

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

In the matter of an application under
Article 126 of the Constitution of the
Democratic Socialist Republic of Sri
Lanka.

S.C.(F.R.) Application No. 397/2019.

1. Wanigasundara Appuhamilage Don
Dharmasiri Wanigasundara
210/D/1, Medagama, Panirendawa,
Madampe.
2. Megesuriya Mudiyanseelage Palitha
Priyankara Bandara Megesuriya,
Aludeniya, Hemmathagama.
3. Miyanamaditte Gedara Ranjith
Wijerathna Bandara Kaduwela,
No. 60/3, Amarathunga Mawatha,
Mirigama.
4. Kodippili Patabendige Priyantha
Nilmini Kumari,
No.367/3, Pasyala Road, Mirigama.
5. Munasingha Appuhamilage Janaka
Ravindra Munasingha,
No. 264/3,
Gorge E De Silva Mawatha,
Kandy.
6. Adikari Mudiyanseelage Lalith
Parakrama Adikaram,
No.41/1,
Heeressgala Road,
Kandy.

7. Jayapathma Herath Mudiyanseleage
Amarathilaka Jayapathma,
Dangahamulahenewatta,
Galapitiyagama, Nikawaratiya.

Petitioners

Vs.

1. A. N. Guruge
Commissioner General of Inland
Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.
2. H.M.C.M. Herath
Commissioner of Inland Revenue,
Department of Inland Revenue,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.
3. A.K.D.D.D. Arandara
Director Legal, Ministry of Finance,
The Secretariat,
Lotus Road,
Colombo 01.
4. D.H.S. Pulleperuma
Director, Ministry of Finance,
The Secretariat,
Lotus Road,
Colombo 01.
5. D.M. Ratnayake
Director,
Management Services Department,
Ministry of Finance,
The Secretariat,

- Lotus Road,
Colombo 01.
6. U.A.S.Harshapriya Sisira Kumara
Director, Establishments
Ministry of Public Administration,
Independence Square, Colombo 07.
 7. The Secretary
Ministry of Finance & Mass Media,
The Secretariat,
Lotus Road,
Colombo 01.
 8. Mr. Dharmasena Dissanayake
Chairman,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
 9. Prof. Hussain Ismail
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
 10. Ms. S. Karunaratne
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
 11. Mr. Prathap Ramanujam
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
 12. Mr. V. Jegarasasingam
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

13. Mr. G.S.A. de Silva,
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
14. Mr. S. Ranugge
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
15. Mr. D.L. Mendis
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
16. Mr. S. Jayathilaka
Member,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
17. Mr. M.A.B. Daya Senarath
Secretary,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
18. P. Sahayanayagam
No. 27, Ginananda Mawatha,
Kotahena, Colombo 15.
19. A. Hewapathirana
Deputy Commissioner,
Stamp Duty & BGL Unit,
11th Floor, Inland Revenue
Department,
P.O. Box 515,
Colombo 02.

20. L.A. Abesekara
No.257, 8th Lane,
Pilaminawatta, Dodangoda.
21. K.T.U. Padmini
No. 244/3A/3, Asiri Mawatha,
Ragama Road, Kadawatha.
22. H.A.S. Hapuarachchi
No. 56/2, Galaha Road,
Hindagala.
23. W.D.M. Ilangakoon
Colombo South Metro Unit,
No.80, Jawatta Road,
Colombo 5.
24. N.B.J.S. Rohana
276/2, High Level Road,
Nugegoda.
25. A.K. Lokubalasooriya
Deputy Commissioner,
MCA Unit 2,
Department of Inland Revenue,
PO Box 515, Colombo 02.
26. His Excellency Maithripala Sirisena
Minister of Defence, Minister of
Mahaweli Development and
Environment,
Presidential Secretariat,
Colombo 01.
27. Hon. Ranil Wickremasinghe,
Prime Minister,
Prime Minister's Office,
No.58, Sir Earnest de Silva Mawatha,
Colombo 07.
28. Hon. John Amaratunga
Minister of Tourism Development,
Wildlife and Christian Religious
Affairs

- Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
29. Hon. Gamini Jayawickrema Perera,
Minister of Buddhasasana &
Wayamba Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
30. Hon. Mangala Samaraweera
Minister of Finance
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
31. Hon. Lakshman Kiriella
Minister of Public Enterprise,
Kandyan Heritage and Kandy
Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
32. Hon. Rauff Hakeem
Minister of City Planning, Water
Supply and Higher Education,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
33. Hon. Thilak Marapana
Minister of Foreign Affairs
Office of the Cabinet of Ministers
Republic Building,

- Sir Baron Jayathilake Mw.
Colombo 01.
34. Hon. Dr. Rajitha Senaratne
Minister of Health, Nutrition and
Indigenous Medicine
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
35. Hon. Ravi Karunanayake
Minister of Power, Energy and
Business Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
36. Hon. Vajira Abeywardena
Minister of Internal & Home Affairs
and Provincial Councils & Local
Government,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
37. Hon. Rishad Bathiudeen
Minister of Industry & Commerce,
Resettlement of long -term Internally
Displaced Persons, Co-operative
Development, Vocational Training
and Skills Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.

38. Hon. Patali Champika Ranawaka,
Minister of Megapolis & Western
Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
39. Hon. Navin Dissanayake
Minister of Plantation Industries
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
40. Hon. P. Harison
Minister of Agriculture, Rural
Economic Affairs, Livestock
Development,
Irrigation and Fisheries & Aquatic
Resources Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
41. Hon. Kabir Hashim
Minister of Highways & Road
Development and Petroleum
Resources Development
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
42. Hon. Ranjith Madduma Bandara
Minister of Public Administration,
Disaster Management and Livestock
Development,

- Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
43. Hon. Gayantha Karunathilaka
Minister of Lands and Parliamentary
Reforms,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
44. Hon. Sajith Premadasa
Minister of Housing, Construction
and Cultural Affairs,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
45. Hon. Arjuna Ranatunga
Minister of Transport & Civil
Aviation
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
46. Hon. U. Palani Digambaram
Minister of Hill Country New
Villages,
Infrastructure and Community
Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
47. Hon. (Mrs.) Chandrani Bandara

- Minister of Women & Child Affairs
and Dry Zone Development
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
48. Hon. (Mrs.) Thalatha Athukorala
Minister of Justice & Pison Reforms,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
49. Hn. Akila Viraj Kariyawasam
Minister of Education,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
50. Hon. M.H.A. Haleem
Minister of Postal Services & Muslim
Religious Affairs,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
51. Hon. Sagala Ratnayake
Minister of Ports & Shipping &
Southern Development,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
52. Hon. Harin Fernando
Minister of Telecommunication,
Foreign Employment and Sports,

Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.

At present, Minister of Tourism &
Land

53. Hon. Mano Ganesan
Minister of National Integration,
Official Languages, Social Progress
and Hindu Religious Affairs,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
54. Hon. Daya Gamage
Minister of Primary Industries and
Social Empowerment,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
55. Hon. Malik Samarawickrema
Minister of Development Strategies
and International Trade,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
56. Mr. S. Abeysinghe
Secretary to the Cabinet,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.

57. Hon. Attorney General
Attorney General's Department,
Colombo 12.
58. His Excellency Ranil
Wickramasinghe
Minister of Defence, Finance,
Economic Stabilization, National
Policies, Technology, Women, Child
Affairs, Social Empowerment and
Investment Promotion
Head of the Cabinet Ministers,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
59. Hon. Vidura Wickramanayake
Minister of Buddha Sasana Religious
& Cultural Affairs,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
60. Hon. Nimal Siripala de Silva
Minister of Ports, Naval and
Aviation Services,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
61. Hon. Ali Sabry
Minister of Foreign Affairs,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.

62. Hon. Dinesh Gunawardana
Prime Minister,
Minister of Public Administration,
Home Affairs, Provincial Councils
and Local Government
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
63. Hon. Douglas Devananda
Minister of Fisheries,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
64. Hon. Susil Premajyantha
Minister of Education
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
65. Hon. Bandula Gunawardana
Minister of Transport and Highways
and Mass Media,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
66. Hon. Wijeyadasa Rajapakshe
Minister of Justice, Prison Affairs,
Constitutional Reforms,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
67. Hon. Kanchana Wijesekera

- Minister of Power & Energy,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
68. Hon. Tiran Alles
Minister of Public Security,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
69. Hon. Nalin Fernando
Minister of Trade, Commerce, and
Food Security,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
70. Hon. Ahamed Naseer
Minister of Environment,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
71. Hon. Mahinda Amaraweera
Minister of Agriculture, and Forest
Resources and Wildlife
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
72. Hon. Roshan Ranasinghe
Minister of Irrigation, Sports and
Youth Affairs,
Office of the Cabinet of Ministers
Republic Building,

- Sir Baron Jayathilake Mw.
Colombo 01.
73. Hon. Ramesh Pathirana
Minister of Plantation
Industries/Industries
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
74. Hon. Prasanna Ranatunga
Minister of Urban Development and
Housing,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
75. Hon. Keheliya Rambukwella
Minister of Health & Water Supply
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
76. Hon. Manusha Nanayakkara
Minister of Labour & Foreign
Employment
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
77. Hon. Justice Jagath Balapatabendi
Chairman,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 77A. Mr. Sanath J. Ediriweera

- Chairman,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
78. Mrs. Indrani Sugathadasa
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 78A. Mrs. S.M.Mohamed
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
79. Mr. SuntharamArumainayaham
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 79A. Mr. N.H.M. Chitrananda
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
80. Dr. T.R.C.Ruberu
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 80A. Prof. N. Selvakkumaran

- Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
81. Mr. A.L.M.Saleem
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 81A. Mr. M.B.R. Pushpakumara
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
82. Mr. Leelasena Liyanagama
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 82A. Dr. A.D.N. de Zoysa
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
83. Mr. Dian Gomas
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 83A. Mrs. R. Nadarajapillai

- Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
84. Mr. Dilith Jayaweera
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 84A. Mr. C. Pallegama
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
85. Mr. W.H. Piyadasa
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
- 85A. Mr. G.S.A.de Silva, PC
Member,
Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
86. The Commissioner General of Inland
Revenue
Department of Inland Revenue,
Sir Chittampalam A. Gardiner
Mawatha,
Colombo 02.

Respondents

87. His Excellency Gotabaya Rajapaksa
Minister of Defence,
Head of the Cabinet Ministers,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold Office)
88. Hon. Mahinda Rajapaksa
Prime Minister
Minister of Finance, Urban
Development & Housing, Buddha
Sasana, Religious & Cultural Affairs,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
89. Hon. G.L. Pieris
Minister of Education
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
90. Hon. Pavithra Devi Wanniarachchi
Minister of Health,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
91. Hon. Janaka Bandara Tennakoon
Minister of Public Services,
Provincial Councils & Local

- Government,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
92. Hon. Chamal Rajapaksa
Minister of Irrigation
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
93. Hon. Dulas Alahapperuma
Minister of Power,
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
94. Hon. Johnston Fernando
Minister of Highways
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
95. Hon. Wimal Weerawansa
Minister of Industries
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)
96. Hon. S.M. Chandrasena

Minister of Land
Office of the Cabinet of Ministers
Republic Building,
Sir Baron Jayathilake Mw.
Colombo 01.
(Ceased to hold office)

97. Samarawickrama Arachchige
Priyanka Damayanthi Dissabandara,
35E/2, Shanthi Mawatha,
Attambagoda,
Panadura.
98. Hewadulige Rasika Priyadane
Siriwardana,
898, Pahalawela Road,
Thalangama South,
Baththaramulla.
99. Samarasinghe Kapparage Jayanthi
Jayawardena,
230/1, Pragathi Mawatha,
Homagama.
100. Krithogu Baduge Krishanthi Lanka,
51/1, Niyadagala, Pannipitiya.
101. Susanthi Shayama Kolambage,
332/39A, Lesly Land, Munagama,
Horana.
102. Randunu Appuhamilage Mangalika
Perera,
12/1, Purana Mirigama, Mirigama.
103. Epitawala Kankanamlage Subhashini
Priyanthika Manathunga,
1571/1/28, Sirimalwatta 2,
Horahene Road, Kottawa,
Pannipitiya.
104. Pathirenehelage Nandana Kumara,
46/2/1, Kompayahena Road,
Panagoda, Homagama.

105. Rajapaksha Pathirajage Dilan
Chaminda Rajapaksha
98/1, Pasgammuna
Buthpitiya.
106. Dissanayake Mudiyansele Kapila
Chulabhaya Dissanayake
22/3, Wekanda Road,
Homagama.
107. Devakalu Arachchige Anusha
Dulashini,
1/156A, Pungnananda Mawatha,
Dibbedda, Panadura.
108. Weerasangilige Iranganie Balaraj
Sanasumvimana, Kapuhena,
Waskaduwa.
109. Ponnai Balaraj
Sanasumvimana, Kapuhena,
Waskaduwa.
110. Yapa Senevirathna Boralassa
Kusumsiri, 14/54, Denuwara,
Walawwatta Pirivena Road,
Molligoda, Waskaduwa.
111. Ambalangoda Guruge Kulasiri
Perera,
Gulawita North, Walallawita.
112. Don Siman Ralalage Mala
Udayanganie Gunawardena,
43, Queens Residence,
Matugama Road,
Nagoda, Kaluthara.
113. Batagoda Gamage Shantha
Thushara,
248/3, Ghanamoli Mawatha,
Makola Road, Makola.
114. Dawakalle Gedara Dissanayake,
186/1, Doluwa Road,

- Pahingamuwa, Hindagala.
115. Marasinghalage Praboda Jagath Chandraneel,
Samadi Mawatha, Uthuwankanda,
Mawanalla.
116. Yasalal Samarasinghe Dissanayake
14/56, Palpolawatta, Godagama,
Meegoda.
117. Pradeep Hemantha Gunawardana
110C, Avissawella Road,
Ranala.
118. Godaamuna Vithanage Indika
Pradeep Nanayakkara
215, Thihariya, Kalagedihena,
Thihariya.
119. Devundarage Indika Udaya Kumara
Dias,
220/6D, Jaya Mawatha,
Ihala Biyanwila, Kadawatha.
120. Balasuriya Mudiyanseelage Thilaka
Kumari Balasuriya,
Galapitamulla, Hindagolla,
Kurunegala.
121. Kakule Kankanamge Janak
Chandana Deshapriya
51/20, Vimana Road,
Homagama.
122. Abeywickrama Gama Arachchige
Geethamala Jayamanthi
905/7C, Shanthipura,
Malabe.
123. Herath Mudiyanseelage Anura Loku
Bandara Herath
58, Alagoda,
Pujapitiya.

124. Dissanayake Mudiyansele Gamini
Saman Kumara Dissanayake
117/3, First Lane,
Abeyrathne Mawatha,
Makuluduwa, Piliyandala.
125. Amaraweera Pathiranage Priyantha
Malathie Gunathilake,
232, Ihala Imbulgoda, Imbulgoda.
126. Viveka Vinodani Hettiarachchi,
124D, Lake Road, Siyambalagoda,
Polgasovita.
127. Tikithanthri Mahasamillage Priyanka
Gunasekera,
6/1/A, School Lane,
Raththanapitiya, Boralesgamuwa.
128. Thishanthi Kumari Jayarathne,
100/2, Welikadawatte,
Nawala Road, Rajagiriya.
129. Pathiranage Manel Rupasinghe,
23/164, Western Park,
Kalagedihena,
130. Keerthinayakelage Priyadarshani
Renuka Gunathunga,
263, 4th Lane, Daisy Mount Estate,
Pilessa.
131. Amarasinghe Arachchillage Gayani
Chamika Kumari Amarasinghe,
76/39A, Nikagolla Waththa,
Rambukkana.
132. Sunil Bandula Kumara
Wanniarachchi,
66/9, Methma Mawatha,
Godagama, Meegoda.
133. Angage Indika Upul Perera,
113/14, Green Valley Gardens,
Kurusa Junction, Alubomulla,

- Panadura.
134. Dona Sunethra Shivanthimala
Senevirathna Dissanayake,
1307/1, Samagi Mawatha,
Rajamalwaththa, Battaramulla.
 135. Hemathilaka Ilayperum,
78, Ananda Balika Mawatha,
Pagoda Road, Pitakotte.
 136. Dassanayaka Mudiyansele
Jayalath Bandara Nadungamuwa,
10, Nadungamuwa, Rajawaka,
Balangda.
 137. Rajakaruna Herath Mudiyansele
Ganasiri Rajakaruna,
1358/2, Bogahawaththa Road,
Pannipitiya.
 138. Suraweera Arachchige Ranjith
Pemasiri,
31/1, Pirivena Road,
Boralasgamuwa.
 139. Hurukgamuwe Herath
Musiyansele Mangala Kumari
Herath,
568G, Galawila Junction,
Payagala Road, Dondangoda.
 140. Galkande Kankanamalage Gamini
Lalith Wijethilake,
285/8, 11th Patumaga,
Rajasinghe Mawatha, Kothalawala,
Kaduwela.
 141. Chamila Damayanthi Lokuliyana,
17, Darlinton Watta, Hapugala,
Wackwella.
 142. Horagampita Bala Gamage
Chandrani,
426/F/5, Central Road,

- Alubomulla.
143. Herath Pathirannahalage Kelum
Punyasiri Wijerathne,
29/12, Avissawella Road,
Ranala.
 144. Wanasinghe Arachchige Don Sarath
Upali Wanasinghe,
205/1, Jayakodi Mawatha,
Andiambalama.
 145. Moragoda Liyanage Sudath
Priyantha Gunathilaka,
353/11, Udumulla,
Mulleriyawa New Town.
 146. Gammanpilage Manoj Indika,
30/207, Silverin Park,
Katana West, Katana.
 147. Amarathunga Arachchige Dona
Hemalatha,
410, Thudawa Watta Road,
Kiriwaththuduwa.
 148. Sedillage Iyesha Asanthi,
70, Mahindarama Road,
Athulkotte, Kotte.
 149. Pandi Gamage Lalith,
24/67, Vijitha Mawatha,
Gampaha Road, Yakkala.
 150. Pathirannehalage Dona Rasika
Vayoni Thenabadu,
250/2, Kekirideniya Lane,
Hewagama, Kaduwela.
 151. Manikge Milari Osaka Wijesooriya,
83, Ranala Road, Habarakada,
Homagama.
 152. Waliwatte Ge Wijedasa,
“Sandagiri”, Tharaperiya,
Nihiluwa.

153. Kahadawa Arachchige Dona Gayani
Madurika Kahadawaarachchi,
66A, Temple Road, Ganemulla.
154. Priyanka Nilanthi Weeragunaratna
Sahabandu,
4, Zone 2, Millenium City,
Kotugoda.
155. Nalawattage Sanjeewa Pinto
Senanayuke,
736/9A, 4th Lane, Madinnagoda,
Rajagiriya.
156. Nanayakkara Warnakula
Patabandige Anura Sarathchandra
Nanayakkara,
148, Mill Road, Maldenipura,
Kakirawa.
157. Dissanayake Mudiyansele
Jayathilake,
102, Kotuwawaththa,
Kahaththewela,
Bandarawela.
158. Weerasinghe Dewayalage Nimal
Rathnasiri,
Gaswatte, Welimada Road,
Bandarawela.
159. Kuruppu Arachchige Eranda
Chinthaka,
84/31, Kirimatiyagara,
Kadawatha.
160. Haththaka Ranaweera Sanath
93/1/A, Pamunugama,
Alubomulla.
161. Wijesooriya Arachchige Nevil
Wijesooriya,
140/8, Arachchigoda,
Pitipana South, Homagama.

162. Jayananda Ilangage Bandula Sri Udayakumara,
41/10, Methmal Mawatha,
Godagama, Meegoda.
163. Alagiya Wadu Predeep De Silva,
23/9, Cillege Lane,
Ambalangoda.
164. Kataluwa Liyanage Karunasantha,
Piyasewana, Kathaluwa,
Ahangama.

1st Set of Intervenient-Respondents.

165. C.J. Goonaratne,
9,1.6, Vishnu Residencies,
Shrubbery Garden,
Colombo 04.
166. S.K. Nirosha Sujani,
183/6, Dehiwala Road,
Maharagama.
167. P.D.S.D. Jayananda,
246, Dr. N.M.Perera Mawatha,
Colombo 08.
168. W.K.D.K. Rajakaruna,
186/B, Ehelagashinna,
Bulumulla, Kiribathkumbura.
169. A.J.Y.A. Samanthika,
391/47, 3rd lane, Walauwatta,
Welipillewa, Ganemulla.
170. A.J.W. Korala,
22/5/5. Aqua Residencies,
Temple Road, Nawala.

2nd Set of Intervenient-Respondents

BEFORE : S. THURAIRAJA, P.C., J.
ACHALA WENGAPPULI, J.
K. PRIYANTHA FERNANDO, J.

COUNSEL : Mahendra Kumarasinghe with Prabuddhika
Tissera for the Petitioner instructed by
Ms. Jayarani Kumarasinghe.
Ms. Viveka Siriwardane, PC., ASG with Ms.
Hasini Opatha, SSC for the 1st -7th, 57th -76th & 86th
Respondents.
Widura Ranawaka with Menaka Warnapura for
the 2nd Set of Interventient -Respondents.
Ruwantha Cooray instructed by Lanka
Dharmasiri for the 18th -25th Respondents
Eraj De Silva with Daminda Wijeratna instructed
by Dimuthu Kuruppuarachchi for the 97th - 164th
Respondents.

ARGUED ON : 08th September, 2023

DECIDED ON : 19th March, 2026

ACHALA WENGAPPULI, J.

The seven Petitioners, who are currently serving as Deputy Commissioners in the Department of Inland Revenue, in their joint amended petition have alleged of an infringement of their fundamental rights guaranteed to them under Article 12(1) of the Constitution by the

executive and administrative actions of the 1st to 17th and 26th to 55th Respondents.

The 1st Respondent is the Commissioner General of Inland Revenue (hereinafter referred to as the CGIR) whereas the 2nd Respondent is the Commissioner of Inland Revenue. The 3rd and 4th Respondents are Directors of the Ministry of Finance, while the 5th and 6th Respondents are the Director of Management Services and the Director of Establishments, respectively. The 7th Respondent is the Secretary to the Ministry of Finance. The 8th and 9th Respondents to 17th Respondents are the Chairman and the members of the Public Service Commission (herein after referred to as the PSC), respectively.

The 26th Respondent is His Excellency the President, in the capacity of the Minister of Finance, whereas the 27th Respondent is the Hon. Prime Minister. The 28th to 55th Respondents are members of the Cabinet of Ministers.

Primary allegation presented before this Court by the Petitioners in support of their claim of infringement of fundamental rights, could be traced to the “... *persistent effort by the PSC to promote the 18th to 25th Respondents*”, and in order to achieve that objective, either to circumvent or to override the order dated 12.10.2009 [P3] made by the Administrative Appeals Tribunal (hereinafter referred to as the AAT) in respect of their appeal in AAT/26/2008 and the judgment of this Court in SCFR 180/2016 delivered on 16.05.2017 [P9(c)] that determined to place them at a particular level of seniority in the Seniority List as they stood in February 2006.

It was further alleged by the Petitioners that the manner in which the PSC sought to achieve the said objective was by way of appointing a committee with a mandate to look into a non-existent issue, and thereupon to make its recommendations to the Cabinet of Ministers. The said Committee, by its report dated 20.02.2019 [P22(a)], recommended the Cabinet to interfere with the Petitioner's current positions in seniority. The Cabinet of Ministers, acting on the said recommendations arrived at a decision on 18.09.2019 [P24], to place the 18th to 25th Respondents over and above the Petitioners in seniority.

The Petitioners' application was supported for Leave to Proceed on 24.09.2020. After submissions made by the learned Counsel for the Petitioners as well as for the Respondents, this Court decided to grant Leave to Proceed to the Petitioners, under Article 12(1). When the Court indicated its intention to grant leave, learned DSG who represented the 1st to 17th Respondents submitted that there are many other officers, who belonged to seven different categories, who would be adversely affected if this Court were to grant relief to the Petitioners as they have prayed for. The Court thereupon made order directing the Petitioners to serve notices on all those officers who might be affected, in the event they succeed in obtaining relief from this Court.

In the amended caption tendered by the Petitioners with their Motion dated 01.09.2023, they have named several other Respondents as 58th to 96th Respondents with the changes in the Cabinet of Ministers. In addition, they have added 97th to 164th Respondents as 1st set of intervenient Respondents and 165th to 170th Respondents as 2nd set of

intervenient Respondents, after they were noticed subsequent to an order of Court and filed petitions seeking permission of Court to intervene.

The 1st Respondent, the CGIR, by his Statement of Objections tendered to Court on 12.03.2020, resisted the application of the Petitioners and sought its dismissal. The 18th to 25th Respondents also tendered their Statement of Objections on 06.12.2021 along with the 1st and 2nd sets of intervenient-added-Respondents, who also tendered their respective Statements of Objections on 26.10.2021 and 17.11.2021, respectively. Counter affidavit of the Petitioners was tendered thereafter.

All the Respondents resisted the Petitioners application and moved for its dismissal.

With the completion of pleadings before this Court, the hearing of the application commenced and concluded on 24.10.2023. The parties were afforded an opportunity to tender post-hearing written submissions, which opportunity was fully utilised by all parties.

Since the allegation of the Petitioners is that the PSC was persistent in its efforts to promote the 18th to 25th Respondents over and above the Petitioners, who are '*senior*' to these Respondents and with a view to circumvent the order of the AAT 26/2008(PSC) as well as the judgment of this Court in SCFR 180/2016, that promoted and placed them in the proper level of seniority, by setting up a Committee; it is necessary to examine the circumstances in which the Petitioners were compelled to seek redress from the AAT and from this Court.

The Petitioners have presented a particular narrative in this regard while different sets of Respondents have presented their own narratives,

but based on certain factual events that had taken place which all parties admit.

In this backdrop, I shall now make an effort to present a brief description of these multiple factual events, as disclosed in the pleadings of all parties and also on the contemporaneous documentation that were tendered as annexures to the pleadings, with the intention that it would facilitate this Court to arrive at an informed finding as to the validity of the different courses of action taken by the relevant Respondents leading up to the decision made by the Cabinet of Ministers in order to resolve the disputes over seniority that had persisted among the parties for over a period of two decades.

The seven Petitioners were recruited on 02.08.1993, to the Department of Inland Revenue as Tax Officers Class II Grade II, along with many others. The Petitioners were placed at the top of their batch, based on the assessment made at the time of recruitment. They were promoted as Senior Tax Officers, Class III Grade I under the Service Minute of 1975 [P2], w.e.f. 24.01.2001 and, even after the said promotion, the same seniority was retained within their batch.

In early 2006, it was noted by the Secretary to the Ministry of Finance that there were no regular recruitments made to the Department of Inland Revenue and that factor clearly had a negative impact on the overall performance of the officers, who are serving in that Department. The Secretary to the Treasury, by his letter dated 21.02.2006 [P22(b) Annexure 6], had issued instructions on the CGIR to fill the 546 vacancies

that exists in the Assessor Class II Grade II officers of that Department, in terms of the Service Minute [P2].

The Secretary to the Ministry of Finance further issued instructions on the CGIR, that 50% of the vacancies are to be filled by candidates, who are selected from an Open Competitive Examination and another 25% by a Limited Competitive Examination, which is restricted to officers, who are currently in the service of the Department of Inland Revenue. The remaining 25% of the vacancies are to be filled on the basis of "*Seniority and Merit*". This direction is in line with Clause 7 of Service Minute [P2]. The marking scheme applied to the officers interviewed on 23.02.2006 for promotion under the category of "*Seniority and Merit*" is as follows;

a. Seniority (4 marks for each year in service)	= 60
b. Efficiency Assessment Report	= 40
c. marks awarded at the interview	= 40
Total marks	= 100

In compliance with the said directions issued by the Secretary to the Ministry of Finance, the CGIR had made arrangements to conduct interviews on 22.02.2006 and 23.02.2006 and called the officers of Class III Grade I, who have fulfilled the requisite qualifications in terms of the Service Minute, for that interview. As already noted, the number of vacancies available in the cadre of officers falling under the category of "*Seniority and Merit*" was 134.

During this time, there were 122 officers, who had been promoted to Class III Grade I during the period commencing from March 1986 and ending up in September 1995, and were accordingly eligible to be called to

be interviewed, in order to be promoted to Class II Grade II, under the category of "*Seniority and Merit*". That left 12 vacancies in the approved cadre of 134 officers. The CGIR was not in a position to determine who he should call for interviews in respect of the balance 12 vacancies, that remain out of the 134 vacancies allocated to the category '*Seniority and Merit*', after calling the senior most 122 officers.

In terms of the Seniority List P10 (as at 01.01.2006), the 1st Petitioner, is listed as the 126th officer in the order of seniority of officers in Class III Grade I and the names of the other Petitioners appear therein after him. The 1st to the 7th Petitioners were undoubtedly the senior most officers, who are listed in the Seniority List P10, after the said 122 officers in Class III Grade I. Hence, the Petitioners claim that they are the '*senior most*' in relation to any other officer in Class III Grade I of their batch that was recruited in 1993. It is undisputed that the Petitioners were promoted to Class III Grade I on 24.01.2001, along with 131 other officers, including the 18th to 25th Respondents.

However, the 122 officers from the senior most batches of officers of Class III Grade I and the 12 senior-most officers (present Petitioners and five others), who have been recruited in 1993 and promoted to Class III Grade I only on 24.01.2001, were the two groups of officers, called for the interviews held on 22.02.2006 and 23.02.2006. The remaining 131 officers who were promoted to Class III Grade I were not called for the interviews.

On 22.02.2006, (incidentally the first day of the interviews), the CGIR strangely sought advice from the Secretary to the Treasury, by his letter [P22(a), Annexure 21], expressing his concern over leaving out several

other officers, who too were appointed to Class III Grade I along with the Petitioners on 24.01.2001, from calling for the interviews. This clarification was sought by the CGIR on the basis of the applicable promotional criterion being "*Seniority and Merit*" and the failure to call those officers who are of equal seniority with the Petitioners to the interviews, and therefore he anticipated that the course of action already taken might pose a problem. He also had his concerns over the possibility of a junior officer being promoted over a senior officer and feared that could also be ground to a legal challenge. Therefore, he sought advice from the Secretary whether to call only the 134 senior most officers in P10 for the interviews or to call for all the other officers (up to the 199th in the Seniority List), for interviews. The reply by the Director General of the Ministry of Finance dated 23.02.2006 [P22(a), Annexure 21], was to call all 199 officers, as it is not proper to call officers to match the exact number of vacancies.

However, on 24.02.2006, the Secretary to the Treasury had issued verbal instructions on the CGIR, restricting the interviews to the 134 officers already identified for the interview. The CGIR, by letter dated 01.03.2006, addressed to the Secretary to the Treasury, referring to the instructions that were issued verbally on 24.02.2006, reminds him of the situation that had arisen in 2001, when 207 applicants were called for interviews to fill only 18 vacancies, and that decision was challenged in Courts [P22(a), Annexure 23]. The Director General, in his reply to CGIR on 07.03.2006 [P22(a), Annexure 24], conveyed the position that since the Trade Unions have expressed their agreement to the manner in which the officers are selected to be called for the interviews and since the Secretary to the Treasury also had issued a verbal directive, his Ministry might not

have any objection to the course of action already taken. Despite these correspondences, the interviews proceeded as scheduled. Only 134 officers who were originally called for that interview had participated.

The PSC, the body which is mandated by the Constitution to regulate appointments, transfers and promotions in Public Service, was virtually defunct during the period commencing from 03.12.2005 and ending with 18.04.2006. The first round of interviews was held in February 2006. The PSC was made functional once more in April 2006, and accordingly the CGIR, by his letter dated 26.04.2006, sent through the Director General of the Ministry of Finance [P22(a), Annexure 25], communicated the interview results of the 134 officers of Class III Grade I to the PSC in a schedule annexed to that letter.

The PSC, by its letter dated 24.05.2006 [P22(a), Annexure 26], sought several clarifications from the Secretary to the Ministry of Finance, which included the clarification on the approved cadres of Class II Grade II and Class III Grade I and also the number of vacancies. The PSC also called for information regarding the number of officers who are promoted to Class III Grade I, who are qualified to be promoted to Class II Grade II. The PSC also requested the Secretary to the Ministry of Finance to provide his reasons for calling only 134 officers, a number equivalent to the number of vacancies, when there were 118 more who were appointed to Class III Grade I on the same day and the reasons for omitting those 118 officers from calling for interviews [P22(a), Annexure 27].

On 31.08.2006, the PSC conveyed its decision [18R5] to the Ministry of Finance promoting only the senior-most 122 officers out of the names of

134 officers who were recommended by the CGIR to be promoted to Class II Grade II. The PSC without promoting the Petitioners along with these 122 officers, instead ordered the CGIR to fill the remaining 12 vacancies after calling all officers who have been promoted to Class III Grade I on 24.01.2001, for an interview. The said 122 officers were promoted to Class II Grade II w.e.f. 02.10.2006 by the PSC by its letter dated 22.09.2006 and have since assumed duties in their posts.

On the orders of the PSC, the Petitioners, the 18th to 25th Respondents and all other officers who were appointed to Class III Grade I on 24.01.2001 along with them were called for an interview. The second round of interviews were held on 14.05.2007 and 15.05.2007. The Petitioners were also called for the interview. After the interviews, the Schedule of Marks, indicating the marks scored by each candidate was prepared. The names of the officers are arranged in the order of merit in the Schedule of Marks, as the CGIR did in the first round of interviews. The Schedule of Marks was submitted to the PSC. The 18th to 25th Respondents are the officers who scored the most marks out of the officers who were promoted to Class III Grade I on 24.01.2001.

The Petitioners (and five others of the 12 officers, who faced the first interview) were not successful in securing sufficient marks to be included into the officers who are promoted for the said 12 vacancies. These 12 officers, (including 18th to 25th Respondents) were accordingly promoted by the PSC to Class II Grade II by letter dated 03.01.2008 [18R7] w.e.f. 16.01.2008. The 18th to 25th Respondents therefore assumed duties in their new posts on 16.01.2008. In terms of Rule 129, the 18th to 25th Respondents should be placed at a higher seniority than the Petitioners, who were not

promoted until the pronouncement of the order of AAT 26/2008 on 12.10.2009.

The decisions taken by the PSC not to promote the Petitioners along with the 122 senior-most officers and to promote only the 18th to 25th Respondents to fill the remaining 12 vacancies in the post of Assessor Class II Grade II, triggered a series of legal challenges. I shall refer to them in this judgment, after arranging them according to the year in which they were initiated, for the purpose of clarity.

In the year 2008, the Petitioners and five others, who were among the group of 12 officers interviewed in February 2006, but were not promoted to Class II Grade II by the PSC, have preferred an appeal to the Administrative Appeals Tribunal (hereinafter referred to as the AAT/26/2008(PSC) on 07.02.2008 [P3]. The Petitioners, being the appellants in that appeal, have claimed in that appeal that they obtained “sufficient marks” at the interviews held on 22nd and 23rd February 2006, which made them entitled to be qualified to be promoted, but the PSC had “unreasonably deprived their promotions, with effect from 02.10.2006” [vide para 3 of p.2 of the order P3].

Similarly, the 12 appellants (including the 18th to 25th Respondents) also preferred an appeal to the AAT (appeal AAT 85/2009 P5) on 28.05.2009. “In that appeal, the grievance presented before the AAT was that they had been placed below, in seniority, the officers who were promoted from the categories of the Limited and Open Competitive Examinations. Those officers have been promoted by the PSC w.e.f. 02.10.2006. It was urged by the appellants that since they were promoted w.e.f. 16.01.2008, it would

have the effect of being placed below in the seniority, to those officers promoted from these two categories. It was the appellants claim that the said placement contravenes the Service Minute which, according to them, states otherwise.

In the same year, the AAT, delivered its order on the appeal preferred by the Petitioners AAT 26/2008(PSC) on 12.10.2009, and directed the ten appellants (including the seven Petitioners) be promoted to Class II Grade II, w.e.f. 02.10.2006. Neither the PSC, nor the CGIR challenge that order by the AAT. The PSC complied with the said order by promoting the Petitioners to Class II Grade II and, apparently acting on its own motion, decided to place them immediately after the 122nd officer, in the seniority list.

It was in the year 2010, that the AAT, had delivered its order in the appeal AAT/85/2009 presented by the 18th to 25th Respondents. The order of the AAT dated 02.12.2010, granted relief prayed by the appellants. With that order, the AAT directed the PSC to antedate the promotion of the 12 appellants, including the 18th to 25th Respondents, w.e.f. 02.10.2006.

Then in the year 2012, the CGIR, by letters issued on 30.08.2012, informed the 18th to 25th Respondents of the implementation of the order in the appeal AAT 85/2009(PSC). The date of promotion of the 18th to 25th Respondents was antedated to be taken as w.e.f. 02.10.2006. This was done by the CGIR on the directions issued by the PSC, by letter dated 10.08.2012 [18R9 and 18R10].

After a brief respite of about two years, the Petitioners have once again instituted legal proceedings in the year 2016. This time they also had

an issue over their date of promotion. With filing of their joint petition dated 30.05.2016 in SCFR 180/2016, the Petitioners and three others from the original 12 officers, have invoked the jurisdiction conferred on this Court under Article 126(1). They complained that the PSC has taken steps to antedate the promotion dates of the 122 officers, who were interviewed in February 2006 along with them, from 02.10.2006 to 22.02.2006, but leaving them out. In addition, they alleged that the PSC also has taken steps to antedate the promotion of another 129 officers from 15.11.2006 to 28.05.2006. Therefore, the said petitioners (including the seven Petitioners) claim that the PSC should have antedated the promotions of all the officers who faced interview in February 2006 without any discrimination.

On 16.11.2016, the 18th to 25th Respondents were informed by the CGIR [18R18], that their promotions to Class II Grade II were antedated from 02.10.2006 to 22.02.2006, on the instructions of the PSC, issued on 20.10.2016.

In 2017, this Court pronounced its judgment in SC FR 180/2016 [P9(c)], on 16.05.2017, immediately after the submissions of the parties were concluded. In the said judgment, this Court had taken the view that *"... the decision of the PSC not to backdate the date of promotion of the Petitioners to 22nd February 2006 is unreasonable and is violative of Article 12(1) of the Constitution."*

Therefore, the Court made order that *"[T]he PSC is directed to implement the order of this Court within one month from today. In giving effect to this order, the PSC must take steps not to affect the seniority of the Petitioners as it existed in February 2006."*

The agitation of the Petitioners over the seniority did not settle even with this pronouncement. During discussions with Additional Secretary to Ministry of Finance on 09.08.2017, they have once again raised the issue of seniority. The Human Resources Manager of Inland Revenue Department, in his letter dated 10.08.2018 and addressed to the Petitioners, presented them with a tentative Seniority List as it stood at 30.06.2017 requesting them to make a written complaint, if there is an issue with their placement in that list [P11(a)].

On 15.11.2017, the Petitioners have filed SC FR 425/2017 [P13], complaining that the PSC had failed to carry out the order issued by this Court in SCFR 180/2016, by promoting them as Deputy Commissioners. In addition, the 18th to 25th Respondents, along with three others, also have presented an appeal to CGIR seeking to rectify what they claim as a wrong placement of them in the Seniority List [P22(a) - Annexure 4P].

In the immediately preceding part of this judgment, I have referred to the legal challenges initiated by the Petitioners as well as by the 18th to 25th Respondents over the effective date of their respective promotions and seniority. But the legal challenges over the seniority issue was not confined to the Petitioners and the 18th to 25th Respondents only. There were many other officers who have also sought to challenge certain decisions made and implemented by the PSC, based on the orders and judgments delivered from time to time in respect of the Petitioners and the 18th to 25th Respondents.

A brief account of such challenges needed to be included at this stage of the judgment, in order to have a fuller understanding of the consequences that flowed from some of these decisions made by the PSC.

On 07.02.2008, a group of 52 petitioners have filed the application SC FR 46/2008 in this Court citing 11 of the 12 officers, who were promoted to Class II Grade II by PSC (including the 18th to 25th Respondents) as respondents. The petitioners in that application introduced themselves as the officers of the 1993 batch, who joined the service along with the said Respondents as well as the Petitioners. They claimed that, in their belief, they have scored more than the 18th to 25th Respondents (who were promoted by the PSC), during the interviews held in May 2007 under the Seniority and Merit category. Therefore, these 52 petitioners have sought a declaration of Court that the promotion of those Respondents is declared illegal, *null* and void and has no force or avail in law.

This Court delivered the judgment in SCFR 230/2008 on 25.02.2008, granting relief to seven petitioners by directing the PSC to promote them to Class II Grade II, w.e.f. 15.11.2006, but without back wages.

On 03.08.2011, whilst taking into consideration of the administrative arrangement between the petitioners in SCFR 46/2008 and the PSC, this Court recorded the fact that the PSC has agreed to promote the 42 petitioners, who scored 43 marks and above, in the interviews held in May 2007. This settlement resulted in the promotion of 63 officers to Class II Grade II, as the cut off mark set up by the PSC was brought down to 43 from 49. This arrangement was a direct consequence of the fact that one of the Petitioners, who was promoted by the order of the AAT in AAT

26/2008(PSC), obtained only 43 marks at the interview. Thus, the PSC was compelled to consent to promote all officers who scored 43 or more during the 2nd interview held in May 2007.

On 14.09.2012, 33 appellants who sat for the Limited Competitive Examination, also preferred an appeal to the AAT (AAT 192/2012) [P7]. They were aggrieved by the decision of the PSC to antedate the appointment of 12 officers, who were promoted to Class II Grade II on 06.01.2008. The 12 officers referred to in this appeal are inclusive of the 18th to 25th Respondents. The PSC has settled the matter under following terms;

“[T]welve officers who had been granted promotions of Class II Grade II w.e.f. 16.01.2008 has to be given effect without causing prejudice to seniority of other officers of the said service and those officers will be included below the seniority of the officers who are already in that service.”

The PSC thereafter directed the Secretary to the Ministry of Finance, by letter dated 26.11.2012, to place the said 12 officers below the officers who have already been promoted to Class II Grade II, w.e.f. 06.01.2008 as the seniority of an officer is governed by sections 14, 1:9 to 1:14 and 11:10 of Chapter II of the Establishment Code [P7a]. The Seniority List, updated up to 30.06.2015 [P8], indeed reflects these placements.

In SCFR 571/2012, this Court accepted the Terms of Settlement between the 52 petitioners and, on 26.02.2014, the PSC, agreed to amend the effective date of promotion to Class II Grade II, as 03.10.2006, in relation to those petitioners and other officers who are similarly circumstanced. The Court also ordered that “... the seniority of officers

appointed to Assessor Class II Grade II on 15.11.2006 based on the Limited Competitive Examination and on 01.01.2007, 03.05.2007 and 15.11.2007 on the results of Open Competitive Examination shall not be disturbed or affected in any manner whatsoever."

In terms of the said settlement, in September 2014, the PSC issued individual letters addressed to the relevant officers that their promotions to Class II Grade II are antedated from 17.01.2008 to be effective from 03.10.2006, but without affecting the seniority of officers who are already promoted under Limited and Open Competitive Examinations and had been promoted w.e.f., 01.01.2007, 03.05.2007 and 15.11.2007 [P22(a) annexures, at p. 12].

The PSC, by its letter dated 04.04.2016 [18R 12], decided to antedate the date of promotion of the 122 (by then only 121) officers, who were interviewed on 22.02.2006 and 23.02.2006, along with the Petitioners and were promoted to Class II Grade II w.e.f. 02.10.2006. This decision was taken by the PSC consequent to an appeal made by the said 121 officers to the PSC, requesting the Commission to have the date of their promotion, which stood at 02.10.2006, be antedated to the date on which the interviews were held *i.e.*, 02.10.2006.

By its letter dated 09.05.2017, the PSC had altogether promoted 272 officers to Class II Grade II under the three categories of Seniority and Merit, Limited and Open Competitive Examinations, w.e.f. different dates, commencing from 22.02.2016, 28.05.2016, 02.10.2016, 03.10.2016, and ending up with 01.01.2017 [18R19]. The 18th to 25th Respondents, who were identified as the first group of officers along with two others, under the

Seniority and Merit category, were promoted by the PSC w.e.f. 22.02.2016 by antedating the date of promotion.

With their petition dated 22.05.2017 [P18], 15 petitioners have complained to this Court in SCFR 184/2017, challenging the promotion of 18th to 25th Respondents by the PSC w.e.f. 22.02.2016. Their challenge to the PSC decision is based on the fact that the 18th to 25th Respondents as well as the Petitioners in the instant application belong to the 1993 batch, as the petitioners of SCFR 184/2017 are, but opted to sit for the Limited Competitive Examination.

On 14.11.2017, another group of 26 petitioners have complained to this Court in SCFR 410/2017 [P19] challenging the decision of the PSC dated 09.05.2017 [18R19].

In addition to these cases and other similar appellate processes resorted to by the Assessors Class II Grade II of Sri Lanka Inland Revenue Service, in order to redress their respective grievances, which they have identified over the dates of promotions to Class II Grade II and the placement in the Seniority List. They also regularly made requests addressed to their Head of the Department, the Secretary to the Ministry of Finance and finally to the Committee, which was appointed to inquire into the anomalies that had resulted in with the multitude of pronouncements made by Courts and Tribunals since 2008 over the promotions to Class II Grade II and placement in the Seniority List.

It is for the purpose of convenience, such requests made by different groups of officers presenting their grievances to different officers and

finally to the said Committee are referred to in the following segment of this judgment but, after arranging them in a chronological order.

I wish to refer to the number of appeals made to the CGIR by different groups of officers during this period first, before making reference to any other requests on this issue.

The Petitioners have written to CGIR on 18.02.2019, giving him notice that, if others were recommended to be promoted as Senior Deputy Commissioners, by leaving them out, they would once again resort to legal action [P20(a)].

The 268 officers who were recruited on the Open Competitive Examination, indicated their position to the CGIR by letter dated 17.08.2018 stating that promotions granted to any number of officers outside the approved cadre should be placed after them in the seniority [P22(a), Annexure 4G]. This includes the 12 officers originally recommended by CGIR for promotion (including the Petitioners) and the 12 officers promoted by the PSC after the second interview, for that number of vacancies (including the 18th to 25th Respondents), depending on who is entitled to be filled into remaining 12 vacancies from the original 134 approved cadre, under the category of Seniority and Merit.

On the same day, the 121 officers who were promoted initially to Class II Grade II, to fill the 134 vacancies too have voiced their objection to the placement of any officer, who was promoted outside the cadre and after the date 15.11.2007. They contended that such an officer should be placed after the 3rd batch of officers who have been recruited on the Open Competitive Examination [P22(a), Annexure 4H].

Seven officers, who have been promoted on the Limited Competitive Examination, by a letter addressed to CGIR on 17.08.2018, wants to have their seniority to remain, as prevailed at that point in time, undisturbed [P22(a), Annexure 4K].

A group of 23 officers, by their letter dated 20.08.2018, objected to the placement of the 18th to 25th Respondents in the Seniority List as they have failed to challenge the settlement entered in AAT 192/2012(PSC) [P22(a), Annexure 4M].

Another group consisting of 128 officers, objected for promoting the officers (the 18th to 25th Respondents), who have not been interviewed on 22.02.2006, with effect from that date [P22(a), Annexure 4O].

In response to a request made by CGIR to make representations to him pertaining to seniority by his letter dated 18.08.2018, another group of officers have placed their objections to the Seniority List attached to that letter. Their objections were presented on the basis that the officers they have identified in that list could not be placed in the list of officers Grade III [P22(a) Annexure 4I].

On 23.08.2018, a group of 42 officers from the original 63 officers who were promoted on Seniority and Merit, sought sufficient time to place their grievance as the 20-minute slot allocated them by the CGIR to make representations is inadequate [P22(a), Annexure 4N].

The 1st, 4th and 6th Petitioners, by their letter dated 18.02.2019, have written to the CGIR on behalf of them as well as five others, requesting latter to recommend them also for the posts of Senior Deputy Commissioner, as they should have been placed in the Seniority List next

to the 121 officers who were promoted, in the category of Seniority and Merit, w.e.f. 22 [P20(a)].

The Petitioners, protested once more to CGIR, by their letter dated 03.07.2019, by stating that they should have been placed in the Seniority List immediately next to the 121 officers who were promoted, in the category of Seniority and Merit [P20(b)]. They have sent another letter on 08.07.2019 to the CGIR seeking a clarification as to which of the Seniority List he would act on, in recommending promotion to the posts of Commissioner [P20(c)].

In addition to these appeals made to CGIR, the officers of the Sri Lanka Inland Revenue Service also made several appeals to the Secretary to the Ministry of Finance requesting his involvement to resolve the issues primarily on seniority.

The Petitioners, by their letter dated 14.08.2017, addressed to the Secretary to the Ministry of Finance, insisted that they be placed immediately after the 121 officers in the Seniority List [P22(a), Annexure 4F].

This was the situation prevailing at the time when the PSC decided to appoint a Committee, conferred with a mandate to consider the grievances of different groups of officers and make suitable recommendations to resolve this simmering issue of seniority.

With the appointment of the members to the Committee, these different groups of officers have presented their grievances to it in written form.

The Committee presented its detailed report [P22(a)] to the PSC, after setting out the conflicting interests of different groups of officers, the effect of the orders made by the AAT and this Court on the seniority of officers, the anomalies that had resulted in and the recommendations of the Committee to resolve the issue. When the report was presented to the Cabinet of Ministers with a memorandum, those recommendations made therein by the Committee was adopted and approved by the Cabinet on 25.06.2019.

The Petitioners filed the instant application before this Court on 18.10.2019.

What has been set out in the preceding section of this judgment is essentially a summarised version of the factual background presented by the parties, presented in a chronological order in order to understand various factors that eventually led to the presentation of the instant application in this Court by the Petitioners. With this factual background in mind, I shall now endeavour to assess the validity of the complaint of the Petitioners made over the appointment of the Committee and the decision made by the Cabinet of Ministers to implement the recommendations made by that Committee.

The seven Petitioners and the 19th to 22nd Respondents have joined the Inland Revenue Department on 02.08.1993. The 18th Respondent joined on 08.09.1987 whereas 23rd and 24th Respondents joined on 01.03.1994. The 25th Respondent joined the Department on 12.01.1995, after about 17 months since the Petitioners have joined in. All of them were appointed to Class III Grade II at the time of their recruitment. After six years into the

service, all of them were promoted to Class III Grade I, on 24.01.2001, except for the 18th Respondent, who was promoted only on 08.09.2000.

The Seniority List (as at 01.01.2006, P10) indicates that there were altogether 133 promotees, who received their promotions to Class III Grade I on 24.01.2001. These 133 numbers of promotees, includes the Petitioners as well as the 19th to 25th Respondents (18th Respondent belonged to a senior batch).

Then came to the decision, made by the Ministry of Finance in January 2006, to promote the officers who are currently serving in Class III Grade I to fill the 538 vacancies of Class II Grade II. This decision was taken by the Ministry, because there was no opportunity in the careers of the officers serving in the Inland Revenue Service for a long period of time for upward mobility, resulting in stagnation of them in their respective posts, which in turn had a negative impact on their performance. The frustration of officers due to stagnation was identified as a factor that had an adverse effect on the efficient discharge of their primary function of revenue collection.

Of those 538 vacancies, 134 were to be filled by promoting eligible officers who qualify under the category of "*Seniority and Merit*". Another 134 vacancies were to be filled by officers who successfully complete the Limited Competitive Examination, while 268 vacancies were kept aside to be filled by officers, recruited through an Open Competitive Examination.

What initially commenced as an issue of seniority between the officers in "*Seniority and Merit*", which has subsequently spread on to other categories, could be attributable to a number of circumstances that had

prevailed over some time in the said service. But, for the time being, I shall focus only on the promotions made to Class II Grade II under the category of "*Seniority and Merit*", with the intention of returning back to other consideration at a later stage of this judgment.

It is correct to say that the Petitioners were the senior most officers, in terms of P10, among the officers, who have been promoted to Class III Grade I on 24.01.2001. This was the position at the time when the administration decided to fill the 538 vacancies of Class II Grade II. The 1st Petitioner's name, who is the senior most among the Petitioners, appears in the 126th place in the Seniority List P10, after the 18th Respondent, whose name appears as the 125th in the said list. The names of the 19th to 25th Respondents appear in the said list after all the other Petitioners and the 18th Respondent.

These 124 officers, who have already been placed above the Petitioners in the Seniority List, were promoted to Class III Grade I, by dates ranging from 01.03.1986 to 21.09.1995 and therefore had a gap of at least five years of service in that post, between the junior most officer of the 124 officers and the senior most officer of the Petitioner's batch of 133. The Petitioners' batch was promoted to Class III Grade I only on 24.01.2001, after about 4 ½ years since the last batch of the senior officers was promoted. The 124 officers who are lined up from the 1st to 124th positions in the Seniority List, were also from different batches, who had been recruited at different times during the said long period. It is obvious that they have been promoted to Class III Grade I very much earlier than the Petitioners. That too happened in several batches and at different time intervals.

The 1st to 15th officers in the Seniority List P10 were promoted on 01.03.1986, while another group of officers (16th to 52nd) were promoted on 02.07.1992. Thereafter seven officers were promoted on 16.07.1992 and from 53rd to 84th another batch of officers were promoted on 02.09.1993. After two officers who were promoted on 01.10.1993, there were another three of them, promoted by the PSC only on 02.12.1993. On 01.01.1994, another three officers were promoted whereas a single officer was promoted on 10.07.1994. Thereafter, all the officers commencing from the 94th and ending with 124th positions had been promoted on 08.09.1995 and one another on 21.09.1995. The 18th Respondent, who is placed at 125th position had been promoted almost five years later on 08.09.2000.

This makes it very clear that the first 124 officers were very much senior in service than the Petitioners, who belong to a batch of officers, promoted to Class III Grade I, at a much later date.

In filling the 134 vacancies under the category of "*Seniority and Merit*", the CGIR rightly decided to call those 122 officers for interviews. There were 12 vacancies that remained to be filled from the total of 134 vacancies, allocated under the said category, after these 122 officers were promoted.

The then CGIR apparently had taken a decision to call only the 134 officers whose names appear in P10 in that order to fill those 134 vacancies. However, the Scheme of Recruitment, applicable during that time [P2], states in Clause 7(a) that it should be done on "*Seniority and Merit*" basis. Apparently, as the correspondence indicate, the Ministry officials too have sanctioned the course of action intended to be taken by the then CGIR.

Therefore, 12 officers, whose names appear in the Seniority List P10, after the 125th officer, including the seven Petitioners, were called for the interview held on 22nd and 23rd February 2006, along with those 122 officers, who belong to the senior most batches. With the decision to call only 12 officers, separating them from the rest of the officers, who too were promoted to Class III Grade I on the same day, for the interview, the CGIR had effectively left out the remaining 121 other officers, from presenting themselves to be evaluated for promotion in the category of *Seniority and Merit*, despite the fact that they too are from the same batch and were serving as officers of Class III Grade I. This artificial division of creating a group of 12, taken off from rest of their batch of 133 officers, who were similarly circumstanced to be called for that interview, is a clear act of discrimination on the part of the CGIR as the applicable selection criterion is '*Seniority and Merit*' and not mere '*Seniority*.' In that decision, it appears that the '*Merit*' component, which had been allocated 40/100 marks, was totally ignored. However, the interview process continued as the then CGIR had proposed and the Petitioners have presented themselves to the said interview in February 2006.

Thus, the origin of the dispute over the seniority in the service, that has persisted for over two decades, which made the Tribunals and Courts to issue multiple rulings after, and has a direct connection to the manner in which the CGIR had decided to fill these 12 remaining vacancies.

This decision to call only the Petitioners and five others from their batch of 133, appears to be some sort of an '*arrangement*' that had been agreed upon, between those 12 officers (including the Petitioners) and the then serving CGIR. This may have happened, perhaps with the tacit

approval of the officials of the Ministry of Finance as well. This is clearly evident from the contents of the letter dated 14.08.2017 [P22(a), Annexure 4F] addressed to the Secretary to the Ministry of Finance by the Petitioners when they insisted that they should be placed immediately after the said 121 senior officers. What made the then CGIR to take this particular course of action and under what justification is not borne out from the pleadings.

What is important to the present consideration is the undisputed fact that they refer to the decision taken by the then CGIR, to call only the senior most 134 from the Seniority List. In a letter addressed to the CGIR, the Ministry indicated that it noted that there were no objections raised by any of the Trade Unions to that decision. This tacit admission by the Petitioners indicative of an 'arrangement' between them and the CGIR is clearly referred to by a group of Petitioners, who filed the application SCFR 184/2017. In that petition, after describing the appointment of 121 officers, "*... who joined the department as Tax Officers before 1993 were appointed to the aforementioned position of "Assessor" under Seniority and Merits basis with effect from 02nd October 2006*" the Petitioners have stated that "*... the balance 12 vacancies (number of vacancies under Seniority and Merits basis after the aforesaid 122 officers were promoted by P3) were kept vacant*". Then the Petitioners in SCFR 184/2017 further stated in paragraph 17 "*... it is the understanding of the Petitioners that the Commissioner General of the Department of Inland Revenue at that time had verbally assured the most senior 12 tax officers who belonged to the 1993 batch that they would be appointed for the said 12 vacancies.*" Importantly, in paragraph 20, the Petitioners further stated that "*... even though the Commissioner General assured the 12 most senior officers belonging to the 1993 batch that they would be given*

opportunities for those 12 vacancies referred to in the above paragraphs, such assurances never materialised due to objections raised by the other officers who belonged to the same 1993 batch."

Similarly, the 26 Petitioners who filed SCFR 410/2017 with their petition dated 14.11.2017 states in paragraph 14 "*[T]he most senior officers of the batch that was promoted to the post of Senior Tax Officer on 24.01.2001 who had already faced interviews in February 2006 as explained above, did not sit for the limited competitive examination or the open competitive examination as they had been assured by the administration of the Department of Inland Revenue that their appointments will be duly approved by the PSC."*

Thus, in view of these statements made by different groups of officers, who were affected by the consequences that ensued since the filling of 12 vacancies out of 134, with the Petitioners, it is reasonable to infer that there was some 'arrangement' between those 12 officers that included the present Petitioners and the CGIR, where it was the understanding between them that only they would be called for the interviews conducted in February 2006, and not the others who belonged to the same batch of 133 officers. This apparent undertaking was in direct conflict with the relevant Clause in the Service Minute. Hence, I prefer to treat that decision made by the CGIR after reaching a "*private arrangement*" between him and the Petitioners, very much prior to the interviews, which clearly discriminated against the rest of their batch by affording a preferential treatment to the Petitioners without any justification.

Interestingly, while the interviews for the 134 vacancies (consisting of 122 officers from the very senior batches and the 12 officers, inclusive of

the Petitioners, who belong to the batch of officers who have been promoted to Class III Grade I on 24.01.2001), were progressing, the CGIR and the Ministry of Finance have engaged in a series of correspondence over the issue of the propriety of the decision to call only 12 officers from the batch of 133 for interviews, leaving out 121 officers. It does not seem logical to engage in this series of correspondence over the said issue while the interviews are proceeding. If the CGIR had a genuine concern, he should have clarified that concern well before the interview process commenced. This engagement in a series of correspondence while the interviews are being held is obviously a futile act. By then the decision to call all 134 officers including the Petitioners for interviews had already been implemented. It is clear that the act of engagement in the correspondence was not meant to decide the important question of the manner in which the 12 out of 134 vacancies are to be filled, but perhaps to act as a cover for any challenge that might come up against that decision in the future.

After the conclusion of the interview process, the Ministry of Finance submitted to the PSC, the names of all 134 candidates, with the recommendation that they be promoted to Class II Grade II. Although, during the stage of selecting candidates to be interviewed, the PSC was dysfunctional owing to certain reasons, by this time, after a hiatus of about six months, it had become functional once again. The PSC rightly decided to promote only the 121 officers, who belong to senior batches, and to leave out the 12 officers from the batch of 133, recruited in 1993 and promoted to Class III Grade I on 24.01.2001.

The PSC also directed to call all the other 121 officers, who have been promoted to Class II Grade I on 24.01.2001, for an interview to fill the remaining 12 vacancies, that had been left out from the original allocation of 134 under the category of Seniority and Merit. The 2nd round of interviews was held on 14th and 15th May 2006. The marking scheme for that interview also indicates that the officers would be allocated a total of 60 marks for their seniority, after awarding 04 marks for each year in service. In addition, 20 marks would be awarded to a candidate based on his or her appraisal report, while 20 marks, out of the total 100, was set apart for the performance of the officer, during the interview process. Thus, it is clear that the applicable promotional criterion was Seniority "and" Merit and not only mere seniority in service.

The respective marks that were awarded by interview panels to the Petitioners as well as the 18th to 25th Respondents during these interviews are presented below in tabulated form (vide 18R4 and P5).

1 st Petitioner	43.2	18 th Respondent	49
2 nd Petitioner	43	19 th Respondent	50
3 rd Petitioner	40.4	20 th Respondent	50
4 th Petitioner	39.6	21 st Respondent	51
5 th Petitioner	38.4	22 nd Respondent	50
6 th Petitioner	42	23 rd Respondent	51
7 th Petitioner	41.4	24 th Respondent	51
		25 th Respondent	49

It is clearly evident from this comparison of marks obtained by each of the litigants, that none of the Petitioners have scored more than the cut-off mark which was set by the PSC at 49.

With the decision made by CGIR to call only the 12 officers for interviews in February 2006, from the batch of 133, most of the others have presented themselves to the Limited and Open Competitive Examinations, vying for a placement within the 134 and 268 vacancies, based on the results of those two examinations. The vacancies in each category were filled, based on the marks scored by each candidate, after their names that were arranged in order of merit, consisting of two separate lists for the two examinations.

There are four decisions that adversely affected the expectations of the Petitioners. First, the PSC decided to promote only 122. Then it was decided not to promote the Petitioners. Third, the PSC also decided to hold another round of interviews and that too, after calling all 133 of the batch of officers who had been promoted to Class III Grade I on 24.01.2001.

Interestingly, after the PSC decided to promote only 122 of the candidates w.e.f., 01.10.2006, by leaving the Petitioners out from the promotees list, they have decided to face the interviews, which conducted in May 2006, for the second time and without challenging any of these decisions that were taken by the PSC to their detriment.

After the results of the 2nd interview made available, the PSC promoted 12 officers, including the 18th to 25th Respondents to Class II Grade I, to fill the remaining 12 vacancies from the original 134, that are allocated under the category of *Seniority and Merit*, but w.e.f., 16.01.2008.

Among the 12 officers promoted after the 2nd interview, there were two officers, whose promotions were recommended by the CGIR after the 1st interview but refused by the PSC, leaving 10 officers from the original group of 12, without promotions. Out of these ten officers, only seven of them filed the instant application. It is important to note that no party made any challenge to the accuracy of the Schedule of Marks sent by the CGIR after the two rounds of interview, in any of the subsequent legal proceedings.

The PSC promoted the 12 officers, including the 18th to 25th Respondents, by letter dated 03.01.2008. They presumably assumed office on the same day. After the decision of the PSC on the successful 12 promotees, which was conveyed to the CGIR, the seven Petitioners, along with three others, who originally formed the group of 10 officers, have preferred an appeal in AAT/26/2008(PSC) on 07.02.2008, complaining that “ ... although they had obtained sufficient marks at the interviews held on 22nd and 23rd February 2006, for promotions to Class II Grade II, the PSC had unreasonably deprived their promotions with effect from 02.10.2006.” It was further contended by the Petitioners and three other appellants, that “ ... the PSC has turned down the recommendations made by the Secretary, Ministry of Finance on several occasions and had thereby provided opportunity for officers junior to them to obtain the promotions to the vacancies of posts belonging to Class II Grade II” and that “ ... it was the appellants who were entitled to the said promotion.” The appellants named the PSC as the only respondent in their appeal and, the 12 officers who were promoted by the PSC (including the 18th to 25th Respondents) were not named as parties to same.

The AAT, whilst considering the complaint of the Appellants presented before it, reproduced that complaint in page 5 of its order dated 12.10.2009. The Tribunal also noted that another grievance presented by the Appellants stating that the marks of the interview conducted in February 2006 had not been released to them. The AAT thereupon called for the Schedule of Marks and other related documents from the PSC. The PSC had apparently responded to that direction with a letter dated 25.09.2009, stating that the Schedule of Marks is not a “*public document*”. The AAT, was not at all happy with the refusal by the PSC, and held that it is not a “*privileged document*” in terms of Sections 123 and 124 of the Evidence Ordinance.

Considering the merits of the appeal of the Appellants, the AAT was of the view that “... *the seniority list of the officers of Class III Grade II has been prepared according to the order of highest marks that had been obtained by the officers at the recruitment examination which was the foundation of their order of seniority*” and the Petitioners promotion to Class III Grade I should be made “... *without disturbing their original order of seniority maintained as officers of Class III Grade II ...*”. The AAT found that the Appellants before it “... *had obtained sufficient marks for promotion at the structured interviews*” and therefore decided to order the PSC to “... *promote all ten appellants to the posts of Assessors, belonging to the Class II Grade II of Sri Lanka Inland Revenue Service with effect from 02.10.2006.*” It appears that the observations tendered by the PSC, containing the marks obtained by each of the Appellants, perhaps unwittingly, was overlooked by the Tribunal in reaching that conclusion, when its attention was diverted to the issue of ‘*confidentiality*’ of the Schedule of Marks.

In the following year, after the Petitioners had appealed to the AAT in AAT 26/2008(PSC), the 18th to 25th Respondents, along with five other Appellants, also have preferred an appeal to the AAT, AAT/85/2009(PSC) seeking to redress one of their grievances over the date of promotion. In AAT/85/2009(PSC), the 12 Appellants were the officers promoted to fill the 12 vacancies after the 2nd interview by the PSC, who were selected on the basis of marks obtained during the structured interview. Their grievance as stated to the AAT was that the officers who sat for the Limited and Open Competitive Examinations were promoted by the PSC w.e.f. 02.10.2006 but the Appellants, who were promoted on Seniority and Merit were promoted w.e.f. 16.01.2008 and therefore being placed below in seniority of those officers. The Appellants complained to the AAT that it is an act “ ... *in contravention of the Service Minute which states that officers who are promoted on seniority and merit ought to be placed above the officers who are appointed on Limited Competitive Examination and on Open Competitive Examination.*” It was also brought to the notice of the AAT that the Appellants have requested the PSC to antedate their promotions, which was refused by that Commission.

With its order in AAT/85/2009(PSC) pronounced on 02.11.2010, the AAT concluded that the promotion of the Appellants w.e.f. 16.01.2008 is “... *not just and it is an error*”. Therefore, the AAT ordered the PSC to antedate the date of promotion of the 12 Appellants (including the 18th to 25th Respondents) to 02.10.2006, from the original date of promotion i.e., 16.01.2008.

Strangely, while pronouncing the order in the appeal AAT/85/2009(PSC), the AAT made somewhat a startling declaration, in

relation to its own order pronounced in the appeal AAT/26/2008(PSC). This was the order by which the Petitioners were promoted to Class II Grade II w.e.f., 02.10.2006.

The AAT in its order in AAT 26/2008(PSC) was critical of the PSC for withholding the Schedule of Marks despite its request to produce in order to determine the appeal of the Petitioners. With the stance taken by the PSC before the AAT that it is not a 'public document', the AAT proceeded to "*consider the material presented before it*" and decided to hold with the Appellants, who claimed that they have scored "sufficient marks" to qualify for that promotion. However, whilst granting relief to the 18th to 25th Respondents to have their date of promotion antedated to 02.10.2006, the AAT, after perusing the observations tendered by the PSC in AAT/26/2008(PSC), made following observations in its order in AAT/85/2009(PSC);

"In the course of writing this order this Tribunal had the opportunity to read the observations filed by the PSC in appeal No. AAT/26/2008 (PSC).

The PSC by their observations filed in appeal No. AAT/26/2008 (PSC) dated 28.11.2008 had gone onto describe the number of vacancies that had been there and the manner in which steps have been taken to fill the 134 vacancies that had to be filled.

The PSC had instructed the Secretary Ministry of Finance to fill 122 out of 134 vacancies. They had instructed the Secretary Ministry of Finance to call all officers who had qualified to fill the balance 12 vacancies.

All officers who were qualified had been summoned for the interviews held on 14.05.2007 and 15.05.2007 to fill the said 12 vacancies.

The PSC in their observations had given the names of the officers who had scored marks at the said interview in order of merit from 1 to 12 in their said observations are as follows:-

<u>Name</u>	<u>Marks</u>
01. K.G. Somapala	52
02. K.T.U. Padmini	51
03. D.M.J.B. Nedungamuwa	51
04. W.D. M. Illangakoon	51
05. N.D.J.S. Rohana	51
06. A. Hewapathirana	50
07. L.A. Abeysekera	50
08. H.A.S. Hapuarachchi	50
09. G. Sabanayagam	49
10. W.A. Jayaratne	49
11. K. Abeysekera	49
12. A.K. Lokubalasuriya	49

It is interesting to note that except for L.A. Abeysekera the names of all eleven appellants are there on that list. They have all had obtained more than 49 marks and had topped the merit list from 1 to 12.

In terms of the said observation the names of the ten appellants in case No. AAT/26/2008 (PSC) too appear and the marks that had been obtained by the said officers too are reflected there. It is of

significance to note that the said ten officers have obtained marks from 43 up to 47 marks. Further the PSC had stated in their observations that the cut off marks were 49. The ten appellants of AAT/26/2008(PSC) had been listed among 17 others who had obtained less than 48 marks and had not qualified to be appointed.

However, in appeal AAT/26/2008(PSC) this Tribunal made its order on the basis that the said ten appellants had been recruited as Class III Grade I officers with effect from 02.08.1993. It is interesting to note that out of the eleven appellants in this appeal the following officers too had been appointed to Class II Grade I on 02.08.1993.

- 1. A. Hewapathirana*
- 2. L.A. Abeyasekera*
- 3. K.T.U. Padmini*
- 4. D.M.J.B. Nandungamuwa."*

The AAT thereafter held in relation to the 18th to 25th Respondents that;

" ... it appears that granting of promotions of the eleven appellants with effect from 16.01.2008 is not just and it is an error. This has caused the eleven appellants to be junior to officers who had been recruited on the Limited and Open Competitive Examinations.

Therefore, this Tribunal directs PSC/Secretary Min of Fin to antedate the promotion of Class II Grade II posts of the Sri Lanka Inland Revenue Service granted to the appellants with effect from 16.08.2008 to be ante dated to 02.10.2006."

Thus, the AAT, in granting relief to 18th to 25th Respondents, apparently revisited its own order in AAT/26/2008(PSC) and although it granted relief to the ten Appellants in that appeal, thought it fit to reproduce the observations sent by the PSC indicating marks scored by each of them, in order to declare that all the Appellants have received marks between 43 to 47, which was less than the cut off mark 49. It then inserts a sentence, after reproducing the marks from the observations, that reads as; “ *[T]he ten appellants of AAT/26/2008 (PSC) had been listed among 17 others who had obtained less than 48 marks and had not qualified to be appointed*”. It is very relevant in the present context to highlight the phrase “*had not qualified to be appointed*”. This reference perhaps tends to indicate the AAT had made a decision which it would not have made, if it considered the said observations in the determination of the appeal AAT/26/2008(PSC). This possibility is supported by the admission by the AAT, when it stated in the order of AAT/85/2009(PSC) that “*[I]n the course of writing this order this Tribunal had the opportunity to read the observations filed by the PSC in appeal No. AAT/26/2008(PSC)*” justifying an inference it may have perhaps overlooked to consider same in the determination of the appeal of the Petitioners in AAT/26/2008(PSC).

Despite the observations of the PSC in AAT/26/2008(PSC) tendered to the AAT with a view to impress upon the Tribunal that the ten Appellants including the Petitioners are not qualified to be appointed, after the said Tribunal made order to promote them w.e.f., 02.10.2006, either the PSC, or the CGIR failed to take any action to have that order set aside.

The order of the AAT in AAT/26/2008 (PSC), promoting the ten appellants who obtained interview marks ranging from 43 to 47, had far-reaching consequences for all officers in Class II, Grade II of the Sri Lanka Inland Revenue Service.

After pronouncement of the orders in the appeals AAT/26/2008(PSC) and AAT/85/2009(PSC) by the AAT, both the Petitioners as well as the 18th to 25th Respondents were placed in equal positions in relation to each other, as if they have been promoted to Class II Grade II w.e.f., on the same day, *i.e.*, 02.10.2006.

A group of 52 petitioners, who have filed SCFR 46/2008 in the registry of this Court on 07.02.2008, were under the belief that the officers who were promoted to Class II Grade II on the orders of the AAT in AAT 85/2009(PSC) have scored less marks than them at the interview. Therefore, they sought to challenge the promotion of the 12 officers, including the 18th to 25th Respondents. In their petition, they have calculated the marks that could have been awarded to the 19th, 20th, 21st Respondents and two others and compared the marks that could have been awarded to the 1st to 5th Petitioners in that application, as reflected in the table inserted into paragraph 38(d) of their petition.

The petitioners have presented SCFR 48/2008 application purely acting on the belief that it is they who scored most at the interview. Since the Schedule of Marks is accepted as a "*confidential document*" by the petitioners in that application, they had no clear information as to the marks each of them had actually scored during the interviews.

This application did not proceed full argument, but an administrative arrangement was agreed upon by the parties on 03.08.2011 [P22(a), Annexure 16], which resulted in the termination of the proceedings before this Court. In that arrangement, the PSC has agreed to approve the promotion of the petitioners in that application but only those who have scored 43 marks and above during the interview to Class II Grade II w.e.f., 17.01.2008. This agreement, indicated by the PSC, had a direct link to the order in AAT/26/2008(PSC) pronounced by the AAT on 12.10.2009, ordering the PSC to promote the Petitioners and three others. In appeal AAT/26/2008(PSC) only the 1st and 2nd Petitioners have scored 43 marks. Other Petitioners have scored marks between 47 and 43. It appears that although the petitioners in SCFR 48/2008 had no proper ground to rely on, in support of their alleged violation of rights guaranteed under Article 12(1), in view of the undisputed fact that higher marks scored were by the 18th to 25th Respondents their application should have failed. But, with the pronouncement of the order of appeal AAT/26/2008(PSC) on 12.10.2009, while their application was pending before this Court, the fact that officers who have scored only 43 had been promoted by the AAT, had infused a valid reason for those petitioners to rely on that AAT decision, in support of their alleged infringement.

It is in these set of circumstances only that the PSC has agreed to promote those 42 officers, from the many petitioners in that application, on the basis that they have scored 43 marks and above. This administrative arrangement resulted in the promotion of 42 of the 52 petitioners who came before this Court in SCFR 48/2008 and thereby adding to the officers

who already filled the original 134 vacancies in the category of *Seniority and Merit*.

These are the factors that are relevant to understand the validity of the Petitioners complaint against the Committee recommendations in its proper context, which were subsequently adopted by the Cabinet of Ministers and approved. The Petitioners, on their part, have perceived that the appointment of the Committee as a methodology devised by the PSC, in its attempt to look for alternatives to circumvent their seniority, that has been firmly established, in terms of the orders made by the AAT in appeal No. AAT/26/2008(PSC) and particularly by the apex Court, in its judgment in SCFR 180/2016, which “ ... *must be honoured right throughout the careers of the Petitioners in the Inland Revenue Department.*”

The infringement alleged by the Petitioners in the instant application is not with regard to their promotion to Class II Grade II or to the date of that promotion. The promotion and the effective date of the promotion applicable to the Petitioners had already been decided by the AAT/26/2008(PSC), when the AAT pronounced its order on 12.10.2009. Not only were the Petitioners promoted to Class II, Grade II, despite the fact that all of them had in reality scored low marks at the interview, but their promotions were also made effective from 02.10.2006 by the Tribunal. The AAT also made order as to the seniority of the Petitioners by stating the level, at which they should be placed in the Seniority List.

The other pronouncement relied on by the Petitioners on their claim of seniority is the judgment of this Court in SCFR 180/2016, in which this Court ordered the PSC to “*backdate the promotion of the Petitioners to the post*

of Assessor Class II Grade II to 22.02.2006.” In relation to seniority of the Petitioners, the Court further ordered the PSC that “ [I]n giving effect to this order the PSC must take steps not to affect the seniority of the Petitioners as it existed in February 2006.”

The success of the case presented by the Petitioners before us, primarily depends on the pivotal question; whether the impugned report of the Committee and the Cabinet Decision, are attempts made by the PSC to circumvent the segment of the said order that reads “... *not to affect the seniority of the Petitioners as it existed in February 2006*” or not.

The PSC, by its letter dated 11.03.2013 and marked as P8(a), insisted that the seniority of individual officers, as reflected in the Seniority List of the Inland Revenue Department, must be arranged in conformity with Sections 14., 1:9 to 1:14 of the Establishment Code. However, with the promulgation of Rules of the Public Service Commission, the PSC by letter dated 12.09.2014 [P 22(a), Annexure 4A], instructed the CGIR that the seniority of an officer should be determined in terms of the Rules 129 and 130 of the said Rules. The Petitioners also accept that the Rules 129 and 130 are the Rules applicable in the determination of the seniority of an officer and have stated so, in paragraph 23 of their petition in SCFR 180/2016 [P9(a)].

Rule No. 129 reads as follows;

“[T]he seniority of Public Officers holding posts of equal status in a class or grade of a particular service or in a government department or institution shall be determined

based on the dates on which those officers assumed duties in the respective posts."(emphasis added)

Rule No. 130 reads as follows;

"[W]here more than one Public Officer had assumed office on a particular day their seniority should be determined in the order of the cumulative total marks obtained by them at the written and trade tests and interviews held for recruitment in accordance with the Service Minute or Scheme of Recruitment. Where there are officers who had obtained equal marks all of them shall be treated as having the same seniority."

The effective dates of promotion, applicable in respect of the different parties to the instant application, therefore cannot provide a valid and reliable basis for the determination of the date of assumption of duties of those officers, on which the seniority would depend on, in terms of the Rule 129. In most instances relevant to the instant application, the effective dates of the promotions have subsequently been antedated repeatedly by the PSC, either on an appeal by a party or in compliance with an order of a Court, but irrespective of that fact the date on which each officer had assumed duties in the promoted post remains the same.

The Petitioners did not specifically state the day on which they have assumed duties as Assessors of Class II Grade II. They were promoted to Class II Grade II by the AAT by its order in AAT appeal No. AAT/26/2008(PSC), w.e.f. 02.10.2006. That order was pronounced by the AAT on 12.10.2009. Therefore, the Petitioners in all probability have

assumed duties in their new posts on a date subsequent to the order dated 12.10.2009, as the PSC needed to issue the letters, confirming their promotions.

On the other hand, the 18th to 25th Respondents have assumed their duties in the post of Assessor Class II Grade II on 16.01.2008, when the PSC, issued its letter dated 08.01.2008, indicating that their promotions were granted w.e.f. 16.01.2008. Thus, the 18th to 25th Respondents have assumed duties as Assessors Class II Grade II, very much prior to the Petitioners did. It is important to note that both these groups of officers were promoted under the category of Seniority and Merit.

In terms of Rule 129, seniority of the Petitioners should be determined on the date they have "*assumed duties in the respective posts*", which is clearly a subsequent date to the date of 08.01.2008. Therefore, in terms of Rule 129, the 18th to 25th Respondents should be placed above the Petitioners in seniority as the latter group had assumed duties after about 22 months from the former group. This is the position of the 268 officers, who were promoted to Class II Grade II, on the results of the Limited and Open Competitive Examinations w.e.f. 15.11.2007, as well.

The seniority of the 122 officers was not contested by any party to these proceedings. This is due to the fact that the promotions of these 122 (later 121) officers, who are senior to the Petitioners as well as to the 18th to 25th Respondents have taken place very much prior to the Petitioners, when the PSC issued its letter confirming their promotions. Unlike the Petitioners, who secured their promotions through the AAT, these officers

had no challenges which prevented them from assuming office in their new posts, coinciding with the grant of promotion by the PSC.

In respect of the Petitioners as well as the 18th to 25th Respondents, their promotions were not made along with that of the aforesaid three other groups. They were promoted very much late by the PSC, on the orders of the AAT, whereas the officers of the other three groups have already "*assumed duties*" in their posts, on the effective date of their promotions, as ruled by the PSC itself.

Therefore, the PSC, by its letter dated 04.12.2012 [P7(b)], decided to place the 12 officers (the 18th to 25th Respondents and another five) who have been promoted w.e.f. 16.01.2008, below the officers those who have already assumed duties in the Sri Lanka Inland Revenue Service.

It is evident from the above that there had been several appeals made to the AAT and fundamental rights applications filed by different groups of officers from time to time. The decisions of those appeals and applications are also delivered at different times. These orders are made in the circumstances referred to in the appeals as well as in the pleadings presented before Courts by the parties to those proceedings. The multiple orders and judgments that were made in such situations, sometime have the potential of impacting on the others who were not made parties. In addition, there could be situations where there are certain parts in those orders which may even be in conflict with others.

It is noted that the AAT, in AAT/26/2008(PSC), ordered the Petitioners be promoted to Class II Grade II w.e.f. 02.10.2006. The Tribunal also made reference to the Petitioner's seniority in that order. The AAT

ordered that the Petitioners be promoted "... *without disturbing their original order of seniority maintained as officers of Class III Grade II ...*". However, the AAT in the appeal AAT 85/2009(PSC), although made order antedating the 18th to 25th Respondents to 02.10.2006, as it made no order on their seniority.

Thereafter, in SCFR 180/2016, this Court ordered the PSC on 16.05.2017 to antedate the date of promotion of the Petitioners to 22.02.2006. The Court made a further order on the Petitioner's claim of seniority by stating that "[I]n giving effect to this order the PSC must take steps not to affect the seniority of the Petitioners as it existed in February 2006."

In the appeal AAT 129/2012(PSC), the AAT, acting on the letter issued by the PSC on 26.11.2012, which stated that " [T]welve officers who had been granted promotion of Clas II Grade II w.e.f. 16.01.2008 has to [be] given effect without causing prejudice to seniority of other officers of the said service and those officers will be included below the seniority of the officers who are already in that service" decided to terminate proceedings before it on 13.05.2013 [P7]. The "twelve officers" referred to in this letter are the 18th to 25th Respondents and four others. This is because, the appellants in AAT 129/2012(PSC) are some of the officers who have been promoted to Class II Grade II on the category of Limited Competitive Examination, w.e.f. 15.11.2006, and have since "assumed duties in the respective posts" from that date. In this instance it appears that the PSC acted on Rule 129, as those appellants have already assumed duties, even before the 18th to 25th Respondents did.

The order made by this Court in SCFR 180/2016 over the seniority of the Petitioners had an effect on the AAT 129/2012(PSC) decision, as in

that instance the 18th to 25th Respondents, who were promoted by the PSC w.e.f. 16.01.2008 should be placed in the seniority “ ... *without causing prejudice to seniority of other officers of the said service and those officers will be included below the seniority of the officers who are already in that service.*” When this Court ordered the PSC that when it antedates the Petitioner’s promotion that must be done in a manner “ ... *not to affect the seniority of the Petitioners as it existed in February 2006*” seemed to have created a conflict situation with the order in AAT 192/2012 as well as Rule 129, in the implementation of the order.

In SCFR 571/2012, when 52 petitioners claimed that they too are entitled to antedate their promotions to 03.10.2006, the PSC agreed to reach a settlement with them. In relation to the seniority of the petitioners to that application, the PSC agreed that “... *the seniority of officers appointed to Assessor Class II Grade II on 15.11.2006 based on Limited Competitive Examination, and on 01.01.2007, 03.05.2007 and 15.11.2007 on the results of the Open Competitive Examination shall not be disturbed or affected in any manner whatsoever.*” Here again the PSC seems to have acted on Rule 129, in agreeing for the said administrative arrangement to have the litigation process ended. However, with the implementation of the order made in SCFR 180/2016 in the manner the Petitioners claim, would result in a conflicting situation with the terms that were approved by this Court in SCFR 571/2012 as well as AAT 129/2012(PSC).

The words “... *not to affect the seniority of the Petitioners as it existed in February 2006*” and “*shall not be disturbed or affected in any manner whatsoever*”, are quite emphatic in what they mean, if taken literally. Thus, it is evident from the said series of orders, which were made quite

independent of each other, do not make room for any form of adjustment being made to the interests of these competing groups of officers in the arrangement of seniority. But the inescapable reality is that the implementation of one order would have an impact, in most instances a negative one, either directly or indirectly on the other officers, whose rights also were secured by similar orders of Court.

It was in this backdrop that the PSC, on 20.10.2016, has directed the Secretary to the Ministry of Finance to take steps to update the Seniority List of the officers in Class II Grade II, in terms of the relevant provisions of the Establishment Code. This direction was made by the PSC in response to a letter addressed to that Commission by CGIR on 08.03.2013, under the heading SCFR 571/2012.

This direction was complied with by the CGIR. The seniority of the officers who have been promoted to Class II Grade II, as at 30.06.2015 was re-arranged in that Seniority List (P8). In P8, the Petitioners are placed at 60-68 positions whereas the 18th to 25th Respondents are placed at 450 to 460 positions. According to P8, under the column with the heading "*Date Reported to Duty*" the Petitioners have assumed duties in that post only on 09.02.2010. But the 18th to 25th Respondents, have assumed duties in the same post on 16.01.2008. Nonetheless, the 18th to 25th Respondents were placed 390 positions below to the Petitioners in the said list. This was the position as at 30.06.2015.

This positioning of the Petitioners and the 18th to 25th Respondents appears to be in direct conflict with Rule 129 on which the seniority of an officers is determined.

The PSC, by its letter dated 04.04.2016 [18R12], responding to an appeal made by the 121 officers (the senior most group of officers) ordered the CGIR to antedate their promotions to 22.02.2006. This was the day on which they were interviewed for the promotion. This decision, made by the PSC, has resulted in a series of similar appeals made by other groups of officers, who too wanted to have their dates of promotion antedated, in order to be in line with the changes brought about by 18R12.

Within a matter of few weeks since the issuance of 18R2 by the PSC, the CGIR, by his letter dated 25.05.2016, convened a meeting in view of several appeals that were presented to him over the seniority issue. The grievances indicated in these appeals had sprung up with the implementation of the said decision by the PSC. The CGIR had thereupon interviewed representatives of each group of officers and proceeded to have another round of discussions with the PSC on 11.10.2016.

The PSC, based on that discussion, has decided to issue an order dated 20.10.2016 [P9(b)(i)/18R16]. The PSC ordered the CGIR that the 18th to 25th Respondents and four others be placed with equal seniority with that of the senior most 121 officers. The Commission also made orders in relation to several other groups of officers as well in 18R16. The order in relation to 18th to 25th Respondents and other four officers was implemented by the CGIR on 16.11.2016, and they were accordingly informed of the changes to their seniority affected by 18R17.

With the implementation of the said decision, the Inland Revenue Assessors' Association, a trade union, raised its objections with CGIR on 27.10.2016 [P14], for the decision to move up the seniority of the 12 officers

(including the Petitioners), whose appointments were antedated by the PSC to 22.02.2006. The said objection was raised on the basis that they have sat the Limited Competitive Examination with many others, but were unsuccessful in securing sufficient marks to be promoted.

With no practical solution in sight to the anomalies that exists in the seniority list of the officers promoted to Class II Grade II, the CGIR was of the view that the promotion list approved by the PSC does not conform to the existing Seniority List. He then wrote to Hon. Attorney General on 12.06.2017 [P16], seeking the latter's advice on the question whether the said promotion list of the PSC is in accordance with the multiple orders made by this Court.

The CGIR once again written to the Secretary to the Ministry of Finance on 14.07.2017 informing the latter of the inability to accept the accuracy of the rearranged Seniority List, and sought instructions whether if he were to act on the said promotion list, issued by the PSC on 05.01.2017 [P17].

With the complexity and the number of officers who are affected by the anomalies in the seniority increased, the Ministry of Finance has taken steps to constitute a committee consisting of senior administrative officers to inquire into the anomalies and make suitable recommendations to address them effectively.

On 30.07.2018, the Secretary to the Ministry of Finance decided to appoint a six-member Committee comprising of senior administrative officers with a mandate to look into the issues that had come up with regard to seniority in the Sri Lanka Inland Revenue Service.

The Secretary has appointed the CGIR as the Chairman of that Committee by letter dated 26.10.2018 [P22(a), Annexure 2]. The other members were from the Ministry of Finance, Department of Management Services, Department of Legal Affairs, Director General of Establishments and Department of Inland Revenue. The Committee was directed that its recommendations be submitted to the Ministry on or before 31.12.2018.

The Committee commenced its sittings on 26.11.2018 and 16 different groups of officers, who made appeals to that Committee, were interviewed through their representatives. It was the 1st Petitioner, who represented the Petitioner's group before that Committee, in support of their appeal. No one challenged the appointment of the Committee or its declared purpose, by way of Court case nor did any person objected to the Commission in complying with their mandate. The 16 different groups of officers have effectively participated in the deliberations and were given equal opportunity to place their respective grievances before the Committee. It is noted that a total of 284 individual officers indicated their grievances to the Committee via their representatives, as per P22a, Annexure 4B, pages 14 to 39 would indicate.

Even after making their representation to the Committee, particularly on the issue of implementation of the order of the PSC in relation to 18th to 25th Respondents, the Petitioners once more have registered their protests on the recommendations of the Committee to CGIR by letters dated 18.02.2019 [P20(a)], 03.07.2019[P20(b)] and 08.07.2019 [P20(c)]. They also made several requests under the Right to Information Act.

The starting point of the issue of seniority which had caused a substantial degree of anxiety among the officers in Class II Grade II of Sri Lanka Inland Service which persists up to now, was referred to earlier on in this judgment. It was traced to the '*private arrangement*' between the Petitioners and the then CGIR. Thereafter, the Petitioners have misrepresented their standing before the AAT by asserting that they have scored "*sufficient marks*" at the interview, when in fact it was not the case. The AAT held with them, overlooking the low marks scored by them. The Petitioners were promoted in the end.

The 18th to 25th Respondents, who were promoted after the 2nd interview and assumed duties, also were successful to antedate their date of promotion from the date 16.01.2008 decided by the PSC on 02.10.2006. In addition, there had been several instances the PSC antedating the date of promotions of different group of officers from time to time.

It was noted above that the different orders made by the Tribunals and Courts to provide redress to a specific group who are placed in a specific set of circumstances and decided upon the material presented before Courts by those parties, were intended to solve that specific issue. But, unfortunately those orders also had the unintended and undesirable effect of upsetting the general set up, which eventually became a problem, even the Courts might not be able to provide with a viable solution.

One Court cannot override a decision already made by another Court, unless exercising appellate jurisdiction. The AAT decisions were not challenged by any other affected parties within the relevant time period. The contribution made by the conduct of the officials of the Inland

Revenue Department, in their failure to place necessary material before Courts to effectively meet the allegations made by different petitioners and their failure to properly instruct their lawyers, resulted in these somewhat irreconcilable orders made by Courts. Thus, such lapses on the part of the concerned officials, deprived the Courts of an opportunity to make a composite decision that resolves the dispute as a whole and deliver justice to as many parties, without depriving others of their due entitlements.

On 24.09.2020, this Court, having heard submissions of the learned Counsel for the Petitioners, learned DSG for the 1st to 17th Respondents and learned Counsel for the 57th to 84th Respondents, after granting Leave to Proceed, ordered the Petitioners to serve notices on the seven categories of officers who might be affected on the application of learned DSG who indicated her concerns that if the Petitioners were granted the reliefs they have prayed for, it may affect the List of Seniority as it will get altered and therefore the persons who would be so affected should be named as parties to the instant application.

Consequent to that order, the 1st and 2nd sets of intervenient Petitioners were added as parties to the instant application on 28.09.2021 and they were named as 97th to 164th Respondents and 156th to 161st Respondents respectively. The Petitioners have filed an amended caption on 03.11.2022 reflecting the status of the added parties, who have been added subsequently.

It could be seen that the promotion of the Petitioners and the subsequent series of antedating had caused an avalanche of legal battles between different groups of officers of that service. The 68 petitioners who

intervened, in midstream in these proceedings, have listed out these instances, which are as follows;

1. SCFR 230/2007
2. AAT 26/2008 (PSC)
3. SCFR 46/2008
4. AAT 85/2009 (PSC)
5. AAT 192/2012 (PSC)
6. SCFR 571/2012
7. SCFR 180/2016
8. SCFR 415/2017
9. SCFR 184/2017
10. SCFR 410/2017.

Irrespective of the apparent irregularities that were noted and remedied by Courts and Tribunals in these specific instances to the respective appellants and petitioners, the cumulative effect of these multiple litigations was that the number of officers who should be promoted on Seniority and Merit, in order to fill only 134 vacancies in that particular category, have increased dramatically.

With the 1st interview conducted in February 2006, a total of 122 officers, who were the senior most in that post, were promoted by the PSC, leaving behind 12 vacancies in the cadre of 134. These 12 vacancies were to be filled after the 2nd interview, with the participation of all officers who were promoted to Class III Grade I on the same day. With the selection of 18th to 25th and four others, who scored the highest marks at the 2nd

interview and promoted to Class II Grade II, the total number of 134 vacancies were effectively filled with.

Then came the order of AAT 26/2008(PSC), promoting the Petitioners and five others, thereby adding 12 more officers to already filled Seniority and Merit category. Consequent upon the promotion of Petitioners, the Petitioners in SCFR 571/2012 too were promoted as they too have scored 43 marks or above at the interview. This was due to the fact that among the Petitioners who were promoted by the AAT, one had scored 43 marks. These officers also added to the category of Seniority and Merit which now well exceeded the approved cadre of officers of 134.

Thus, in total 209 officers were promoted to Class II Grade II in the category of Seniority and Merit, and thereby exceeding the approved cadre of 134 by 75 officers. Adding to these issues, CGIR sought advice from Secretary to the Ministry of Finance, as 28 officers (125-255 on seniority list) who could have applied under the category of Seniority and Merit, instead have sat for the Limited Competitive Examination and were appointed on 15.11.2006. in the event that the AAT 85/2009 is decided in favour of the appellants, CGIR anticipated another an anomaly in seniority would result in.

Similarly, under Limited Competitive Examination category, a total of 129 officers were promoted on the examination results and, by order of SCFR 230/2007 another 7 officers were added to that category, making the total of 136 officers, instead of the approved cadre of 134. However, there was no issue arose in respect of the officers who were promoted to Class II

Grade II, on the results of Open Competitive Examination. They were appointed to their posts w.e.f. 01.12.2006, filling the cadre of 268.

The Petitioners have perceived the appointment of the Committee as an attempt made by the PSC to circumvent the relief granted and secured in their favour by this Court in SCFR 46/2008. But in fact it originated from the Ministry of Finance and at a later stage only the PSC involvement in the process became evident.

Examination of the contents of the report issued by the Committee [P22(a)] reveals that it had not only considered the seniority issues of the Petitioners *vis a vis* the 18th to 25th Respondents, but also of several other groups who also had similar seniority issues presented before it. The Committee also considered the terms of settlements, the orders and the judgments made by the AAT and this Court from time to time. The issues the Committee had considered includes the seniority of the 122 officers, who were the senior most in the Class III Grade I, the seniority of the officers who were promoted on the results of Limited Competitive Examination, the seniority of the officers who were promoted on the results of Open Competitive Examination, the seniority of the 63 officers who were promoted on the orders made by this Court in SCFR 46/2008 and SCFR 571/2012 and the seniority of 28 officers who alleged that they were not called for interviews held in May 2007. Thus, it is clearly not a mechanism to bypass the judicial orders made in relation to the seniority of the Petitioners, but rather a concerted attempt to find a viable solution to a complex issue that had consumed a significant amount of administrative and judicial time.

The recommendation 2, one of the two recommendations being impugned by the Petitioner is the placement of 12 officers (including the 18th to 25th Respondents) immediately below the 122 officers, who were the senior most in Class III Grade I. The reasoning of the Committee in making this recommendation is as follows;

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ජ්‍යෙෂ්ඨතා/කුසලතා පදනම මත 2007 මැයි 14/15 දිනයන්හි පැවති සම්මුඛ පරීක්ෂණයේ උපරිම ලකුණු ලබා ගත්, රාජ්‍ය සේවා කොමිෂන් සභාවේ අනුමැතිය මත 2008.01.16 දින පත් කරන ලද නිලධාරීන් 12 දෙනා ජ්‍යෙෂ්ඨතා ලේඛනයේ දෙවනුව තැබිය යුතු බව නිර්දේශ කරමු.

පැහැදිලි කිරීම:

උසස් කිරීම සඳහා සුදුසුකම් ලත් සියළු නිලධාරීන් නිසි පරිදි යළි සම්මුඛ පරීක්ෂණයකට කැඳවා එහිදී ලබාදී ඇති ලකුණු අනුපිළිවෙල අනුව මෙම නිලධාරීන් පත් කොට ඇත. එසේම ඔවුන් 2008.01.16 දින වැඩ භාරගෙන ඇත. එසේම මෙම නිලධාරීන් 2006 පෙබරවාරි 22 හා 23 පැවති සම්මුඛ පරීක්ෂණයට කැඳවීමට අවශ්‍ය සියලු සුදුසුකම් සපුරා ඇති නිලධාරීන් බවද පරිපාලනමය වැරදි තීරණ මත රාජ්‍ය සේවා කොමිෂන් සභාවේ උපදෙස් පිළිනොපැදීමෙන් මෙම නිලධාරීන් එම සම්මුඛ පරීක්ෂණ කැඳවා නොමැති බවද කමිටුවේ අදහස් වේ.

AAT/26/2008 (PSC) තීරණයෙන් පත් වූ නිලධාරීන් දස දෙනා මෙම නිලධාරීන් ආලෝමය දෙනාට ඉහළින් තැබීම සාධාරණ නොවන බව නිරීක්ෂණය කරමු. මන්ද යත් ඔවුන් සම්මුඛ පරීක්ෂණයෙන් අඩු ලකුණු ලබා තිබීමයි (ඇමුණුම 31). එසේම 2007.05.14 හා 15 යන දිනයන්හි පැවති සම්මුඛ පරීක්ෂණයේ ලකුණු ලබාදීමේ ක්‍රම වේදය හෝ නිලධාරීන් ලබා ගත් ලකුණු සම්බන්ධයෙන් හෝ ඊට විරුද්ධව අධිකරණ තීරණයක් හෝ රාජ්‍ය සේවා කොමිෂන් සභා නියෝගයක් නොමැති බවද සඳහන් කරමු. රාජ්‍ය සේවා කොමිෂන් සභාව විසින් එම ලකුණු ලබාදීම පිළිබඳව යළි විමසීම් කොට ඇති බවත් ඒ පිළිබඳව සැකීමකට පත්වීමෙන් අනතුරුව අනුමැතිය ලබා දී ඇති බවත් (ඇමුණුම 32 හා ඇමුණුම 33) අනුව පෙනී යයි. එබැවින් එහි ලකුණු නිවැරදි ලෙස ලබා දුන් ලකුණු ලෙස සැලකිය හැකිය.

In view of the reasoning adopted by the Committee to make the recommendation 2, I am unable to hold with the Petitioners that the Committee has acted unreasonably or illegally in making same. Rule 129 is clear and it is undeniable fact that the 18th to 25th Respondents have “assumed duties” in their new posts well before the Petitioners did, which event that occurred only after the order of AAT 26/2008 delivered on

12.10.2009. It appears that the Petitioners have entertained a misapprehension that the date of promotion as the determinant factor in their placement in the Seniority List. The Petitioners themselves conceded that Rule 129 is the Rule applicable and it has no reference to the effective date of promotion but only to a date of assuming duties. The date of promotion, in itself, would not automatically guarantee the Petitioners of their due seniority. Thus, the Committee is justified in making the recommendation 2 in its report, which is founded on the applicable rules of procedure.

Recommendation 8 is merely a continuation of the recommendation No. 2 and the same conclusion is accordingly applicable. The challenge made to the validity of the Cabinet Decision P24, is accordingly hinged upon the question of the validity of the Recommendation Nos. 2 and 8, made by the Committee.

The Committee not only made these two recommendations but made several others as well. It is the Cabinet of Ministers who decided to implement those recommendations. Since the only complaint made against the appointment of the Committee by the Petitioners confined to the claim that it is an instrument used in the attempt by the PSC to circumvent the Court orders and not of its legal legitimacy or competency to look into the situation faced by the administration over the issue of seniority, it could be safely assumed that the Petitioners do not have an issue over the legal validity of those recommendations.

The PSC is conferred with powers under Article 55(3) “ *[S]ubject to the provisions of the Constitution, the appointment, promotion, transfer,*

disciplinary control and dismissal of public officers shall be vested in the Public Service Commission". Clearly, the PSC was acting well within its powers in appointing the Committee with a mandate to make recommendations on a specific issue. But it might be doubtful whether the PSC had the Constitutional mandate to implement the recommendations made by the Committee as the issue confronted by the PSC in this particular instance is not a case of promotion of an individual public officer or promotions of a group of public officers. By this time, the issue over seniority had assumed such level of complexity, it might even exceed the mandate conferred under the Article 55(3) and perhaps even cross over to the realm of policy.

When the Cabinet of Ministers decided to accept and implement those recommendations in the exercise of its powers conferred under Article 55(1), it was not determining the issue of promotions of individual officers, but rather the policy which is best suited to resolving the simmering crisis in the Sri Lanka Inland Revenue Service. Article 55(1) states that "*[T]he Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal*".

The question, whether the Cabinet of Ministers, in the exercise of its powers conferred under Article have acted in violation of the Article 12(1) must be decided next. This is because, if at all, the interests of the Petitioners would have prejudiced, not due to the recommendations made by the Committee, but due to implementation of the said decision of the Cabinet of Ministers [P24(c)].

The applicable principle of law is clearly laid down by *S. N. Silva* CJ in *Wickremasinghe v Ceylon Petroleum Corporation and Others* (2001) 2 Sri L.R. 409. This was an instance where the applicability of equality principle was considered by this Court, in the context of when the dealership for distribution of petroleum products was terminated in terms of a contract, whether that could be challenged on the basis of an infringement of Article 12(1). This Court, set out the equality principle enshrined in Article 12(1) as follows (at p. 416);

“[T]he protection of equality is primarily in respect of law, taken in its widest sense and, extends to executive or administrative action referable to the exercise of power vested in the Government, a minister, public officer or an agency of the Government. However, the Court has to be cautious to ensure that the application of the guarantee of equality does not finally produce iniquitous consequences. A useful safeguard in this respect would be the application of a basic standard or its elements, wherever applicable. The principle element in the basic standard as stated above is reasonableness as opposed to being arbitrary.”

Having stated thus, the Court proceeded to declare that (ibid); *“[I]n respect of executive or administrative action one would look at the person who is alleging the infringement and the extent to which such person is affected or would be effected. But, the test once again is one of being reasonable and not arbitrary. Of particular significance to the fact of this case, the question arises as to the perspective or standpoint from which such reasonableness should be judged. It certainly cannot be judged only from a subjective basis of hardship to one and benefit to the other. Executive or administrative action may bring in its wake*

hardship to some, such as deprivation of property through acquisition, taxes, disciplinary action and loss of employment. At the same time, it can bring benefits to others, such as employment, subsidies, rebates, admission to universities, schools and housing facilities. It necessarily follows that reasonableness should be judged from an objective basis."

The primary factor relied upon by the Petitioners against the implementation of the recommendations made by the Committee consequent to the approval granted by the Cabinet is that they have the effect of circumventing a specific order made by this Court in SCFR 180/2016 in its judgment, which meant to protect their seniority in the Sri Lanka Inland Revenue Service.

The Petitioners are currently placed immediately after the 121 officers, who are senior to them and all the other officers, who joined the said service in the year 1993. The Petitioners seek to resist any change in the current seniority by placing heavy reliance on the judgment of this Court in SCFR 180/2016. It was already referred earlier on in this judgment that the Petitioners did not challenge either the appointment of the Committee or of its mandate. They had the opportunity to present their position before the Committee. They have participated in the proceedings of that Committee voluntarily. There is no complaint that the Committee did not consider their representations. The Petitioners did not challenge the recommendations made by the Committee on as a whole. In the instant application the challenge to recommendation 2 and 8 is confined to the conflict with the order made by this Court on their seniority.

Thus, it is clear from the above, that the strongest point relied on by the Petitioner in support of their challenge on the recommendations of the Committee is the specific section of the order of this Court made in SCFR 180/2016 where it directed the PSC “ ... to backdate the promotion of the Petitioners to the post of Assessor Class II Grade II to 22nd February 2006”. They contend that the recommendations are in direct conflict with the part of the order of the Court directing that the PSC “... must take steps not to affect the seniority of the Petitioners as it existed in February 2006.”

Consequent to the order of Court, the dates of appointment of the Petitioners were antedated by the PSC to 22.02.2006. That is the date of appointment of the first 122 officers and the 18th to 25th Respondents as well. Thus, the first part of the order was carried out by the PSC. The Petitioners too accept that position. The second part of the said order, *i.e.*, that the PSC must take steps “... not to affect the seniority of the Petitioners as it existed in February 2006” too has been admittedly complied with by the PSC.

The PSC has apparently understood that part of the order of this Court as a specific direction to place the Petitioners immediately after the 122 officers, who are anyway senior in service to the Petitioners, thus retaining the relative positions in the Seniority List as at 01.01.2006. This fact too is admitted as the Petitioners. They have stated so, in paragraph 15 of the petition dated 30.05.2016 in SCFR 180/2016 [P9(a)]. In that paragraph, it is stated that they “ ... have been placed in their due seniority as it existed even prior to the February 2002 interviews, that is, immediately next to the 121 candidates who were granted promotion by the PSC ...”.

In paragraph 36 of their affidavit, the Petitioners have further stated that they “... had already been promoted to fill the vacancies based on the February 2006 interviews” and there was no way “... to question the validity of the Petitioners being placed in seniority on par with the group of 122 officers who initially got promoted based on February 2006 interviews”.

Thus, the complaint made before this Court by the Petitioners is not that the PSC failed to carry out either the first or the second part of the order by promoting them or antedating their appointments but that the PSC, having done so, is now looking for alternatives to circumvent or override what it has already put into effect pursuant to the rulings made by the AAT and this Court, by appointing a Committee. In their perspective, the Committee was appointed firstly, when there was no such need and secondly, with the motive to obtain a recommendation to do what this Court had ruled that PSC cannot do. That is the basis on which the Petitioners challenge the report of the Committee in general and, particularly the 2nd and 8th recommendations, along with the Cabinet decision that adopted those recommendations and decided to implement them.

The complaint by the Petitioners is primarily aimed at the recommendations 2 in the said report marked P22(a). The challenge made by the Petitioners on the validity of those two recommendations of the said Committee is founded on the allegation of wrongful assessment of the relevant factors. The Petitioners also seek to term the said recommendations as an act of criticism on the orders issued by the AAT in appeal AAT 26/2008(PSC) and by this Court in SCFR 180/2016.

The 2nd recommendation is already reproduced earlier on in this judgment. The 8th recommendation made by the Committee was to the effect that the seniority of the officers in terms of its recommendations should be continued even after any officer being promoted to Class II. However, if an officer is not placed in the relevant salary scale or failed to satisfy the Efficiency Bar or subjected to disciplinary proceedings, he should lose his seniority.

It is very evident upon perusal of these two recommendations that, what lies at the very core of the Petitioner's complaint to this Court is the effect of the recommendations, which made them placing below the 18th to 25th Respondents in the revised Seniority List. This is because in terms of the said recommendations, the 18th to 25th Respondents would be placed immediately below in the seniority of the initial 122 officers, who have been promoted to Class II Grade II, w.e.f., 22.02.2006 by the PSC, to be in line with the request made by the CGIR by his letter dated 30.05.2007 [P22(a), Annexure 29].

The relevant part of the order of this Court in SCFR 180/2016, in relation to the complaint of the Petitioners, is the direction made on PSC, requiring that Commission "*... not to affect the seniority of the Petitioners as it existed in February 2006*" when it antedates the date of appointment to Class II Grade II to 22.02.2006, from the initial date of 02.10.2006. The said part of the order is not specific as to the exact level of seniority at which the Petitioners to be placed at since the Court only referred to a seniority "*as it existed in February 2006*".

The reasons for the use of language in making the said order by Court in this particular manner could be understood as we proceed along further down in this judgment.

The validity of the complaint of the Petitioners that the PSC is trying to circumvent that part of the order through a Committee, appointed with a view to justify the re-arrangement of the Seniority List of the Sri Lanka Inland Revenue Service, would essentially depend on what this Court meant, as to what it deemed to be the seniority of the Petitioners, in making the said order, by the words “... *as it existed in February 2006*”, vide judgment P9(c).

It must be noted that the Petitioners, on their part, were very much consistent with their expected level of placement in the Seniority List. They have maintained that stance right through the multiple legal challenges which they have initiated over time. They firmly believed that their seniority as at 01.01.2006 should be maintained all along their respective careers, despite the promotion to Class II Grade II, which is done based on Seniority and Merit. As noted above, the Petitioners and three others have petitioned to this Court in SCFR 180/2016, stating (at paragraph 15 of the petition dated 30.05.2016, P9(a), that they “... *have been placed in their due seniority as it existed even prior to the February 2002 interviews, that is, immediately next to the 121 candidates who were granted promotion by the PSC ...*”.

The primary infringement of fundamental right, the Petitioners were seeking to redress through their application in SCFR 180/2016, was the denial of antedating of their appointments to 22.02.2006 by the PSC,

whereas the promotions of the other 121 officers, who faced the interview with them in February 2006, were antedated to 22.02.2006. In paragraph 29 of P9(a), the Petitioners have stated that “ ... *backdating of appointments as referred to in P7 excluding the Petitioners and adjusting seniority in the post of Assessor in the manner described therein result in absolute injustice to the Petitioners as explained above and are illegal, unreasonable, arbitrary and amounts to violation of the legitimate expectation of the Petitioners that they will be treated without undue discrimination or difference.*”

Hence, in the said petition, the Petitioners and others have prayed from this Court, primarily, a declaration of infringement of fundamental right of equality and, in addition, also prayed for an order to antedate their appointments.

With regard to the issue of seniority, they also prayed from this Court to “[D]irect the Respondents or any one or more of the Respondents as may seem appropriate ... to treat the period of active service of the Petitioners in the post of Assessor Class II Grade II, for all intents and purposes, as the same as that of the rest of the 121 candidates who faced the interview in February 2006 together with the Petitioners...”. Of course, the Petitioners, in drafting the said prayer used a different wording to what they have used very specifically in paragraph 29(a) of their petition. But, there is no doubt; what they really wanted to achieve from this Court was, if I am to put so plainly, to place them “*immediately next to the 121 candidates who were granted promotion by the PSC*”.

Despite the clarity of the expected level of placement in the Seniority List on the part of the Petitioners, this Court, after granting them the

primary reliefs of a declaration and an order directing the PSC to antedate their promotions with effect from 22.02.2006, also ordered that; it must be done in a manner “... *not to affect the seniority of the Petitioners as it existed in February 2006*”.

The Court obviously desisted in its order from making a reference to a specific level of seniority, although the Petitioners have expressed themselves clearly what exactly they want. If the Court were to grant that relief, as prayed for by the Petitioners, it could have easily used the very words, used by the Petitioners to the effect that “... *as the same as that of the rest of the 121 candidates who faced the interview in February 2006 together with the Petitioners...*”. In the alternative, the Court could have simply stated that the relief as prayed for in paragraph (iv) of the prayer to the petition dated 30.05.2016 is granted.

But for some reason it did not. The Court, instead, decided to couch the said relief in its pronouncement in such a way that it only reads that the act of antedating of their appointments should be done in such a manner “... *not to affect the seniority of the Petitioners as it existed in February 2006*”.

In addition to the two options referred to in the preceding paragraphs, the Court also had a third option. If it were to grant relief in the manner the Petitioners expected the Court to, it could have made a direct reference to the Seniority List as at 01.01.2006. The fact that the Petitioners have annexed the Seniority List to the petition of SCFR 180/2006 as “P1”, where the exact level of seniority is clearly reflected, further confirms of this restricted form of pronouncement made by this

Court. If their Lordships were to restore the Petitioners, in the exact level of seniority that they obviously have held as a rightful entitlement even after the promotion to Class II Grade II, the Court could have simply ordered to the PSC that the Petitioners should be placed in the seniority as reflected in P1, which indicates the relative seniority of each officer which stood as at 01.01.2006, just a few weeks before the interviews, were conducted in February 2006.

Instead of making such a clear and definitive pronouncement, the Court only directed the PSC that the antedating appointments should be carried out “... *not to affect the seniority of the Petitioners as it existed in February 2006*”. Therefore, it is clear that the said direction could not be taken in its literal meaning to denote a position that the seniority of an officer in the Sri Lanka Inland Revenue Service should continue throughout his career as a static norm. Instead, upon perusal of the Service Minute, it becomes evident that in promoting an officer to Class II Grade II on Seniority and Merit, seniority of such an officer is re-arranged depending on the marks scored at the interview, as he or she is promoted not only in strict consideration of seniority but on merit as well.

This fact becomes clearly visible upon a comparison made between the arrangement of the Seniority List as at 01.01.2006 [P1 in SCFR 180/2016 and the current Seniority List marked as P10, in the instant application] and the contents of the letter addressed to the PSC by CGIR [P22(a), Annexure 28].

This letter was meant to provide certain clarifications that were sought by the PSC from the CGIR. This was issued at a time the PSC

wanted certain clarifications over the inaccuracies that was detected in the names of the 122 officers, who were placed in the order of merit. The CGIR thereupon provided the corrected names of 19 such officers to the PSC. This letter, in addition to correcting names, also sets out their respective positions in the seniority, which had to be re-arranged for the purpose of placing them in the order of merit, depending on their performance at the interviews.

The contents of this letter clearly established the fact that all the candidates who faced the interview in February 2006 are lined up in the order of merit and that had been done not strictly acting on the order of seniority as it stood at 01.01.2006, but after considering the marks obtained by each officer, under the “*Merit*” factor as well.

In order to illustrate the point; that the seniority was rearranged at this promotion, I wish to cite a few examples.

Mrs. *K.L.D.T. Irin*, being placed at 1st position in the Seniority List as at 01.01.2006 [P10] was the senior most of all the officers in Class III Grade I. After the interview, she was placed at the 18th position, whereas *S.M. Samarakoonbanda*, who was placed originally at 16th position in P10, moved up to the position No. 1. This is because he had scored the highest marks (85.8) at the interview. Mr. *R.A.D.M. Wimal*, who was in the 3rd place of the Seniority List P10, was listed as the 5th after the interview and had slid down two positions. Mr. *T.B. Rathnayaka*, who was placed in the 22nd position in the Seniority List P10 had moved up to the 9th position after the interview by advancing 11 positions. Mr. *P.P.G. Gemunupola*, who was the

28th in the seniority list, lost 33 positions after the interview, having being placed in the 61st position.

This is due to the fact, as already noted earlier on in this judgment, that the marks were awarded at the interview not only for seniority but for other two factors as well. In relation to seniority 4 marks were awarded for each year, up to a maximum of 60 marks. Thereafter, 20 marks were awarded on the Appraisal Report of the officer and another 20 marks awarded for the performance at the interview, and thus making a total of 100 marks. It is the 60:40 ratio between the seniority and merit that made these differences in the placement of an individual officer in seniority over others.

This Court, in making the said order in SCFR 180/2016, was fully aware of the fact that, by the time of the hearing of that application, there had been several substantial changes had taken place altering the status of the parties drastically. The affidavit of the then Chairman of PSC, tendered in SCFR 180/2016 and, annexed to the petition of the Petitioners in the instant matter, marked as "P9(b)" sets out the relevant background in which these appointments and placements in the seniority were made.

The judgment of SCFR180/2016 was pronounced by this Court on 16.05.2017. In terms of the decision of the AAT in appeal AAT/85/2009 dated 02.11.2010, the 18th to 25th Respondents too were already promoted to Class II Grade II w.e.f. 22.02.2006. In addition, the first batch of the most senior officers who were promoted w.e.f. 02.10.2006 too had their promotions antedated to 22.02.2006. These 12 officers (including the 18th to 25th Respondents) who have scored more marks than any of the Petitioners

at the interviews are therefore entitled to be placed in similar seniority with the 121, whose appointments and seniority not been challenged by any party. Thus, altogether there were total of 136 officers (at the time of their respective appointments) who were already appointed w.e.f. 22.02.2006. The judgment of SCFR 180/2016, which was pronounced subsequent to all these events also added ten more officers to the cadre of officers in Class II Grade II who were promoted w.e.f. 22.02.2006. The Petitioners were the last batch of officers to have their promotions antedated to 22.02.2006.

The Rule 129, which deals with seniority of officers specifically states that the seniority should be counted on the date on which an officer "*assume duties*" in a particular post, and not necessarily from the date of promotion to that post, if the promotion and assumption of office, had taken place in two different dates.

It is also important to note that in the judgment of SCFR 180/2016, this Court made no order adverse to or affecting the validity of the appointments of the 18th to 25th Respondents or on their placement in the Seniority List. The Petitioners in SCFR 180/2016 did not name the 12 officers (inclusive of the 18th to 25th Respondents) as parties affected by success of their application. In these circumstances, the words "*... not to affect the seniority of the Petitioners as it existed in February 2006*" could not therefore be construed simply to mean that the Petitioners should be placed over and above the 18th to 25th Respondents in the Seniority List, disregarding the other attendant factors in totality. This is due to the simple reason that this Court did not think it was proper to grant relief to

Petitioners in that very form, despite they have specifically prayed for such a relief in that very form, from Court.

Hence, the Court's deliberate and careful use of words in describing what it wanted to grant as relief to the Petitioners in SCFR 180/2016, with its order in directing the PSC that the antedating of their appointments should be carried out in a manner "*... not to affect the seniority of the Petitioners as it existed in February 2006*" should accordingly mean to have the Petitioners placed at an appropriate level of seniority with the other 134 officers whose appointments are also made w.e.f., 22.02.2006 "*... as it existed in February 2006*", and in terms of the Rule 129.

In the absence of a specific order that the Petitioners be placed immediately after the 121 officers, the recommendation of the Committee could not be taken as a recommendation that is in direct conflict with what this Court had ordered the PSC, in its judgment in SCFR 180/2016, although it may have the effect of deviating from the literal meaning attributed to it by the PSC to the words "*... not to affect the seniority of the Petitioners as it existed in February 2006*". The PSC apparently understood that part of the order to place the Petitioners immediately below the 121 officers.

It is neither the function nor the desire of this Court, in the instant application, to re-visit any of its orders already made and to rectify any situation that may have resulted from those orders. It would not sit idle either, if and when some entity or a person exercising executive power tries to work around a judgment to suit whims and fancies of an external body. But, when the administration of an important State institution, that

deals with an important function of the State, is grappling with a pressing issue that had developed over the years and inflated up to gargantuan proportions, and appointing a Committee to find a viable solution to that issue by a process of engagement of all the stake holders, I am of the firm view that such a course of action could not be termed as an unreasonable or irrational decision; particularly when viewed against this rather peculiar situation.

The recommendation 2, which the Petitioners have vehemently attacked as an indirect attempt to circumvent the order of this Court in SCFR 180/2016, was meant to correct an anomaly that had resulted in as a direct consequence to the said "*private arrangement*" between the Petitioners and the then CGIR. There is no recommendation by the Committee in its report, suggesting to demote the Petitioners and the others from their current positions on account of obtaining marks less than the cut off marks set by the PSC at 49. That would have solved the issue in accordance with seniority, in terms of Rule 129.

The 18th to 25th Respondents were placed at a lower seniority not due to any fault of theirs but because of the administrative blunder made by those who were involved in the decision-making process. They should have been promoted, based on their performance at the first interview, along with the 121 officers. But they were forced to take the second interview which was held only in May 2007, which in turn made their date of promotion w.e.f. 16.01.2008, creating a gap of almost 15 months between dates on which they assumed duties, when compared with the 121 senior

officers, who assumed duties on 02.10.2006, after the PSC promoted them by its letter dated 22.09.2006. Considerations of equities, which this Court should take into consideration of making orders, favours the 18th to 25th Respondents rather than the Petitioners, since those Respondents are entitled to be placed at the seniority, as the Committee has now recommended, which an entitlement they were deprived of at that point in time, solely due to the afore stated '*private arrangement*'.

It is correct that the Petitioners would lose the benefits which they may have reaped on the act of the PSC, done in relation to their seniority, after the pronouncement of the judgment of SCFR 180/2016. I am not convinced that the answer to the question; whether the PSC, in placing the Petitioners in the Seniority List where they are right now, was in fact acted on a specific order made to that effect by this Court, lies in the affirmative. When the test of reasonableness is applied on the impugned Cabinet Decision to act on recommendation 2, from an objective point of view, I am unable to convince myself that it infringes the right to equality of the Petitioners, guaranteed to them under Article 12(1), even if it would have the effect of changing the seniority thus far enjoyed by the Petitioners, which in turn was based on the placement made by the PSC under the belief that this Court had in fact ordered that Commission to make such a placement.

I derive support for my afore-stated conclusion by applying the principles identified in *Wickremasinghe v Ceylon Petroleum Corporation and Others* (*supra*) and wish to quote S.N. Silva CJ once more, where his Lordship has observed that (at p. 416); "[T]he claim of each party appears to have merit when looked at from the particular standpoint of that party. But,

reasonableness, particularly as the basic component of the guarantee of equality, has to be judged on an objective basis which stands above the competing claims of parties."

In view of the above reasoning, it is my considered view that the Petitioners have failed to establish any infringement of their fundamental rights, as alleged by them. Their petition is accordingly dismissed.

I make no order as to costs.

JUDGE OF THE SUPREME COURT

S. THURAIRAJA PC., J.

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J.

I agree.

JUDGE OF THE SUPREME COURT