

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

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

SC/FRA/321/2019

1. G. S. Karunathilake
No. 87, Henapola,
Pamunuwaththa,
Meerigama.
2. H. M. Samabandu Kumara
"Piyasewana",
Pitawela,
Imbulgasdeniya.
3. H. B. Gunathilake
No. 52, 7th Lane,
New Town,
Giriulla.

PETITIONERS

Vs.

1. Dr. Dammika Jayalath
Provincial Director of Health Services,
Office of the Provincial Director
of Health Services (Western Province),
Maligawaththa Secretariat Building,
P.O. Box 876,
Colombo 10.
2. Mr. Premadasa Kodithuwakku
- 2A. Mr. Udaya Rohan de Silva

The Chairman of the
Provincial Public Service Commission (Western
Province),
No. 628, 10th Floor,
Jana Jaya Building,
Rajagiriya.
3. Mr. Sunil Abeywardane

- 3A. Mrs. Chathurika Wijesinghe
4. Mrs. Kanthi Wijethunga
5. Mr. Nizamudeen Udayar Mohamed Ameen
- 5A. Mrs. Ruvani Yasoja Hapuarachchi
6. Thambipillei Muthukumarasamy
- 6A. Mr. Naganathan Sivakumaran
- 6B. Mrs. Nelun Charmaine Madurasinghe
- 6C. Mr. Samsudeen Liyavudeen

Members of the
Provincial Public Service Commission (Western
Province),
No. 628, 10th Floor,
Jana Jaya Building,
Rajagiriya.

7. Mrs. Chandrani Samarakoon
The Secretary (Acting)
- 7A. Mr. Thilak Senarath
The Secretary

All are of,
Provincial Public Service Commission (Western
Province),
No. 628, 10th Floor,
Jana Jaya Building,
Rajagiriya.

8. The Secretary
Ministry of Agriculture,
Land, Irrigation, Fisheries, Animal Product &
Health and Agrarian Development (Western
Province),
7th Floor, Provincial Council Complex,
No.204, Denzil Kobbekaduwa Mawatha,
Battaramulla.
9. The Hon. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

G. S. Karunathilake and Others v Dr. Dammika Jayalath, Provincial Director of Health Services, and Others
Case No. SC/FRA/321/2019

Before: Janak De Silva, J.
Arjuna Obeyesekere, J
Dr Sobhitha Rajakaruna, J.

Counsel: Rasika Dissanayake and Shabber Huzair with Dewni Kaluarachchi for
Petitioners

Ganga Wakishta Arachchi, DSG for the Respondents

Written Submissions: Petitioners : 24 April 2025
Respondents : 04 April 2024

Argued on: 12 March 2026

Decided on: 30 September 2026

Judgement

Dr Sobhitha Rajakaruna J.

1. This is a Fundamental Rights Application instituted by three Petitioners who are or were Public Health Inspectors in the Provincial Public Service of the Western Province. The Petitioners allege that the acts and omissions of the 1st to 8th Respondents in relation to the process of promotion from the post of Public Health Inspector Grade I to the Supra Grade have violated, and/or are likely to violate, their fundamental rights guaranteed under Articles 12(1), 12(2) and 14(1)(g) of the Constitution.
2. The Petitioners were recruited as Public Health Inspectors at different times between 1977 and 1988 and were subsequently promoted to Grade I of the Public Health Service. They were thereafter absorbed into the Provincial Public Service of the Western Province at different points in time. A Seniority List of Public Health Inspectors Grade I was published in 2007, and the Petitioners were placed at the 15th, 20th and 21st positions respectively. Subsequently, a Seniority List marked P15 was issued in connection with the calling of applications for promotion to the Supra Grade, in which the Petitioners were placed at the

3rd, 7th and 9th positions respectively. The Petitioners contend that P15 was the approved Seniority List in force at the relevant time.

3. Applications were called for promotion to the Supra Grade and the Petitioners participated in an interview held on 10 October 2016. According to the Petitioners, they were informed by the Interview Board that the approved Seniority List marked P15 would be used for the purpose of the promotions. However, no results of that interview were released, and no appointments were made pursuant thereto. In the meantime, questions arose concerning the accuracy of the Seniority List, and further revised or draft Seniority Lists were prepared. The Petitioners objected to such revisions and maintained that P15 remained the only duly approved Seniority List which could lawfully be used for the relevant promotions.
4. In 2019, the Respondents (except the 9th Respondent) called for fresh applications for promotion to the Supra Grade and subsequently conducted another interview on 26 September 2019, notwithstanding that the results of the 2016 interview had not been released. The Petitioners participated in the fresh process, while maintaining that the same could not lawfully replace the process commenced in 2016. The Petitioners thereafter invoked the jurisdiction of this Court, principally challenging the decision to call for fresh applications and seeking, inter alia, the release of the results of the 2016 interview and promotions based on Seniority List P15.
5. Leave to proceed was granted to the 2nd and 3rd Petitioners under Article 12(1) of the Constitution on 7 April 2022. No interim relief was granted. The Respondents have opposed the application and contend, inter alia, that there was no legal impediment to calling for fresh applications, that the decision to do so was rational and reasonable having regard to the passage of time and changes in the relevant circumstances, that the Petitioners acquiesced in the fresh process by submitting applications and participating in the subsequent interview, and that the reliefs sought by the Petitioners no longer correspond with the prevailing factual position.

Summary of the Petitioners' Case

6. The Petitioners' principal contention is that P15 was the valid and approved Seniority List applicable when applications were initially called for promotion to the Supra Grade and when the interview was conducted on 10 October 2016. They contend that they were

placed at the 3rd, 7th and 9th positions respectively in that list and that they acquired a legitimate expectation that their applications would be considered and the promotions effected on the basis of P15 and the results of the interview already conducted.

7. The Petitioners submit that, after the 2016 interview, the Respondents failed to release its results or to effect the corresponding promotions. Instead, draft and purportedly revised Seniority Lists, including P21 and P32, were introduced. The Petitioners maintain that those lists were erroneous, misleading and had not been approved by the Provincial Public Service Commission and therefore had no legal validity for the purpose of determining promotions.
8. The Petitioners rely particularly upon the response given by the Provincial Public Service Commission to the inquiry made through the Ombudsman. According to that response, promotions to the Supra Grade were to be based on seniority and merit, an interview had already been held on 10 October 2016, discrepancies existed in the Seniority Lists, and promotions would be made upon receipt of an updated Seniority List. The Petitioners contend that, notwithstanding this position, the Respondents subsequently called for fresh applications and conducted a fresh interview without first releasing the results of the 2016 interview.
9. It is further the Petitioners' position that the Seniority List marked P43, which was received by them after the institution of these proceedings, could not lawfully be relied upon for the purpose of making promotions. They contend that P43 was not in existence or published when applications were called in 2019 and that, at that time, P15 remained the only approved Seniority List. The Petitioners further allege that P43 was introduced to favour certain office bearers of trade unions.
10. The Petitioners therefore contend that the decision to call for fresh applications and to conduct a fresh interview, without releasing the results of the 2016 interview, was arbitrary, unreasonable, irrational, unfair, illegal and ultra vires. They further submit that the Respondents failed to comply with the principles of natural justice and failed to provide any satisfactory explanation as to why the earlier interview and the approved Seniority List P15 were disregarded. According to the Petitioners, these acts and omissions have violated their rights to equality and equal protection of the law under Article 12 and their right under Article 14(1)(g).

11. On that basis, the Petitioners seek, inter alia, an order directing the release of the results of the interview held on 10 October 2016 and the making of promotions to the Supra Grade on the basis of P15 and those results, together with orders declaring null and void and/or quashing any decisions to effect promotions based on P43, and consequential relief including compensation and costs.

Respondents' Position

12. The Respondents, while accepting that the Petitioners are Public Health Inspectors who had been promoted to Grade I and subsequently absorbed into the Provincial Public Service of the Western Province, dispute the Petitioners' contention that the 2016 promotion process continued to constitute the operative basis upon which promotions were required to be made. The Respondents submit that the seniority lists of Public Health Inspectors have been subject to revision over time and that such lists are maintained and updated by the office of the Provincial Director of Health Services for official purposes, including promotions.

13. The Respondents submit that although applications were called and interviews were conducted in 2016, no appointments were made pursuant thereto. They contend that, in the intervening period, further revisions to the Seniority List took place. A revised Seniority List was prepared in 2017, another update was made in 2019, and following further consideration by the relevant authorities, a reformulated Seniority List marked R6 was prepared and submitted in 2022. According to the Respondents, R6 is the most recent Seniority List applicable to the Public Health Inspectors in the Western Provincial Public Service and was prepared after, inter alia, considering the views of the Petitioners.

14. In those circumstances, the Respondents contend that there was no legal impediment to calling for fresh applications in 2019. Their position is that the decision was rational and reasonable because several years had elapsed since the applications were initially called and the 2016 interviews were conducted, during which period the status and circumstances of the relevant officers could have changed. They further contend that no appointments had been made pursuant to the 2016 process and that the subsequent calling of applications therefore did not unlawfully interfere with any completed promotion process.

15. The Respondents further rely upon the conduct of the Petitioners themselves. They submit that, after the fresh applications were called in 2019, the Petitioners submitted their

respective applications and participated in the interview held on 26 September 2019. It is therefore contended that the Petitioners accepted and acquiesced in the fresh promotion process and cannot, having participated therein, subsequently seek to invalidate that very process. The Respondents characterise this as an attempt by the Petitioners to approbate and reprobate in respect of the same matter.

16. The Respondents also contend that the reliefs sought by the Petitioners are misconceived because they are founded upon a Seniority List and an interview which are no longer operative. In particular, they submit that P15 has been cancelled and is no longer in operation, while P43 has also been cancelled and replaced by R6. Accordingly, the Respondents contend that an order directing promotions based on P15 would disregard the current Seniority List and would not correspond with the present factual and administrative position.
17. Finally, the Respondents contend that the application is time-barred. They submit that the Petitioners seek, in substance, to challenge the failure to effect promotions on the basis of the interview conducted on 10 October 2016, yet did not challenge that alleged failure until the institution of the present proceedings, more than two years and ten months thereafter. On that basis, the Respondents maintain that the Petitioners are not entitled to invoke the fundamental-rights jurisdiction of this Court in respect of the matters complained of.
18. Accordingly, the Respondents' position is that their conduct was lawful, rational and reasonable; that there has been no violation of the Petitioners' fundamental rights under Article 12(1) of the Constitution; and that the application should therefore be dismissed.

Consideration and Determination

19. Having considered the pleadings, documents and submissions of learned Counsel, it appears to me that the principal question arising for determination is whether the decision of the Respondents to call for fresh applications for promotion to the Supra Grade in 2019, notwithstanding that an interview had previously been conducted on 10 October 2016, amounted to an arbitrary or unreasonable exercise of executive or administrative power to constitute a violation of the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution.

20. At the outset, it is necessary to observe that the seniority position of Public Health Inspectors in the Western Provincial Public Service was not static during the period relevant to this application. The material placed before Court demonstrates that the seniority lists were revised from time to time. The Seniority List marked P15 was the list in existence when applications were initially called for promotion in 2016. However, subsequent revisions took place in 2017 and 2019, and further consideration by the relevant authorities resulted in the preparation of the reformulated Seniority List marked R6 in 2022. The Respondents submit that R6 is the latest Seniority List presently applicable to the Public Health Inspectors in the Western Provincial Public Service.
21. The circumstances leading to the revision of the seniority position also cannot be disregarded. It is evident that representations had been made by the Sri Lanka Public Health Inspectors Union and Regional Directors of Health concerning the perceived injustice caused by determining seniority merely by reference to the date of appointment to Grade I, particularly in circumstances where some officers had obtained their promotions while serving in other Provincial Councils where the cadre structure and promotional opportunities were different. It was against that background that the process of revising the seniority position commenced.
22. In such circumstances, I am unable to accept the proposition that the Seniority List marked P15 acquired an immutable or vested character merely because it was the list in operation when the applications were initially called and the interview was conducted in 2016. A seniority list maintained for the purpose of administering a public service cannot, in my view, be regarded as incapable of revision where legitimate administrative considerations require its correction or updating, particularly where discrepancies in the existing seniority position have been identified, and representations have been made by the officers concerned.
23. It is also significant that the interview held on 10 October 2016 did not culminate in appointments to the Supra Grade. The Petitioners themselves acknowledge that, notwithstanding the interview, the results were not released, and the promotions were not effected. Thus, the 2016 process did not result in any completed appointment or promotion upon which the Petitioners could claim an accrued legal right.

24. The Respondents have offered a rational explanation for the decision to commence a fresh process in 2019. Several years had elapsed between the calling of applications and the interview in 2016 and the subsequent process initiated in 2019. During that period, the seniority position of the officers had been the subject of revision and further consideration. In those circumstances, the decision to call for fresh applications cannot, without more, be characterised as arbitrary, irrational or unreasonable.
25. In this connection, considerable significance must also be attached to the conduct of the Petitioners themselves. Upon the calling of fresh applications in 2019, the Petitioners submitted their respective applications and thereafter participated in the interview conducted on 26 September 2019. The Petitioners now seek to challenge the very process in which they voluntarily participated. Although the Petitioners contend that they submitted their applications as a precautionary measure, their participation remains a relevant circumstance when assessing whether the conduct of the Respondents was so arbitrary or unreasonable as to constitute a violation of Article 12(1).
26. I am therefore of the view that the Petitioners cannot, in the circumstances of this case, rely upon their participation in the fresh process as a basis for challenging that process itself, while at the same time seeking to revive a process commenced several years earlier which had not resulted in any appointment. The principle that a party cannot approbate and reprobate in relation to the same matter is also relevant to an assessment of the Petitioners' conduct in the present case, as contended by the Respondents.
27. I next turn to the contention concerning the Seniority List marked P43. The Petitioners contend that P43 was an undated list subsequently introduced by the Respondents and that it was not the approved Seniority List at the time applications were called in 2019. However, the material placed before Court, including the Respondents' position, demonstrates that the seniority position underwent further revision in 2019. In particular, P43 is, in substance, the same Seniority List as that identified as R4 in the Respondents' documents. The fact that the Petitioners refer to it as P43 does not, therefore, by itself establish that it was an unauthorised or wholly separate Seniority List introduced for the purpose alleged by the Petitioners.
28. Of particular relevance is the last page of the said Seniority List, where the principal office bearers of the relevant Trade Union have placed their signatures and recorded that they

had no objection to the Seniority List. This circumstance assumes significance because the Petitioners have alleged that P43/R4 had been introduced with the intention of favouring or giving priority to certain office bearers of Trade Unions. The contemporaneous endorsements appearing on the final page of the list do not support that allegation. On the contrary, the signatures and recorded absence of objection by the principal Trade Union representatives tend to indicate that the Seniority List was considered by the relevant representatives without objection at that stage.

29. In my view, an allegation of mala fides, favouritism or discriminatory treatment cannot be sustained merely by assertion. Such an allegation must be supported by cogent material demonstrating that the impugned administrative action was actuated by an impermissible consideration. In the present Case, I do not find sufficient material upon which this Court could conclude that the preparation or use of the relevant revised Seniority List was motivated by an intention to favour particular Trade Union office bearers.

30. Further, the Respondents have explained that the Seniority List marked R4 was subsequently reconsidered and reformulated following discussions among the relevant authorities, resulting in the Seniority List marked R6. The Respondents state that R6 was prepared after, inter alia, considering the views of the Petitioners and that it is presently the operative Seniority List.

31. This subsequent development is important when considering the reliefs sought by the Petitioners. The Petitioners seek, inter alia, to have promotions made on the basis of P15 and to have any decisions based on P43 quashed. Yet, according to the material before Court, neither P15 nor P43/R4 presently constitutes the operative Seniority List, P43/R4 having itself been superseded by R6. Consequently, the relief sought would require the Court to disregard the current seniority position and revive an earlier Seniority List which is no longer operative.

32. I am also unable to accept the proposition that the failure to release the results of the 2016 interview, standing alone and without any further unlawful act, constitutes a continuing violation of the Petitioners' fundamental rights. The alleged failure to proceed based on that interview occurred in the context of a promotion process which did not culminate in appointments and during a period in which the seniority position itself was being reconsidered and revised.

33. This brings me to a further and, in my view, decisive consideration, namely the question of delay. Article 126(2) of the Constitution requires an application alleging infringement or imminent infringement of a fundamental right to be made within the constitutionally prescribed period. The constitutional time limit is intended to ensure that alleged infringements are brought before this Court without undue delay, while the relevant facts and circumstances remain capable of effective judicial examination.
34. In the present case, the Petitioners principally seek to secure the benefit of the interview conducted on 10 October 2016 and the Seniority List marked P15. The Petitioners were aware, immediately following that process, that the results had not been released and that the promotions had not been effected. Nevertheless, no fundamental-rights application was instituted challenging that failure within the prescribed constitutional period. The Respondents have specifically submitted that the Petitioners sought to challenge the failure to effect promotions based on the 2016 interview only after a period exceeding two years and ten months.
35. The subsequent calling of applications in 2019 cannot, in my view, be employed to revive a cause of action which had already become time-barred. The substance of the Petitioners' grievance remains that the Respondents ought to have proceeded with the 2016 process and ought to have made the promotions on the basis of P15. That complaint had already arisen and was known to the Petitioners well before the institution of the present Application.
36. In the circumstances, I hold that, insofar as the Petitioners seek to challenge the failure to release the results of the interview held on 10 October 2016 and seek consequential relief based upon Seniority List P15, the present Application is time-barred. The subsequent events relied upon by the Petitioners do not, in my view, create a fresh infringement of their fundamental rights to revive that otherwise time-barred claim.
37. Even considered independently of the question of limitation, I am not persuaded that the Respondents' decision to call for fresh applications in 2019 was arbitrary, irrational, discriminatory or unreasonable. The decision was taken in circumstances where no appointments had been made pursuant to the 2016 interview, the seniority lists had undergone successive revisions, and several years had elapsed. The Petitioners themselves

participated in the fresh process. These circumstances, considered cumulatively, provide a rational basis for the course adopted by the Respondents.

38. Article 12(1) does not guarantee an individual a right to promotion merely because that individual has participated in an earlier selection process. Nor does it require an administrative authority to perpetuate an earlier process where circumstances material to the administration of the public service have subsequently changed.

39. Having considered the totality of the circumstances, I find no sufficient basis to conclude that the Respondents acted upon any impermissible consideration or that their decision to recommence the promotion process was so unreasonable or irrational as to amount to a violation of Article 12(1) of the Constitution.

Conclusion

40. For the reasons set out above, I am of the view that the Petitioners have failed to establish that the Respondents, in calling for fresh applications for promotion to the Supra Grade in 2019, acted arbitrarily, irrationally, unreasonably or contrary to the principles of equality guaranteed by Article 12(1) of the Constitution.

41. I further hold that the Petitioners' claim, insofar as it seeks to challenge the failure to release the results of the interview conducted on 10 October 2016 and seeks promotions based upon the Seniority List marked P15, is time-barred.

42. Moreover, P43/R4 was subsequently subjected to further consideration and was replaced by the reformulated Seniority List marked R6, which the Respondents state is the current Seniority List applicable to the Public Health Inspectors in the Western Provincial Public Service. The relief sought by the Petitioners would therefore require this Court to direct the Respondents to act upon a Seniority List and an interview which are no longer operative, while disregarding the subsequent administrative process culminating in R6.

43. It is, however, of particular significance that learned Counsel for the Petitioners, at the hearing of the present application, submitted that the Petitioners are agreeable to promotions to the Supra Grade being effected based on the seniority reflected in R6. This submission is nevertheless a relevant consideration in determining the nature of the relief that may appropriately be granted in the circumstances of the present case.

44. In these circumstances, I am satisfied that the Respondents have provided a rational and reasonable explanation for the course adopted by them and that the Petitioners have failed to demonstrate any discriminatory or arbitrary treatment warranting the intervention of this Court under Article 126 of the Constitution. Accordingly, I hold that the Petitioners have failed to establish a violation or imminent violation of the fundamental rights guaranteed to them under Article 12(1) of the Constitution. The application is therefore dismissed. There shall be no order as to costs.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court