

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

*In the matter of an Application under and
in terms of Articles 12(1) and 14(1)(g) to
be read with Article 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.*

SC/FRA/400/2021

A.L. Ariyawansa,
7D, Welegoda Road,
Rahula Junction,
Matara.

PETITIONER

Vs.

1. Secretary,
Ministry of Agriculture,
No. 80/5,
Govijana Mandiraya,
Rajamalwatta Lane,
Battaramulla.

2. Commissioner General of Agrarian
Development,
Department of Agrarian
Development,
No. 24, Sir Marcus Fernando
Mawatha,
Colombo 07.

3. Assistant Commissioner of Agrarian Development,
Department of Agrarian Development,
Galle District Office,
Labuduwa,
Akmeemana.
4. Director General of Establishments,
Ministry of Public Administration and Home Affairs,
Colombo 07.
5. Hon. Attorney General,
Attorney General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

Before

- : Arjuna Obeyesekere, J.
- : Sampath B. Abayakoon, J.
- : K.M.G.H. Kulatunga, J.

Counsel

- : Shihara Ekanayake instructed by
Jayamuditha Jayasooriya for the Petitioner.
- : Sureka Ahmed, SSC instructed by Nimalika
Wickremasinghe, SA for the Respondents.

Argued On : 23-01-2026

Written Submissions : 24-02-2026 (By the Respondents)

: 23-02-2026 (By the Petitioner)

Decided On : 26-05-2026

Sampath B. Abayakoon, J.

The petitioner filed this application alleging that one or more respondents, among the 1st to 4th respondents named in the petition, have infringed and violated his fundamental rights guaranteed in terms of Article 12(1) and 14(1)(g) of the Constitution.

Accordingly, he has prayed for the reliefs as prayed for in the petition and has sought for an order based on the salary scheme marked along with the petition as P-25 to rectify the alleged salary anomaly of the petitioner.

When this matter was supported on 12-09-2023 for the purpose of granting leave to proceed, this Court decided to grant leave only on the alleged violation of petitioner's fundamental rights guaranteed under Article 12(1) of the Constitution. While granting leave, the Court has drawn its attention to the document marked and produced as P-12 by the petitioner, where it has been claimed that his last drawn annual salary at the time he was released from teachers' service was Rs. 35,244/-, and also the fact that there was no specific document which shows the exact last drawn salary of the petitioner as a teacher.

At the hearing of this application, this Court heard submissions of the learned Counsel who represented the petitioner and that of the learned Senior State Counsel (SSC) who represented the respondents. The parties were allowed to file additional consolidated post-argument written submissions as well for the purpose of determining the application.

Facts in Brief

The petitioner has joined the Government Service as a Graduate Teacher on 10-08-1987. The document marked P-01 shows that he has been recruited as an Arts Graduate Assistant Teacher under the District Service Scheme. In terms of paragraph 10 of the said letter of appointment, his consolidated annual salary has been denominated under general degree in the following manner;

14,400 – 3 x 480 – 15,800 / 16,800 – 6 x 480 –

19,680 / 20,640 – 9 x 480 – 24,960

It has been averred by the petitioner that after being recruited to the Government Service as a graduate teacher, he was absorbed into the Agrarian Service Department by the letter of appointment dated 31-08-1988 (document marked P-02) and was posted as a Regional Officer of the department. He has taken up the position that he was released from the Department of Education in order to absorb him into the Agrarian Service Department (document marked P-04).

He has contended that although he was absorbed into the new service from his previous service, he was placed on a salary scale as if he had been newly recruited to the government service, which created a salary anomaly. On the said basis, he has submitted the documents marked P-05 to P-25 to justify his claim to the attention of the Court. It is his position that he should have been placed on the salary scale applicable to the teachers' service after he joined the Agrarian Services Department, which was a higher salary scale, and his salary increments should have been granted accordingly.

To buttress his position, he has also submitted documents to claim that another person called Piyarathne, who was similarly circumstanced, has been placed on a higher salary scale applicable to teachers' service, depriving him of the same benefit for which he is entitled.

It was on the said basis that the petitioner is seeking redress from this Court under the fundamental rights jurisdiction.

The common position taken up by the respondents in their objections has been that the petitioner's alleged salary anomaly has no basis, and he has been placed on the due salary scale.

It has been their position that the petitioner's claim for a higher salary scale cannot be compared to that of Mr. Piyarathne as claimed, and therefore, the petitioner would not fall into the category of a person who was treated differently under similar circumstances. The respondents have moved for the dismissal of the petition on the basis that there was no violation of the fundamental rights guaranteed under the Constitution when it comes to the claim made by the petitioner.

Consideration of the Relevant Legal Provisions & the Conclusion

The petitioner has joined the Government Service as an Assistant Teacher holding a General Degree in Arts under the District Service Scheme. After joining the said service on 10-08-1987, he has taken up a position of an Agrarian Services Regional Officer (Grade II) according to his letter of appointment dated 31-08-1988 (P-02). This goes on to establish that he has served as an Assistant Teacher only for a period of one year.

Initially, upon his assumption of a new appointment, it has been written to the petitioner by the relevant educational authority that his resignation from the teachers' service has been accepted. However, by the letter dated 27-10-1994, the Secretary of the Education Services Board has written to the relevant educational authority stating that the petitioner joining the Agrarian Services Department should be treated as him being released from the teachers' service enabling him to take up his appointment as an Agrarian Services Regional Officer.

There can be no doubt that since the petitioner has served only one year as an Assistant Teacher, what he could have earned was only one salary increment from his initial basic salary as an Assistant Teacher. Although it appears that he has been subsequently treated as a person who holds an Honours Degree and the relevant additional salary increments applicable to a graduate who holds such an Honours Degree had been granted, in his initial

teacher appointment, have been on the basis of a General Arts Degree holder, where he was entitled to an annual basic commencement salary of Rs. 14,400/-.

It is my view that even if his basic salary as a teacher was amended according to subsequent circulars, for the purposes of this application, his basic salary has to be considered based on his letter of appointment marked P-01. It is clear that after he joined the Agrarian Services Department, according to the letter of appointment marked P-02, his basic annual commencement salary has been Rs. 19,680 – 9 x 480 – 8 x 600 – 28,800.

The petitioner has filed this application and has maintained the position that he was released from the teachers' service and absorbed into the Department of Agrarian Services, and therefore, he should be placed on the salary scale he enjoyed while serving as an assistant teacher. However, there is nothing to indicate that his release from the teachers' services was to absorb him into the Agrarian Services Department. Having scrutinized the documents tendered by the parties, it is abundantly clear to me that upon an application by the petitioner, he has been released from the teachers' service allowing him to join the Agrarian Services Department, which does not under any circumstances fall into the category of absorption (අන්තර්ග්‍රහණය) of an employee from one department to another department.

I am in full agreement with the submissions of the respondents that only in a situation where an employee is absorbed into another service, such an employee is entitled to enjoy the salary benefits of his previous service and not in a situation where a person is released from a service allowing him to join another service. I find that the adjusting of salary of the petitioner after he joined the Agrarian Services Department should therefore be in terms of Chapter VII, Section 9 of the Establishment Code.

The documents tendered to this Court which show the correspondence between the relevant authority in relation to the adjustment of the petitioner's salary clearly establish that his salary has been calculated based on

subsections 3, 4, 5, 6 of the above Chapter VII section 9 of the Establishment Code.

The relevant section 9, which relates to incremental credit, reads as follows,

9. Incremental credits

9:3 Incremental credit maybe granted only for past services in a post which is superior to or comparable with the new post to which the person appointed.

9:4 When an officer moves from one post to another without any break in service, and the salary scale of his previous post is not “superior” to or “comparable” with that of the new post to which he is appointed, incremental credit maybe granted for the following period of service in the previous post.

9:4:1 For period of service on a fix salary higher than the initial of the new post.

9:4:2 For period of service on the initial and on salary steps higher than the initial new post.

9:5 Incremental credit maybe granted for such periods of prior service as are admissible under subsections 9:3 to 9:4 only via the salary scales that were in force for the new post to which the officer is appointed during those particular periods i.e. the salary of the officer would have earned had he been paid for such admissible periods on the salary scales that were in force for the new post during such periods, should be ascertained.

9:5:1 If the salary scale on which the earned salary is determined has been revised the earned salary so determined should be converted to the revise salary on the basis authorized for the particular revision of salaries.

In that event the salary obtained on such conversion will be the earned salary, to be considered for determining the salary in the new post in terms of subsections 9:6 and 9:7.

9:6 For the purpose of determining the salary step on which an officer should be placed in his post the salary to be reckoned is the last salary drawn in the previous post, or the salary earned in terms of subsection 9:5 whichever is the lower.

It is clear from the documents tendered by the respondents that the petitioner's salary has been calculated on the basis of his basic salary as a Regional Officer of the Agrarian Services Department by granting him one increment, which he has earned as an assistant teacher in his previous employment, and also six additional salary increments on the basis that he holds an Honours Degree. It is clear that thereafter he has been granted due increments based on subsequent circulars whenever he earned them.

There is no basis to compare the petitioner's situation to the granting of salary increments to one Piyarathne as claimed by the petitioner. The documents before the Court show that after joining the teachers' service, the said Piyarathne has joined the Agrarian Services Department after completing 6 years of service, where he has earned six salary increments. It is clear that the said Piyarathne has been placed on a higher salary scale on the said basis and not on any other basis as claimed by the petitioner.

I am unable to find any basis that the petitioner had a legitimate expectation of getting the salary calculated as in the document marked P-25, which was not in accordance with the relevant provisions of the Establishment Code under which the petitioner's salary has to be calculated.

I am of the view that agitating over a long period of time based on something he is not entitled to receive would not create a legitimate expectation in such person's favour under any circumstances.

In the case of **SC/APP/167/2014 decided on 23.05.2025, per E.A.G.R Amarasekara, J.;**

“The above clearly indicates neither an expectation, of which the fulfilment requires the decision maker to make an unlawful decision nor an expectation based on an ultra vires representation can be legitimate expectation. It also indicates that reasonableness of reliance is a necessary condition for a legitimate expectation.”

In the case of **Ariyaratne and Others Vs. Inspector General of Police and Others (2019) 1 Sri L R 100, at page 102,** it was held;

“A substantive legitimate expectation will not be protected by judicial review if inter alia fulfilling the expectation will be in breach of the public authority's statutory duty or where the person who claims the right has not dealt fairly with the public authority or where the granting of the expectation would have an unfair or unjust result.”

At page 118, Prasanna Jayawardena, J. quotes Prof. Endicott of the University of Oxford [Administrative Law 2nd ed. at p. 283],

“...legitimate expectation might be better called a 'legally protected expectation'.”

In the case of **Wannigama Vs. Incorporated Council of Legal Education and Others [2007] 2 Sri L.R, at page 292,** it was observed that;

“It is not possible to rely upon a legitimate expectation, unless such expectation is founded upon either a promise or an established practice.”

For the reasons as considered above, I find that the 1st to 4th respondents have not infringed the petitioner's fundamental rights guaranteed in terms of Article 12(1) of the Constitution as claimed by the petitioner.

Accordingly, the fundamental rights application is dismissed for want of merit.

There will be no costs of this application.

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree.

Judge of the Supreme Court

K.M.G.H. Kulatunga, J.

I agree.

Judge of the Supreme Court