued on 20th May 1996),

Sri Lanka Agricultural Service (“P10c” issued on 8th May 2002) and Sri Lanka Education Administration Service (“P10d” issued on 1st March 2002) contain a schedule of posts exclusively identified for officers of the respective services, including high posts assigned for officers of the ‘Special Grade’ of the respective services.

xvii. This placed officers of the other All-Island Services at a disadvantage *vis-a-viz* officers of the Sri Lanka Administrative Service.

9. The position of the Petitioners is that, due to the following reasons, the impugned Service Minute of the Sri Lanka Administrative Service (published in *Gazette Extraordinary* No. 1842/2 dated 23rd December 2013 - “P11”) is unlawful, illegal unreasonable and arbitrary:

- i. Instead of reviewing and issuing a new Service Minute each for the All-Island Services represented by the Petitioners, the Respondents have issued a further Service Minute for the Sri Lanka Administrative Service. It has resulted in a series of high posts being exclusively allocated for officers of the Sri Lanka Administrative Service, including certain posts previously held by certain officers of the other All-Island Services.
- ii. “P11” would result in even very senior officers of the Special Grade of the All-Island Services, represented by the Petitioners, being disqualified from holding all high posts of the public sector, including certain posts they must ideally hold. Some examples cited by the Petitioners are as follows:
 - a) Additional Commissioner General, Department of Agrarian Development (held previously by an officer of the Sri Lanka Agriculture Service)
 - b) Commissioner, Deputy Commissioner and Assistant Commissioners of the Provincial Departments of Ayurveda

- (previously held by officers of the Sri Lanka Ayurvedic Medical Service)
- c) Director, National Institute of Indigenous Medicine (previously held by an officer of the Sri Lanka Ayurvedic Medical Service)
 - d) Additional Secretary and Director, Ministry of Agriculture (previously held by officers of the Sri Lanka Agriculture Service)
 - e) Director, Provincial Agriculture Departments (previously held by officers of the Sri Lanka Agriculture Service)
 - f) Additional Regional Education Directors (Administration) of the Provincial Education Ministries (previously held by officers of the Sri Lanka Education and Administrative Service)
- iii. "P11" is contrary to the settlement reached between the parties in SC FR Application No. 17/2006.
 - iv. The assignment of posts in the public sector (as contained in "P11") to officers of the Sri Lanka Administrative Service has been decided upon by the Respondents without any logical basis or rational justification and is thus arbitrary and irrational.
 - v. Implementation of "P11" will result in promotions of public officers of the All-Island Services, being represented by the Petitioners, being curtailed, and their being unable to assume high posts in the public sector.
 - vi. "P11" is tantamount to a change in policy relating to the public sector, which should have been decided upon in terms of Article 55(4) of the Constitution only by the Cabinet of Ministers. The contents of "P11" had not been decided upon by the Cabinet of Ministers. Thus, in issuing "P11", the Respondents have acted *ultra-vires* their powers.
 - vii. "P11" contravenes Article 55(3) of the Constitution, and therefore is unconstitutional.

- viii. The Petitioners had a legitimate expectation of being able to hold senior posts in the public sector, which by “P11” have now been exclusively assigned to officers of the Sri Lanka Administrative Service.
- ix. Prior to formulating “P11”, the Petitioners were not afforded a hearing on the proposed scheme, and thus their legitimate expectations have been unlawfully frustrated.

Submissions of President’s Counsel for the Petitioners

- 10. Mr. Manohara De Silva, PC submitted that the issuance of “P11” was against the spirit of the settlements reached in SC/FR 17/2006 and SC/FR 312/2016. He submitted that both those Applications were settled on the understanding reached between the parties that the officers of the several All-Island Services being represented by the Petitioners would be treated by the Public Service Commission and other authorities in an equitable manner. Learned President’s Counsel submitted that the said expectation had been breached by the Respondents by listing in the schedule of “P11” a series of high-profile posts that may be held only by officers of the Sri Lanka Administrative Service. Thus, officers of the other All-Island Services had not been treated in an equitable manner.
- 11. Learned President’s Counsel emphasized that the identification of such posts to be held only by officers of the Sri Lanka Administrative Service had been done in an arbitrary and unreasonable manner and thus was unlawful. He submitted that in these circumstances, the impugned Service Minute of the Sri Lanka Administrative Service (“P11”) was an infringement of the Fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution.
- 12. Furthermore, learned President’s Counsel submitted that implementation of “P11” would result in (a) the Petitioners and other public servants whom they

represent being deprived of assuming and serving in a large number of posts to which they and their respective predecessors were previously entitled to serve, (b) such deprivation was caused without any valid basis, (c) the promulgation of "P11" tantamounted to a change in State policy, which had been carried out contrary to Article 55(4) of the Constitution, in that the Cabinet of Ministers had not approved the change in such policy, (d) the Petitioners had been deprived of their legitimate expectation of assuming some of the posts contained in Appendix A of "P11", and (e) the Petitioners were not afforded a hearing prior to the formulation of "P11".

13. Responding to the position taken up by the Respondents that the impugned decisions which resulted in the issuance of "P11" was taken by the Director General of the Department of Management Services (DGMS), learned President's Counsel emphasized that there was no 'law' that authorized such officer to formulate Appendix "A" of "P11". On that footing, he submitted that the Public Service Commission cannot shield themselves of the responsibility of having issued "P11". Learned President's Counsel submitted that, in terms of Article 55(3) of the Constitution, the responsibility for determining which category of public servant, possessing which attributes and aptitudes, is entitled to assume a particular post in the public service lies with the Public Service Commission. Furthermore, learned President's Counsel emphatically expressed his disagreement with the submission made on behalf of the Respondent's by learned Deputy Solicitor General, that the decision of the Director General of the Department of Management Services with regard to posts to be assigned exclusively for officers of the Sri Lanka Administrative Services was 'final'. He quipped that such submission was without any basis in 'law' and contrary to contemporary judicial precedent regarding the Rule of Law and the scope of Judicial Review of executive and administrative decisions.

Explanation provided by the Respondents

14. Jinasiri Dadellage (the holder of the office of the 1st Respondent – Secretary to the Ministry of Public Administration and Management), by his Affidavit dated 26th January 2016, has provided the following explanation:

- i. Unlike the All-Island Services represented by the Petitioners and the other All-Island Services, the Sri Lanka Administrative Service was established in 1822 during the British colonial rule of this country. It was previously known as the ‘Ceylon Civil Service’ and thereafter as the ‘Ceylon Administrative Service’. It was in 1972, that it was re-named the ‘Sri Lanka Administrative Service’.
- ii. Whether a particular post is departmental (assigned to a closed service) or whether it belongs to an All-Island Service or to a Combined Service is decided upon by the Director General of the Department of Management Services. Decisions regarding the cadre and positions of the public sector is arrived at when approving the cadre requested by a State institution. This is done by taking into consideration the needs of the relevant service. It is thereafter, that the decision is incorporated into the applicable Scheme of Recruitment or to the Service Minute. It is a matter outside the purview of the Public Service Commission.
- iii. Senior posts in the public sector are not only assigned to officers of the several All-Island Services. They are assigned to other services and personnel as well.
- iv. A ‘Special Grade’ was created above ‘Grade I’ of the All-Island Services and was categorized as a ‘Senior Executive’ category. Salary code ‘SL.03-2006’ was assigned to it. Furthermore, according to Public Administration Circular No. 6/2006, a post within the ‘Special Grade’ should be filled only when a vacancy arises and from among officers who have completed five

- (5) years in 'Class I' together with a total of eighteen (18) years in the Executive category of the Public Service.
- v. The posts in public services assigned to officers of the Sri Lanka Administrative Service who belong to the 'Special Grade' and the other Grades were first prepared and approved by the Director General of the Department of Management Services, prior to their inclusion in "P4".
 - vi. "P10a" was prepared to bring the Service Minute of the Sri Lanka Planning Service compatible with Public Administration Circular No. 06/2006. In September 2010, at a time when the Public Service Commission was defunct, the Cabinet of Ministers approved "P10a". The Service Minutes of the Sri Lanka Agricultural Service ("P10b") and the Sri Lanka Educational Administrative Service ("P10c") which were developed before, were approved by the Public Service Commission (as it was functioning by that time).
 - vii. The new Service Minute of the Sri Lanka Administrative Service ("P11") was formulated in accordance with the provisions of Public Administration Circular No. 6/2006 and the settlement arrived at in SC/FR 17/2006. Furthermore, policy clearance for that Service Minute was obtained from the Cabinet of Ministers on 15th August 2013.
 - viii. Those positions (as approved by the Director General of the Management Services - "Y1") listed in 'Appendix A' of the Service Minute of the Sri Lanka Administrative Service ("P11") were determined based on (a) policy considerations, (b) demands of the public service, and (c) requirements of the respective service. In the future, based on the same considerations, 'Appendix A' will be revised from time to time.
 - ix. The post of 'Additional Director General of the Department of National Planning' had been included in Appendix A, inadvertently.

- x. The posts of 'Additional Secretary of the Presidential Secretariat' and 'Director General of the Ministry of Finance and Planning' have always been held by officers of the Sri Lanka Administrative service. Whereas, the posts of 'Additional Secretary of Ministries' have been held by officers of the Sri Lanka Administrative Service and by officers of the other All- Island Services. That has also been decided upon by the Director General of the Department of Management Services, based on the classification of the post and the nature of the duties and functions of such post ("Y2").
- xi. "P11" has been revised to enable the following positions (listed in "Y3") to be held by an officer of any All-Island Service:
- a) Secretary, Public Service Commission
 - b) Secretary, National Police Commission
 - c) Secretary, Commission to Investigate Allegations of Bribery or Corruption
 - d) Secretary, Salaries and Cadre Commission
 - e) Secretaries of Provincial Ministries
 - f) Director General and Additional Director General, Customs Department
 - g) Post Master General

This amendment to the Service Minute of the Sri Lanka Administrative has been published in *Gazette* No. 1923/47 dated 16th July 2015.

- xii. As at 20th November 2015, the Director General of the Department of Management Services has from time to time approved certain posts to be held by officers of the 'Special Grade' of the other All-Island Services. (Those positions have been listed in documents produced marked "Y4A", "Y4B", "Y5", "Y6", "Y7A" and "Y7B".) This would amount to a revision of "P11".

15. In addition to the foregoing explanation, Dharmasena Dissanayake (the holder of the office of the 2nd and 12th Respondents – Chairman, Public Service Commission) by his Affidavit dated 5th February 2016 has in addition to corroborating the position contained in the Affidavit of the Secretary to the Ministry of Public Administration, provided to the following explanation as well:

- i. Following a period of non-functioning, the Public Service Commission had been re-constituted on or about 2nd July 2014.
- ii. Determination of posts and cadre of the Sri Lanka Administrative Service is a matter outside the purview of the Public Service Commission. The Public Service Commission is only empowered to approve the Service Minutes of the several Services and the Schemes of Recruitment of each posts. Subject to policy clearance by the Cabinet of Ministers, they are determined by the relevant administrative authority, and in this instance by the Director General of the Department of Management Services.
- iii. Appointments to senior administrative posts in the public sector are filled in accordance with Articles 55(2) and 55(3) of the Constitution. Heads of Departments are appointed by the Cabinet of Ministers and other positions are filled according to the relevant Schemes of Recruitment and the Service Minutes.
- iv. There are several senior administrative posts that are not set apart exclusively for officers of any of the All-Island Services.
- v. The Petitioners do not have any legal right in respect of the posts contained in Appendix 'A' of "P11". The only legitimate expectation the Petitioners could have (following the publication of "P4") is that the posts already approved or to be approved in the future for the several All-Island Services, being represented by the Petitioners, will be available to be held by officers of such All-Island Services.

- vi. "P11" was formulated in accordance with Public Administration circular No. 6/2006 and the settlement arrived at in SC FR Application No. 17/2006. Policy clearance for the impugned Service Minute of the Sri Lanka Administrative Service was granted by the Cabinet of Ministers on 15th August 2013 (relevant Cabinet memorandum - "X3", Cabinet Decision - "X4").
- vii. "X5" reflects that, by letter dated 19th November 2013, the Director General of the Department of Management Services has informed the Secretary to the Ministry of Public Administration and Home Affairs that he has approved the posts contained in Appendix 'A' of "P11" for the Sri Lanka Administrative Service.
- viii. The Director General of the Department of Management Services has approved several posts for officers of the Special Grade of the Sri Lanka Planning Service, Sri Lanka Agriculture Service, Sri Lanka Educational and Administrative Service and the Sri Lanka Ayurvedic Medical Service. Those will be enforced in due course.

Submissions of Deputy Solicitor General for the Respondents

16. Replying to the submissions of learned President's Counsel for the Petitioners, learned Deputy Solicitor General (DSG) Dr. Avanti Perera citing from the published responsibilities of the Director General of the Department of Management Services (DGMS), submitted that to the extent relevant to this Application, it was the responsibility of the DGMS to *inter-alia* (i) determine the cadre of each of the positions in the public sector, (ii) identify and include specific posts in the public sector under a particular service, (iii) approve recruitment and promotional procedures of the posts in the public sector, (iv) study and review service minutes and service conditions, and (v) conduct studies on recruitment policy.

17. Learned DSG submitted further that the contents of Service Minutes pertaining to the categories of public officers who are eligible to hold specified posts in the public sector is ultimately a reflection of State policy. In terms of Article 55(1), the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal. According to Cabinet decision dated 21st February 2013 (“X4”), the Cabinet of Ministers had decided that the list of posts to be assigned exclusively for officers of the Sri Lanka Administrative Service (list of posts in ‘Appendix A’ of “P11”) was to be updated in consultation with the Department of Management Services. Accordingly, based on the needs of the relevant Services, as intimated to it by the relevant administrative authorities and having considered each post, the DGMS had by “Y1” approved the lists of posts contained in ‘Appendix A’ of “P11”. Citing the contents of letter dated 19th November 2023 (“X5”) sent by DGMS to the 1st Respondent (Secretary to the Ministry of Public Administration), learned DSG submitted that DGMS had given careful consideration to each post and determined whether or not such post should be included in ‘Appendix A’ of “P11”, while giving reasons therefor. Learned DSG therefore submitted that, the identification of posts to be included in ‘Appendix A’ of “P11” had been done by the DGMS in an objective manner and not in an ad-hoc or arbitrary manner. She further submitted that, the posts listed in ‘Appendix A’ of “P11” was a culmination of the Cabinet decision (“X4”) and the approval given by the DGMS as contained in “Y1”. Thus, she emphasized that ‘Appendix A’ of “P11” was not the exclusive creation of the 1st Respondent (Secretary to the Ministry of Public Administration) nor that of the 12th to 15th Respondents (Public Service Commission). Therefore, learned DSG submitted that the formulation of ‘Appendix A’ of “P11” was completely outside the purview of the Public Service Commission.

18. Furthermore, learned DSG submitted that, even though certain posts in the public sector have been exclusively assigned to officers of the 'Special Grade' of the Sri Lanka Administrative Service (as contained in "P11"), certain posts have been similarly assigned (after the filing of this Application) and have been proposed to be assigned to officers of the Sri Lanka Planning Service ("Y4A", "X13", "X14" and "X17"), Sri Lanka Agriculture Service ("Y4B", "X1", "X8", "X9" and "X19"), Sri Lanka Education Administrative Service ("Y5", "X2", "X12" and "X18") and the Sri Lanka Ayurvedic Medical Service ("Y5", "X15" and "X16").
19. Learned DSG also submitted that the identification of posts to be exclusively assigned to each All-Island Service is an ongoing process and *"much water has flowed since the Petitioners' Application"*.
20. Furthermore, learned DSG submitted that the Petitioners have failed to show how the impugned decisions were grossly arbitrary, irrational or unreasonable.
21. Learned DSG also submitted that it would not be reasonable to expect this Court to consider the justification for each of the posts in 'Appendix A' of "P11" to be listed alongside each such post. That task learned DSG submitted *"has already been carried out by the 1st Respondent, with the approval of the Department of Management Services"*.
22. In these circumstances, learned Deputy Solicitor General submitted that the position of the Respondents is that none of the Respondents have infringed the fundamental rights of the Petitioners.

Analysis and Conclusions

23. **Core issue which requires adjudication** - While the case of the Petitioners is founded upon multiple grounds including certain historical factors such as the settlements reached in SC/FR 17/2006 and 312/2016 and their ensuing expectations (which was categorized as being 'the legitimate expectations of the Petitioners'), the primary ground is premised upon the allegation that the preparation of 'Appendix A' of "P11" which contains a list of senior managerial and administrative posts in the public sector has been carried out in an arbitrary and unreasonable manner and such posts have been exclusively assigned to officers of the several Grades of the Sri Lanka Administrative Service. Additionally, the Petitioners have alleged that similar exclusive allocations have not been made for officers of the several Grades of the other All-Island Services which the Petitioners represent. This additional ground was a fact as at the time this Application was filed in January of 2014. However, as pointed out by learned Deputy Solicitor General who represented the Respondents, this purported anomaly has been addressed after this Application was filed. Several lists containing posts that have been and will be exclusively assigned to the All-Island Services which the Petitioners represent have been tendered to this Court by way of Motions submitted to Court. Multiple documents (which have been referred to in the learned DSG's submissions referred to above) have been filed per each All-Island Service, since such lists have evolved due to preparation of such lists going through several rounds of review. However, learned President's Counsel for the Petitioners submitted that, although such posts are to be exclusively filled by officers of the several Grades of the All-Island Services represented by the Petitioners and the relevant lists have been prepared by the competent authorities, the Petitioners are not satisfied. This is because the so-called 'plum' posts in the public sector (set out in 'Appendix A') continue to remain within the list of posts reserved to be exclusively filled by officers of the several Grades of the Sri Lanka

Administrative Service. Therefore, it is evident that the case of the Petitioners is in fact founded upon the first ground referred to above; that being, the allegation that 'Appendix A' which contains posts in the public sector which are to be filled exclusively from among officers of the Sri Lanka Administrative Service had been prepared in an arbitrary and unreasonable manner, and thus the corresponding decision to permit only officers of the Sri Lanka Administrative Service to fill such posts, infringes the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution. While learned President's Counsel insisted on the well-founded nature of this allegation, the learned DSG vehemently denied this allegation. In these circumstances, I shall approach the judicial adjudication of this Fundamental Rights Application focused on that core issue.

24. Key questions to be answered - In the course of adjudicating this Application, I shall seek to answer the following among other questions:

- i. Have the decision-makers who decided upon the positions to be included in 'Appendix A' of "P11" taken the corresponding decisions objectively or in the alternative in an arbitrary or unreasonable manner?
- ii. In taking such decisions, have the decision-makers been subjective and or biased in favour of officers of the Sri Lanka Administrative Service?
- iii. Are the corresponding decisions lawful and in national and public interests?
- iv. Are the impugned matters within the scope of judicial review of a Fundamental Rights Application, or are they non-justiciable issues, which are beyond the scope of the jurisdiction of this Court?
- v. Would the answers to any one or more of these questions [questions (i) to (iii) above] constitute an infringement of the Petitioners' fundamental rights guaranteed by Article 12(1) of the Constitution?

- vi. Have any one or more of the Respondents infringed the fundamental rights of the Petitioners guaranteed by Article 12(1)?

25. **Officers of All-Island Services and which category (class) they belong** - This Fundamental Rights Application relates to public servants (officers) belonging to four (4) All-Island Services (represented by the Petitioners) and the Sri Lanka Administrative Service. This Court was informed that within the overall public service of this country, there are another seven (7) other All-Island Services, making a total of eleven (11) All-Island Services. In addition thereto, there are certain other Services referred to as 'Closed Services' and 'Combined Service'.

26. Both Counsel agreed with one another, and I too find myself in agreement with the assertion that, all public servants (officers) of the eleven (11) All-Island Services are -

- a) public servants belonging to their respective All-Island Service, and
- b) ranked either in the 'Senior Executive' or 'Executive' categories of the public service of this country.

Therefore, they constitute one category (class), that being 'officers of the several All-Island Services of the public service of Sri Lanka' who also belong to the 'Senior Executive' and 'Executive' Grades of the public service.

27. Nevertheless, learned Deputy Solicitor General in her submissions seemed to suggest that in comparison with the other ten (10) All-Island Services, officers of the Sri Lanka Administrative Service constitute a special and superior category (class). Thus, she attempted to justify the exclusive allocation of posts contained in 'Appendix A' of "P11" to public servants of the Sri Lanka Administrative Service. Apart from adducing some historical facts that reflect its colonial origins and heritage, no evidence in support of the proposition of their superiority was

presented to this Court. Due to the absence of evidence in support of that contention of superiority, it is not possible for this Court to proceed on the footing that officers of the Sri Lanka Administrative Service constitute a superior category of public servants.

28. It is common ground that these public servants of the several All-Island Services (including the Sri Lanka Administrative Service, the All-Island Services which the Petitioners represent and the remaining ten (10) All-Island Services) -

- i. possess certain core skills, experience, expertise and aptitudes which are common to all officers of the same Grade of each such All-Island Services, and
- ii. possess certain other skills, experience, expertise and aptitudes which are unique to officers of the same Grade of the respective All-Island Service, and therefore uncommon to officers of the same Grade of the other All-Island Services.

29. This necessitates me to proceed to adjudicate this matter (particularly for the purpose of applying Article 12(1) of the Constitution) on the premise that, public servants (officers) of each of the Grades (including the Special Grade) of the Sri Lanka Administrative Service, Sri Lanka Planning Service, Sri Lanka Ayurvedic Medical Service, Sri Lanka Agriculture Service and Sri Lanka Education Administrative Service constitute five (5) distinct sub-categories (sub-classes) of public servants belonging to five distinct Services. However, officers of these five (5) All-Island Services along with officers of the other All-Island Services not represented in these proceedings, do constitute one main category (class), which single category can be nomenclated as 'Officers of All-Island Services of the public service of Sri Lanka'. In language that is often used by Counsel before the Supreme Court, this situation can be described as '*officers of the several All-Island Services are*

in fact 'apples' and 'oranges' and several other distinct varieties of fruits (as per each All-Island Service), yet, they are all 'fruits'". In this jargon, the class is a reference to 'fruits' and the sub-classes are references to 'apples' and 'oranges'.

30. This same principle would apply to the other All-Island Services (the six such other Services) which are not represented by the Petitioners. Each such All-Island Service constitutes a separate sub-category within the earlier mentioned single main category (class).

31. In these circumstances and based on the evidence placed before this Court, I cannot treat any one All-Island Service as constituting a superior class within the public service in comparison with the other All-Island Services. Thus, the eleven (11) All-Island Services cannot be placed in a hierarchical order and must be placed separately and collaterally under one broad category; that being 'All-Island Services of the public service of Sri Lanka'. However, within each such All-Island Service, indeed officers of the Special Grade, Grade I, Grade II and Grade III must be placed in a hierarchical order, in that sequence.

32. **Public Administration Circular No. 06/2006 ("P3")** - In April 2006, titled "Restructuring of Public Service Salaries based on Budget Proposals 2006" the then Secretary of the Ministry of Public Administration and Home Affairs had issued 'Public Administration Circular No. 06/2006' ("P3"). This circular announced the implementation of a new salary structure and other emoluments for public servants, according to the basis contained in 'Annexure I' of that circular. This circular prescribed the manner in which existing salaries were to be converted into the new salary scales. The implementation of the new salary structure necessitated all posts in the public service to be re-categorised / re-grouped by each Ministry and Department based on the definitions contained in 'Annexure II' and in terms

of 'Annexure III' of the circular. "P3" also provided for restructuring of service Grades III, II, I and Special Grade, and introduced a two-fold promotional scheme from Grade III to II in the public service. According to the scheme, promotion from Grade I to the Special Grade was after five (5) years. Implementation of these schemes contained in "P3" necessitated the revision of the Service Minutes of the several All-Island Services.

33. Impugned Service Minute of the Sri Lanka Administrative Service ("P11") - Published in *Gazette Extraordinary* No. 1842/2 of 23rd December 2013, captioned "Minute of the Sri Lanka Administrative Service", it has been issued by the then Secretary of the Public Service Commission T.M.L. Senaratne. It is stated in its 'Notification' that it is being issued by the Order of the Public Service Commission. It is also stated that it is to come into operation (and during the hearing it was revealed that it did come into operation with retrospective effect) with effect from 1st July 2012. It causes the substitution of the previous Minute of the Sri Lanka Administrative Service dated 28th October 2005 (published in *Gazette Extraordinary* No. 1419/3 dated 14th November 2005 - "P4") and amendments made to it from time to time.

34. Decision-maker of impugned "P11" - Throughout her submissions, learned Deputy Solicitor General laid emphasis on the fact that 'Appendix A' of "P11" had been originally prepared by the Secretary to the Ministry of Public Administration, revised at the instance of the Director General of Management Services (DGMS) and thereafter approved by the DGMS, and finally approved by the Cabinet of Ministers. Documents tendered on behalf of the Respondents such as "X5", "Y1" and "Y2" seems to support that position. Nevertheless, it is *ex-facie* evident from "P11" that "P11" has been issued by the Secretary of the Public Service Commission on the Order of the said Commission. "P11" makes no reference to

approval given by the Cabinet of Ministers, the Director General of Management Services and to the role performed by the Secretary to the Ministry of Public Administration. Therefore, the purported authority under which “P11” has been issued lies with the Public Service Commission. Therefore, the responsibility for “P11” must be vested in the Public Service Commission. In these circumstances, the position advanced by the Petitioners that the impugned “P11” contains and reflects a series of decisions taken by the Public Service Commission cannot be faulted. Furthermore, that the Petitioners having not cited the Cabinet of Ministers and the Director General of Management Services as parties to this Application also cannot be faulted.

35. **Article 55 of the Constitution** – Article 55 of the Constitution provides as follows:

*“(1) The Cabinet of Ministers shall provide for and determine **all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal.***

*(2) The **appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Department shall, vest in the Cabinet of Ministers.***

*(3) Subject to the provisions of the Constitution, the **appointment, promotion, transfer, disciplinary control and dismissal of public officers shall be vested in the Public Service Commission.***

(4) The Commission shall not derogate from the powers and functions of the Provincial Public Service Commissions as are established by law.

(5) The Commission shall be responsible and answerable to Parliament in accordance with the provisions of the Standing Orders of Parliament for the exercise and discharge of its powers and functions. The Commission shall also forward to Parliament in each calendar year, a report of its activities in respect of such year.” [Emphasis added by me.]

36. It is evident from a plain reading of Article 55, that the Cabinet of Ministers has been vested with the Constitutional mandate of determining and laying down policy relating to public officers. Such policy would include those relating to appointments, promotions, transfers, disciplinary control and dismissal of public officers. However, in terms of Article 55(3), the Constitutional mandate of making specific appointments, granting promotions, effecting transfers, carrying out disciplinary control and dismissal of public officers has been vested in the Public Service Commission. In terms of Article 55(4), this authority is subject to the authority vested in Provincial Public Service Commissions. Furthermore, in terms of Article 55(2), such functions relating to Heads of Departments have been vested in the Cabinet of Ministers. An examination of a Service Minute of an All-Island Service (such as "P11") reveals that it contains policy, a scheme, a mechanism and procedure to be followed relating to the relevant sub-category of public officers pertaining to the -

- a) role of the service,
- b) modes of entry into the relevant All-Island service,
- c) appointments to the service, including basic qualifications and the applicable schemes of recruitment,
- d) service categories and grades,
- e) salary scales,
- f) manner of confirmation in service,
- g) posts belonging to the service,
- h) promotions to higher grades, and
- i) appointments to posts.

However, the Service Minute does not contain all provisions relating to officers of the service, such as matters pertaining to transfers, disciplinary control and dismissal. Be that as it may, it is evident that, a Service Minute of a particular All-

Island Service (such as “P11”) is the outcome of the exercise of power by both the Cabinet of Ministers and the Public Service Commission. While the relevant policy is laid down by the Cabinet of Ministers, the exact mechanism to give effect to such policy and many other matters is specified and promulgated by the Public Service Commission. Within a Service Minute of a particular All-Island Service, it is not possible to separate policy provided by the Cabinet of Ministers and the scheme and the mechanism developed by the Public Service Commission to give effect to such policy. Therefore, as in the instant situation, it is the issuing authority which must take responsibility for the Service Minute. Therefore, the Petitioners having impugned the final decision of the Public Service Commission in issuing “P11” cannot be faulted.

37. **Contents of “P11”** - As referred to in the preceding paragraph, “P11” contains several sets of information pertaining to the Sri Lanka Administrative Service. It also contains a list of posts which only officers of prescribed Grades of the Sri Lanka Administrative Service are entitled to hold.

38. **‘Appendix A’ of the Service Minute of the Sri Lanka Administrative Service (“P11”)** - ‘Appendix A’ is found in the 1st Schedule of “P11” with the caption “The Schedule of the Posts of Sri Lanka Administrative Service”. It contains a list of posts in the public service which can be held exclusively (only by) officers of the Sri Lanka Administrative Service. These positions are categorized under the Grades of the officers of the Sri Lanka Administrative Service who would be entitled to be appointed to and hold such posts. Within each Grade, there is reference to whether or not the relevant post is that of the Government or a Provincial Council and the institution to which the post has been assigned. This categorization takes the following structure:

- i. Special Grade officers of the Sri Lanka Administrative Service

- a) Government posts - 62
- b) Provincial Council posts - 6
- ii. Grade I officers of the Sri Lanka Administrative Service
 - a) Government posts - 111
 - b) Provincial Council posts - 10
- iii. Grade II officers of the Sri Lanka Administrative Service
 - a) Government posts - 62
 - b) Provincial Council posts - 16
- iv. Grade III officers of the Sri Lanka Administrative Service
 - a) Government posts - 97
 - b) Provincial Council posts - 17

This adds up to 381 posts in the public sector. However, the actual number of positions exclusively assigned to officers of the Sri Lanka Administrative Service would be much higher than 381. That is because certain posts in 'Appendix A' such as Additional Secretaries of Ministries and Government Agents / District Secretaries constitutes multiple positions which would obviously be held by several officers. Thus, the total number of positions exclusively assigned to officers of the several Grades of the Sri Lanka Administrative Service would far exceed 381.

39. As stated previously, a few positions listed in 'Appendix A' assigned to officers of the 'Special Grade' have been subsequently removed from the list by the introduction of several amendments to "P11". Examples are the posts of Secretary of the Public Service Commission, Secretary of the National Police Commission, Secretary of the Commission to Investigate Allegations of Bribery or Corruption, the Director General of the Ministry of Finance and Planning and Secretaries to

Provincial Ministries. These amendments were carried out after this Fundamental Rights Application was filed.

40. Posts exclusively assigned to the Sri Lanka Administrative Service - With the view to illustrating the importance of positions exclusively assigned to officers of the 'Special Grade' of the Sri Lanka Administrative Service, I list below some such posts:

- i. Additional Secretary, Presidential Secretariat
- ii. Additional Secretary, Prime Minister's Office
- iii. Additional Secretaries of Ministries
- iv. Director General, Combined Service Division, Ministry of Public Administration and Home Affairs
- v. Director General, Establishments Division, Ministry of Public Administration and Home Affairs
- vi. Government Agents / District Secretaries
- vii. Commissioner General of the Departments of Labour, Land, Land Settlement, Land Use Policy Planning, Motor Traffic, Registration of Persons, Samurdhi, Prisons, Immigration and Emigration, and Commissioners General of several other Government Departments.
- viii. Directors General of the Departments of External Resources, Fiscal Policy, Government Information, Management Services, Manpower and Employment, National Budget, Pensions, and Directors General of several other Departments of the Government.
- ix. Additional Commissioners General, Additional Commissioners, Additional Directors General of several Government Departments.
- x. Secretaries of Provincial Public Service Commissions, Governor's Offices, and Council Offices of Provinces.

41. Thus, there is no doubt, and therefore I find myself in complete agreement with the submission made by learned President's Counsel for the Petitioners that, the apex and most important and responsible posts of high recognition in public sector (colloquially referred to by learned President's Counsel as 'plum' or 'prestigious' posts in government) have been exclusively assigned to officers of the 'Special Grade' of the Sri Lanka Administrative Service. A consideration of the revised Service Minutes of the All-Island Services prepared following the filing of this Fundamental Rights Application supports the submission of learned President's Counsel that the positions in the public service exclusively assigned to officers of the several All-Island Services represented by the Petitioners are far less superior in status and junior in ranking than those posts in both the Government and Provincial Councils assigned exclusively to officers of corresponding Grades of the Sri Lanka Administrative Service.

42. Thus, it is evident that all officers of the All-Island Services other than the Sri Lanka Administrative Service have not been treated equally in comparison with the manner in which officers of the Sri Lanka Administrative Service have been treated. However, what constitutes an infringement of Article 12(1) of the Constitution, is not mere unequal treatment. An infringement of Article 12(1) arises out of inequitable treatment of persons belonging to one class (absence of equality in the treatment of persons belonging to one class). In this instance, that class would be **public officers of Senior Executive and Executive Grades of the Public Service of Sri Lanka belonging to the several All-Island Services**. Thus, the issue for consideration is whether, by the assignment of a specified set of posts in the public sector to be filled exclusively by officers belonging to specified Grades of the Sri Lanka Administrative Service (which is a sub-class), the other public officers of the remaining sub-classes have been inequitably treated. However, it is necessary to note that, the scope of this Fundamental Rights

Application necessitates adjudication of only whether in the listing of posts to be exclusively held by officers of the Sri Lanka Administrative Service ('Appendix A' of "P11"), officers of the All-Island Services represented by the Petitioners have been treated in an inequitable manner.

43. **The Fundamental right to Equality and its original manifestation** - This may be an opportune moment to briefly reflect on the Fundamental right to Equality enshrined in Article 12 of the Constitution. In *W.P.S. Wijerathna vs. Sri Lanka Ports Authority and Others* [SC/FR 256/17, Supreme Court Minutes of 11th December 2020] this Court has illustrated in detail the nature and the scope of Article 12(1) of the Constitution by detailing out the evolution of the judicial precedent pertaining to the Fundamental right to Equality. Commenting on the early period, the Court observed the following:

"During the very early stages of the evolution of the legal concept of equality in Sri Lanka, Chief Justice Sharvananda in Elmore Perera v. Major Montague Jayawickrema, Minister of Public Administration and Plantation Industries and Others explaining the nature of Article 12, held that it forbids the State from denying to any person equality before the law and equal protection of the law. ... It means that all persons are equally subject to the law and have a right to equal protection of the law, in similar circumstances, both as regards privileges and liabilities imposed by the law. It ensures that, laws have to be applied equally to all persons, and that there must be no discrimination between one person and another, when their position is substantially the same. The principle which underlines Article 12 is that, equals must be treated equally, operate equally on all persons, under like circumstances. Article 12 guarantees equality among equals. It is violated both by unequal treatment of equals and equal treatment of the unequal. ... equality before the law does not mean that persons who are different shall be treated as if they were the same. Article 12 does not absolutely preclude the State from differentiating between persons and things. The State has the power of what

is known as 'classification' on a basis of rational distinction relevant to the particular subject dealt with. So long as all persons falling into the same class are treated alike, there is no question of discrimination and there is no question of violating the equality clause. The discrimination that is prohibited, is treatment in a manner prejudicial as compared to another person in similar circumstances. So long as classification is based on a reasonable and a justifiable basis, there is no violation of the constitutional right to equality. What is forbidden is invidious (unfair / offensive / undesirable) discrimination. The guarantee of equal protection is aimed at preventing undue favour to individuals or class privilege, on the one hand, and at hostile discrimination or the oppression of equality on the other. ...

Since the essence of the right guaranteed by Article 12 and the evils which it seeks to guard against are the avoidance of designed and intentional hostile treatment, or discrimination on the part of those entrusted with the administering of the same, a person setting up grievances of denial of equal treatment must establish that between persons similarly circumstanced, some were treated to their prejudice and the differential treatment had no reasonable relevance to the object sought to be achieved. He must show that, the other person was similarly situated or equally circumstanced. He must make out that not only had he been treated differently from others, but had been so treated from persons similarly placed without any reasonable basis, and such differential treatment is unjustifiable. ...

Discrimination can exist only where two persons or two subjects are treated in different ways. It arises only from two dissimilar treatments and from similar treatment. There is no discrimination when two equals are treated alike. Discrimination can exist only where two persons or two subjects are treated in different ways. ... It would thus be seen that, former Chief Justice S. Sharvananda's views of the concept of equality is akin to the 'reasonable classification doctrine' which is consonant with the conventional description of discrimination founded

upon the concept of 'equality between similarly placed persons'. [Emphasis added by me.]

44. In *J.G. Mangala and Others vs. Amith Jayasundera, Commissioner General of Examinations and Other* [SC/FR 286, 287, 289, 291 & 294/2024, SC Minutes of 31st December 2024] this Court has reiterated that “... it is trite law recognised consistently by this Court, that equals must be treated equally. Equals cannot be classified and treated unequally. Classification unless founded upon intelligible criteria to facilitate a lawful objective and the intended purpose for which power has been conferred, violates the right to equality and therefore Article 12. However, as held by this Court on numerous occasions, equality, which is a concept based on the firm foundation of the Rule of Law, does not totally forbid classification.”

45. **Contemporary judicial precedent:** Referring to more recent and contemporary judicial precedent which in my view illustrates the full ambit of the right of equality and better serves the interest of the public by outlawing all outright and subtle manifestations of inequality, in *Wijerathna vs. Sri Lanka Ports Authority and Others* (*supra*) the Court proceeded to observe that -

“... the Supreme Court has provided an expansive and more progressive definition of the concept of equality, founded upon the concept of ‘substantive equality’, aimed at protecting persons from arbitrary, unreasonable, malicious and capricious executive and administrative action. ... After careful examination and consideration of the law and the need for such law, respectfully, I am also inclined to distance myself from the conservative interpretation given by Chief Justice Sharvananda to the concept of equality, while expressing my agreement with the subsequent views expressed by their Lordships enumerated in the judgments referred to below, which encompass the broad concept of ‘substantive equality’. It is necessary to place on record that the ‘reasonable classification doctrine’ continues to play an important role in certain factual situations,

*in determining whether the right to equality has been infringed. ... It would thus be seen that, both 'equality between similarly placed persons' and 'substantive equality' come within the scope of Article 12(1) of the Constitution. As former Chief Justice Parinda Ranasinghe has pointed out in **Ramuppillai v. Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and Others**, Article 12 requires that, (i) among equals, the law should be equal and it should be equally administered, (ii) like should be treated alike, (iii) all persons are equal before the law and are entitled to the equal protection of the law, (iv) no citizen shall be discriminated against on grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds, (v) equality of opportunity is an instance of the application of the general rule underlying Article 12, (vi) whilst Article 12 does not confer a right to obtain State employment, it guarantees a right to equality of opportunity for being considered for such employment, (vii) what is postulated is equality of treatment to all persons in utter disregard of every conceivable circumstance of difference as may be found amongst people in general, (viii) it prohibits class legislation, but that reasonable classification is not forbidden, and (ix) in instances where a classification exists, it must appear that not only that a classification has been made, but also that the classification is one based on some reasonable ground or some difference which bears a just and proper relation to the purpose of the classification. ... Justice Dr. Shirani Bandaranayake (as she then was) has pointed out in **Kanapathipilli v. Sri Lanka Broadcasting Corporation and Others**, that the concept of equality, is a "dynamic concept". It is based on the principle that the status and dignity of all persons should be protected whilst preventing inequalities, unfairness and arbitrariness. ...*

*It is also necessary to point out that in **Wickremasinghe v. Ceylon Petroleum Corporation and Others**, Chief Justice Sarath Silva has pointed out that, **although the objective of the right to equality is to ensure that all persons,***

similarly circumstanced are treated alike, it is seen that the essence of this basic standard is to ensure 'reasonableness' being a positive connotation, as opposed to 'arbitrariness' being the related negative connotation. If legislation or the executive or administrative action in question is 'reasonable' and 'not arbitrary', it necessarily follows that all persons similarly circumstanced will be treated alike, being the end result of applying the guarantee of equality. ...

In Weligodapola v. Secretary, Ministry of Women's Affairs, Justice Dr. A.R.B. Amerasinghe has held that, though Article 12 of the Constitution does not especially mention the right to equality of opportunity for all citizens in matters relating to employment under the State, it is 'a necessary incident of application of the concept of equality' enshrined in Article 12. ... As Justice Mark Fernando has pointed out in Ramuppillai v. Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and Others, the term 'the law' contained in Article 12(1) relates not only to the 'law' as it is conventionally understood and interpreted, it would include both subordinate legislation and executive action. Thus, for the purpose of Article 12, schemes of recruitment, promotion and appointment would come within the scope of the term 'the law'".

I would add to this list propounded by Justice Mark Fernando, "Service Minutes of the several services of the public service". In fact, as regards the instant matter, the scheme of recruitment, appointments and promotions are contained in the respective 'Service Minutes' of the several All-Island Services.

- 46. Full recognition of the Fundamental right to Equality (application of the new doctrine) -** It would thus be seen that the Fundamental right to Equality is no longer limited to prohibiting discrimination taking the manifestation of (a) persons

of one distinct class being invidiously treated in an unequal manner, founded upon unintelligible differentia (similarly circumstanced persons being dissimilarly (unequally) treated in a manner that does not have a causal rational nexus to the purpose for which such persons have been classified), and (b) persons of two or more distinct classes being treated in an equal manner based on unintelligible differentia (dissimilarly circumstanced persons being similarly (equally) treated without a rational basis for the amalgamation of the two classes). It is now well accepted that this prohibition (referred to as the 'classification doctrine') merely protects people against only one form of inequality.

47. Therefore, the doctrine against inequality now frowns upon and outlaws a host of other maladies as well. This is in the realm of the exercise of power by public functionaries which causes 'injustice' and declares them to also infringe the Fundamental right to Equality. This wide ambit is referred to as the 'new doctrine' regarding the Fundamental right to Equality. In today's context, not only does the Fundamental right to Equality reign supreme over and embrace and absorb into its fold other Fundamental rights such as the rights that protect liberty and multiple other freedoms, it serves as the guardian against possible other infringements of the rule of law. In that regard, the term 'law' is to be understood in the widest possible sense as including non-legislative and yet 'applicable and governing sets of rules' as well.

48. Thus, particularly following the Constitutionalisation of principles of Administrative Law into the domain of Fundamental Rights Law, it can now be said that in the sphere of executive and fundamental action (including decision-making), in addition to situations where the original narrow doctrine pertaining to the Fundamental right to Equality would be infringed, based on contemporary

judicial precedent, the Fundamental right to equality and thereby Article 12(1) would also be infringed in the following situations as well:

- i. Exercise of power contrary to law (including in a manner that violates prohibitions contained in law) [*Vavuniya Solar Power (Private) Ltd. v. Ceylon Electricity Board* (SC FR No. 172/2017, SC Minutes of 20th September 2023)],
- ii. Exercise of power in the absence of legal authorization (power conferred) or in excess of legal authorization [*Menaka Gandhi v. Union of India* (1978) AIR 0597 SC, *Weligodapola v. Secretary, Ministry of Women's Affairs and Teaching Hospitals and others* (1989) 2 SLR 63 and *Perera and nine others v. Monetary Board of the Central Bank of Sri Lanka and others* (1994) 1 SLR 152],
- iii. Exercise of power contrary to the procedure established by law [*K.L.I. Amarasekera and others v. Sri Lanka Ports Authority and others* (SC FR No. 52/2015, SC Minutes of 27th September 2023) and *Wijerathna v. Sri Lanka Ports Authority* (SC FR No. 256/2017, SC Minutes of 11th December 2020)],
- iv. Exercise of power in violation of the *Rules of Natural Justice* [*Gamini Dissanayake v M.C.M. Kaleel and others* (1993) 2 SLR 135, *A.H. Hulugalla v Sri Lanka Bureau of Foreign Employment* (SC FR No. 72/2019, SC Minutes of 29th November 2024) and *Dr. Athulasiri Kumara Samarakoon and others v. Minister of Finance and others (Economic crisis case)* (SC FR Nos. 195/2022, 212/2022, SC Minutes of 14th November 2023)],
- v. Exercise of power for purposes contrary to the purpose for which such power has been conferred and exercise of power for collateral reasons [*Vasudeva Nanayakkara v Choksy and Others (John Keells Case)* (2008) 1 SLR 134],
- vi. Exercise of power in an arbitrary or unreasonable manner [*Rajavarothiam Sampanthan v. Attorney General and others (Parliament dissolution case)* (SC FR No. 351-361/2018, SC Minutes 13th December 2018), *Ariyawansa and others v. The People's Bank and others* (2006) 2 Sri LR 145, *Karasinghe Arachchillage Ruwan Lasantha Deshapriya v. The Institute of Valuers of Sri Lanka* (SC FR No.

- 372/2019, SC Minutes of 16th June 2025), *Ambika Sathkunanathan v. Attorney General and others (Promulgation of a State of Emergency and Emergency Regulations case)* (SC FR Nos. 246/2022, 261/2022, 262/2022, 274/2022, 276/2022, SC Minutes of 23rd July 2025), *Dr. Athulasiri Kumara Samarakoon and others v. Minister of Finance and others (Economic crisis case)* (SC FR Nos. 195/2022, 212/2022, SC Minutes of 14th November 2023) and *Rathnayake Mudiyansele vs. Secretary to the Treasury, Minister of Finance (Local Government Election Case)* (SC FR Nos. 69/2023, 79/2023, 90/2023, 139/2023, SC Minutes of 22nd of August 2024)],
- vii. Exercise of power founded upon malice or in a capricious manner [*Elmore Perera v. Major Montague Jayawickrema, Minister of Public Administration and Plantation Industries and others* (1985) 1 SLR 285, *Jayawardena v. Dharani Wijayatilake, Ministry of Justice and Constitutional Affairs and others* (2001) 1 SLR 132 and *Wijerathna v. Sri Lanka Ports Authority* (SC FR No. 256/2017, SC Minutes of 11 December 2020)],
- viii. Non-fulfillment of statutory and other public duties by statutory and public functionaries [*Vavuniya Solar Power (Private) Ltd v. Ceylon Electricity Board* (SC FR No. 172/2017, SC Minutes of 20th September 2023), *Faiz v. AG* (1995) 1 SLR 372, *Sugathapala Mendis v. Chandrika Kumarathunga (Waters edge case)* (2008) 2 SLR 339, *Rathnayake Mudiyansele vs. Secretary to the Treasury, Minister of Finance (Local Government Election Case)* (SC FR Nos. 69/2023, 79/2023, 90/2023, 139/2023, SC Minutes of 22nd of August 2024), *Dr. Athulasiri Kumara Samarakoon and others v. Minister of Finance and others (Economic crisis case)* (SC FR Nos. 195/2022, 212/2022, SC Minutes of 14th November 2023) and *Janath S. Vidanage v. Inspector General of Police and others (Easter Sunday attack case)* (SC FR 163/2019, 165/2019, 166/2019, 184/2019, 188/2019, 191/2019, 193/2019, 195/2019, 196/2019, 197/2019, 198/2019, 293/2019, SC Minutes of 12th January 2023)],

- ix. Exercise of power resulting in the frustration of a legitimate expectation generated [*Dayarathna v. Minister of Health and Indigenous Medicine* (1999) 1 SLR 393, *Fernando v. Associated Newspapers of Ceylon Ltd* (2006) 3 SLR 141 and *Edirachchige Kushan v. Sri Lanka Bureau of Foreign Employment* (SC FR No. 66/2019, SC Minutes of 29th November 2024) and *Vavuniya Solar Power (Private) Ltd v. Ceylon Electricity Board* (SC FR No. 172/2017, SC Minutes of 20th September 2023)],
- x. Exercise of power in violation of the Rule of Law [*Ambika Sathkunanathan v. Attorney General and others (Promulgation of a State of Emergency and Emergency Regulations case)* (SC FR Nos. 246/2022, 261/2022, 262/2022, 274/2022, 276/2022, SC Minutes of 23rd July 2025), *Rajavarothiam Sampanthan v. Attorney General and others (Parliament Dissolution case)* (SC FR Nos. 351-361/2018, SC Minutes of 13th December 2018) and *Dr. Athulasiri Kumara Samarakoon and others v. Minister of Finance and others (Economic crisis case)* (SC FR Nos. 195/2022, 212/2022, SC Minutes of 14th November 2023)],
- xi. Exercise of power in violation of the Public Trust Doctrine [*Sugathapala Mendis v Chandrika Kumarathunga (Waters edge case)* (2008) 2 SLR 339, *Janath S. Vidanage v. Inspector General of Police and others (Easter Sunday attack case)* (SC FR 163/2019, 165/2019, 166/2019, 184/2019, 188/2019, 191/2019, 193/2019, 195/2019, 196/2019, 197/2019, 198/2019, 293/2019, SC Minutes of 12th January 2023) and *Chandra Jayaratne and others v. Attorney General and others (Economic crisis case)* (SC FR Nos. 195/2022, 212/2022, SC Minutes of 14th November 2023)],
- xii. Exercise of power contrary to the principle of inter-generational equity [*Bulankulama and Others v. Secretary, Ministry of Industrial Development and Others* [2000] 3 Sri L.R. 243 and *Watte Gedera Wijebanda v. Conservator General of Forests and Others* [2009] 1 Sri L.R. 337],

- xiii. Exercise of power contrary to the principle of intra-generational equity [*Sarath Fernando, Conservator General of Forests and two others vs. P.B.S. Dissanayake and two others, (Supreme Court Minutes of 8th October 2024)*], and
- xiv. Exercise of power contrary to the due process of the law (i.e. in a manner where the exercise of power is not just, fair or reasonable) [*Menaka Gandhi v. Union of India (1978) AIR 0597 SC* and *Wijerathna v. Sri Lanka Ports Authority (SC FR No. 256/2017, SC Minutes of 11 December 2020)*].

I must hasten to add that the foregoing list is not to be understood as a comprehensive citation of situations where the right to Equality is violated. It is also necessary to note that, in reality, a particular impugned situation may come under more than one of these fourteen grounds.

49. All such infractions of the rule of law (which in practice may overlap) are now recognized as amounting to infringement of the Fundamental right to Equality. Therefore, in the contemporary administration of justice, the primary objective of judicially screening impugned decisions and actions through the lens of the Fundamental right to Equality, is to ensure legitimacy, justice and fairness by outlawing multiple forms and manifestations of injustices caused in the exercise of power by public functionaries in a manner that amounts to an abuse of power. Simply put, the Fundamental right to Equality is aimed at facilitating good governance by the State by ensuring that they exercise power as intended by Parliament in public interest.

50. Though Article 126 read with Article 17 of the Constitution has conferred on the Supreme Court judicial scrutiny of alleged infringement or imminent infringement of Fundamental rights limited to Executive or Administrative action, it must be borne in mind that the other two organs of the State being the

Legislature and the Judiciary and the latest addition to those organs (branches) of the State (which may be appropriately referred to as the 'fourth branch of the State') being the Constitutional Council and the several independent Commissions, are all equally obliged by the Constitution to respect, protect and abide by the Fundamental right to Equality.

51. Application of the original understanding of the Fundamental right to Equality - This matter can be considered from the conventional application to the Fundamental right to Equality. By listing out a series of apex, high ranking, high profile, well-recognised and leading managerial and administrative posts (included in 'Appendix A' of "P11") to be filled only by officers of the Sri Lanka Administrative Service, has the final decision-maker (namely the Public Service Commission) drawn a distinction between officers of the Sri Lanka Administrative Service and officers of the other All-Island Services? In other words, has the Public Service Commission classified officers of the Sri Lanka Administrative Service and officers of all other All-Island Services by placing them into two groups? If that is the case, it is the final decision-maker's burden to justify that classification, and convince this Court that the said classification is reasonable and just in relation to the justiciable object sought to be achieved by such classification. In this instance, the purported objective is the identification of officers who would better possess the required competencies to efficiently perform the job functions of the several posts listed in 'Appendix A' of "P11". In the pleadings filed in this Fundamental Rights Application, the Respondents have not submitted any factual justification for the classification of the two groups referred to above, this being the officers of the Sri Lanka Administrative Service into one group and the officers of the All-Island Services represented by the Petitioners into the other group.

52. Furthermore, given the fact that officers of the respective Grades of the several All-Island Services possess certain core competencies, it is the burden of the decision-maker to justify as to why Senior Executive and Executive Grade public servants of all All-Island Services are not on an equal footing eligible for consideration of appointment to the posts listed under 'Appendix A' of "P11". Is it that only officers of the Sri Lanka Administrative Service possess the required competencies to efficiently discharge the job functions of the several posts listed under 'Appendix A' of "P11"? No such explanation has been provided by the Respondents. It appears so evidently that the decision-maker has proceeded on the presumed assumption that officers of the Sri Lanka Administrative Service are superior in their competencies to perform the job functions associated with all the posts listed in 'Appendix A' in comparison with their counterparts in the other All-Island Services. However, no empirical or other evidence in support of that assumption was presented to this Court. Thus, in that regard too, the Respondents have not discharged their burden of proof.

53. **Application of the contemporary recognition of the Fundamental right to Equality (the new doctrine) to the instant matter** - Applying the contemporary recognition of the principles of law enshrined within the Fundamental right to Equality to the evidence before this Court, it would be seen that, what is necessary to determine is not only whether public officers of the several All-Island Services constitute one broad category (class) of persons or whether they constitute different categories (classes), or whether they possess equal or similar attributes (such as basic educational qualifications (at entry point), advanced education secured during employment in public service, training, skills, experience and expertise and aptitude to be equally entitled to hold the posts contained in 'Appendix A'. The corollary would be to determine whether disentitling officers of the All-Island Services represented by the Petitioners from holding posts

contained in 'Appendix A' was based in intelligible differentia. Though those are also relevant factors, based on the case presented by the Petitioners, what is necessary for the adjudication of this Fundamental Rights Application is to determine whether in the preparation of the list of posts to be included in 'Appendix A' of "P11", the decision-maker had acted arbitrarily or unreasonably, and therefore whether conferring on Senior Executive and Executive Grade officers of the Sri Lanka Administrative Service the exclusive opportunity of holding the posts contained in 'Appendix A' was arbitrary or unreasonable. In other words, was it arbitrary or unreasonable to have disentitled officers of the All-Island Services represented by the Petitioners to hold posts contained in 'Appendix A'?

- 54. Public Service appointments must be based on the identification of necessary competencies and determination of merit founded upon objective decision-making** - I wish to approach this matter from another perspective, from which it would be possible to *inter-alia* determine whether the decision-maker has acted in an arbitrary or unreasonable manner. This approach stems from the basic premise that appointments to posts in the public service must necessarily be made upon an objective consideration of suitability of the applicant(s) to hold the respective post and founded upon an objective assessment of merit. In other words, appointments to and in the public service (whatever may be the category, service or post) must be founded upon meritocracy. Merit-based appointments and promotions in the public sector is the only reasonable, reliable, fair and sustainable starting point by which the State can ensure that public officers whose primary duty is to serve the public according to law and through the execution of State policy, diligently and efficiently perform the tasks of the respective posts they hold. While the degree of confidence the appointing authority has in respect of the person to be appointed as to his suitability is a relevant fact, such confidence must be founded upon an

objective consideration of relevant suitability criteria and assessment of the candidate's merit, and not based on irrelevant considerations such as ethnic, religious, personal, political or personal affiliations, nor should suitability be determined arbitrarily or unreasonably.

55. Schemes of Recruitment - What a 'Scheme of Recruitment' in the public service seeks to achieve is the laying down of suitability criteria for the relevant post (developed based on an objective consideration of necessary attributes and aptitudes) and the setting in place of a transparent selection methodology and process, by which it can reasonably be expected that the decision on selection would be objective and correct. An objective decision on selection would and should exclude favoritism, corruption, mala-fides, subjective or irrelevant considerations, arbitrariness and unreasonableness. Thus, the guarantee of equality enshrined in Article 12 can be ensured only through such objective decision-making in public sector selections, appointments and promotions, founded upon objective criteria. Furthermore, the cherished expectation of the Public, of a competent, efficient and service oriented public service can be achieved only if selection for appointment and promotion in the public sector is founded upon equality of treatment to those desirous of being selected for appointment and promotion, and the process of selection being founded upon the objective assessment relevant suitability criteria and determination of merit. Such must be the governing criteria for appointments to and promotions in the public service.

56. Determination of suitability to hold posts in the public sector - Competency for selection to hold different posts in the public service must be founded upon objectively developed suitability criteria that enables the identification of the most suitable person(s) to hold the respective posts. Such suitability criteria are generally divided into two groups; these being attributes and aptitudes (which

reflect potential). The assessment of such criteria for the objective determination of suitability can be determined through several primary considerations:

- i. Entry qualifications:
 - a) basic and advanced qualifications (which would reflect education up to the point of selection, knowledge and capacity),
 - b) pre-recruitment training that had been received,
 - c) relevant experience,
 - d) skills to enable successful discharge of the job functions,
 - e) relevant expertise, and
 - f) aptitude,
- ii. Seniority (for promotions)
- iii. Determination of the level of competency at the stage of selection;
- iv. Predictability of the potential to successfully perform job functions; and
- v. Performance at competitive examinations for the assessment of knowledge, and skills and aptitude (which would be necessary to select the required number from among a larger group of applicants).

57. It need not be emphasized that the preparation of posts to be included in 'Appendix A' of "P11" should have been done in consonance with the principle of equality and therefore should have been based on objective criteria. The law on fundamental rights would not recognize the Cabinet of Minister, the Public Service Commission, the Secretary to the Ministry of Public Administration or the Director General of Management Services to possess any unquestionable prerogative or personal power or any authority which is beyond judicial review in the determination of posts to be included in 'Appendix A'. Conferment of such unquestionable and unreviewable authority to any one or more of them would be obnoxious to the Rule of Law and contrary to public interests. Fundamental rights of the People including those of public officers cannot be protected by the adoption

of such an outdated and undesirable approach, which would most certainly be contrary to public interest.

58. Duty to explain the grounds upon which the impugned decision is arrived at -

If the formation of the list of posts in 'Appendix A' of "P11" was developed objectively sans any arbitrariness or unreasonableness, the Respondents should have been in a position to explain based on objective criteria as to why only officers of the Sri Lanka Administrative Service were deemed to be suitable for selection to each of those posts contained in 'Appendix A' and as to why none of the officers of the corresponding Grades of the other All-Island Services would be unsuitable for selection to such posts.

59. The duty to provide to this Court reasons for the impugned decision lay with the Respondents. Such a rational basis for the determination of the posts to be exclusively held by officers of the Sri Lanka Administrative Service was not disclosed to this Court. In fact, no basis at all was revealed to the Supreme Court. The only purported explanation provided was that, based on the job functions of the relevant posts and service requirements, the Director General of the Department of Management Services determined that only officers of certain Grades of the Sri Lanka Administrative Service would be eligible to hold the posts listed in 'Appendix A' of "P11". The specific criteria per each post used for such determination was not disclosed to this Court. In these circumstances, I am compelled to conclude that objective criteria for the selection of posts to be exclusively filled by officers of the Sri Lanka Administrative Service was not disclosed to Court, because objective criteria had not been applied in that regard. Thus, there was none to be disclosed. Therefore, the irresistible inference to be drawn in that regard is that the decision-maker had acted arbitrarily and unreasonably in determining that only officers of the Sri Lanka Administrative Service should be entitled to hold posts listed in 'Appendix A' of "P11".

Findings

60. In view of the foregoing, I conclude that the series of decisions encapsulated in 'Appendix A' of "P11" relating to the posts to be exclusively held by officers of the Sri Lanka Administrative Service had been prepared by the Secretary to the Ministry of Public Administration original Respondents in an arbitrary and unreasonable manner, and therefore, infringes the Fundamental right to Equality of the Petitioners recognized by Article 12(1) of the Constitution.

Declarations

61. Accordingly, I declare that 'Appendix A' of the Service Minute of the Sri Lanka Administrative Service ("P11") infringes the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution. Accordingly, I further declare that the Members of the Public Service Commission who decided on the issuance of the Service Minute of the Sri Lanka Administrative Service ("P11") have collectively infringed the fundamental rights of the Petitioners guaranteed by Article 12(1) of the Constitution.

62. In view of the declarations contained in the preceding paragraph, I declare 'Appendix A' of "P11" a nullity. Such declaration of nullity will come into effect prospectively from the date of this Judgment. Therefore, such declaration of nullity shall not affect the legality of appointments to the posts listed in 'Appendix A' of "P11", made from 23rd December 2013 up to the date of this Judgment.

63. Furthermore, for a period of two (2) years from the date of this Judgment, the Public Service Commission shall be entitled to make appointments to posts listed in 'Appendix A' based on an identification of necessary competencies to hold each such post and assessment of competencies of officers who belong to the several All-Island Services who may be desirous of being appointed to such posts.

Orders

64. The Public Service Commission is directed to, in compliance with Article 55 of the Constitution and in consultation with relevant officials of the public sector including the Secretary of the Ministry of Public Administration and the Director General of Management Services to prepare afresh and publish 'Appendix A' of "P11". In doing so, the Public Service Commission shall be guided by objective considerations including the principles contained in this Judgment in a manner that would enable the said Commission to identify and determine per each post (a) the competencies necessary for a public officer to be able to successfully discharge the job functions of each post, and (b) the methodology to be adopted to assess such competencies, enabling the Commission to be able to identify and appoint the most suitable officer to each such post. Ideally, prior to finalising corresponding decisions, the Public Service Commission shall afford an opportunity to representative groups of officers of the several All-Island Services to express their views regarding such formulation of competencies and assessment methodology. The task of preparing 'Appendix A' afresh shall be completed within two (2) years from the date of this Judgment. If the revision of 'Appendix A' of "P11" necessitates the revision of similar appendixes of the Service Minutes of the other All-Island Services, the Public Service Commission shall carry out such revisions as well within the afore-stated stipulated time period of two (2) years.
65. The Attorney-General is directed to prepare a legal advisory founded upon the principles and reasoning contained in this Judgment and forward it to the (i) Honourable Minister of Public Administration, (ii) Chairman of the Public Service Commission, (iii) Secretary to the Ministry of Public Administration, and to the (iv) Director General of the Department of Management Services.

Clarification

66. The findings contained in this Judgment should not be interpreted as a finding that all public officers of the same Grade of the several All-Island Services (a) possess identical or nearly similar competencies, and (b) would be equally entitled to hold all posts assigned to the relevant Grade in the public service, and more particularly to the posts contained in 'Appendix A' of "P11".
67. Indeed, an objective consideration of the competencies applicable to each post in the public sector may justify the conclusion that officers of a particular Grade of a particular All-Island Service would be more suitable than their counterparts in other All-Island Services to hold one or more specified posts and to perform the corresponding job functions.
68. Officers of a particular Grade of a particular All-Island Service are more suitable than their counterparts to hold and discharge the functions of a particular post in the public sector can be a finding consonant with the Fundamental right to Equality, provided such finding is reached following an objective and diligent consideration of the relevant facts. Therefore, that is a matter to be decided upon following the identification of the job specific competencies required to successfully discharge the job functions of each post and the competencies common and related attributes of officers of a particular Grade of the several All-Island Services. Furthermore, this Judgment should not be interpreted as causing the nomenclated identities of the several All-Island Services redundant.
69. Furthermore, it is necessary to note that this Judgment is founded upon the formal pleadings tendered by the Petitioners and the Respondents to the Supreme Court. However, in the interest of justice, to the extent possible, this Court has taken into consideration the contents of most of the additional documents tendered by the Honourable Attorney-General by way of Motions.

Outcome

70. For the reasons stated in this Judgment, this Fundamental Rights Application is allowed.

71. The Petitioners shall be entitled to recover from the State the actual costs incurred by them to file and prosecute this Application.

Judge of the Supreme Court

A.H.M.D. Nawaz, J.

I agree.

Judge of the Supreme Court

Kumudini Wickremasinghe, J.

I agree.

Judge of the Supreme Court