

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

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

**S.C. FR Application No.
331/2015**

1. Graduate Trainee Assistant Land Use Planning Officers'
Union,
No. 31, Pathiba Road,
Narahenpita,
Colombo 05.
2. S.L.A. Mahinda,
No.210, Bandagiriya,
Weligaththa.
3. J.M. Kanthi Kumari Jayasinghe,
No. 186 B,
Matikotumulla, Essella, Veyangoda.
4. B.A. Nanda Yalgama,
Uda Thibottuwawa,
Uhumeeya.
5. I.P. Anupama Sewwandi Basnayake,
'Vimukthi, Mahapitiya,
Pothuhera.
6. P.M. Palitha Pathiraja,
No.493, Singhagiri Mawatha,
Alawwa.
7. Samantha Mandalawatta,
No.11A, Saram Mudali Mawatha,
Weliweriya,
Matara.

8. A.M. Premarathna,
Niriella Road,
Palawela,
Uda Niriella,
Ratnapura.
9. A.H.T. Liyanage,
Hendrik Watta,
Pokuna Mawatha,
Atthiligoda,
Galle.
10. K. H. Jayantha,
Bogahatennawatta,
Dodampahala, Dikwella.
11. P.D.A. Nishantha,
No.209/1, Arachchigoda,
Dodamgoda,
Kaluthara South.
12. R.D. Pathmasiri,
Thotupolaarawa,
Makulella, Bandarawela.
13. W.G.K.P.K. Guneratha,
No. 17/2, Bollegoda, Ambatenna.
14. S.H.C.P. Samarasinghe,
No.04, Sisil Issauwa,
Bandara Puliyankulama, Anuradhapura.
15. A.M. Chandra Kumari Attapattu,
No. 493, Singhagiri Mawatha, Alawwa.
16. M.M.Sriyani Mangalika,
Viduhala Mawatha,
Walpaluwa, Minuwangete.
17. R.P.R. Rajakaruna,
No.348, Rajapaksha Mawatha,
Horogolla, Ganemulla.

18. M.S.P.Perera,
No.08, Weediyawatte,
Udugampola.
19. R.M.D.M. Menike,
Nimsara', Obbegoda,
Moneragala.
20. H.M.N.C. Heart,
No.4/26, 4th Lane,
Muhandiram Weeratunga Mawatha,
Negombo Road, Kurunegala.
21. B.M. Dhammika Kumari Basnayaka,
'Wasana', Kuda Galgamuwa,
Kurunegala.
22. W.U.S. Silva,
No.1/45, Ambahera,
Uhumeeya.
23. R.D.P. Jayalal Dassanayake,
No.08, Green Village,
Maspotha, Kurunegala.
24. Ratnasiri Gamage,
No.47, Mahaveediya,
Moneragala.
25. S.P.Edirisinghe,
No.25B, Winson Road,
Paluwatta, Beliatta.
26. I.M. Ananda Premalal,
Isuru Mawatha, Yakgahapitiya, Dambulla
Road,
Kurunegala.
27. R.D.T.S. Jayasekera,
No. 134, New Renilwatte,

Hindagolle.

PETITIONERS

vs

1. M.K.A.D.S. Gunawardena,
Minister of Lands, Ministry of Lands,
'Mihikatha Medura', Land Secretariat,
1200/6, Rajamalwatta Avenue, Battaramulla.

1A. John A.E. Amaratunga,
Minister of Lands, Ministry of Lands,
Rajamalwatta Road,
Battaramulla.

2. Dr. I.H.K.Mahanama,
Secretary,
Ministry of Lands,
Mihikatha Medura', Land Secretariat,
1200/6, Rajamalwatta Avenue,
Battaramulla.

3. P.M. Shanthi Fernando,
Director General,
Department of Land Use Policy
Planning,
No.31, Pathiba Road, Narahenpita,
Colombo 05.

4. M. Godakanda,
Director General,
Department of Management Services,
General Treasury,
Colombo 01.

5. Secretary,
National Pay
Bandaranaike Memorial International
Conference Hall,

Bauddhaloka Mawatha,
Colombo 07.

5A. K. L. L. Wijeratne,
Chairman,

5B. Nimal Bandara,
Member,

5C. Dayananda Vidanagamachchi,
Member,

5D. J. Charitha Rathwaththe,
Member,

5E. Prof. Kithsiri Madapatha Liyanage,
Member,

5F. Leslie Shelton Devendra,
Member,

5G. Suresh Shah,
Member,

5H. Sanath Jayantha Ediriweera,
Member,

5I. V. Regunathan,
Member,

5J. Kamal Mustapha,
Member,

5K. Prof. Gunapala Nanayakkara,
Member,

5L. Nandapala Wickramasuriya,
Member,

5M. Madam Sujatha Cooray,
Member,

5N. Gerry Jayawardena,
Member,

5O. S. Thillainadarajah,
Member,

5P. Dr. Anura Ekanayake,
Member,

5Q. Sembakuttige Swarnajothi,
Member,

5R. P. K. U. Nilantha Piyaratne,

5S. N. H. Pathirana,

5T. H. T. Dayananda,
Member,

5U. T. B: Maduwegedera,
Member,

5V. Dr. Wimal Karandagoda,
Member,

5W. A. Kadiravelupillai,
Member,

The 5A to 5B Respondents of all:
The National Salaries and Cadre
Commission,
Room 2-G, BMICH,
Buddhaloka Mawatha,
Colombo 07.

6. Sathyaa Hettige,
Chairman,

6A. Dharmasena Dissanayaka,
Chairman,

7. S. C. Mannapperuma,
Member,

7A. A. Salam Abdul Waid,
Member,

8. Ananda Seneviratne,
Member,

8A. D: Shirantha Wijayatilaka,
Member,

9. N. H. Pathirana,
Member,

9A. Prathap Ramanujam,
Member,

10. S. Thillanadarajah,
Member,

10A. V. Jegarasasingam,
Member,

11. A. Mohamed Nahiya,
Member,

11A. Santi Nihal Seneviratne,
Member,

12. Kanthi Wijetunge,
Member,

12A. S. Ranugge,
Member,

13. Sunil S Sirisena,
Member,

13A. D.L. Mendis,
Member,

14. I. M. Zoysa Gunasekera,
Member,

14A. Sarath Jayathilaka,
Member,

15. Secretary,
Public Service Commission.

6th to 15th Respondents all of the:
Public Service Commission,
No 177, Nawala Road,
Narahenpita, Colombo 05.

16. Hon. Attorney-general,
Attorney- General's Department,
Colombo 12.

RESPONDENTS

BEFORE

: Mahinda Samayawardhena, J.
Dr. Sobhitha Rajakaruna, J.
M. Sampath K. B. Wijeratne, J.

COUNSEL

: Shantha Jayawardena with Hiranya
Damunupola, Azra Basheer with Vihangi
Tissera Instructed by Sanjeeva
Kaluarachchi for the Petitioners.

Hashini Opatha, SSC instructed by Rizni
Firdous, SSA for the Respondents.

ARGUED ON

: 12.11.2025

DECIDED ON

: 05.08.2026

M. Sampath K. B. Wijeratne J.

Introduction

The 1st Petitioner, namely the Graduate Trainee Assistant Land Use and Planning Officers' Union, together with the 2nd to 27th Petitioners, who are members of the said Union, filed this Petition dated August 14, 2015, invoking the jurisdiction of this Court under Articles 17 and 126(1) of the Constitution, alleging that their fundamental rights had been infringed by the executive and/or administrative actions of the Respondents. Subsequently, the Petitioners filed an amended Petition dated October 28, 2016, amending the reliefs sought in the original Petition.

Having heard the submissions of both parties, this Court granted leave to proceed on July 13, 2020, in respect of the alleged infringement of Article 12(1) of the Constitution.

The grievance advanced by the Petitioners is that, notwithstanding the Scheme of Recruitment dated October 8, 2015 (marked 'A'), which restructured the post of Land Use Planning Officer into three hierarchical grades, namely Grade III, Grade II, and Grade I, the salary scale applicable to all three grades remains the same, namely MN 4/2006. In contrast, the Schemes of Recruitment governing the Public Management Assistant Service, the Grama Niladhari Service, and the Sri Lanka Technological Service provide for a supra grade carrying the higher salary scale of MN 7/2006, notwithstanding that the minimum qualification for entry into those services is merely the G.C.E. Advanced Level. By comparison, the minimum qualification prescribed for appointment to the Land Use Planning Service is a university degree. In these circumstances, the Petitioners contend that the omission to provide a supra grade carrying a higher salary scale under the Scheme of Recruitment marked 'A' is manifestly unfair, unreasonable, and discriminatory.

Thus, the Petitioners seek the creation of a supra grade carrying the salary scale of MN-7/2006 for the post of Land Use Planning Officer, to which promotions

may be made on merit upon the completion of 20 years of service in the Department of Land Use Policy Planning.

The material facts of the case are as follows:

Around 1994 and 1999, unemployed graduates were recruited under the Graduate Recruitment Scheme by the then Director General of the National Budget attached to the Ministry of Finance. Some of those recruits were assigned to the Land Use Policy Planning Division of the Ministry of Lands as **Assistant Land Use Planning Officers**. The Petitioners were among those assigned to the said Division and were recruited in 1999.

The officers recruited in 1994 and 1999 were posted to various District Secretariats, where they assisted the respective District Land Use Planning Officers and discharged their duties under the latter's supervision.

By Circular No. BDA/1/29/A dated July 25, 2000, issued by the Secretary to the Ministry of Finance and Planning, the graduates recruited in 1999 to the Public Service were absorbed into permanent posts in the Public Service and State Corporations. Thereafter, the Petitioners were issued letters of appointment as Assistant Land Use Planning Officers.

It is admitted that the Petitioners were placed on a lower salary scale than other graduate trainees, as they had been appointed to fill existing vacancies in the Public Service rather than newly created posts¹.

In 2005, another group of graduate trainees was recruited to the Land Use Policy Planning Division as **Land Use Planning Assistants**. They too were assigned to the District Secretariats and assisted the District Land Use Planning Officers while functioning under the supervision of the same officers. Thus, the only distinction between the 1994 and 1999 batches, on the one hand, and the 2005 batch, on the other, was the difference in seniority arising from the respective years of recruitment. All officers recruited to the said posts were placed on the

¹ Paragraph 14 of the Petitioner's Written submission and paragraph 8 of the 3rd and 6th Respondents' written submission.

same salary scale and performed the same functions. Subsequently, the designations of Assistant Land Use Planning Officers and Land Use Planning Assistants were changed to **Land Use Planning Officers**.

In 2006, with the issuance of Public Administration Circular No. 06/2006, those who had been designated as Land Use Planning Officers were placed on the salary scale of MN-4, which is the standard salary scale applicable to “Associate Officers”.

The Respondents assert that the Service Minutes pertaining to the Public Management Assistant Service, Grama Niladhari Service, and Sri Lanka Technological Service provide for posts carrying the MN 7/2006 salary scale solely in recognition of the supervisory functions discharged by officers holding such posts. Since supervisory responsibilities do not fall within the ambit of the duties assigned to Land Use Planning Officers, the application of the said salary scale to them is unwarranted, as the two categories of officers are not comparable.

The Supreme Court, in the case of *Ramuppillai vs Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and Others*², interpreted the equality clause contained in our Constitution as follows:

“Equality means parity of treatment, under parity of conditions: that any classification in order to be constitutional must rest upon distinctions that are substantial and not merely illusory: that the test is whether it has a reasonable basis free from artificiality and arbitrariness embracing all and omitting none natural falling into that category: that the equality of opportunity takes within its fold all stages of service from initial appointment to its termination including promotion, but that it does not prohibit the prescription of reasonable rules for selection and promotion applicable to all members of a classified group: that the principle of equality is applicable to

² [1991] 1 Sri L.R. 11.

employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity.”

However, it must be noted that inequality, by itself, does not constitute a violation of the guarantee of equal protection, since every classification of persons subject to regulation necessarily involves some degree of disparity. It is only where such inequality is manifestly arbitrary or patently unreasonable that it offends the constitutional principle of equality.

A similar view was expressed by Shirani Bandaranayake J. (as she was then) in ***Gunaratna vs People’s Bank and Others***³, with reference to the Indian case of ***Arkansas Gas Co. vs Railroad Commission***⁴, as follows:

*“Inequality per se does not violate equal protection, for every selection of persons for regulation pronounces inequality in some degree. **The inequality to offend the principle of equality must be actually and palpably unreasonable and arbitrary**”* [emphasis added]

In the present matter, I am persuaded that the distinctions drawn between the Petitioners and those serving in the Public Management Assistant Service, Grama Niladhari Service, and Sri Lanka Technological Service do not arise from arbitrary decision-making but are founded upon the inherent differences in the nature of the functions performed within each service.

Although the relevant authorities acknowledged the Petitioners’ grievance and endeavoured to provide some measure of relief by exploring various proposals and making several attempts to facilitate further avenues for career advancement, such efforts, by themselves, do not give rise to a legitimate expectation that an intermediate Supra Grade position between the Land Use Planning Officer and the Assistant Director would be created, as claimed by the Petitioners. This is because the Petitioners were never provided with any assurance or undertaking that such relief would be granted, as contended by the Respondents.

³ [2001] 1 Sri LR 381.

⁴ 261 US 379 at 384.

H.W.R. Wade and C.F. Forsyth, in *Administrative Law*, 10th Edition, at page 449, stated that “*it is not enough that an expectation should exist; it must in addition be legitimate.*” Although the Petitioners may have entertained certain expectations arising from various discussions and draft proposals, such expectations do not attain the status of a legitimate expectation in law unless such a claim possesses the requisite qualities.

This principle was set out in the judgment of the Privy Council in ***Francis Paponette and Others vs The Attorney General of Trinidad and Tobago***⁵.

“The initial burden lies on an applicant to prove the legitimacy of his expectation. This means that in a claim based on a promise, the applicant must prove the promise and that it was clear and unambiguous and devoid of relevant qualification. If he wishes to reinforce his case by saying that he relied on the promise to his detriment, then obviously he must prove that too. Once these elements have been proved by the applicant, however, the onus shifts to the authority to justify the frustration of the legitimate expectation.”

Further policy decisions do not fall within the purview of the Court. As such, this Court cannot issue a direction for the creation of an intermediate Supra Grade position between the Land Use Planning Officer and the Assistant Director when the relevant authorities have determined that no such necessity exists.

The Supreme Court of India, in ***BALCO Employees Union (Regd.) vs Union of India and Others***⁶, quoted with approval the following observations made in the majority decision in ***Narmada Bachao Andolan v. Union of India and Others***⁷:

“While protecting the rights of the people from being violated in any manner utmost care has to be taken that the court does not (SIC) its jurisdiction. There is, in our constitutional framework a fairly clear demarcation of powers. The Court has come down heavily whenever

⁵ [2010] UKPC 32.

⁶ AIR 2002 SC 350.

⁷ (2000) 10 SSC 664.

the executive has sought to impinge upon the Court's jurisdiction. At the same time, in exercise of its enormous power the Court should not be called upon to or undertake governmental duties or functions. The Courts cannot run the Government nor can the administration indulge in abuse or non-use of power and get away with it. The essence of judicial review is a constitutional fundamental. The role of the higher judiciary under the Constitution casts on it a great obligation as the sentinel to defend the values of the Constitution and the rights of Indians. The Courts must, therefore, act within their judicially permissible limitations to uphold the rule of law and harness their power in public interest. It is precisely for this reason that it has been consistently held by this Court that in matters of policy the Court will not interfere.

[...]

In respect of public projects and policies which are initiated by the Government the Courts should not become an approval authority. Normally such decisions are taken by the Government after due care and consideration. In a democracy welfare of the people at large, and not merely of a small section of the society, has to be the concern of a responsible Government. If a considered policy decision has been taken, which is not in conflict with any law or is not mala fide, it will not be in public interest to require the Court to go into and investigate those areas which are the function of the executive [...] “

The Government retains the prerogative to formulate policies in the public interest, and Courts will not ordinarily inquire into or scrutinize such policy determinations. Judicial intervention arises only where a policy is shown to be unlawful, contrary to law, or vitiated by mala fides. Save in such circumstances, the Court has no role in matters involving mere policy choices.

The Scheme of Recruitment marked ‘P31’, which was applicable to Assistant Land Use Planning Officers, did not provide the Petitioners with a clear

promotional pathway. However, this position was subsequently rectified by the Scheme of Recruitment marked 'Y', which delineates a distinct and limited competitive pathway whereby Land Use Planning Officers may advance to the executive rank of Assistant Director (District Land Use) carrying the SL 1-2006 salary scale. The Respondents contend that, notwithstanding the limited number of available positions for Assistant Directors (District Land Use Planning), such positions are filled through a limited competitive selection process, thereby making them available exclusively to the Petitioners.

The Respondents state that there is no possibility of introducing a Scheme of Recruitment based on the MN-7 salary scale, as the Department of Land Use Policy Planning has no requirement for an intermediate position between Land Use Planning Officers and Assistant Directors (District Land Use). This is because the Department does not have additional functions and duties that could be assigned to an additional supra grade position.

The creation of posts within the Public Service is a matter that falls exclusively within the domain of the appointing authority. It is for the Executive, guided by considerations of administrative necessity, financial resources, and policy priorities, to determine the number of posts required for the efficient discharge of its functions. The Courts, in the exercise of their jurisdiction, cannot compel the State to create new posts, nor can they substitute their own judgment for that of the Government in matters relating to workforce planning and resource allocation. Judicial review is confined to ensuring that such decisions are made in accordance with law, are not arbitrary, and do not infringe constitutional rights. Beyond these limits, the structuring of the administrative machinery remains the prerogative of the elected Government.

In such circumstances, I am of the view that the Petitioners have failed to establish an infringement of their fundamental rights guaranteed under Article 12(1) of the Constitution by any executive or administrative action of the Respondents.

The objection raised by the Respondents to the amended Petition, namely, that it materially alters the original reliefs sought and that the Petitioners are thereby attempting to secure new and distinct reliefs not contemplated in their initial grievance, does not warrant consideration by this Court. This is because, in view of the conclusion reached herein that the Petitioners have failed to establish any infringement of their fundamental rights, consideration of the said objection does not arise. Such consideration would have been necessary only if this Court had concluded that the Petitioners had established a sustainable case.

The application is accordingly dismissed. I make no order as to costs.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J.

I agree.

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J.

I agree.

JUDGE OF THE SUPREME COURT