

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

In matter of an application under
Articles 17 and 126 of the
Constitution

1. M.P.G.N.P. Cooray,
No. 382/1, Welihena South,
Kochchikade.
2. P.T.S. Perera
470, Alubogahawatta,
Eriyawetiya, Kelaniya.
3. D.S.S. Weerasinghe
Kadjudas Koratuwa,
Kodigamuwa, Walasamulla.
4. E.M.G.P.C. Ekanayakka
No. 282-2/7, Galpotta Road,
Bollatha North,
Bollatha,
Ganemulla.

SC FR APPLICATION NO. 38/14

PETITIONERS

-VS-

1. Ceylon Petroleum Corporation,
No. 609, Danister De Silva
Mawatha,
Colombo 09.
2. L.E. Susantha de Silva,
Managing Director,
Ceylon Petroleum Corporation,

No. 609, Danister De Silva
Mawatha,
Colombo 09.

- 2A. Mohamed Uvaris Mohamed,
Managing Director,
Ceylon Petroleum Corporation,
No. 609, Danister De Silva
Mawatha,
Colombo 09.
- 2b. Sr. Sp. Rathnayake
Managing Director,
Ceylon Petroleum Corporation,
No. 609, Danister De Silva
Mawatha,
Colombo 09.
3. Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

Before: Hon. P. Padman Surasena, J.
Hon. E. A. G. R. Amarasekara, J.
Hon. Mahinda Samayawardhena, J.

Counsel: Manohara de Silva, PC with Harithriya Kumarage & Dilmini de Silva instructed by Anusha Perusinghe for the Petitioners.
Yuresha de Silva, DSG for the Respondents.

Argued on: 09.12.2024

Decided on: 13.06.2025

E. A. G. R. Amarasekara, J.

The above application No. SC FR 38/2014 was filed before this Court against the Respondents named therein in the Petition, under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka (hereinafter referred to as “the Constitution”), alleging that the decision of the 1st and/or 2nd Respondents to externally recruit Management Trainees-Grade A7 and their failure to promote the Petitioners to Executive Grade is arbitrary, capricious, unreasonable, and has no force or effect in law and is violative of the fundamental rights guaranteed to them under Article 12 (1) of the Constitution. On or about 11.12.2014, this Court had granted leave to proceed for this Fundamental Rights application under Article 12 (1) of the Constitution.

However, as per the Journal Entry dated 12.05.2020, the learned President’s Counsel for the Petitioners has submitted that they have obtained relief to an extent but, they were exploring the possibility of back dating the promotions. This matter was later taken up for argument on 09.12.2024. Parties have also filed their pre-argument written submissions regarding the matter in issue.

Among other things, the reliefs prayed by the Petitioners are as follows:

1. A declaration that the Fundamental Rights of the Petitioners guaranteed by Article 12(1) of the Constitution have been infringed by the 1st and the 2nd Respondents,
2. A declaration that the decision of the 1st Respondent to externally recruit Management Trainees-Grade A7 is null and void,
3. An order cancelling the recruitment of Management Trainees- Grade 7 initiated by advertisement marked P17,
4. An order directing the 1st Respondent to promote the Petitioners to Grade A7 and/or Executive Grades,
5. Compensation for the violation and costs.

During the argument, it was admitted that all the Petitioners have now got their promotions to the Executive Grades with the effluxion of time and thus, the main relief prayed for has been granted

by the Respondents prior to the final adjudication of this application by this Court. It must be noted that the reliefs 1, 2 and 3 above have been prayed in anticipation that a violation may occur with the intended recruitments of external candidates as advertised depriving the Petitioners from getting promotions to the Executive Grades. The circumstances now show that the Petitioners have not been deprived of their promotions, but in fact, they have been given promotions. During the argument, it appeared that the Petitioners are more concerned with getting their promotions backdated as a relief. Even though, no proof was tendered, during the argument, it was stated on behalf of the Respondents that no one was recruited as per the alleged advertisement marked P17. However, there was no dispute that the Petitioners' main grievance has now been addressed, and they have now reached Executive Grades through promotions.

As the main grievance has now been addressed by the Respondent, I do not intend to relate the factual matrix relevant to this application in detail. In summary, the Petitioners are graduates employed by the 1st Respondents, but it appears that they obtained their degrees while being employed by the 1st Respondent. They joined the 1st Respondent as non-executive grade employees according to the qualifications they had at the relevant time. The Petitioners term them as 'underemployed graduates'.

Meanwhile, it appears that the Government, to accommodate unemployed graduates, had placed certain unemployed graduates in the employment of the 1st Respondent in the non-executive grades. Those unemployed graduates had filed the fundamental rights application No. SC FR 172/2006 seeking appointment to the Executive Grade. These Petitioners also sought to intervene in the said application as parties. It appears that the said matter was terminated in view of a Board decision of the 1st Respondent dated 16.05.2006 (marked P8), and the direction of this Court was to implement the scheme contained in the said decision without delay- vide P9. The following terms in the said Board decision indicates the scheme approved by this Court in that action.

- a) To offer promotion to all under-employed graduates subject to a limitation of minimum grade B-2 and maximum grade A-7 within two promotions, and to train them for a period of one year for possible placement of executive position vacancies.*
- b) To offer Grade B-3 as per their letter of appointment to unemployed graduates with effect from 1st July 2006 and to offer grade B-2 when their training program is commenced after*

lapse of four months from the date of commencement of training of under-employed graduates as specified in para (a) above.

c) *To advertise all executive position vacancies and allow all qualified personnel to apply and to be selected on the basis of CPC marking scheme- vide P8.*

As per the Paragraphs No. 6, 8, 10 and 12 of the affidavit dated 16.02.2015 filed by the Deputy General Manager (Human Resource and Administration) as the Statement of Objection, the two promotions mentioned in the above terms had been given to each of the Petitioners in this case. It is also not in dispute that the said in-service training contemplated in the above terms also was given. The position of the Petitioners is that, for the purpose of the said training, they were positioned as Graduate Trainees which was not a position included in the cadre of the 1st Respondent, and even after the completion of the said training programme, the Petitioners were not placed in Executive Grade commensurate with their educational qualifications. However, it must be noted that the above terms do not contain anything to say that they must be placed in an Executive Grade position after the completion of the training programme, but it appears that all qualified personnel are to apply when the vacancies occur and has to be selected on the basis of 1st Respondent's marking schemes. This is not an application challenging the non-selection of them on their application to any vacancies challenging the marks given to them.

The Petitioners have also mentioned that on certain occasions; certain under-employed graduate were promoted based on recommendation made by a political victimization committee and the Ombudsman. This application is also not concerned with any violation caused by such promotions. On the other hand, if the Petitioners wanted to challenge such promotions, they should have come to Courts within the one-month time limit from any alleged violations occurred due to such promotions which appeared to have taken place in 2007.

The present application pertains to the incident of calling applications from external candidates to be recruited as Management Trainees-Grade A7 by P17 published on 13.12.2013. The Petitioners alleged that this calling of external applications is contrary to the Scheme of Recruitment as it has increased the required educational qualification to a minimum of Degree with a Second Class Upper Division while treating a Postgraduate Degree or a MBA as an added qualification when, as per the Scheme of Recruitment what is needed is a General Degree with one year experience or an Honours Degree for promotions. The fear of the Petitioners that, if the said recruitments

contemplated in P17 were to be made, such would jeopardize the Petitioners avenues to promotion to Grade A7 had prompted them to file the application at hand before this Court.

The said P17 advertisement took place in December 2013, the learned DSG stated in open Courts on 09.12.2024 during the argument, that no one was recruited in terms of the said advertisement. No evidence is available to say that anyone has been recruited as per the said advertisement. If any one was recruited after the advertisement was published in 2013, there was sufficient time for the Respondents to come to know that from 2013 to 2014. On the other hand, in their objections, the Respondent had stated that they got the necessary approval for the qualifications mentioned in the said advertisement from the Department of the Management services of the Ministry of Finance for the said new recruitments as Management Trainees-Grade 7. It is true that there should be avenues for the internal applicants to get the promotions, but at the same time, for the progress of the 1st Respondent, there should be an opportunity to recruit even directly from external applications. To pave way for internal candidates, the opportunity for external candidates should not be totally shut down. The advertisement calls for applications for Management Trainees - Grade A7. This itself does not bar the Petitioners ability to apply for vacancies in the real management cadre when there are vacancies as they also underwent the training programme as Management Trainees, though not placed as Grade A7. It is true, if there is a conflict with the Scheme of Recruitment, it is a matter to be looked into, but for the reasons given below, it is a useless exercise to do that merely for academic purpose.

- It appears no one has been recruited in terms of the said advertisement and the said advertisement has not been acted upon.
- It is not sensible to think that said advertisement will be used after more than 10 years from its publication.
- The Petitioners filed this application, imagining that this publication would affect their promotion to Executive Grades, but in fact, parties now agree that they have been promoted to the Executive Grades. The relevant promotion letters have been tendered to Court with the motion dated 12.05.2016 by the Respondents.

Hence, there is no violation of Fundamental rights as envisaged by Article 12(1) of the Constitution.

With regard to backdating of the appointments to the Executive Grade, there is no application made indicating why it should be backdated so that the opposite party could reply and also for the Court to evaluate the factual circumstances. As said before, the directions in the previous Fundamental Rights case do not indicate that once the training is completed, the Petitioners must be placed in Executive Grade. Thus, the date of completion of the said training cannot be considered for such purpose. It is not shown that anyone has been recruited as per the advertisement, P17. Thus, no date can be considered on that basis. The Petitioners have referred to certain occasions where certain under-employed graduates were promoted due to recommendations from a Political Victimization Committee and Ombudsman etc. If there was grievance based on that, the Petitioners should have come to Courts based on that within the time frame given by law. In an application based on the publication of P17 notice, those incidents cannot be considered to backdate the appointments made to the Executive Grade. Hence, this Court cannot consider any request for backdating the appointments to the Executive Grade.

Therefore, this application is dismissed. No costs.

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Judge of the Supreme Court

Hon. P. Padman Surasena, J.

I agree.

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Judge of the Supreme Court

Hon. Mahinda Samayawardhena, J.

I agree.

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Judge of the Supreme Court