

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

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

**S.C. (FR) Application No.250/2020**

1. Jayakodi Arachchilage Amarathunge  
36A, Ashely Peris Mawatha, Kagalle.
2. Dahanayakage Chandrani Dahanayake  
45/C1, Jesminwatta, Kiribathkumbura.
3. Manikin Gedera Dharmasena,  
271/4, Samagi Mawatha, Pitipana Uthura,  
Homagama.
4. Polgaswatte Gamaralage Chandrawathie  
1/50/1, Pansalagawawatta, Meneripitiya,  
Warakapola.
5. Sujeewa Sepali Kumarawadu,  
55/10, 2<sup>nd</sup> Lane, Kandahena Watta,  
Depanama, Pannipitiya.
6. Liyana Arachchige Kithsiri,  
Weeramalyaya, Hidellana, Ratnapura.
7. Chandralatha Surangani Hettiarachchi  
Senanayaka,  
177, Sarasawi Asapuwa, Hapugala,  
Wackwella, Galle.
8. Muhammad Musthafa Abdul Kaiyoon,  
251, Police, Road, Sammanthurai.
9. Ranawaka Arachchige Pradeepika  
Ranawaka,  
298A, Weera Mawatha Bangalawatta,  
Kottawa.

**PETITIONERS**

**Vs.**

1. I D Jayantha Kulathunga,

- College of Technology, Puttalama Road,  
Kurunegala.
2. Nevil Edirisinghe,  
Department of Technical Education &  
Training, No. 557, Olcott Road,  
Colombo 10.
  3. S. Parameswaran,  
Department of Technical Education &  
Training, No. 557, Olcott Road,  
Colombo 10.
  4. H. M. T. K. Herath,  
Technical College, Halawata Road,  
Wariyapola.
  5. A. K. Hettiarachchi,  
Technical College, Maddewatta,  
Matara.
  6. R.D.D. Deshapriya,  
Department of Technical Education &  
Training, No. 557, Olcott Road,  
Colombo 10.
  7. M. M. Hettige,  
Department of Technical Education &  
Training, No. 557, Olcott Road,  
Colombo 10.
  8. H.M.R.D. Herath,  
Technical College, Pannala Road,  
Kuliyapitiya.
  9. R.P.U. Rajapaksha,  
Technical College, Warellawatta, Yakkala,  
Gampaha.
  10. W.M.D.M. Fernando,  
Department of Technical Education &  
Training, No. 557, Olcott Road,  
Colombo 10.
  11. W.A.D.M.M. Wijesinghe,

- Department of Technical Education & Training, No. 557, Olcott Road, Colombo 10.
12. Preethi Wijesinghe,  
Department of Technical Education & Training, No. 557, Olcott Road, Colombo 10.
  13. T. Pasakararajah,  
Technical College, Manchatuduwa, Batticaloa,
  14. A.A.D. Leelarathna,  
Department of Technical Education & Training, No. 557, Olcott Road, Colombo 10.
  15. A.M.R.R.Abeykoon,  
Technical College, Anguruwella Road, Warakapola.
  16. S.N.W.M.L.R. Ratnayaka,  
Technical College, New Town, Anuradhapura.
  17. K.K. Chandrika,  
College of Technical, New Town, Weerawila.
  18. M.A.M.A.W.S. Amunugama,  
Department of Technical Education & Training, No. 557, Olcott Road, Colombo 10.
  19. K.P.S.S. Abeywickrama,  
Technical College, Matale Road, Dambulla.
  20. M. Somasorriyam  
Technical College, Main Road, Akkaraipattu.
  21. S.K.K.A. De Silva,  
Technical College, Aruppala, Kandy.
  22. P.K.K. Mahanama,

- Department of Technical Education & Training, No. 557, Olcott Road, Colombo 10.
23. R.K. Nihal,  
Technical College, Puwakdandawa,  
Beliatta.
  24. M. M. K. Weerawardana,  
Department of Technical Education & Training, No. 557, Olcott Road,  
Colombo 10.
  25. K. D. Perera,  
Technical College, Vidyapura,  
Polonnaruwa.
  26. H. R. P. M. Bandara,  
Technical College,  
Wewatenna, Bandarawela.
  27. S. Thyagarajah,  
Hardy Advanced Technological College.  
Ampara.
  28. R. A. Amarasiri Ranjana,  
Technical College, Yodha Ala Road,  
Hasalaka.
  29. M. G. S. M. Jayawickrama  
Technical College, Kachcheriya Road,  
Kegalle.
  30. H. A. S. Kumaralal,  
Technical College, Anguruwella Road,  
Warakapola
  31. S. J. Basnayaka  
Technical College, New Town,  
Embilipitiya.
  32. P. P. Kumari,  
Technical College, Gam Udawa  
Thammennagama, Anamaduwa.
  33. K. G. Herath Banda  
Technical College, Aruppala, Kandy.

34. N. D. Thusith Weerawardana  
Technical College, Sirigala, Monaragala.
35. R. B. Guruge,  
Department of Technical Education &  
Training, No. 557, Olcott Road,  
Colombo 10.
36. Nihal Kithsiri Gamalathge.  
Technical College, M. C. Road, Matale.
37. U. I. W. K. Weerakotuwa,  
Technical College, Mahawanawela,  
Dehiattakandiya.
38. Anura Kumasaru,  
Technical College, Maddewatte,  
Matara.
39. C. W. Liyanage,  
Technical College, Godagama,  
Homagama.
40. R. M. G. Bandara,  
Technical College, Puttalama Road,  
Kurunegala.
41. K. M. S. Banda,  
Technical College, M.C. Road,  
Matale.
42. P. N. K. Malalasekara,  
Director General,  
Department of Technical Education and  
Training,
- 42A. S. C. Jagath,  
Director General,  
Department of Technical Education and  
Training,  
**Above 1<sup>st</sup> to 42(A) Respondents All C/O  
Department of Technical Education and  
Training,  
Olcott Mawatha, Colombo 10.**
43. Sarath Abayagunawardana,

- Secretary of Skills Development,  
Employment & Labour Relations,  
6<sup>th</sup> Floor, "Mehewara Piyasa",  
Narahenpita, Colombo 05
- 43A. Prof. Kapila Perera,  
Secretary, Ministry of Education  
Ministry of Education,  
Isurupaya, Pelawaththa, Battaramulla.
- 43B. P.W. Rajapaksa  
Secretary to the State Ministry of  
Skills Development, Vocational Education,  
Research and Innovation.  
  
State Ministry of Skills Development,  
Vocational Education, Research and  
Innovation.  
3<sup>rd</sup> Floor, Sethsiripaya Stage 1,  
Battaramulla, Sri Lanka.
- 43C. M. N. Ranasinghe  
Secretary to the State Ministry of  
Education,  
Ministry of Education, Isurupaya.  
Pelawatta, Battaramulla.
44. Dinesh Gunaeardana,  
Minister of Skills Development,  
Employment & Labour Relations,  
Ministry of Skills Development,  
Employment & Labour Relations,  
6<sup>th</sup> Floor, "Mehewara Piyasa",  
Narahenpita, Colombo 05.
- 44A. Prof. G.L. Peiris,  
Minister of Education,  
Ministry of Education, Isurupaya.  
Pelawatta, Battaramulla.
- 44B. Seetha Arambepola  
State Minister of Skills Development,  
Vocational Education, Research and

- Innovation.  
3<sup>rd</sup> Floor, Sethsiripaya Stage 1,  
Battaramulla, Sri Lanka.
- 44C. Susil Premajayantha,  
Minister of Education,  
Ministry of Education, Isurupaya.  
Pelawatta, Battaramulla.
45. Mr. Dharmasena Dissanayaka,  
Chairman,  
Public Service Commission.
- 45A. Mr. Jagath Balapatabendi  
Chairman,  
Public Service Commission.
- 45B. Sanath J. Ediriweera,  
Chairman,  
Public Service Commission.
46. Dr. Prathap Ramanujam,  
Member,  
Public Service Commission.
47. Mrs. V. Jegarasasingam  
Member,  
Public Service Commission.
48. Mr. S. Ranugge,  
Member,  
Public Service Commission.
49. Mr. D. Laksiri Mendis,  
Member,  
Public Service Commission.
50. Mr. Sarath Jayatillaka  
Member,  
Public Service Commission.
51. Mrs. Sudharma Karunarathna  
Member,  
Public Service Commission.

52. Mr. G. S. A. De Silva,  
Member,  
Public Service Commission.
53. M. A. B. Daya Senarath,  
Secretary,  
Public Service Commission.  
**Above 45<sup>th</sup> to 53<sup>rd</sup> Respondents all C/O  
No.1200/9, Rajamalwatta Road,  
Battaramulla.**
54. Hon. Attorney General  
Attorney General's Department,  
Colombo 12.
55. Mrs. Indrani Sugathadasa  
Member  
Public Service Commission.
56. Mr. Leelasena Liyanagama  
Member  
Public Service Commission.
57. Mr. T.R.C. Ruberu,  
Member  
Public Service Commission.
58. Mr. Dian Gomes,  
Member  
Public Service Commission.
59. Mr. W.H. Piyadasa,  
Member  
Public Service Commission.
60. Mr. Dilith Jayaweera,  
Member  
Public Service Commission.
61. Mr. V. Shivagnanasoni,  
Member,  
Public Service Commission.
- 61A. Mr. Suntharam Arumainayham,  
Member  
Public Service Commission

62. Mr. A. L. Mohamed Saleem,  
Member  
Public Service Commission  
**Above 55<sup>th</sup> to 62<sup>nd</sup> Respondents all C/O  
No.1200/9, Rajamalwatta Road,  
Battaramulla.**
63. S. M. Mohamed,  
Member,  
Public Service Commission.
64. N. H. M. Chitrananda,  
Member,  
Public Service Commission.
65. Dr. N. Selvakumaran,  
Member,  
Public Service Commission.
66. M. B. R. Pushpakumara,  
Member,  
Public Service Commission.
67. Dr. A.D.N. De Zoysa,  
Member,  
Public Service Commission.
68. R. Nadarajapillai,  
Member,  
Public Service Commission.
69. C. Pallegama.  
Member,  
Public Service Commission.
70. G.S.A. De Silva,  
Member,  
Public Service Commission,  
**Above 63<sup>rd</sup> to 70<sup>th</sup> Respondents all C/O  
No.1200/9, Rajamalwatta Road,  
Battaramulla.**  
**RESPONDENTS**

**BEFORE** : S. THURAIRAJA, PC, J.  
K.K. WICKREMASINGHE, J.  
ACHALA WENGAPPULI, J.

**COUNSEL** : Boopathi Kahathuduwa for the  
Petitioners.  
Chula Bandara with Ms. Gayathri Kodagoda and  
Ms. Bhagya Gunawardane for the 2<sup>nd</sup>,3<sup>rd</sup>, 5<sup>th</sup> -7<sup>th</sup>,  
10<sup>th</sup>, 11<sup>th</sup>, 14<sup>th</sup> -18<sup>th</sup> , 22<sup>nd</sup>, 31<sup>st</sup>, 35<sup>th</sup>, and 37<sup>th</sup>  
Respondents.  
M. Gopallawa, SDSG for 42<sup>nd</sup> – 70<sup>th</sup> Respondents.

**ARGUED ON** : 30<sup>th</sup> August, 2024

**DECIDED ON** : 12<sup>th</sup> March, 2026

**ACHALA WENGAPPULI, J.**

With their petition dated 10.08.2020, the nine Petitioners have collectively invoked the jurisdiction conferred on this Court by Articles 17 and 126(1) of the Constitution seeking multiple reliefs including relief in the interim, by alleging an infringement of their fundamental rights guaranteed under Articles 12(1) and 14(1)(g) by the executive and administrative actions of the 42<sup>nd</sup> to 53<sup>rd</sup> Respondents.

The Petitioners are public employees belonging to the Sri Lanka Technical Education Service. They currently hold appointments in Grade II – Special Cadre of that service and in terms of Clause 9 of the Service Minutes of 15.08.1986 (P3), they have satisfied the Efficiency Bar, which is required of an officer of the said Cadre, in terms of the said Service Minute.

The 1<sup>st</sup> to 41<sup>st</sup> Respondents also joined the Sri Lanka Technical Education Service as Special Cadre employees along with the Petitioners. However, the 1<sup>st</sup> to 41<sup>st</sup> Respondents were appointed to their posts in the General Cadre by the Public Service Commission, in the year 2017 on their applications. The 1<sup>st</sup> to 41<sup>st</sup> Respondents currently hold positions of Vice Principals and Deputy Directors in the said Service while some of them were given acting appointments for the posts of Principals and Directors of Technical Colleges.

It is the position of the Petitioners that, in terms of the said Service Minute, the 1<sup>st</sup> to 41<sup>st</sup> Respondents are required to sit for the special examination stipulated by Clause 8 of the Service Minute, and in their failure to do so, they do not satisfy the mandatory Efficiency Bar requirement as stipulated by Clause 7, which they must satisfy prior to applying for any higher post. The said Clause in fact specifically disqualifies such officers from being eligible to apply to a higher post.

The Petitioners state that when applications were called to fill vacancies for Grade 1 of the Sri Lanka Technical Education Service on 22.02.2019 (by Gazette No. 2112 of 22.02.2019 - P6) they verily believed that they would score "*excellent marks*" according to the eligibility criteria and have therefore tendered their respective applications. On 03.07.2020, a new amended Marking Scheme (P7) was introduced by the Public Service Commission, which was made applicable to the applicants who tendered their applications on 22.02.2019, by amending the notice published on that day.

On 10.07.2020, the Petitioners have received letters calling them for interviews along with the 1<sup>st</sup> to 41<sup>st</sup> Respondents, although they did not satisfy the eligibility criteria, in their failure to pass the Efficiency Bar after switching

over to General Cadre. The Trade Union, which the Petitioners are members of, objected to calling of the 1<sup>st</sup> to 41<sup>st</sup> Respondents for the said interview on that basis (P9). The interviews were held from 23<sup>rd</sup> to 26<sup>th</sup> July 2020 and the Petitioners have presented themselves for the said interview, subject to their said objection.

Therefore, the Petitioners alleged that their fundamental rights under Articles 12(1) and 14(1)(g) were violated by the 42<sup>nd</sup> to 53<sup>rd</sup> Respondents as;

- a. the Service Minute requires officers to pass the Efficiency Bar examination after they receive appointments to the current Grade, which is a pre-requisite to being considered for promotion,
- b. the Sri Lanka Technical College has not conducted the efficiency bar examination, prescribed for Grade II - General Cadre employees since 2017.

Additionally, since the 1<sup>st</sup> to 41<sup>st</sup> Respondents have not satisfied the requirement imposed by Clause 7 of the Service Minute in order to be promoted to the posts of Grade 1 of the Sri Lanka Technical Education Service, their promotions are illegal.

The Petitioners further alleged that the 42<sup>nd</sup> and 43<sup>rd</sup> Respondents have conducted interviews under the old Service Minute, whilst having a new Service Minute in force. Therefore, they alleged it was unlawful for these two Respondents to have conducted interviews under the old Service Minute. The Petitioners also state that, if applications are called afresh for the said post under the amended Service Minute, their interest will not be prejudiced.

In view of the above, the Petitioners seek *inter alia* a declaration that their fundamental rights under Article 12(1) and 14(1)(g) are violated, and a declaration that the 1<sup>st</sup> to 41<sup>st</sup> Respondents have not satisfied the Efficiency Bar, a requirement imposed on Grade II - General Cadre employees of the Sri Lanka Technical Education Service. They accordingly take up the position that the 1<sup>st</sup> to 41<sup>st</sup> Respondents have not satisfied the necessary prerequisites in terms of the Service Minute P3, to be promoted to Grade I of that Service. They further seek their appointments to Grade I of that Service.

The 1<sup>st</sup> to 41<sup>st</sup> Respondents, in their joint Statement of Objections, have taken the position that they have satisfied all the eligibility criterion set out by Clause 7 of the Service Minute, which is a mandatory requirement for all officers who are appointed to any post of any Grade in the Sri Lanka Technical Education Service and must be fulfilled within three years of such appointment. Therefore, the 1<sup>st</sup> to 41<sup>st</sup> Respondents assert that all of them have satisfied the said requirement, well within three years after their initial appointment to the Grade III of Special Cadre, along with the Petitioners. When applications were called in 2016 to fill the posts of Grade II of General Cadre, they have applied and were appointed to the said posts in February 2018, with effect from 26.12.2016.

When applications were called for the post of Grade I of Sri Lanka Technical Service in February 2020, the 1<sup>st</sup> to 41<sup>st</sup> Respondents have tendered their applications. They were called for an interview. The 1<sup>st</sup> to 41<sup>st</sup> Respondents further assert that since 1986, as a policy, there was no requirement whatsoever in the Department of Technical Education and Training which insists on an employee to pass another Efficiency Bar examination, when he has once completed such requirement, after his 1<sup>st</sup> appointment into the service. Therefore,

the 1<sup>st</sup> to 41<sup>st</sup> Respondents claim that the requirement of an Efficiency Bar examination, in terms of Clauses 7, 8 and 9 of Service Minute were only imposed on those officers who have been recruited directly into the Sri Lanka Technical Service and placed at those three Grades.

The 42<sup>nd</sup> Respondent, being the Director General of the Department of Technical Education and Training, supports the position of the 1<sup>st</sup> to 41<sup>st</sup> Respondents when he stated that, in relation to the requirement of passing the Efficiency Bar examination, in terms of Clause 7 of the Service Minute, these Respondents have already satisfied that requirement when they passed the “*sole-Efficiency Bar examination*” referred to in Clause 7 of the Service Minute, after they were appointed to Grade III - Special Cadre. The 42<sup>nd</sup> Respondent therefore asserts that there is no requirement for the 1<sup>st</sup> to 41<sup>st</sup> Respondents to pass the Efficiency Bar examination once more, upon being promoted to Grade II. He further asserts that the 1<sup>st</sup> to 41<sup>st</sup> Respondents were promoted from Grade III to Grade II by way of an internal promotion scheme and not by way of fresh appointments.

The Petitioners, in the counter affidavit, have sought to refute that position by asserting that whenever an officer is appointed to a new post, Clause 7 applies and that requirement is not confined to the time of recruitment only. This is because the explanation to Clause 5 of the Service Minute states that the only way an officer could be appointed from the Special Cadre to the General Cadre or *vice versa* is by way of a “*new appointment*” and not by way of a “*transfer*”, which in turn triggers the requirement that such an officer must pass the Efficiency Bar examination once more after that new appointment.

When the matter is taken up for argument on 30.08.2024, learned Counsel for the Petitioners, to be in line with what the Petitioners have averred in their petition, has submitted that the plain reading of the Clauses 6 and 7 makes it abundantly clear that the only way to change the cadre, which an officer was taken in initially, is by taking a fresh appointment and therefore a Grade II employee, who takes up a fresh appointment in the General Cadre after switching from the Special Cadre, must satisfy the Efficiency Bar requirement in that new post, if he is to be considered eligible to apply for any promotions in the Sri Lanka Technical Education Service.

In view of the material presented before this Court by way of pleadings and of the submissions made by the learned Counsel, it is necessary to examine the employment history of the Petitioners as well as the 1<sup>st</sup> to 41<sup>st</sup> Respondents in a more detailed manner.

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Petitioners have initially served as Assistant Instructors attached to Technical Colleges, under the Department of Technical Education and Training of Sri Lanka. The Cabinet of Ministers, upon being appraised by the Cabinet Memorandum No. 99/0719/12/001, taken a decision on 11.06.1999 to absorb the Assistant Instructors, who were then serving under the said Department to the posts of Instructors of Sri Lanka Technical Education Service and to place them at Grade III - Special Cadre of that service. Relevant Letters of Appointments were issued to the said set of Petitioners by the Public Service Commission on 22.08.2000 (vide documents P1A, P1B, P1C, P1D, P1E, P1F and P1H). The 7<sup>th</sup> and 9<sup>th</sup> Petitioners, who were selected from open stream to be appointed as Lecturer Grade II, in the Special Cadre of Sri Lanka Technical Education Service, after placing them at Grade III of that service (vide P1G and P1H).

The Public Service Commission, by the letters issued on 06.03.2012 to that effect, promoted the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 8<sup>th</sup> Petitioners to Grade II of Sri Lanka Technical Education Service, whereas it decided to promote the 7<sup>th</sup> Petitioner and 9<sup>th</sup> Petitioner to Grade II on 16.03.2012 and 23.08.2012 respectively. The 5<sup>th</sup> Petitioner was however promoted to the said Grade only on 13.06.2017. The letters issued by the Public Service Commission promoting them to Grade II are tendered to Court marked P2A to P2I, which also indicated that the terms and conditions of employment as indicated in the already issued Letters of Appointment are continued in addition to being subjected to the Service Minute.

Since the primary contention of the Petitioners, being the 1<sup>st</sup> to 41<sup>st</sup> Respondents have failed to fulfil the eligibility criterion that qualifies them to apply to Grade I appointment, when they failed to satisfy the Efficiency Bar requirement in terms of Clause 7 of the Service Minute, after they were admitted into the General Cadre of Grade II, it is necessary at this stage to examine the validity of the said contention.

There is no dispute that the relevant Service Minute, applicable to the Petitioners as well as 1<sup>st</sup> to 41<sup>st</sup> Respondents, was published in the Government Gazette No. 415 of 15.08.1987. The said Service Minute was tendered to Court by the Petitioners, along with their petition, marked P3.

Clauses 6 and 7 of the said Service Minute P3 reads as follows;

6. ශ්‍රී ලංකා කාර්මික අධ්‍යාපන සේවයේ ඒ ඒ පන්තිවලට කෙරෙන පත්කිරීම් සහ උසස් කිරීම් කුලලතාවය මත වන අතර, ජ්‍යෙෂ්ඨතාව දෙවන ස්ථානයේ ලා සලකණු ලැබේ.  
සංලක්ෂ්‍යය- නව පත්වීමක් ලබාගැනීමෙන් හැර විශේෂ සේවක සංඛ්‍යාවෙන් සමාන්‍ය සේවක සංඛ්‍යාවට හෝ සමාන්‍ය සේවක සංඛ්‍යාවෙන් විශේෂ සේවක සංඛ්‍යාවට හෝ මාරුවීම් ලබාගත නොහැක.

7. ශ්‍රී ලංකා කාර්මික අධ්‍යාපන සේවයේ නිලධාරීන් සඳහා කාර්යක්ෂමතා කඩඉමක් ඇත. ශ්‍රී ලංකා කාර්මික අධ්‍යාපන සේවයේ ඕනෑම තනතුරකට පත් කරන ලද සෑම නිලධාරියකු විසින්ම එබඳු පත්කිරීමේ දින සිට අවුරුදු තුනක් ඇතුළත අදාළ කාර්යක්ෂම කඩඉමෙන් උත්තීර්ණ විය යුතුය. නියමිත කාලය ඇතුළත කාර්යක්ෂමතා කඩඉමෙන් උත්තීර්ණ වීමට අපොහොසත්වීම, වැටුප් වර්ධක විලම්බනයකිරීමට හේතුවන අතරම, ඉඩදී ඇති කාලපරිච්ඡේදයට වැඩිපුර ගෙන ඇති කාලපරිච්ඡේදය වැටුප් වර්ධක බිලම්බනය කරනු ලැබූ කාල පරිච්ඡේදයක් ලෙස සලකණු ලැබේ. තවද කාර්යක්ෂමතා කඩඉමෙන් උත්තීර්ණ වනතුරු කවර හෝ උසස් තනතුරක් ඉල්ලුම් කිරීමට එම නිලධාරීන් නුසුදුස්සන් ද වනවා ඇත.

Plain reading of Clause 7 of the Service Minute indicates that there is one Efficiency Bar that must successfully be completed by the officers of the Sri Lanka Technical Education Service, after being appointed for any of the three Grades recognised by the said Minute. The relevant sentence of Clause 7 is clear in this respect as it reads “කාර්යක්ෂමතා කඩඉමක්”. The words “කාර්යක්ෂමතා කඩඉමක්” is deliberately used in Clause 7 denoting the requirement in a singular form. The reference to a one Efficiency Bar requirement, is once more repeated as the said Clause further when it used the term “කාර්යක්ෂමතා කඩඉමෙන්” twice more in its text. This position is further reflected in the letters P8A to P8I, calling the Petitioners for an interview and they were required to bring along the original certificates in relation to satisfying the Efficiency Bar requirement. Once more, the terms used in these letters in making reference to the Efficiency Bar were in singular (“කඩඉම”). This is the reason why the 1<sup>st</sup> to 41<sup>st</sup> Respondents claim that the requirement to satisfy the Efficiency Bar examination is a one-time requirement and, having satisfied same, once at some level, it need not be satisfied thereafter, upon being considered to be promoted to Class I.

Clause 16 of P3 imposes the requirement that the officers those who have been absorbed into Sri Lanka Technical Education Service must complete the

Efficiency Bar, in terms of Clauses 8 and 9. The Petitioners have fulfilled this requirement after they were absorbed into the Service as the letters issued by the Public Service Commission (P4A, P4B and P4C) would indicate. These letters indicate that the 5<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Petitioners have tendered their post graduate diploma certificates and teacher training certificate to have them exempted from applicability of the Efficiency Bar, after their appointments were made to the Grade III of the Sri Lanka Technical Education Service.

Even though the Petitioners assert in their petition that they were promoted to Grade II of the Sri Lanka Technical Education Service, they did not assert in the petition that they have satisfied the Efficiency Bar examination requirement, whilst in Grade II, in terms of their own contention, which enabled them to apply to be promoted to Grade I. But the Petitioners strongly relied on the fact that the 1<sup>st</sup> to 41<sup>st</sup> Respondents, who were initially appointed to Grade III - Special Cadre along with them, and promoted to Grade II - Special Cadre, thereafter switched to Grade II - General Cadre, and thereby they have taken up "*new appointment*" which triggers the explanatory note to Clause 6. The said note states no transfers could be made within General and Special Cadres, unless by taking it up as a new appointment. The Petitioners, in taking up this position seek to differentiate the 1<sup>st</sup> to 41<sup>st</sup> Respondents, who were allegedly favourably treated, despite specific provisions contained in the Service Minute, indicate to the contrary.

The 1<sup>st</sup> to 41<sup>st</sup> Respondents collectively taken up the position by that it was the general policy adopted by the Department of Technical Education and Training not to insist on the Efficiency Bar requirement for any subsequent promotions, after it was satisfied by an officer at some level. This claim was accepted and confirmed by the Director General of the Department of Technical

Education and Training (the 42<sup>nd</sup> Respondent) in his affidavit. The 42<sup>nd</sup> Respondent asserts therein that the *"... Efficiency Bar in Clause 7 of the SLTES Service Minute is the sole Efficiency Bar that an officer is required to pass in the SLTES"*. He further asserts that after satisfying the Efficiency Bar requirement, the 1<sup>st</sup> to 41<sup>st</sup> Respondents were promoted to Grade II – Special Cadre along with the Petitioners. The 1<sup>st</sup> to 41<sup>st</sup> Respondents were able to gain another *"promotion"* to Grade II – General Cadre, *" ... as permitted by Clause 12 of the SLTES Service Minute."* He also asserted that *"Although some of the Petitioners too had applied for promotion to the Class II – General Cadre in such a manner, they had been unsuccessful."*

This position, taken up by the 1<sup>st</sup> to 43<sup>rd</sup> Respondents, seems to be in line with the relevant Clauses of the Service Minute as they provide to make appointments to each of the three Grades not only from internally but also from outside, including candidates other than the officers who are already in the Sri Lanka Technical Education Service. Clause 12, (i)(b) allows an officer attached to any institution under the Ministry of Higher Education who draws an annual salary of Rs. 32,100.00 at the time of applying, could also be appointed to Grade I of that Service. In such a situation, it is clear that such a new appointee must comply with the Efficiency Bar requirement in terms of Clause 7. It is apparent that those who are already in the service serving in Class II need not take the Efficiency Bar once again, when Clause 7 refers to one Efficiency Bar.

This is also indicative from the Clause 12 which sets out the qualifications for each of the Grades. Under Grade II, which is applicable to both General Cadre and Special Cadre, an applicant who applies to Grade II from Grade III must have completed five years satisfactory service in General or Special Cadre.

There is no reference made in that Clause imposing a requirement to fulfil the Efficiency Bar requirement, in applying for the next level promotion.

The Petitioners, in their counter affidavits, have denied these assertions and state that the only '*promotions*' that could be granted to an officer in the Service is a promotion either from Grade III to Grade II or from Grade II to Grade I and not from Special Cadre to General Cadre or *vice versa*.

In this context, it is important to focus on the primary complaint of the Petitioners that the 1<sup>st</sup> to 41<sup>st</sup> Respondents have not fulfilled the eligibility criterion that enabled them to apply to be promoted to Class I of Sri Lanka Technical Education Service.

The 1<sup>st</sup> to 41<sup>st</sup> Respondents, and the 42<sup>nd</sup> Respondent state that there in fact was such a policy adopted by the institution, where an officer of the Sri Lanka Technical Education Service needs to satisfy only "*the sole*" Efficiency Bar, which in turn would satisfy the requisite eligibility criterion for a promotion from his current Grade to a higher Grade in that Service.

It is evident that, after the promotion to Grade II from Grade III, that none of the Petitioners claim that they have satisfied the Efficiency Bar requirement for the second time, although they are insisting on the fulfilment of such a requirement by the 1<sup>st</sup> to 41<sup>st</sup> Respondent, making reference to the Service Minute. In the absence of a declaration to that effect and in the absence of any documentary proof, it could be reasonably assumed that they too have not done so, before applying to be promoted to Class I. The fact that they were called for an interview in relation to selection of candidates for Class I, indicates that in spite of the Service Minute requirement to that effect, the Petitioners were treated as eligible candidates to be promoted to Class I of the Sri Lanka Technical

Education Service. This is why the Petitioners place heavy reliance on the switching of Cadre by the 1<sup>st</sup> to 41<sup>st</sup> Respondents, by insisting that they have received "*new appointments*" in the Service, and thus are needed to satisfy the Efficiency Bar.

However, it must be noted that if the relevant Clauses of the Service Minute are applied in the manner the Petitioners have asserted before this Court, then they too had to be considered to have failed the said eligibility criterion in applying for Class I of the said service.

Perusal of the Service Minute P3 revealed that the nature of the Efficiency Bar requirement which the Petitioners had to satisfy after being appointed to Class III of Special Cadre is set out therein at the Appendix "A". The specific subjects, which a candidate must take in, on a question paper set for a period of three hours, includes the subjects of General Administration, Accounts, Education and Second Language. Under the subject of General Administration, the administrative procedures contained in the Establishment Code, the Government Regulations and the Articles of the Constitution of the Republic were included. Under the subject of Education, law relating to education, administration and supervision were covered. Thus, it seems from this elaborate scheme formulated by the Public Service Commission, that it has expected the Efficiency Bar examination applicable to officers of the Class III of the said Service to possess familiarity and competency in an array of important areas of administration, which is necessary to effectively discharge the duties of the office they hold. The Petitioners also claim that the Efficiency Bar is a stringent test.

In terms of the Service Minute, any employee, after being appointed to a Grade in the Sri Lanka Technical Education Service must satisfy the Efficiency

Bar requirement within the stipulated time period of three years and, any failure on his part to do so, would result in the suspension of salary increments. This was already referred earlier on in this judgment in a different context. The failure to fulfil this requirement acts as a bar for such an officer's entitlement to apply for higher Grades. The Efficiency Bar examinations are expected to be conducted by the Department of Examinations, at regular intervals.

The Petitioners in their petition blame the Department of Technical Education for its continued failure to hold the Efficiency Bar examination applicable to the "*new appointees*" (1<sup>st</sup> to 41<sup>st</sup> Respondents) to the Class II - General Cadre of the Sri Lanka Technical Education Service. The manner in which the Department of Technical Education applied the different Clauses of Service Minute P3, apparently not on the strictest of terms. The Petitioners cannot claim that the "*new appointees*" must sit and pass the Efficiency Bar examination after they were appointed to Grade II of General Cadre, when the Petitioners themselves did not sit for the Efficiency Bar examination after their respective appointment to Class II of Special Cadre. They too have received the same benefit, as the 1<sup>st</sup> to 41<sup>st</sup> Respondents did, when the Department of Technical Education and Training has adopted a policy, which stipulates that all they need is to satisfy the "*sole Efficiency Bar*" in order to be promoted to a higher Grade. If Clause 7 is not applied to the Petitioners to the last letter, then it would not be strictly applicable to the 1<sup>st</sup> to 41<sup>st</sup> Respondents as well. The Strict application of the explanatory note that insists no interchanges between different Cadres unless as by way of a new appointment could not be taken as imposing a mandatory requirement, which is different to any other requirements imposed by Clause 7. The said Clause also insists that officers could apply to be promoted to higher Grades, only on satisfying an elaborate scheme of testing the

administrative and other required skills of an officer to perform his job responsibilities.

This Court in this application is not called upon to pronounce the merits or the demerits of strict adherence to the provisions of a Service Minute to the 'letter of law' and the desirability of the approach taken by the Department of Technical Education, in respect of the Petitioners as well as the 1<sup>st</sup> to 41<sup>st</sup> Respondents, up to their respective promotions to Class II. But, in view of the exemptions given to some of the Petitioners by the Public Service Commission, in relation to the "stringent" Efficiency Bar requirement that must be fulfilled after being appointed to Sri Lanka Technical Education Service - Class III - Special Cadre, it appears that it had not strongly insisted on the acquisition of the required knowledge in the different subjects that is tested by that examination.

The Service Minute, by its Clause 9, permits the Efficiency Bar requirement to be satisfied by acquiring a professional or academic qualifications in the relevant field such as Post Graduate Degree/Diploma or Diploma in Education/Technical Education or Teacher Training Diploma/Certificate of Teacher Training. Thus, sitting for the Efficiency Bar examination conducted by the Department of Education is not the only way available to an officer of the Sri Lanka Technical Education Service by which he could satisfy the requirement imposed by Clause 7 of the Service Minute.

The 5<sup>th</sup> Petitioner was exempted from the requirement of satisfying the Efficiency Bar by the Public Service Commission with the acceptance of his post graduate diploma (P4A) whereas the 7<sup>th</sup> Petitioner was exempted on the acceptance of her Teacher Training Certificate. The 8<sup>th</sup> Respondent completed

his post graduate diploma and he too was exempted from the Efficiency Bar requirement.

It must be highlighted that in terms of Clause 3 of the Service Minute P3, all applicants to the Class I of the Service must have either a post graduate degree or a post graduate diploma or an equivalent qualification to be promoted. This was insisted on by the Service Minute as the basic qualification to be considered for promotion to Class I. There is no complaint by the Petitioners to the effect that the 1<sup>st</sup> to 41<sup>st</sup> Respondents have failed to qualify that requirement. They only insist on the alleged failure to satisfy the Efficiency Bar requirement in Class II, due to the switching done from Special Cadre to General Cadre. If that being the case, the 1<sup>st</sup> to 41<sup>st</sup> Respondents too must possess, either a Post Graduate Degree or a Post Graduate Diploma or an equivalent qualification, which would qualify them to be called for an interview, in order to be considered for promotion to Class I.

If the Efficiency Bar requirement is applicable as the Petitioners claim, then those Respondents too are entitled to receive an exemption from that requirement, as some of the Petitioners have. But this situation does not arise for consideration in the instant application, as it indicates that not only the “*policy*” referred to by the 1<sup>st</sup> to 41<sup>st</sup> Respondents as well as the 42<sup>nd</sup> Respondent, who speaks of a “*sole*” Efficiency Bar which an appointee to Sri Lanka Technical Education Service must satisfy, but the several Clauses of the Service Minute P3 also support adaptation of such an approach.

Clause 12 of the Service Minute contains provisions that are in line with the said policy. The qualifications that are required in order to be appointed to different Grades of the Service are set out in that Clause. In relation to the instant

matter, the qualifications that are set out therein for Grade II and Grade III are as follows;

**“ II වැනි පන්තිය- සාමාන්‍ය සේවක සංඛ්‍යාව**

සෑම අයදුම්කරුවෙකුම පහත දැක්වෙන ක්ෂේත්‍රයන්ගෙන් ලබා ගත් පිළිගත් විශ්ව විද්‍යාලයක උපාධියක්

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|---------------------------------|---------------------------|
| (අ) ඉංජිනේරු විද්‍යාව           | (ආ) ගණිතය                 |
| (ඇ) විද්‍යාව                    | (ඈ) වාණිජ්‍ය විශේෂ උපාධිය |
| (ඉ) ආර්ථික විද්‍යා විශේෂ උපාධිය | (ඊ) කෘෂිකර්මය             |
| (උ- රාජ්‍ය හෝ ව්‍යාපාර පරිපාලනය | (ඌ) ඉංග්‍රීසි             |

පශ්චාත් උපාධියක් හෝ විශේෂ උපාධි ඩිප්ලෝමා සහතිකයක් හෝ සමාන සුදුසුකම්,

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අවුරුදු අටක ඉගැන්වීමේ සහ/හෝ පරිපාලන පළපුරුද්දක් ඇති අයකු විය යතුය.

නැතහොත්

- (ii) පිළිගත් විශ්ව විද්‍යාලයකින් ලබාගත් උපාධියක් සහිත උසස් අධ්‍යාපන අමාත්‍යාංශය යටතේ ඇති කාර්මික විද්‍යාලයක අවම වශයෙන් අවුරුදු අටක ඉගැන්වීමේ සහ/ හෝ පරිපාලන පළපුරුද්ද ඇති අයෙකු විය යුතුය.

නැතහොත්

- (iii) ශ්‍රී ලංකා කාර්මික අධ්‍යාපන සේවයේ iii වන පන්තියේ සාමාන්‍ය හෝ විශේෂ සේවයේ සංඛ්‍යාවේ යටත් පිරිසෙයින් අවුරුදු පහක සතුටුදායක සේවා කාලයක් සම්පූර්ණ කොට ඇත්තාවූද සිය තනතුරෙහි සරීර කරනු ලැබ ඇත්තාවූද අයකු විය යුතුය.

**II වැනි පන්තිය- විශේෂ සේවක සංඛ්‍යාව**

සෑම අයදුම්කරුවෙකුම-(i) (අ) නියමිත විෂයයෙන්/ විෂයයන්ගෙන්, පිළිගත් විශ්ව විද්‍යාලයකින් / විශ්ව විද්‍යාලවලින් උපාධියක් සහ පශ්චාත් උපාධියක් හෝ උපාධි ඩිප්ලෝමා සහතිකයක් හෝ සමාන සුදුසුකම්

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(ආ) ශ්‍රී ලංකා කාර්මික අධ්‍යාපන සේවයේ III වන පන්තියේ සාමාන්‍ය හෝ විශේෂ සේවක සංඛ්‍යාවේ යටත් පිරිසෙයින් අවුරුදු පහක සතුටුදායක සේවා කාලයක් ඇත්තාවූද, සිය තනතුරෙහි ස්ථිර කර ඇත්තාවූද අයෙකු විය යුතුය.”

The required qualifications indicate that recruitment to Grade II - General Cadre, is open to anyone who possess them. However, for an appointment to Grade II - Special Cadre, only the officers who are already serving in the Sri Lanka Technical Education Service Grade III with five years of satisfactory service record could apply. Thus, it was essentially meant to ensure the promotional prospects of the officers who are already in that Service. The 1<sup>st</sup> to 41<sup>st</sup> Respondents have switched over to Grade II - General Cadre from their original Grade II - Special Cadre, by fulfilling the required qualifications. The Petitioners do not dispute that fact either. They simply contend that the 1<sup>st</sup> to 41<sup>st</sup> Respondents must be treated as “*new appointees*”, in order to disqualify them from applying to Grade I.

The other contention advance by the Petitioners was that the Service Minute P3 was amended by Gazette Extraordinary No. 2183/20 of 06.07.2020 (P10) and the 42<sup>nd</sup> and 43<sup>rd</sup> Respondents proceeded to conduct interviews under the old Service Minute (P3). They further state in paragraph 22 of their petition that “*[T]he Petitioners state that whilst having a new Service Minute in force, it was unlawful for the 42<sup>nd</sup> and 43<sup>rd</sup> Respondents to conduct interview[s] under the old Service Minute. The Petitioners state that if the present interview process is cancelled and if fresh applications are called under the new Service Minute they will not be prejudiced.*”

The applications for the posts of Grade I of the Sri Lanka Technical Education Service were called by the Public Service Commission on 22.02.2019 in terms of the notice published in the Government Gazette No. 2112 of 22.02.2019 (P6). It spells out the applicable marking scheme as well, which provided prior

notice to the prospective applicants informing them of the basis on which the marks would be given during the interview. This notice was amended by the Public Service Commission with a publication of an amended marking scheme, which is applicable to those who have applied on or before 15.03.2019 (P7). Perusal of P8A to P8I indicate that the Petitioners were called for an interview to be held on 26.07.2020, for the purpose of evaluating them to be promoted to Class I of the Service. The amended Service Minute P10, was published by the Public Service Commission on 06.07.2020.

It is correct to state that when the interviews were held on 26.07.2020, the Public Service Commission has already taken steps to amend the Service Minute of the Sri Lanka Technical Education Service, with substantial changes introduced with such amendments. It appears that the Petitioners have mixed feelings towards the changes introduced by the amended Service Minute and its effect on their promotional prospects. Having accepted the new system introduced by the amended Service Minute P10, as reproduced from their petition, the Petitioners in their submissions have taken up the position that the Service Minute 2020 is the Service Minute that should be followed and a Grade promotion could be given to all the Petitioners to Class I of Sri Lanka Technical Education Service, as they have satisfied all the requirements.

In the amended Service Minute P10, the opening statement makes it clear that any action taken in terms of the earlier Service Minute P3 is not prejudiced by the amendments introduced by same as it states “ *FOLLOWING Service Minute of the Sri Lanka Technical Education Service is substituted without prejudice to any action taken or purportedly have been taken in terms of Service Minute of the Sri Lanka Technical Education Service published in the Gazette Extraordinary No. 415*

*dated 15.08.1986 of the Democratic Socialist Republic of Sri Lanka and the amendments made thereto from time to time."*

Therefore, it is clear that the Service Minute P10, has no effect on the interviews that were called on 23.07.2020, although it was published just 17 days prior to the scheduled interviews.

In view of the reasons set out in the preceding part of this judgment, it is my considered view that the Petitioners have failed to establish to the required degree of proof that their fundamental rights under Articles 12(1) and 14(1)(g) were infringed by any of the Respondents, as alleged.

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

**JUDGE OF THE SUPREME COURT**

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

I agree.

**JUDGE OF THE SUPREME COURT**

**K. K. WICKREMASINGHE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**