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

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

SC FR Application No:
SC/FRA/32/2025

1. L.A.K. Chaminda,
No. 171/1, 1st Lane, Old Road,
Hinguroara,
Embilipitiya.

2. U.C. Wickramasinghe,
No. 63, Sri Hemananda Mawatha,
Bataganwila,
Galle.

3. W. Nandadasa,
No. 270B, Gemunupura,
Sevanagala.

4. K. Upali,
No. 319, Tissapura,
Sevanagala.

5. C.J. Senevirathne,
No. 850, Sevanagalagama,
Sevanagala.

6. R.G.N. Thushara,
No. 113, Koulara North,
Sevanagala.

7. J.B.A. Sirikelum,
No. 796, Sathutugama,
Sevanagala.

8. R.S.I. Ranasinghe,
No. G1/601, New Town,
Embilipitiya.

9. K.G.H.C. Wimalachandra,
No. 40, Usweliara, Ekamuthugama,
Sevanagala.

10. D.M.G.R. Dissanayake,
14th Mile Post, Madukotan Arawa,
Badalkumbura.

11. L.I. Kumarapathirana,
G2/14, Housing Scheme,
Sevanagala.

12. K.G.V. Maduranga,
No. 130/7, 3rd Post,
Moraketiya,
Embilipitiya.

13. W.A.S. Sanjeewa,
No. 282, Mihindupura,
Sevanagala.

14. A.B.A. Irosha,
No. 227, Housing Scheme,
Sevanagala.

15. H.N.G.D. Wijethunga,
No. 56, Sevanagala North,
Sevanagala.

16. K.J. Samanthilake,
No. 299, Mihindupura,
Sevanagala.

17. I.R. Wijewickrama,
Ran Thilina, Wijesiripura Road,
Walasmulla.

18. W.D. Sandaruwan,
No. 277, Ginigalpilessa,
Sevanagala.

19. K.P.R. Rathna Kumara,
No. 120, Koulara North,
Sevanagala.

20. G.R.P. Kumara,
No.790, Sathutugala,
Sevanagala.

21. A.A. Prasanga,
No. 472, Indikolapelassa 2,
Sevanagala.

PETITIONERS

Vs.

1. Lanka Sugar Company (Private) Limited,

2. Dr. Rukshan Gunathilake,
Chairman.

2A. Ms. Sanadamali Chandrasekera,
Chairperson.

3. Prof. K.G.S. Senarathna,
Chief Executive Officer/Director.
3A. Ms. Deepika K. Gunarathna,
Chief Executive Officer / Director.

4. Prof. E. Kaliyadasa,
Director.

5. Dr. J.S. Hewage,
Director.

6. Mr. M.B.S. Piyadasa,
Director.

6A. Mr. K.T.I Premarathne,
Director.

6B. Mrs. S.W.C. Jayamini,
Director.

All at:
Lanka Sugar Company (Private) Limited,
1st Floor, Stage 1, Sethsiripaya,
Battaramulla.

7. Secretary to the Treasury,
Ministry of Finance, Planning and Economic Development,
The Secretariate,
Colombo 1.

8. Director General,
Department of Management Services,
Room 325, 3rd Floor,
Ministry of Finance,
The Secretariate,
Colombo 1.

9. Minister of Industry and Entrepreneurship Development,
Ministry of Industry and Entrepreneurship Development,
No. 73/1, Galle Road,
Colombo 3.

10. Secretary,
Ministry of Industry and Entrepreneurship Development,
No. 73/1, Galle Road,
Colombo 3.

11. Commissioner General of Labour,
Department of Labour,
'Mehewara Piyasa',
No. 41, Kirula Road,
Colombo 5.

12. Assistant Commissioner of Labour,
Embilipitiya Labour Office,
Department of Labour,
New Town Road,
Embilipitiya.

13. D.A.G. Kularatne,
Senior Labour Officer,
Embilipitiya Labour Office,
Department of Labour,
New Town Road,
Embilipitiya.

14. Auditor General,
Auditor General's Department,
306/72, Polduwa Road,
Battaramulla.
15. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

Before	:	Achala Wengappuli, J.
	:	Mahinda Samayawardhena, J.
	:	Sampath B. Abayakoon, J.
Counsel	:	Senany Dayaratne with Nishadi Wickramasinghe, Janani Abeywickrema and Maheshika Bandara instructed by Bindiya Senarath for the Petitioners.
	:	Harsha Fernando, P.C. with Chamith Senanayaka and Yohan Cooray instructed by Dimuthu Kuruppuarachchi for the 1st, 2A, 3A, 5th, 6A and 6B Respondents.
	:	Kanishka De Silva Balapatabendi, DSG instructed by M. Wickramanayake for the 7th to 15th Respondents.
Argued on	:	02-04-2026
Written Submissions	:	15-05-2026 (By the 7th to 15th Respondents)
	:	15-05-2026 (By the 1st, 2A, 3A, 5th, 6A and 6B Respondents)
	:	26-06-2026 (By the Petitioners)
Decided on	:	07-08-2026

Sampath B. Abayakoon, J.

The petitioners filed this fundamental rights application seeking to challenge what they termed as arbitrary, *ad hoc,* capricious, illegal, unlawful and wrongful decisions by the 1st respondent and other respondents named in the petition to discontinue and or suspend the payment of an increment/increase/revision of salary due to the petitioners in terms of circular No. 02/2016 dated 25-04-2016 issued by the Department of Management Services.

It has been the contention of the petitioners that the decision to discontinue and or suspend the payment of the said increment is null and void and no force or avail in law, and is in total contravention of the relevant government circulars in force and also contrary to the legitimate expectations of the petitioners.

They claim that hence, their fundamental rights guaranteed in terms of Article 12(1) and 14(1)(g) of the Constitution of the Republic have been violated.

When this matter was considered before this Court on 19-06-2025, this Court granted leave to proceed for the alleged violation of the fundamental rights of the petitioners guaranteed in terms of Article 12(1) and 14(1)(g) of the Constitution.

At the hearing of this application, this Court heard the submissions of the learned Counsel for the petitioners and the learned President's Counsel who represented the 1st, 2A, 3A, 5th, 6A, and 6B respondents. Court also heard the submissions of the learned Deputy Solicitor General (DSG) who represented the 7th to 15th respondents. After the conclusion of the arguments, the parties were allowed to file post-argument written submissions for the consideration of the Court.

The Facts

The petitioners are employees of the 1st respondent company, namely, Lanka Sugar Company Pvt Ltd, which is a fully owned by the Government of Sri Lanka and the entirety of shares vested with the 7th respondent.

It is a company incorporated under and in terms of the Companies Act. The said company has come into being as a result of the taking over of two companies namely, Sevanagala Sugar Company and Pelawatta Sugar, subsequent to the passing of the revival of Underperforming Enterprises and Under-utilized Assets Act No. 43 of 2011.

Admittedly, the petitioners are employees of the Sevanagala Unit of the 1st respondent company, which is primarily engaged in the manufacturing of sugar and other related products. Petitioners alleged that they being employees of a State-owned entity are entitled to receive the benefits of circular No. 2/2016 dated 25-04-2016 issued by the Department of Management Services through the Ministry of Finance.

It has been their position that although the said circular does not name the 1st respondent company as an institution which falls within the ambit of the circular, it has been due to a manifest inadvertence or oversight, and for all intended purposes, the 1st respondent company should be considered as an institution that is covered by the said circular.

It has been contended that after a delay of several years to implement the said circular, the Board of Directors of the 1st respondent by its Board Papers 09(1) and 09(2) dated 19-02-2024 (document marked P-04) approved the salary increments as provided for by the circular No. 02/2016 with effect from 25-09-2023 for executive and non-executive employees of the 1st respondent.

The petitioners aver that the said revised salary and the allowances were paid to them subsequent to the said decision over a period of 16 months until it was informed to them that it will be discontinued or suspended, which would mean reverting back to the payment of their salaries and allowances paid to them before the implementation of the provisions of the circular No. 02/2016.

The petitioners claim that having come to know the 1st respondent's decision, they complained to the relevant Assistant Commissioner of Labour, and in the inquiry held in that regard, the 1st respondent agreed to continue with the revised salary. However, when they received their January 2025 salary, to their utmost shock, they realized that their salaries had been dramatically reduced from that of December 2024 salary paid to them. That is to say that the 1st respondent had reverted back to the salaries paid prior to the increments granted in terms of circular No. 02/2016.

The petitioners have averred in their petition that subsequently there was another inquiry before the Commissioner of Labour and following a sequence of events, they came to know that the discontinuation or suspense of their increased salary or allowances was a result of an internal memorandum circulated by the chairman of the 1st respondent company to the Chief Executive Officer (CEO) referring to an audit query dated 12-12-2024, though it has been erroneously referred to as an audit report (document marked P-10).

In the said memorandum, the chairman has proceeded to bring to the attention of the CEO that the approval of the Department of Management Services must be obtained before the payment of such increased salaries and allowances, and therefore, the company must revert back to the salary scales paid to the employees prior to 25-09-2023. The petitioners have marked the said audit query as P-12 together with this application.

It is the position of the petitioners that the said audit query has only posed several questions to the 1st respondent for it to respond with observations and the steps it proposes to correct or remedy the said questions. The petitioners contend that it makes no reference to a requirement of reverting back to the salaries paid to its employees prior to September 2023.

It is on the above-mentioned basis that the petitioners have pleaded the violation of their fundamental rights as pleaded from paragraphs 42 to 53 of the petition, claiming that their fundamental rights are guaranteed in terms of Article 12(1) which refers to equality before the law and the equal protection of the law, and 14(1)(g) which refers to freedom to engage in any lawful occupation, profession, trade, business or enterprise, have been violated by the respondents.

It appears from the stand taken up by the respondents that the main objection to the application is that the circular No. 02/2016, under which the petitioners have come before the Court, has no application for the petitioners. It has been their position that the 1st respondent company had no entitlement to apply the provisions of the said circular to a selected section of their employees, namely, the petitioners who are the employees of Sevanagala Unit while ignoring the employees of its Pelawatta unit. It had been the contention of the petitioners that the corrective measures taken in that regard cannot form a violation of the fundamental rights of the petitioners. It was also the position of the respondents that there cannot be any legitimate expectation as claimed based on an illegality.

In addition, the respondents have also claimed that the application before the Court is time-barred, and the petitioners have failed to name the necessary parties to the petition, namely the employees of the other Unit of the 1st respondent company who are entitled to be treated equally for the petitioners' claim to be successful.

<u>Consideration of the Fundamental Rights Application and The Conclusion</u>

It is abundantly clear that this fundamental rights application has been filed by the petitioners on the premise that they are entitled to benefit from Management Service Circular No. 02/2016, which has provided for a revision of the salary structure for employees of statutory bodies, corporations, and fully owned government companies. According to the said circular, the said revised salary structures as morefully described in the 1st schedule should be effective from 01-01-2016 in five steps as stated in the 2nd schedule of the circular.

Paragraph 2 of the said Circular states that the mentioned salary revision should be applicable only to the institutions specifically mentioned in annexture 01 of the circular. The said paragraph also states that the above salary revision would not be applicable to institutions where the salary been determined in terms of a collective agreement or to institutions where a variable living allowance is paid based on the consumer price index. Paragraph 3 has set out the allowances that have been amalgamated into the new salary structure.

It is an admitted fact that the 1st respondent company under which the petitioners are employed is not a State-owned entity mentioned in the 1st schedule of the said circular.

It is clear from the application filed before this Court that the petitioners have claimed that, fundamental rights guaranteed under Article 12(1) and 14(1)(g) of the Constitution had been violated on the basis that although the 1st respondent is not a company mentioned in the annexture 01 of the circular, it should have been mentioned in the said annexture 01, since the absence of the name of the 1st respondent company was due to a manifest inadvertence or oversight.

Their claim that they had legitimate expectations in that regard was also on the same premise.

As I have stated before, there cannot be any dispute that on the face of circular No. 02/2016, the petitioners who are employees of the 1st respondent company cannot claim benefits under it since the 1st respondent company's name does not appear in the annexture 01 of the circular.

It is clear that the petitioners are seeking this Court's intervention under and in terms of the fundamental rights jurisdiction of this Court to give a different interpretation to the circular on the basis that, although the 1st respondent company is not mentioned in annexture 01, being a state entity, the employees of the said institution are entitled to be benefited from the said circular.

In other words, the petitioners are seeking impliedly to challenge the circular No. 02/2016 which was issued on 25-04-2016, and implemented with effect from 01-01-2016, nearly 10 years after its implementation. It is the very basis upon which the respondents argue that the application is time-barred.

It needs to be emphasized again that the 1st respondent company has come into being as a result of incorporation of previously existed two companies operating in Sevanagala and Pelawatta, which were vested in the State as a result of the Underperforming Enterprises and Underutilized Assets Act No. 43 of 2011.

It is clear from the documents tendered to Court that at the time of vesting of the said two private entities, there had been two separate salary structures upon which the employees of the two entities remuneration packages were structured, which has continued even after the vesting of the two entities and the forming of the 1st respondent company by amalgamation and under the Companies Act.

The documents tendered by the respondents and the petitioners show that an entity which was not originally mentioned in the annexture 01 of the circular can be admitted under the said annexture subsequently, if the said entity fulfils the criteria set out by the Department of Management Services to qualify under the management service circular No. 02/2016.

However, what is clear to me is that when the Board of Directors of the 1st respondent company decided to grant a salary revision to the employees of only one unit of their company, namely the Sevanagala Unit based on the misguided notion that circular No. 02/2016 should be made applicable to them, there was no legality whatsoever in such a Board determination. It is simply due to the fact that the 1st respondent company was not a state entity mentioned in annexture 01.

The Board of Directors of the 1st respondent company appears to have acted on their own whims and fancies, rather than rational planning. What they should have done was to fulfil the criteria that have been set out by the Department of Management Services for them to qualify under the said circular and thereafter to seek an amendment to the said circular from the relevant authority. In my view, it is only thereafter the 1st respondent company can proceed to give effect to circular No. 02/2016 and not in the manner they have acted, which is an illegality.

It appears that only after this illegality was brought to the attention of the management of the 1st respondent company by way of an audit query, it has got activated and proceeded to stop paying salaries calculated based on the said illegal notion and to revert back to the salaries paid previously to its employees.

The documents tendered to this Court by the respondents show the fact that circular No. 02/2016 is not applicable to the 1st respondent; it was a matter that the management of the 1st respondent company knew from the very outset. It is clear that as far back as 2019 the Ministry under which the 1st respondent company functions have been attempting to resolve this issue. However, due to various shortcomings in this process, the Department of Management Services has not approved the request made in this regard.

It is well settled law that the Court cannot give sanction or authority to executive actions which amount to an illegality in guise of legitimate expectations in terms of the fundamental rights jurisdiction.

In the case of **C.W. Mackie and Company Ltd Vs. Hugh Molagoda, The Commissioner General of Inland Revenue and Others (1986) 1 SLR 300 at 310-311**, it was observed by **Sharvananda, C.J.**;

> *"Even though the Commissioner General has unlawfully restrained from recovering any turnover tax from other rubber dealers, the rule of equity before the law or equal protection of the law under Article 12(1) cannot be invoked in such circumstances. In the exercise of its jurisdiction to*

grant relief or give such directions as this Court may deem just and equitable, this Court cannot lend its sanction or authority to an illegal act. Illegality and equity are not on speaking terms."

In **Ginigathgala Mohandiramlage Nimalsiri Vs. Cornel P.P.J. Fernando (SC/FR/256/2010, SC Minutes of 17-09-2015)**, this Court held that;

"In order to succeed in an application made on the grounds of legitimate expectation the expectation must be legitimate. Mistakes, decisions made on erroneous factual data or illegality cannot be the basis for a legitimate expectation."

For the reasons as considered above, I am of the view that the actions of the board of directors of the 1st respondent company or the other respondents mentioned do not constitute a basis to conclude that the fundamental rights guaranteed in terms of Article 12(1) of the Constitution have been infringed.

The next matter to be considered is whether the fundamental rights guaranteed in terms of Article 14(1) (g) have been violated in any manner due to the actions of the respondents.

The Article 14(1)(g) of the Constitution reads as follows;

14(1)(g). The freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.

In the case of **Mrs. W.M.K. De Silva Vs. Chairman Ceylon Fertilizer Corp. SC/FR/Application No. 7/88 (1979) 2 SLR 393 at 407**, it was observed that;

"…in an application for relief under Article 14(1)(g), the Petitioner must also show that her right to engage in any lawful occupation, profession, trade, business or enterprise was unreasonably obstructed. The Petitioner must go further still and establish that the right claimed was (a) a legal right and that (b) it is a fundamental right."

There is no allegation that the decision of the respondents to suspend the revised salary payments subsequently, when it has come to light that there was no legal basis for the decision, had come to a situation where the employees who were the beneficiaries of the decision could not engage in their usual employment in the company. In fact, the petitioners' claim that their spending habits have also been changed after the salary revision cannot be a reason to justify any violation in terms of Article 14(1)(g).

Hence, it is my considered view that the petitioners' application shall fail on the said contention as well.

It is my view that the objection in relation to the question of time bar and failure to name the necessary parties in the application are matters that need not be considered since the fundamental rights petition of the petitioners shall stand dismissed for the reasons as considered.

Accordingly, the application is dismissed. There will be no costs.

Judge of the Supreme Court

Achala Wengappuli, J.

I agree.

Judge of the Supreme Court

Mahinda Samayawardhena, J.

I agree.

Judge of the Supreme Court