

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

In the matter of an application under
and in terms of Articles 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

S.C. (FR) No. 398/2019

1. S.J.K. Hemalatha,
No 19/08, Mahawatta North, Kundasale.
2. W.A.S. Rohana,
No. 16, Wadumulla, Dewalapola.
3. K.K.A. Jayawardena,
No.48, Seebel Park, Melagoda,
Wanchwala.

Petitioners

Vs.

1. National Savings Bank PLC.
2. S.D.N. Perera,
General Manager/ CEO,
National Savings Bank PLC.
- 2(a) Mrs. Shashi Kandambi
General Manager/ CEO,
National Savings Bank PLC.
3. M. P. A. W. Peiris
Deputy General Manager (Branch
Operation)

4. B.P.J. Gunasekera,
Deputy General (International Division)
Manager.
5. M K.S. Weerasena,
Assistant General Manager (Training).
6. M A.M.A.B. Alahakoon
Assistant Manager (Transport Division).
7. H.P. Janaka
Assistant Manager (Mail Division)
8. G.D.S. Pieris,
Assistant Manager (Credit Division)
1st to 8th Respondents all of;
National Savings House,
255, Galle road Colombo 3.
9. K.R.M. Perera,
Manager, Raddolugama Branch of the
National Savings Bank.
10. B. M. A. F. B. Waththege
Manager
Rideegama branch
National Saving Bank.
11. H. K. G. N. Wickramanayake Manager
Kaduwela Branch,
National Savings Bank.
12. Deric Perera,
Assistant Manager, Mahabage Branch.
13. Hon. Attorney General,
Attorney General's Department
Colombo 12.

Respondents

Before : A. L. Shiran Gooneratne, J.
Menaka Wijesundera, J.
M. Sampath K. B. Wijeratne, J.

Counsel : Uditha Egalahewa, PC with Damitha Karunarathna instructed by Lilanthi De Silva for the Petitioner.

Rajitha Perera, DSG instructed by D.L.L. Wijesinghe for the 1st, 3rd, 4th, 5th & 13th Respondents.

Shantha Jayawardena with Azra Basheer instructed by Dinesh De Silva for 6th, 7th, 9th, 11th & 12th Respondents.

Written

Submissions : Latest written submissions on behalf of petitioners on 25th November, 2025.

Latest written submissions on behalf of the 6th, 7th, 9th, 11th & 12th Respondents on 17th November 2025.

Argued on : 22.10.2025

Decided on : 30.01.2026

MENAKA WIJESUNDERA J.

The Petitioners in the instant matter are namely: S. J. K. Hemalatha (1st Petitioner), W. A. S. Rohana (2nd Petitioner), and K. K. A. Jayawardena (3rd Petitioner), who had been attached to the 1st Respondent Bank, which is the National Savings Bank PLC at the time of filing the instant petition.

The 1st Petitioner had joined the bank on 01.09.2001 as a Banking Assistant and, at the time of filing the instant application, had been serving in the capacity of Assistant Manager Grade III-II.

The 2nd Petitioner had also joined the Respondent Bank on 01.01.1996 as a Banking Assistant and had been serving as an Assistant Manager Grade III-II.

The 3rd Petitioner had likewise joined the Respondent Bank on 01.01.1996 as a Banking Assistant and had been serving as an Assistant Manager Grade III-II.

The Petitioners have alleged that their fundamental rights under Articles 12(1) and 14(1)(g) of the Constitution have been violated, and have sought a declaration of the same from this Court, as the Respondents are alleged to have denied the Petitioners of their promotion to Manager Grade III-I in the Respondent Bank.

When this matter was supported for leave on 09.06.2022, this Court have granted leave under Articles 12(1) and 14(1)(g) of the Constitution. The Petitioners have stated that 1st Respondent Bank, by Assistant General Manager's instruction letter No. 05/2019 dated 25.01.2019, had requested all those who were eligible for the post of Manager Grade III-I to apply for the said vacancy as per Circular letter No. 922/2017. The said documents have been marked and produced as P1a and P1b.

This court observes that P1a had stated that 'applicants who are eligible' should forward their applications through their respective Heads of their respective Branches on or before 05.02.2019.

Documents marked and produced as P1b is the Respondent Bank's scheme of promotions, which has been approved by the Board of Directors of the Bank, and it specifies the marking schemes which should be adopted for promotions within the Bank.

This Court specifically draws its attention to paragraph 4 of the said document, which reads as follows:

"Marks will be awarded only for the Educational /Professional qualifications relevant to banking operations or to the present duties performed. Such qualifications should have been earned during the specific period of service considered for the promotion as at the closing date of applications."

The Petitioners have further stated that they applied to the above mentioned post on the basis of being confirmed officers in Grade III-II "with a minimum of 2 years of service experience" as per the circular marked as P1b. The said documents are marked P2a-p2c

The Petitioners had been called for an interview on 27.06.2019 and 09.07.2019, and the interviews had been conducted by the 3rd to 5th Respondents. The impugned decision of the interview board had been marked and produced as P3, and the Petitioners' names have not been included in the said decision.

The Petitioners had been disturbed and disappointed at P3, and the instant application had been filed.

The 1st Petitioner has pleaded that she holds a Bachelor of Arts (Special) degree and has obtained a Postgraduate Diploma in Business Management from local university. She has further stated that during her service period in the Respondent bank, she had successfully brought the branches she served to profit-earning status and ensured that they achieved the targets set out by the main branch.

The 1st Petitioner has also stated that she had requested the 1st Respondent Bank to release her marks at the interview and to her dismay, learned that she had scored only 52.33 marks. She has pleaded that her self-assessment mark was 82.83 and therefore her fundamental rights have been violated.

The 2nd Petitioner had also pleaded his academic qualifications, holding a Bachelor of Commerce degree and completing a Certificate Course at the Institute of Bankers of Sri Lanka. He has further stated that during his service in the Respondent Bank, he had obtained more than 80 marks in his annual performance evaluations within the bank. he further states that he had been informed by the Respondent Bank that he had obtained only 60.23 marks at the interview, to his surprise and disappointment, while his self-assessment amounted to 85 marks. Therefore, he has pleaded that his fundamental rights have been violated.

The 3rd Petitioner has averred his academic qualifications of having a Bachelor of Business Management degree and a Diploma in Landscaping and Gardening. He also has stated that his internal annual appraisals within the bank had been over 75, but at the interview to his dismay, he has not obtained relevant marks; therefore, he pleaded that his fundamental rights had been violated.

The 1st to 5th Respondents have filed their submissions and have stated very emphatically that the marking scheme for the Post of Manager Grade III-I, applied by the Petitioner had been solely based on the marking scheme at 3R1/P1b. The Respondents have further stated that there had been 140 applicants which had included the 6th to the 12th Respondents, who have been selected at the interview.

The interviews have been conducted by a panel of three persons, chaired by the 4th respondent, along with 3rd and the 5th respondent. Marks have been awarded as per 3R1 and P1B, and the mark sheets had been duly certified by the interview panel.

Upon the conclusion of the interview, the cut off mark had been 62, based on the available number of vacancies. The Respondents have further alleged that 46 applicants have been chosen strictly, according to the marks obtained at the interview and their names have been published in gazette named as P3.

The Respondents have stated that Petitioners have not been selected because they had failed to obtain the cut off marks of 62.

They had also stated that the academic qualifications which were considered had to be obtained during the period considered for promotion, as per circular 3R1/P1B, as pointed out above by this Court.

Therefore, the Respondents have stated that no marks had been awarded for educational and professional qualifications obtained not within the period stipulated in the above circular.

The Respondents have further submitted that, as per the circular 3R1 and P1B, the degree is not a mandatory requirement for the above promotion, and the no-pay leave obtained by the successful candidates have been deducted when computing their period of service at the time of awarding marks in the interview.

In view of the submissions and the facts of both parties, the interview for the above vacancy had been purely based on 3R1 and P1B. The qualifications stipulated in the said scheme had to be obtained within the time frame during their service in Grade III-II, not prior to this.

The candidates who had been selected had obtained the cut off marks of 62 and those who had not receive the said cut off marks had been rejected.

I will initially deal with the first declaration sought by the Petitioner, namely that the Fundamental Right guaranteed by Article 12(1) of the Constitution has been infringed by one or more of the Respondents.

Article 12(1) provides that,

“All persons are equal before the law and are entitled to the equal protection of the law.”

Article 12(1) of the Constitution ensures protection from arbitrariness and discrimination by executive or administrative action. The objective of Article 12(1) of the Constitution therefore is to ensure equal treatment. In the case of **Wijerathna v Sri Lanka Ports Authority [2020] SC (FR) Application No.**

256/2017 - SC Minutes 11.12.2020, Justice Kodagoda explains the concept of equality as provided within Article 12(1) as follows:

“The concept of ‘equality’ was originally aimed at preventing discrimination based on or due to such immutable and acquired characteristics, which do not on their own make human being unequal. It is now well accepted that, the ‘right to equality’ covers a much wider area, aimed at preventing other ‘injustices’ too, that are recognized by law. Equality is now a right as opposed to a mere privilege or an entitlement.”

In the case of **Ariyawansa and others v. The People’s Bank and others** [2006] 2 Sri LR 145 at 152, Bandaranayake J stated:

“The concepts of negation of arbitrariness and unreasonableness are embodied in the right to equality as it has been decided that any action or law which is arbitrary or unreasonable violates equality.

Furthermore, in the determination of this Court in **The Special Goods and Services Tax Bill** (SC/SD/1-9/2022, page 36), it was held that,

“absolute and unfettered discretion being vested in an officer of the Executive is a recipe for (i) unreasonable and arbitrary decision making, (ii) abuse of power, (iii) corruption, and (iv) the roadway to depredation of the Rule of Law. On all such accounts, it results in an infringement of Article 12(1) of the Constitution which guarantees equal protection of the law.”

Given the facts of the current case, this Court recognizes that Article 12(1) is not violated merely because a candidate is not selected. The principle of equality ensures fairness in the process, not outcomes. Courts have repeatedly held that equality cannot be interpreted as a guarantee for success in selection processes, but rather a guarantee that the process is free of bias, arbitrary criteria, or unlawful preferences. This reasoning was followed by Justice Mark Fernando in the case of **Jayawardena v. Dharani Wijayatilake, Secretary, Ministry of Justice and Constitutional Affairs and Other** [2001] 1 Sri L.R. 132 at 134, where he held that,

“It is accepted today that powers of appointment and dismissal are conferred on various authorities in the public interest, and not for private benefit, that they are held in trust for the public and that the exercise of these powers must be governed by reason and not caprice.”

In the case of **W.P.S. Wijerathna v. Sri Lanka Ports Authority [2020] SC (FR) Application No. 256/2017**, Justice Yasantha Kodagoda P. C, further

expounded on what Justice Mark Fernando held, clearly articulating the nexus between Article 12(1) and the appointments and promotions in the public service;

“In my view, principally, schemes for the selection, appointment and promotion of persons for employment positions should contain mechanisms enabling the selection of the most suitable person for the relevant position, whilst embodying the principle of equality. The objective sought to be achieved by doing so, is the imposition of compulsion on persons in authority who are empowered to take decisions relating to selections, appointments, recruitment and promotions, to arrive at objective and reasonable decisions, and thereby securing protection against arbitrary decision-making.”

The Respondents categorically deny that the Petitioners' fundamental rights under Articles 12(1) and 14(1)(g) have been infringed. They assert that all actions were taken reasonably, transparently, and in the best interests of the candidates. The material placed before this Court demonstrates that the Respondents had acted in accordance with the approved scheme of promotion (marked P1B/3R1), and that all applicants, including the Petitioners, had been subjected to an identical marking process within the framework prescribed therein.

In the absence of any noticeable procedural irregularity or unequal treatment, this Court is not inclined to interfere with the administrative discretion exercised by the Respondent Bank in the matter of promotions.

I shall now deal with the second declaration sought by the Petitioner, namely a declaration that the Fundamental Right guaranteed by Article 14(1)(g) of the Constitution has been infringed by one or more of the Respondents.

Article 14(1)(g) of the Constitution guarantees that:

“Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.”

Former Chief Justice Sharvananda comprehensively meted out as to what amounts to a violation of Article 14(1)(g) in the case of ***Elmore Perera v. Major Montague Jayawickrema, Minister of Public Administration and Plantation Industries [1985] 1 Sri LR 285***. Sharvananda C. J. stated as follows,

“The right to pursue a profession or to carry on an occupation is not the same thing as the right to work in a particular post under a contract of

employment. If the services of a worker are terminated wrongfully, it will be open to him to pursue his rights and remedies in proper proceedings in a competent court or tribunal. But the discontinuance of his job or employment in which he is for the time being engaged does not by itself infringe his fundamental right to carry on an occupation or profession which is guaranteed by Article 14(1)(g) of the Constitution”

Justice Sharvananda further held that,

“Article 14(1)(g) recognises a general right in every citizen to do work of a particular kind and of his choice. It does not confer the right to hold a particular job or to occupy a particular post of one’s choice.”

A similar view was expressed by Justice A.R.B. Amerasinghe in **W. M. K. De Silva v. Chairman, Ceylon Fertilizer Corporation**, wherein he held that, Article 14(1)(g) ensures the freedom to engage in any lawful occupation of one’s choice, but that does not extend to a right to be employed by a particular master or in a particular place of work.

Since it has been clearly established that Article 14(1)(g) does not guarantee one’s right to a particular post or designation, the facts of the current matter suggest that the petitioners were not deprived of their freedom to engage in their profession but rather that they were denied a promotion. Given the circumstances, I am of the view that, the Respondents have not infringed the Petitioner’s Fundamental Right guaranteed in terms of Article 14(1)(g) of the Constitution.

In conclusion, this Court finds that the Petitioners have failed to establish, by evidence, that the actions of the Respondents in the conduct of the promotional interview or the marking process were arbitrary, discriminatory, or in violation of the Petitioners’ fundamental rights guaranteed under Articles 12(1) and 14(1)(g) of the Constitution.

Hence, the application is dismissed without costs.

JUDGE OF THE SUPREME COURT

A. L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT

M. Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT