

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

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

1. W.M. Chandrapala,
"Wellassa," Galgamuwa,
Miyaththalawa,
Inginiyagala.
2. D.G. Anil Pradeep Kumara,
No.42,
Madugama,
Siyabalanduwa.
3. R.W.W.N.R. Rajapaksha,
Pasala Idiripita,
Karawila,
Bandalkumbura.
4. D.M. Sanjeewa Sampath Gunasekara,
No.19/2, Waragama,
Buddama,
Monaragala.
5. R.M.A. Kumara Bandara
No.128, Kotiyagala,
Monaragala.
6. S. Harikaran,
Muththaiya Road,
Vattiweli, Pothuvil.
7. T.G. Aruna Shantha,
Ambagahakanda,
Panapola,
Kalawana.

S.C.F.R. Application No: 278/2023

8. W.A. Chanaka Ruwan Gunapala,
EN. 9/3 B. Uhana Road,
Karangawa, Ampara.
9. N. Malinda Priyamal Nawalage,
Kalugasyaya, Siyabalanduwa,
Monaragala.
10. J.P. Sanjeewa Priyankara,
Maldam Abhaya,
Pitakumbura, Bibila.
11. D.M. Ajith Kumara,
No.88, Balagolla,
Buddama, Monaragala.
12. R.M. Nilantha Athulasiri Bandara,
No.76, Kotiyagala,
Monaragala.
13. K.M. Jeewan Kanchana Nawoddy
Kumara,
1 B. 45 Katagara, Namaloya,
Ampara
14. T.B. Chandrarathna,
Serawa, Pitakumbura,
Bibila.
15. D.M. Chandupani Dissanayake,
401/C, Bant Road,
Inginiyagala.
16. Ruwani Sanjeewa Witharana,
88/B, Hospital Road,
Inginiyagala.

17. H.M. Nilanthi Kumari Manike,
'Jayamini' Narangas Arawa,
Meegahapitiya, Dambagalla.
18. H.M. Nishantha Ranjith Kumara,
No.42, Kiulegama,
Wadinagala, Ampara.
19. Y.M. Asanka Lakshman,
No.05, Jayanthipura,
Wadinagala, Ampara.
20. K.G. Chandana Pushpa kumara,
T/50, Nagavimana,
Inginiyagala.
21. T.M. Thushani Madhushika Kumarasinghe,
Kotagoda, Kanda Uda Panguwa,
Monaragala.
22. P.M.Sandun Pushpakumara,
Dalpalama Asala, Pallan Oya,
Dewalahinda, Ampara.
23. K.M. Premarathna,
9th mile post,
Govindupura, Monaragala.
24. K.K. Indrani,
6 1/4-mile post, Antpara Road,
Kandauda Panguwa,
Monaragala.
25. R.M.R. Chaminda Rathnayake,
Serawa, Pitakumbura,
Bibile.
26. R.B. Upul Keerthi Kumara,
Bulupitiya, Nilgala, Bibile.

27. S.M. Pradeep Sampath Wijewardena,
No.63/A/9, Marawa,
Dorakumbura, Padiyathalawa.
28. B.G.S. Sarathchandra,
No. 913, Meegolla,
Barawardaka Oya, Hasalaka.
29. U.G. Dhanushka Priyadarshana,
No. 565, 10 Ela,
Ulpathagama, Hasalaka.
30. G.G. Anusha Lakmali Karunaratne,
No.115, 2 Ela,
Handungamuwa, Mathale.
31. W.G. Dhammika Susil Bandara,
No.1578, 42 Canal,
Nugagolla, Mathale.
32. M.M. G. Chandima Sanjeevani Kumari,
No.712, 19 Division,
Handungamuwa, Mathale.
33. A.A.S. Sandunpriya,
198/1, Pasala Mawatha,
Bibiladeniya, Udubaddawa.
34. K.A. Ruwan Sanjeewa,
Dematawala,
Udubaddawa.
35. H.M.H.D.B. Jayawardena,
No.1A, Tholambugolla,
Galewela.
36. S.A.N.P. Bandara
Matihakka Waththa,
Polpitiya, Matikumbura, Polgahawela.

37. K.M. Chathuranga Kulathunga,
No.17 1/2, Moragaswewa,
Habarana.
38. P.G.K.S Erandika Karunarathne,
No.48, Rotawewa,
Galoya Junction.
39. K. A. Pradeep Kumara,
Embawalapitiya, Munuwargate,
Wariyapola.
40. W.G.A. Udaya Kumara,
No. 15/1, Maeethi Mawatha,
Galoya Junction,
Minneriya.
41. S.S. Sampath,
No. 200/02,
Bibiladeniya,
Udubaddawa.
42. W.G.D. Aruna Chaminda,
Kothalawala Road, Rajaela,
Higurakgoda.
43. H.G.C. Dilhani,
Welikanda,
Dodamduwa.
44. N.V. Roshan Samith Kumara,
Rathambalagama,
Hambegamuwa,
Thanamalwila.
45. K.R. Nayanajith,
No. 4/02,
Madummankada Para,
Udawalawa.

46. S. Chathuska Kalpani,
No.315/1, Karuna Niwasa,
Udawalawa Junction,
Thibolkatiya, Kolambage Ara.
47. H.D.C Piyadasa,
No. 130, Ananda Maithree Mawatha,
Thumbagoda,
Balangoda.
48. T.Vasikaran,
Main Road Karithiue-11,
Batticaloa office.
49. B.M.D. Madhushanka,
Thottama, Mahanagapura,
Ampara.
50. S.B. Premawansha,
314/2, Pussallagolla,
Udispaththuwa.
51. W.M.A.R. Shanuka Wanninayake,
Koswaththa,
Panaduragama.
52. T.M.I. Aththanayake Manike,
7/A, Nagavimana,
Inginiyagala.
53. R.W. Chamil Danushka,
C/276/1, Industrial Area,
Ampara.
54. W.A.J.K. Wijesooriya,
No.66/5, Kurunegala Road,
Wilakagadapoththa,
Wariyapola.

55. A.M. Abeyrathne,
11/3, Hawenagama,
Kolonthalawa,
Padiyathalawa.
56. K.M. Sumanawathie
Alupathgala, Galabadda,
Monaragala
57. Y.P. Dimuthu Priyadarshani Pathirana,
No. 63/8,
Galoya Junction.
58. H.M.C. Samaraweera,
Siri Sewana, Kuda Pallegama,
Maha Pallegama.
59. V.H. Chaminda Prabath,
No. 66/A, Army Camp Road,
Udawalawa.
60. D.M. Gayan Sanjeewa Kumara,
9 Mile post, Madagama,
Bibile.

PETITIONERS

Vs.

1. Chandana Sooriyabandara,
Director General,
Department of Wild Life Conservation,
811A, Jayanthipura,
Battaramulla.
2. Hon. (Mrs.) Pavithra Devi Wanniarachchi,
Minister of Wildlife and Forest Resource
Conservation,
No. 1090, Sri Jayawardenapura Mawatha,
Rajagiriya.

2A. Hon. (Mr.) Dr. Dammika Patabendi,
Ministry of Environment,
Sobadam Piyasa, 416/C/1,
Robert Gunawardena Mawatha,
Battaramulla.

3. R.M.C.M. Herath,
Secretary to the Ministry of Wildlife and
Forest Resource Conservation,
No. 1090, Sri Jayawardenapura Mawatha,
Rajagiriya.

3A. K.R. Uduwawala,
Secretary to the Ministry of Environment,
Sobadam Piyasa, 416/C/1,
Robert Gunawardena Mawatha,
Battaramulla.

4. Hon. Dinesh Gunawardena,
Prime Minister & Minister of Public
Administration, Home Affairs, Provincial
Councils, and Local Government,
Independence Square,
Colombo 07.

4A. Hon. Prof. Chandana Abeyratne,
Minister of Public Administration, Provincial
Councils, and Local Government,
Independence Square,
Colombo 07.

5. K.D.N. Ranjith Ashoka
Secretary to Ministry of Public
Administration, Home Affairs, Provincial
Councils, and Local Government,
Independence Square,
Colombo 07.

5A. S. Aloka Bandara,
Secretary to Ministry of Public
Administration, Provincial
Councils, and Local Government,
Independence Square,
Colombo 07.

6. S. Alokabandara,
Director General of Combined Services,
Ministry of Public Administration, Home
Affairs, Provincial Councils, and Local
Government,
Independence Square,
Colombo 07.

6A. R.M.N.E.K. Ranasinghe,
Director General of Combined Services,
Ministry of Public Administration, Provincial
Councils, and Local Government,
Independence Square,
Colombo 07.

7. Director General,
Department of Management Services
Room No. 325, 3rd Floor,
Ministry of Finance,
The Secretariat,
Colombo 01.

8. Sanath J Ediriweera,
Chairman,

9. S.M. Mohamed,
Member,

10. N.H.M. Chithrananda,
Member,

11. Prof. N. Selvakumaran,
Member,

12. M.B.R. Pushpakumara,
Member,

13. A.D.N. de Zoysa,
Member,

14. R. Nadarajapillai,
Member,

15. C. Pallegama,
Member,

16. G.S.A. De Silva, PC,
Member,

08th to 16th Respondents;
All of the
Public Service Commission,
No. 1200/9, Rajamalwaththa Road,
Battaramulla.

17. W.H.M.M.C.K. Dayaratne,
Secretary,
Public Service Commission,
No. 1200/9, Rajamalwaththa Road,
Battaramulla.

18. Hon. Attorney General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS

1. Imamdeen Al Irfath,
Dahanakwewa, Mukiriyawe,
Kahatagasdigiliya, Anuradhapura.

2. K.P.G. Nuwan Krishanthi Piris,
No. 156, Gampolawatta,
Hingurakgoda, Polonnaruwa.
3. A.H.M.R.K. Herath Wadigamangawa,
No. 177, Koonkadawela,
Anamaduwa, Puttalam.
4. K.N. Duminda Udaya Kumara,
Nissasala Walaukadura,
Pusella, Kalupahana,
Badulla.
5. W. Dinidu Prasad Wijerathna,
Pahala Kudapattiya,
Perakampura, Kahatagasdigiliya,
Anuradhapura.
6. I.K.M. Sumthra Weerasinghe,
Kakirawa Junction, Kahatagasdigiliya,
Anuradhapura.
7. M. Anura Kumara,
No. 216/A Opposite Padanama,
Sisilasagama, Hambantota.
8. K. M. Sarath Kumara,
Heramula, Demuwatha,
Rakwana, Rathnapura
9. Weerakkutige Ranjith,
No. 628/1, Sudugala,
Panamura, Embilipitiya.
10. J. G. Tharindo Shrinath,
Vikasitha, Walawe,
Ambalanthota.

ADDED-RESPONDENTS

Before: Hon. Janak De Silva, J.

Hon. K. Priyantha Fernando, J.

Hon. Sampath B. Abayakoon, J.

Counsel:

Saliya Pieris, P.C., with Charaka Jayaratne, Nethmi Silva, Dinithi Jayasinghe and Pasindu Fernando for Petitioners

Fazly Razik, DSG with Sureka Ahmed, SSC for Respondents

M.U.M. Ali Sabry, P.C., with Ruwantha Cooray with Yoosuf Alfayed for 1st-10th Added Respondents

Written Submissions tendered on:

30.09.2025 by Petitioner

13.12.2024 by Respondents and 16.12.2024 by 1st to 10th Added Respondents

Argued on: 01.09.2025

Decided on: 29.04.2026

Janak De Silva, J.

Petitioners are Volunteer Guides in the Department of Wildlife Conservation (DWC) since 2014. They are members of “සමස්ත ලංකා වනජීවී මාර්ගෝපදේශකයින්ගේ වෘත්තීය සමිතිය” (Union) which comprises 279 Volunteer Guides working in the DWC.

The crux of their complaint is that a legitimate expectation had being created in them of being absorbed into the permanent cadre by the DWC deploying them for nearly a decade to perform its work. As the DWC failed to do so, the Petitioners claim that the fundamental rights guaranteed to them under Articles 12(1) and 14(1)(g) of the Constitution have been infringed.

Factual Matrix

The services of Volunteer Guides were used whenever there was a shortage of Wildlife Guards to accompany the local and foreign visitors who visited National Parks and to serve in various offices of the DWC. It had also been the practice for the Park Wardens to seek the assistance of retired as Wildlife Guards, Wildlife Range Assistants and Wildlife Rangers to serve as Volunteer Guides upon the payment of a daily stipend.

Additionally, the Park Wardens had also assisted persons residing in the vicinity of the National Parks to act as Volunteer Guides upon the payment of a daily stipend. However, these Volunteer Guides are not permitted in law to carry out raids, bear firearms on duty, or maintain electric fences and in fact, the Park Wardens had also been instructed not to assign these functions to Volunteer Guides. But it is well demonstrated that their services had been utilized by the DWC, irrespective of these stated limitations of their roles.

In 2014, 362 Volunteer Guides who joined the DWC in 2003 were recruited to the permanent cadre of the DWC. This was done in terms of Circular No. 25/2014 dated 12.11.2014 and Circular No. 25/2014(1) dated 29.12.2014,.

This recruitment comprised two categories of Volunteer Guides, namely: (i) those who possessed the requisite educational qualifications and had completed 180 days of service; and (ii) those who did not possess the requisite educational qualifications but have completed three years of service.

Nevertheless, since none of the Petitioners nor the members of the union had completed the mandatory 180 consecutive days of service, the Petitioners were not granted permanent employment in this recruitment.

Later, these two circulars were repealed by Circular No. 25/2014(11) dated 04.04.2016 only to be reinstated by Circular No. 29/2019 dated 18.09.2019.

The Petitioners rely mainly on the following recommendations, which were communicated between the relevant authorities, both prior to and subsequent to the reinstatement of the aforementioned circulars by Circular No. 29/2019, in support of their contention that the Respondents had created a legitimate expectation that they would be absorbed into the permanent cadre of the DWC.

1. The 1st Respondent, by letter dated June 2019, submitted a draft Cabinet Memorandum to the then Secretary of the Ministry of Tourism Development, Wildlife, and Christian Religious Affairs, stating that the Volunteer Guides currently serving with the DWC possess a wide range of skills, including the ability to drive heavy vehicles, operate boats, cook, work as masons, handle electrical engineering tasks, and demonstrate proficiency in computer usage and in light of these diverse

skills, recommending that the Petitioners and/or other members of the Union be recruited into the permanent cadre of the DWC. (P10 to the Petition)

2. In response to the grievance letters (P16(i) to P16(xxx) to the Petition) the former President, instructed the 1st and/or 3rd Respondents and/or the Ministry of Mahaweli Development and Environment, and other relevant authorities, to take steps to initiate the recruitment process for the Petitioners and other members of the Union as it was a fair and/or reasonable request. (P18 to the Petition)
3. 1st Respondent, by two letters both dated 28.08.2023, informed the Secretary to H.E. the President and the Secretary to the Hon. Prime Minister that the 1st Respondent would take prompt action to recruit the Petitioners to the permanent cadre of the DWC as soon as a decision to that effect is communicated. (P27(a) and P27(b) to the Petition)

However, in the meantime, the Multipurpose Development Task Force was established in December 2020 as a governmental initiative aimed at providing employment opportunities to qualified youth from low-income backgrounds. Approximately 36,000 persons who had completed education up to Grade 8 were recruited to this Task Force and were assigned to the offices of their respective Divisional Secretaries for a training period of one year. Upon completion of the said training period, the recruited officers were to be deployed to various Ministries, Departments, other Government Institutions, and Provincial Councils to undergo a further period of training for two years.

Accordingly, the Secretary to the Ministry of Defence, by letter dated 30.09.2020, had requested all Ministries, Departments, and other Government Institutions to indicate their requirements of persons under this initiative, in compliance with DMS Circulars Nos. 1/2020 and 2/2020.

In response, the DWC, by letter dated 03.05.2021, indicated its requirement of 7,111 persons. This included 6,037 persons for the post of Electric Fence Maintenance Assistants, while the remainder were to be deployed to provide other services under different categories.

Consequently, the DWC was assigned 4900 Multipurpose Development Assistants (MPDAs) in two tranches in September and December 2021. These MPDAs rendered services in relation to the maintenance of electric fences and their salaries were paid by the State consequent to their recruitment under this initiative. Out of the said number, only 4327 MPDAs remained attached to the DWC as at 18.11.2023, while the remaining officers had ceased to serve in the DWC.

On 09.05.2023, the Cabinet appointed Officials Sub Committee, being a six-member committee chaired by the Secretary to the Prime Minister, tasked with synchronizing recruitments to the public service, approved only 4731 MPDAs out of the 6037 requested by the DWC to perform electric fence maintenance duties.

Thereafter, by a Cabinet decision, it was decided to assign 4731 MPDAs to the DWC as Electric Fence Assistants. But the DWC, in collaboration with the National Apprentice and Industrial Training Authority, developed a specialized National Vocational Qualification (NVQ) certificate in electric fence maintenance, and the MPDAs assigned to the DWC were required to obtain the said qualification. Subsequently, interviews were conducted and 2426 candidates possessing the requisite qualification were identified. However, as the number of qualified candidates was less than 4731, steps were being taken to obtain the approval of the Cabinet of Ministers to vary the stipulated qualifications.

Nevertheless, by their Petition dated 15.11.2023, the Petitioners sought an interim order restraining the 1st to 17th Respondents from taking any further steps to fill vacancies in the DWC to which the Petitioners could be considered for recruitment, in particular seeking to restrain the filling of such vacancies by MPDAs, a process which was stated to be presently taking place. Even though this Court granted the interim order sought on 03.05.2024, it was subsequently varied by Order dated 19.12.2024, whereby it was directed that the Respondents may proceed with recruitment, subject to 300 vacancies being reserved for the Petitioners and other Volunteer Guides.

It was subsequently submitted that, following these interim orders, and in view of the increasing difficulty in carrying out the functions of the Department due to the shortage of employees and existing vacancies within the DWC, the 3rd Respondent, by letters dated 14.06.2024 and 18.06.2024, sought approval from the Secretary to the Prime Minister to

recruit 279 Volunteer Guides to the DWC for the post of Field Assistant. By letter dated 25.06.2024, the Secretary to the Prime Minister granted approval for this recruitment. Thereafter, by letter dated 26.06.2024, the Acting Director General of the DWC informed the 7th Respondent to take necessary steps to give effect to the said recruitment, and by letter dated 23.07.2024, the 7th Respondent also granted approval. However, the Public Service Commission, at its 134th meeting held on 10.09.2024, rejected the proposed recruitment.

Legitimate Expectation

The doctrine of legitimate expectation is founded on the principle that justice requires that a public authority be restrained from frustrating an expectation which it has itself created, whether by an abrupt change in policy or by acting on extraneous or collateral considerations.

In ***Council of Civil Service Unions v. Minister for the Civil Service [(1985) A.C. 374, 408-9]***

Lord Diplock stated that for a legitimate expectation to arise, the decision:

*“must affect [the] other person by depriving him of some benefit or advantage which either (i) **he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.**”* (emphasis added)

The terms of the representation by the decision-maker must entitle the party to whom it is addressed to expect, legitimately, one of two things:

- (a) That a hearing or other appropriate procedure will be afforded before the decision is made (**Procedural Legitimate Expectation**); or
- (b) That a benefit of a substantive nature will be granted or, if the person is already in receipt of the benefit, that it will be continued and not be substantially varied (**Substantive Legitimate Expectation**)

In English law, procedural legitimate expectation developed first, owing to its close association with the principles of natural justice. In ***R v. Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators*** [(1972) 2 QB 299 at 306], Lord Denning emphasized that:

“It is said that a corporation cannot contract itself out of its statutory duties. But that principle does not mean that a corporation can give an undertaking and break it as they please. So long as the performance of the undertaking is compatible with their public duty, they must honour it. At any rate they ought not to depart from it except after the most serious consideration and hearing what the other party has to say: and then only if they are satisfied that the overriding public interest requires it.” (emphasis added)

Moreover, in ***R v. Secretary Of State For Transport ex parte Richmond-Upon-Thames L.B.C*** [1994 1 WLR 74 at 92], Laws, J. also observed that,

“A public authority may, by an express undertaking or past practice or a combination of the two, have represented to those concerned that it will give them a right to be heard before it makes any change to its policy upon a particular issue which affects them. If so, it will have created a legitimate expectation that it will consult before making changes, and the court will enforce this expectation save...” (emphasis added)

Procedural legitimate expectation has consistently been recognized by our courts. [Sundakaran v. Bharathi and Others [1989] 1 Sri. L. R. 46, Desmond Perera v. Karunaratne, Commissioner of National Housing [1994] 3 Sri. L. R. 316 (CA); [1997] 1 Sri. L. R. 148 (SC), Laub v. Attorney-General [1995] 2 Sri. L. R. 88, Multinational Property Development Limited v. Urban Development Authority [1996] 2 Sri. L. R. 51; M.R.C.C. Ariyaratne & Others v. N.K. Illangakoon & Others (SC/FR/Application No. 444/2012, S.C.M. 30.07.2019); Vavuniya Solar Power (Private) Limited v. Ceylon Electricity Board & Others (SC/FR/Application 172/2017, S.C.M. 20.09.2023)].

In *Dayarathna and Others v. Minister of Health and Indigenous Medicine and Others* [(1999) 1 Sri L.R. 393 at 412], Amerasinghe, J. held that,

“No opportunity was given to the petitioners to argue why the change of policy should not affect them: they were faced with a situation where a change of policy had been made without their knowledge... Moreover, legally, the respondents failed to observe their duty. When a change of policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavorably...”
(emphasis added)

Courts have accepted that procedural protection should be given where an individual has a legitimate expectation of procedural protection such as a hearing or a consultation before a decision is made. It is also accepted that where an individual has a legitimate expectation that a benefit of a substantive nature will be granted, or if already in receipt of the benefit, that it will be continued, then fairness too dictates that expectation of the benefit should give the individual the entitlement to be permitted to argue for its fulfilment.

The controversy is whether in such situations the individual has a legitimate expectation that the benefit will be granted or continued. This is the question of substantive legitimate expectation.

The traditional objection to the doctrine of substantive legitimate expectation is two-fold:

- (a) Ultra Vires by fettering the discretion
- (b) The principle of legality

The arguments in favour of permitting substantive legitimate expectation are based on the principle of legal certainty. It is said that where a public body makes a promise it is in the interests of good administration that it should act fairly and should implement its promise.

Prior to the Court of Appeal decision in ***R. v. Secretary of State for the Home Department, ex p Hargreaves*** [(1997) 1 W.L.R. 906] the weight of authority was in favour of the developing doctrine of substantive legitimate expectations. There was direct support in ***R. v. Secretary of State for the Home Department, ex p Ruddock*** [(1987) 1 W.L.R. 1482] and ***R. v. Ministry for Agriculture, Fisheries and Floods, ex p Hamble (Offshore)*** [(1995) 2 All E.R. 714] while indirect support could be found in ***R. v. Secretary of State for the Home Department, ex p Khan*** [(1984) 1 W.L.R. 1337].

However, in ***R. v. Secretary of State for the Home Department, ex p Hargreaves*** [(1997) 1 W.L.R. 906] Court cast a shadow over the doctrine of substantive legitimate expectation by suggesting that it was not for Court to determine the fairness of a decision of a Minister not to accommodate a reasonable expectation which a policy would thwart, as this amounted to an intrusion into the merits of the decision. It was suggested that in matters of substance, *Wednesbury reasonableness* is the proper test, and that the doctrine of legitimate expectation, based on fairness, cannot be extended from procedural to substantive matters.

It was for the decision-maker to undertake the balancing act: to decide whether the expectation should be protected or whether the public interest is strong enough to override the expectation. Court will only quash the decision to apply the new policy instead of the old, if it could be shown that the judgment of the decision maker to do was irrational, *Wednesbury unreasonable*; it could not be quashed on the basis of fairness. In ***Hargreaves*** [supra] Court overrode ***Hamble*** [supra] in holding that a balancing exercise should be undertaken by Court.

In ***R. v. North and East Devon Health Authority, ex p. Coughlan*** [(2000) 2 W.L.R. 622] the Court of Appeal examined this question in detail and it held that the starting point is to ask what the individual's legitimate expectation was, and suggested that where there is a dispute as to this, it is to be determined by Court, with there being at least three possible outcomes with Court taking a different role in respect of each category.

- (a) Court may decide the public body only needs to bear in mind its previous policy or assurances, giving it the weight, it thought fit, but no more, before

deciding to change course. Court will then only review the decision on conventional *Wednesbury* grounds.

(b) Court may decide that the representation gives rise to a legitimate expectation of procedural benefit and if so, the court will require the opportunity for consultation to be given unless there is an overriding reason to withdraw from it.

(c) Court will in a proper case, decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Once the legitimacy of the expectation is established, it is for Court to determine whether there is sufficient overriding interest relied upon for the change of policy or to justify departing from the promise. Court is undertaking a balancing exercise between the *public interest* and the *individual's interest*. This category is a clear acceptance of the doctrine of substantive legitimate expectation. The Court defined the type of case of an enforceable expectation of a substantive benefit as being where the expectation is confined to one person or a few people, giving the promise or representation the character of a contract. Promises rather than policies are more likely to fall within this category.

Our courts have recognized substantive legitimate expectation [***Dayaratne and others v. Minister of Health and Indigenous Medicine and Others* (1999) 1 Sri. L. R. 393; *Mowjood v. Pussadeniya* (1987) 2 Sri. L. R. 287; *M.R.C.C. Ariyaratne & Others v. N.K. Illangakoon & Others* (supra); *Werage Sunil Jayasekera and others v. B.A.P. Ariyaratne, General Manager, Department of Railways* (SC FR 64/2014, SCM 05.04.2022); *Chanaka Harsha Talpahewa v. Prasad Kariyawasam, Secretary to the Minister of Foreign Affairs and others* (SC FR 378/2017, S.C..M 21.06.2022); *Vavuniya Solar Power (Private) Limited v. Ceylon Electricity Board & Others* (supra)].**

However, Weerasuriya J. in ***Sirimal and others v. Board of Directors of the Co-operative Wholesale Establishment and others* [(2003) 3 Sri.L.R. 23 at 29]** held that:

“[...] when there is a substantive legitimate expectation in need of protection, it is for the decision maker and not the Court to judge whether that expectation should

be protected or whether broader public interest is so strong as to override the expectation. The Court would only intervene if the decision maker's judgment was perverse or irrational. Thus, the present position is that the substantive protection of legitimate expectation has to be sought on the more traditional approaches of the English Law namely (a) procedural protection and (b) protection in terms of 'Wednesbury' unreasonableness."

This decision appears to shut out the third category discussed in **Coughlan [supra]**. To that extent the dicta of Weerasuriya J. in **Sirimal [supra]** is *per incuriam* as Court did not consider **Coughlan [supra]**. Accordingly, in my view the third category identified in **Coughlan [supra]** which allows for substantive legitimate expectation to be protected and enforced by Court is, subject to the criteria identified therein, part of our law.

Analysis

The claim of the Petitioners is founded upon two distinct avenues, namely:

1. Several recommendations have been communicated between relevant authorities in terms of the recruitment of Volunteer Guides into the permanent cadre of the DWC, both prior to and subsequent to the reinstatement of Circular No. 25/2014 dated 12.11.2014 and Circular No. 25/2014(1) dated 29.12.2014, by Circular No. 29/2019 dated 18.09.2019 (Marked P10, P18, P27(a), P27(b) to the Petition), and;
2. In 2014, pursuant to Circular No. 25/2014 dated 12.11.2014 and Circular No. 25/2014(1) dated 29.12.2014, 362 Volunteer Guides who had joined the DWC in 2003 were absorbed into the permanent cadre, thereby constituting a past practice of recruiting Volunteer Guides into the permanent cadre of the DWC.

But as Court recognized in **Desmond Perera and Others v. Karunaratne, Commissioner of National Housing and Others [(1994) 3 Sri L.R. 316]**, it is trite law that the mere existence of a "hope" or "reasonable hope" on the part of a claimant is insufficient to sustain a claim founded on the doctrine of legitimate expectation [See **Siriwardana v. Seneviratne and Others (2011) 2 Sri.LR 1**]; **India v. Hindustan Development Corporation [(1993) 2 SCC 499]**.

Notwithstanding the recommendations communicated between the relevant authorities may have given rise to a hope or even a reasonable hope on the part of the Petitioners, I find it difficult to hold that such communications amounted to a clear and unambiguous promise or undertaking, whether express or implied, to absorb Petitioners into the permanent cadre of the DWC.

These communications were made exclusively between the relevant authorities and were neither directed at the Petitioners nor intended to be addressed to them or the class of persons they represent. Founding legitimate expectation on such internal communications has the detrimental impact of public authorities abstaining in the future from seeking administrative measures to address grievances in the public service. Moreover, these communications do not constitute a general representation, as their nature does not correspond to the usual modes through which such general representations are made, such as announcements, circulars, policies, or publications. In these circumstances, I hold that the said communications marked P10, P18, P27(a), and P27(b) to the Petition are insufficient to give rise to a legitimate expectation.

In considering whether the past precedent of recruiting Volunteer Guides into the permanent cadre of the DWC in 2014 is capable of giving rise to a legitimate expectation, I am mindful of the decision in ***R v. Department of Education and Employment, ex parte Begbie*** [(2000) 1 WLR 1115] wherein the Court, citing ***Council of Civil Service Unions v Minister for the Civil Service*** [supra], held as follows:

*“legitimate or reasonable expectation may arise either from an express promise given on behalf of a public authority or from the **existence of a regular practice which the claimant can reasonably expect to continue**”* (emphasis added)

However, in the circumstances of the present case, there is only a single event, and I am of the view that treating a solitary instance as a regular practice would be contrary to its very meaning and may give rise to unwarranted legal consequences in similarly circumstanced cases in the future. Therefore, I further hold that the recruitment of Volunteer Guides into the permanent cadre of the DWC in 2014 does not upon a

consideration of all the circumstances of this case amount to a regular practice of the DWC capable of giving rise to a legitimate expectation.

In view of the foregoing reasons, I do not find any valid basis to accept the contention of the Petitioners that the Respondents had created a legitimate expectation for their absorption into the permanent cadre of the DWC.

Nevertheless, even assuming that a clear and unambiguous promise or a regular practice had been established, I have no hesitation in holding that such a promise or regular practice cannot form the basis of a substantive legitimate expectation and be enforced in the circumstances of the present case.

As the Public Service Commission correctly identified at the 134th meeting held on 10.09.2024;

1. The “Volunteer Guides” is not an approved cadre position and **there is no Scheme of Recruitment to appoint them in the Public Service,**
2. The letter engaging “Volunteer Guides” included a clause to the effect that **the position does not confer any entitlement or right to permanent appointment** or any other privileges and,
3. **Appointing them to the post of “Field Assistant” will contradict the Scheme of Recruitment for the post of “Field Assistant,” which requires recruitment through open competitive basis,** and will permit people to join the permanent public service through the backdoor denying opportunities to others and violating their right to equality in law.

Chapter II, 2:1 of the Establishment Code reads:

“For every post in the Public Service or, where such a post belongs to a Grade or Service, for every such Grade or Service, there should be a Scheme of Recruitment which specifies the salary scale of post, the qualifications required, age limits and other relevant particulars, drawn up by the Department concerned and approved in accordance with Sub-section 2:2 to 2:5.” (emphasis added)

Moreover, Chapter III, 28 of the Procedural Rules of the Public Service Commission (2022) stipulates that:

*“An appointment on permanent or contract or temporary or acting or attending to duties basis, shall be made only for **a post falling within the approved cadre of the relevant institution and having an approved Service Minute or Scheme of Recruitment**, as the case may be, with funds provided by the General Treasury.”*
(emphasis added)

The public service is maintained by public funds in order to provide an efficient and productive service to the public. It must not be used for making appointments on political patronage or nepotism. The procedure for recruitment and promotions in the public service must be aimed at recruiting persons replete with appropriate knowledge, skills and attitudes in a transparent manner. It is only then can public service be maintained with high productivity and provide equal opportunities to all those who fulfill required qualifications to be recruited and their career progression.

Approved Schemes of Recruitment form a fundamental constituent of this procedure. The recognition of Volunteer Guides of the DWC, being positions devoid of an approved Scheme of Recruitment, as a part of the public service is plainly inconsistent with the applicable legal framework governing public service appointments in Sri Lanka. Any attempt to recruit or absorb such persons into the permanent cadre of the DWC, otherwise than through an open competitive process, is equally unsustainable in law.

An *ultra vires* representation should not be binding on the body which made it as it would entirely destroy the doctrines of *ultra vires* and separation of powers which are related. In ***Robertson v. Minister of Pensions* [(1949) 1 K.B. 227]**, Lord Denning used the doctrine of estoppel to give relief to an individual who had relied on an unlawful representation. However, the House of Lords in ***Howell v. Falmouth Boat Construction Co.* [(1951) A.C. 837]** disapproved of Lord Denning’s remarks relating to an *ultra vires* assurance and its legal consequences.

In ***Regina v. Inland Revenue Commissioners, Ex Parte M.F.K. Underwriting Agents Ltd. and others*** [(1990) 1 WLR 1545 at 1573] Judge J. states:

“No legitimate expectation could arise from an ultra vires relaxation of the relevant statute by the body responsible for enforcing it.”

The principle that Court will not give effect to a legitimate expectation where to do so would involve the decision-maker acting contrary to law is fundamental [***Attorney-General of Hong Kong v. Ng Yuen Shiu*** [1983] 2 AC 629 at 638; ***Coughlan*** [supra. at 647, 651, 656; ***R v. Secretary of State for Education and Employment, Ex parte Begbie*** (2000) 1 WLR 1115 at 1125, 1132)].

In ***Tokyo Cement Company (Lanka) Ltd. v. Director General of Customs*** [(2005) BLR 24] the Supreme Court held that the representation must be *intra vires* for there to be a legitimate expectation.

For the foregoing reasons, the alleged representation or promise relied upon by the Petitioners are in any event *ultra vires*.

A Court of law cannot compel a public body to do what it is not legally empowered to do. In ***Rowland v. Environment Agency*** [2005 Ch 1], ***R (Bibi) v. Newnham London Borough Council*** [(2002) 1 WLR 237] and ***R (Bloggs 61) v. Secretary of State for the Home Department*** [(2003) 1 WLR 2724], it has unequivocally been affirmed that the doctrine of legitimate expectation cannot be invoked to enlarge or extend the powers of a public authority, nor can it render enforceable any act or decision which is *ultra vires* the authority of that body. In ***Rowland v Environment Agency*** [supra] it was further held that the fundamental principle is that a legitimate expectation can only arise on the basis of a lawful promise.

In the cases relied on by the learned President’s Counsel for the Petitioners, it appears that certain settlements have been arrived at based on the opinion of the Hon. Attorney General. This opinion itself is not before Court. In any event it is only a legal opinion and not binding on this Court. The Constitution only guarantees equal protection of the law and not equal violation of law. One illegality does not justify another illegality [***C.W.***

Mackie and Co. Ltd. v. Hugh Molagoda, Commissioner General of Inland Revenue and Others (1986) 1 Sri.L.R. 300 at 309].

For the foregoing reasons, I hold that the Petitioners have failed to establish that the Respondents had created any legitimate expectation that they would be absorbed into the permanent cadre of the DWC. Accordingly, I hold that there has been no infringement of Article 12(1) of the Constitution.

Article 14(1)(g)

Article 14(1)(g) of the Constitution states that:

“every citizen is entitled to – the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.”

It is well established that while Article 14(1)(g) recognizes a general right in every citizen to do work of a particular kind and of his choice, it does not confer the right to hold a particular job or to occupy a particular post of one’s choice [***Perera v. Jayawickrema*** [(1985) 1 Sri LR 285]; ***W.P.S. Wijerathna v. Sri Lanka Ports Authority and Others*** (SC (FR) Application No. 256/2017; S.C.M. 11.12.2020); ***Balachandra Arachchige Don Nuwan Chathuranga Padmasiri & Others v. C. D. Wickramaratne & Others*** (SC/FR/46/2021, S.C.M. 23.11.2022); ***Pathmasiri Dissanayakalage Priyalal Chaminda Sirisena v. Madushanka Dias*** [S.C. (F.R.) Application No. 06/2018, S.C.M. 31.03.2026)].

Moreover, in ***W.M.K. De Silva v Chairman, Ceylon Fertilizer Corporation*** [(1989) 2 Sri L.R. 393], Amerasinghe, J. also observed that Article 14(1)(g) does not extend to a right to be employed by a particular master or in a particular place of work.

In that sense, I do not find that the failure of the Respondents to absorb the Petitioners into the permanent cadre of the DWC amounts to an infringement of Article 14(1)(g) of the Constitution.

Accordingly, I hold that the Petitioners have failed to establish any infringement of the fundamental rights guaranteed to them by Article 12(1) or 14(1)(g) of the Constitution.

For all the foregoing reasons, I dismiss the application without costs.

JUDGE OF THE SUPREME COURT

K. Priyantha Fernando, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath B. Abayakoon, J.

I agree.

JUDGE OF THE SUPREME COURT

