

**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/394/2007**

1. Alankara Mudiyansele  
Chandratilaka Bandara  
153/5, Kirulapona Mawatha,  
Colombo 05
2. Wijesinghe Mudiyansele Kumara  
Rathnasiri Malalasekara  
425 C, Manakada Road,  
Kadawatha.
3. Polgollegedara Bandula Kumara  
Wikramasinghe  
130, Paolayaya, Raththota.
4. Sinha Aracchilage Nirmali Menaka  
Seneviratne  
163/3, "Sandasiri",  
Mawathawatta,  
Kadawatha.  
(DISCHARGED FROM  
PROCEEDINGS)
5. Jayasinghe Deveyala Susantha  
NevilDepawansa  
125, Arampolwatta,  
Mawathagama.
6. Herath Mudiyansele Thushara  
Manthriratne  
30/3, Peellagama Watta,  
Sumangala Mawatha, Polgahawela.
7. Liyanage Don Jagath Mahinda  
276, Gonagaldeniya,  
Waharake.

8. Sinhala Pedige Gamini Dharadasa  
Medagedara, Parabawila,  
Pothuhera.
9. Ratnayaka Mudiyanseelage Amara  
Divakara Ratnayake  
'Ratnashram 'E  
Walpola, Gokaralla.
10. Sanadasiri Pathirannahalage  
Chithra Chandani Sandagiri  
103 A 1, Walpola,  
Rukgahawila.
11. Kuranage Jeewa Subashini Kuranage  
4/3/2, Kottalanda,  
Nungamuwa.
12. Palagamage Gedara Jayathilake  
92/7, Urapola Road,  
Pilimathalawa.
13. Samarasinghe Mudiyanseelage Sarath  
Hemapala Samarasingha  
47, Sri Wajiragnana Mawatha,  
Colombo 09.
14. Edirimuni Rodrigo Sujith Bhathiya  
Ediriweera  
528 b, Bodhirja Mawatha,  
Thalawathugoda.
15. Rupahin Gangoda Anurathna  
179/2, Polhena, Madapatha,  
Piliyandala.
16. Mapa Appuhamilage Padmasiri  
Ariyaratne,  
146, Bulathweldeniya,  
Nikahetikand.
17. Mirisage Priyantha Ranjith  
Washinton  
Gunawardena Mawatha,  
Dummaladuriya.  
(DISCHARGED FROM PROCEEDINGS)

18. Serasinghe Thotagamuwage Saman  
Keerthi Serasinghe  
1/9, Gamunu Mawatha,  
Kotuwegoda,  
Rajagiriya.
19. Nanda Sanjeewa Weerathunga,  
'Ajantha', Sapugoda,  
Kamburupitiya.

**PETITIONERS**

Vs.

1. Director General of Customs,  
Department of Sri Lanka Customs,  
PO Box 618, Bristol Street,  
Colombo 01.
2. Duminda Jayaratna  
Director, Customs (Personnel)  
Department of Sri Lanka Customs,  
PO Box 618, Bristol Street,  
Colombo 01.
3. Dr. R.H.S. Samaratunga,  
Secretary,  
Ministry of Finance and Planning,  
The Secretariat,  
Colombo 01.
4. S. B. Divaratne,  
Former Deputy Secretary,  
Ministry of Finance and Planning,  
The Secretariat,  
Colombo 01.
5. P.B. Abeykoon  
Secretary to His Excellency the  
President,

Presidential Secretariat,  
Colombo 01.

- 6(a). K.L.L. Wijeratne  
Chairman,  
National Salaries and Cadre  
Commission,  
Room 2-116,  
BMICH,  
Buddhaloka Mawatha,  
Colombo
- 7(a). Asoka Jayasekara  
Secretary,  
National Salaries and Cadre  
Commission.
- 8(a). Nimal Bandara  
Member,  
National Salaries and Cadre  
Commission.
- 8(b). Dayananda Vidanagamachchi  
Member,  
National Salaries and Cadre  
Commission.
- 8(c). J. Charitha Rathwaththa  
Member,  
National Salaries and Cadre  
Commission.
- 8(d). Prof. Kithsiri Madapatha Liyanage  
Member,  
National Salaries and Cadre  
Commission.
- 8(e). Leslie Shelton Devendra  
Member,  
National Salaries and Cadre  
Commission.
- 8(f). Suresh Shah,  
Member,  
National Salaries and Cadre

Commission.

8(g). Sanath Jayantha Ediriweera  
Member,  
National Salaries and Cadre  
Commission.

8(h). V. Regunathan  
Member,  
National Salaries and Cadre  
Commission.

8(i). Kamal Mustapha  
Member,  
National Salaries and Cadre  
Commission.

8(j). Prof. Gunapala Nanayakkara  
Member,  
National Salaries and Cadre  
Commission.

8(k). Sujatha Cooray  
Member,  
National Salaries and Cadre  
Commission.

8(l). Gerry Jayawardena  
Member,  
National Salaries and Cadre  
Commission.

8(m). S. Thillainadarajah  
Member,  
National Salaries and Cadre  
Commission.

8(n). Dr. Anura Ekanayake  
Member,  
National Salaries and Cadre  
Commission.

8(o). Sembakuttige Swarnajothi  
Member,

National Salaries and Cadre  
Commission.

8(p). P.K.U. Nilantha Piyaratne  
Member,  
National Salaries and Cadre  
Commission.

8(q). N.H. Pathirana  
Member,  
National Salaries and Cadre  
Commission.

8(r). H.T. Dayananda  
Member,  
National Salaries and Cadre  
Commission.

8(s). T.B. Maduwegedera  
Member,  
National Salaries and Cadre  
Commission.

8(t). Dr. Wimal Karandagoda,  
Member,  
National Salaries and Cadre  
Commission.

9. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

10(a). Dharmasena Dissanayake  
Chairman,  
Public Service Commission,  
No.177, Nawala Road, Narahenpita,  
Colombo 05.

11(a). Salam Abdul Waid  
Member,  
Public Service Commission.

12(a). Shirantha Wijayatilaka  
Member,  
Public Service Commission.

- 13(a). Dr. Prathap Ramanujam  
Member,  
Public Service Commission.
- 14(a). V. Jegarasasingam  
Member,  
Public Service Commission.
- 15(a). Santi Nihal Seneviratne  
Member,  
Public Service Commission.
- 16(a). S. Ranugge  
Member,  
Public Service Commission.
- 17(a). D. L. Mendis  
Member,  
Public Service Commission.
- 18(a). Sarath Jayathilaka  
Member,  
Public Service Commission
- 19(a). H.M.G. Senevirathne  
Member,  
Public Service Commission.

**RESPONDENTS**

20. Vipula Minuwanpitiya  
148 A, Oruthota,  
Gampaha.
21. Geekiyanage Jayamini Sarath  
Fernando  
4/18, Singhapura Road,  
Chilaw.

22. Mallikage Don Shamini Avantha  
No. 25/47, Hospital Road,  
Mathugama.

**ADDED RESPONDENTS**

**Before:** Achala Wengappuli, J  
Dr. Sobhitha Rajakaruna, J  
M. Sampath K.B. Wijeratne, J

**Counsel:**

Kalinga Indatissa, PC with Harin Saddhasena, Shavinda Herath and Ovini Hattotuwa  
for the Petitioner

Rajitha Perera, DSG instructed by Nimalika Wickramasinghe, SA for the 1st and 9th  
Respondents

Manohara De Silva, PC with Harithriya Kumarage for the Intervenient Respondents

**Written Submissions:**

Petitioners : 27 November 2025  
1st and 9th Respondents : 13 June 2025, 09 December 2025  
Added Respondents : 17 January 2023, 01 December 2025

**Argued on:** 13 October 2025

**Decided on:** 21 May 2026

**Dr. Sobhitha Rajakaruna, J**

*Summary of Petitioners' Submissions*

The Petitioners claim that they are Excise Tax Officers attached to the Excise Special Provisions Unit of the Department of Sri Lanka Customs. They are responsible for the collection of excise duties and levies on articles produced or manufactured in, or imported into, Sri Lanka, in terms of the Excise- Special Provisions- Act No. 13 of 1989 as amended by Act No. 40 of 1990 ('Act').

According to the Petitioners, prior to 1993, the powers and functions under the said Act were exercised by the Department of Excise under the Commissioner General of Excise. In 1993, following a Cabinet Memorandum presented by the then Minister of Finance, the Cabinet of Ministers approved the transfer of those powers and duties to the Director General of Customs and the officers of the Department of Customs. Consequently, the Petitioners state that they were appointed as Excise Tax Officers in the newly established Excise Special Provisions Unit of the Customs Department.

The Petitioners state that their appointments were made in accordance with the recruitment scheme ('P5') formulated by the Ministry of Public Administration, and that they satisfied the prescribed qualifications. They aver that the threshold qualifications required for appointment as Excise Tax Officers are identical to those applicable to Assistant Superintendents of Customs Grade II. However, unlike the Assistant Superintendent of Customs ('ASC') cadre, the recruitment scheme for Excise Tax Officers contains no provisions for promotion or career progression.

The appointments of the Petitioners were confirmed by the Public Service Commission upon completion of the three-year probationary period. Over the years, the Petitioners submit that there has been a significant reduction in their workload, resulting in professional stagnation. Having remained in the recruitment grade without any promotional prospects for approximately ten years, they made representations to the relevant authorities seeking redress.

In July 2005, a Cabinet Memorandum (a draft is marked as 'P10') was initiated proposing the absorption of the Petitioners into the Customs Service as Assistant Superintendents of Customs. The proposal specifically intended to seek approval to absorb the 20 Excise Tax

Officers into the ASC cadre and to place them at the lower end of the seniority list of Assistant Superintendents of Customs so as not to affect the seniority of existing officers. However, the very next day, the Assistant Superintendents of Customs Union commenced trade union action opposing the absorption, and the implementation of the proposal was halted.

The Petitioners further rely on the recommendation of the Deputy Secretary to the Treasury that they be absorbed into the ASC posts after an internal examination and placed at the bottom of the seniority list ('P11a' - letter from the Deputy Secretary to the Treasury annexing an unsigned report and 'P11b' - the minutes of a meeting held between officials of the Ministry of Finance and the Treasury concerning the implementation of the absorption proposal). They state that they were agreeable to this arrangement.

The Petitioners also refer to acknowledgements of their grievances by the Presidential Secretariat and by the 6th Respondent, Co-Chairman of the National Salaries and Cadre Commission. Despite these recommendations and despite performing duties and functions similar to those of Assistant Superintendents of Customs, and being placed on the same salary scale ('MN 5') with the requirement to sit for the same efficiency bar examinations, no steps have been taken by the 1st to 3rd Respondents to absorb the Petitioners into the ASC cadre or to formulate a scheme of promotion for them.

### ***The Alleged Infringement of Fundamental Rights***

The Petitioners contend that the failure and/or refusal of the 1st to 3rd Respondents to implement the proposed absorption or to provide any career progression, despite repeated recommendations and directives (including letter 'P14' dated 15 October 2007 purportedly from the Presidential Secretariat-5th Respondent), is arbitrary, unreasonable, irrational and discriminatory.

The Petitioners further submit that there was an imminent infringement of their rights, as appointments to the post of ASC Grade II were due to be made with effect from 15th November 2007. In essence, the Petitioners seek judicial intervention to redress the long-standing stagnation in their service and the alleged discriminatory treatment that has

denied them promotional prospects and career advancement available to other officers performing purported comparable functions.

The Petitioners further urge this Court to determine and declare that the relevant Respondents have infringed the Petitioners' fundamental rights guaranteed under Article 12(1) of the Constitution by failing to implement the recommendations set out in the documents marked 'P10' (the aforesaid Cabinet Memorandum), 'P11a', and 'P12' appended to the Petition, or by failing to implement the proposed schemes relating to the salary scale and promotions of the Petitioners.

### *Submissions of the 1st and 9th Respondents*

The 1st and 9th Respondents contend that, in the absence of a policy decision by the Cabinet of Ministers on the draft Cabinet Memorandum ('P10') in terms of Article 55(4) of the Constitution (as applicable at the relevant time), neither the Director General of Customs nor any other Government authority has the legal authority to make appointments in the manner sought by the Petitioners. They assert that the 1st Respondent has expressly stated his lack of authority to effect such appointments, as the existing Scheme of Recruitment ('1R1') contains no provision permitting such action. Accordingly, the Respondents maintain that the Petitioners' application is misconceived in law, that no violation of any fundamental rights has been established, and that the instant Application ought to be dismissed.

The then Director General of Customs, swearing an affidavit on 10 March 2008, denied that the Petitioners were originally within the Department of Customs, asserting that they only received training from that Department, which did not amount to on-the-job training. It was further contended that the educational qualifications for the posts of ASC and Excise Tax Officers are not identical. He stated that no Cabinet decision was made regarding the implementation of the said Cabinet Memorandum marked 'P10', and that the Secretary to the Treasury had not recommended absorption but had merely forwarded the document.

The document marked 'P11a' was said to be only a part of the relevant instrument, and the said Act only provides for special incentives to Excise Tax Officers. The document

marked P11b, according to the above deponent, was neither signed nor subsequently confirmed by any party to the discussions. The National Salaries and Cadre Commission, through document 'P13' (recommendation issued by the National Salaries and Cadres Commission-6th Respondent), had not acknowledged that the Petitioners should be absorbed as Assistant Superintendents of Customs. The only purported recommendation for such absorption was the Cabinet Memorandum marked 'P10', signed by the relevant Minister, which was never presented to the Cabinet. Finally, he maintained that apart from document 'P10', none of the other documents contained any recommendation for the absorption of the Petitioners.

### ***The Contention of the 20th to 22nd Added Respondents***

The Added Respondents, who are Assistant Superintendents of Customs, contend that no Cabinet decision was ever made to implement the proposals in the Cabinet Memorandum ('P10'), and therefore no lawful basis exists for the recruitment sought by the Petitioners. They argue that document P11a is merely an unsigned and incomplete report lacking any directive force, while 'P12' (Minutes of a meeting convened by the Presidential Secretariat) only records discussions among officials and does not amount to an official decision. Accordingly, none of these documents imposes any obligation on the Respondents to recruit the Petitioners.

They further submit that the applicable Scheme of Recruitment ('X2') strictly provides for recruitment to the post of ASC through an open competitive examination (80%) and internal promotions based on seniority (20%). Any alternative method of recruitment would violate this scheme, create inconsistencies, and prejudice the seniority of existing officers.

### ***Alleged Legitimate Expectation***

The Petitioners submitted that their legitimate expectations regarding career advancement through promotions, placement in an appropriate salary scale, and appointment to the post of "Deputy Excise Tax Superintendent of Customs" have been frustrated by the conduct of the Respondents, including the State. They argued that the doctrine of

legitimate expectation is a well-recognised legal principle preventing public authorities from acting unfairly or inconsistently where an individual has a legitimate expectation of a certain course of treatment. Such an expectation, they contended, may arise from a clear promise, a consistent past practice, or a representation made by a public body. It was further submitted that any departure from such an expectation is justiciable, as justice requires that a public authority be precluded from frustrating an expectation it has itself generated.

The Petitioners invoked two distinct types of legitimate expectation: (a). Procedural, entailing a right to be heard or requiring the authority to follow a prescribed process; and (b). Substantive, involving a claim against a public authority which, through its representations or practices, has given rise to an expectation of a specific outcome or benefit.

To the contrary, on the issue of legitimate expectation, the Added Respondents argue that the Petitioners cannot rely on the Cabinet Memorandum, as it is a mere proposal without legal effect unless approved by a formal Cabinet decision, which is absent and, in fact, such Memorandum was withdrawn. Citing judicial authority, they maintain that even a Cabinet decision alone does not give rise to a cause of action unless followed by an implementing act or omission.

They further contend that no legitimate expectation can arise in the absence of a valid and lawful representation by an authorised authority. Any representations in P11a and P12 are said to be unauthorised and contrary to the established Scheme of Recruitment. Therefore, the Petitioners cannot claim any enforceable expectation of being recruited to the respective carder.

There is no doubt that the primary issues in the instant Application arise from the said draft Cabinet Memorandum and from either its withdrawal or the non-implementation of the proposals contained therein. The Petitioners contend that their alleged legitimate grievance has remained unredressed for the past two decades, and that the repeated recommendations concerning their promotions, placement, and salary have given rise to a legitimate expectation on their part. As stated by the Petitioners, the reduction in workload, the lack of promotional opportunities, and their placement at the lower level of the National salary scale have resulted in the career stagnation of them. Nevertheless, the

task at this stage is to determine whether the Petitioners have suffered any prejudice as a result of the alleged legitimate expectation arising from the said draft Cabinet Memorandum, 'P10', 'P11a' and 'P12'.

In a scholarly exposition of the principle of legitimate expectation, supported by extensive judicial authority, His Lordship Justice Yasantha Kodagoda PC, J. in *Vavuniya Solar Power (Private) Limited v Ceylon Electricity Board*, SC FR 172 2017 SC Minutes of 20 September 2023, held:

“The rationale of the doctrine of legitimate expectations is also that if a public authority has induced a person to rely upon its representations or practices on the premise that such reliance was a real possibility and would bear fruit, it is under a fiduciary duty to act in such a way that the reliance placed by such person will not result in detrimental outcomes to such person, who in good faith had placed reliance on the representations of a public authority and its practices. Public authorities must be required by law to honour expectations created by their own representations and practice. If unable to do so, the public authority concerned should compensate the person affected by having placed reliance on such representations and practices”.

“Recognising the doctrine of legitimate expectations is also a means of ensuring administrative fairness. It curtails the opportunity public authorities would otherwise have to decide on matters subjectively, or in an arbitrary, capricious or unreasonable manner. Therefore, the exercise of administrative discretion is required by law to be subject to the legal duty cast on public authorities to honour legitimate expectations generated by it through its own representations and practices”.

### ***Conclusion***

A proposal that has never received Cabinet approval cannot, as a matter of law, constitute a clear and unambiguous representation that a benefit will be conferred. I see no evidence that the said draft Cabinet Memorandum ('P10') had been placed before the Cabinet through proper channels. At most, it reflects a preliminary policy intention. The Government must retain the freedom to formulate, consider, and withdraw policy

proposals without being exposed to legal claims whenever a proposal does not proceed to formal adoption. To hold otherwise would unduly fetter executive decision-making.

In my view, all the other documents relied upon by the Petitioners, apart from the draft Cabinet Memorandum itself, appear to be no more than attempts by the authorities to address the Petitioners' alleged grievances. Any bona fide attempt by the authorities to provide redress is fundamentally different from a promise made by those authorities. Therefore, such genuine attempts by officials who do not possess the final authority to make a conclusive decision on the relevant proposals cannot be relied upon to establish a legitimate expectation on the part of the aggrieved parties.

By analogy, an unapproved Cabinet Memorandum carries no binding force and cannot give rise to a substantive legitimate expectation. The doctrine requires an expectation that is legitimate in law, and not merely a hope or desire. A proposal that never secured Cabinet approval cannot, absent exceptional circumstances, form the basis of a legitimate expectation.

In the said *Vavuniya Solar Power (Private) Limited*, the Supreme Court explained the doctrine of legitimate expectation as a principle grounded in fairness, accountability, and good administration. The Court held that when a public authority, through its representations or established practices, induces a person to reasonably rely on the expectation of receiving a benefit, the authority assumes a duty to act fairly and avoid causing detriment to that person. Public authorities are therefore expected to honour the expectations they create, and where this is not possible, compensation may be warranted for those adversely affected by their reliance. The judgment further emphasised that the doctrine serves as a safeguard against arbitrary, capricious, or unreasonable administrative action by ensuring that public authorities exercise their discretionary powers fairly and consistently. The Supreme Court also observed that, in cases involving substantive legitimate expectation, judicial review is not confined to the traditional test of Wednesbury unreasonableness. Instead, courts must balance the claimant's legitimate expectation and personal interest against the public authority's justification for changing its policy, particularly where the authority asserts that such a change is required in the public interest.

Having carefully considered the judgment in *Vavuniya Solar Power*, I am unable to find that the facts and circumstances of the present Application satisfy the criteria for the

establishment of a legitimate expectation in favour of the Petitioners. Accordingly, the Petitioners' claim based on legitimate expectation fails.

In light of the foregoing, I hold that the fundamental rights guaranteed under Article 12(1) of the Constitution have not been infringed by the alleged conduct of the Respondents as set out in the Petition and the affidavits filed by the Petitioners. The Application is accordingly dismissed.

**Judge of the Supreme Court**

**Achala Wengappuli, J.**

I agree.

**Judge of the Supreme Court**

**M. Sampath K.B. Wijeratne, J.**

I agree.

**Judge of the Supreme Court**

