

**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 in respect of violation and/or imminent violation of Articles 12(1) and 14(1)(g) of the Constitution.

S.C. (FR) No. 433/2021

1. S. D. L. Sanathweera,
No; 16/14, Up Lands
Aruppola,
Kandy.
2. D. L. K. J. Wijethunga
No; 16/14, Up Lands,
Aruppola,
Kandy.
3. I. C. S. B. Rathnayaka,
Temple Road, Pothuhera.

Petitioners

Vs.

1. K. P. Gamini Rajarathna,
Chief Secretary,
Central Provincial Council,
Kandy.
2. J. P. Sunil Jayalath,
Chief Secretary,
Sabaragamuwa Provincial Council,
Rathnapura.

3. J. J. Rathnasiri,
Secretary,
Ministry of Public Services, Provincial
Councils and Local Government,
Independent Square, Colombo 07.
4. W. K. S. Wickramapala,
Director,
Engineering Services,
Engineering Services Division,
Ministry of Public Services,
Provincial Councils and Local
Government,
Independent Square, Colombo 07.
5. Engineering Service Board,
Ministry of Public Services, Provincial
Councils and Local Government,
Independent Square, Colombo 07.
6. Public Service Commission
Office of the Public Service Commission,
No 1200/9, Rajamalwatta Road,
Battaramulla.
7. Hon. Justice Jagath Balapatabandi,
Chairman,
Public Service Commission.
8. Indrani Dugathadasa,
Member,
Public Service Commission.
9. Suntharam Arumainayaham,
Member,
Public Service Commission.
10. T. R. C. Ruberu,
Member,
Public Service Commission.

11. Ahamad Lebbe Mohomad Saleem,
Member,
Public Service Commission.
12. Leelasena Liyanagama
Member
Public Service Commission.
13. Dian Gomes
Member
Public Service Commission.
14. Dilith Jayaweera
Member,
Public Service Commission.
15. W. H. Piyadasa,
Member,
Public Service Commission
16. M. A. B. D. Senerath,
Secretary,
Public Service Commission
*All are at Office of the Public Service
Commission,
No 1200/9, Rajamalwatta Road,
Battaramulla.*
17. B. M. A. D. B. Disanayake.
18. H. A. M. Yasawardana.
19. K. P. N. Peiris.
20. S. D. Priyanthi.
21. A. M. M. W. B. Premadasa.

All of Care of Director of Engineering

*Services Division,
Ministry of Public Services, Provincial
Councils and Local Government,
Independent Square, Colombo 07.*

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

Respondents

Before : Yasantha Kodagoda, PC, J.
A. L. Shiran Gooneratne, J.
Menaka Wijesundera, J.

Counsel : S. N. Vijithsingh for the Petitioners.
Ms. Sureka Ahmed, SSC, instructed by Nimalika
Wickremasinghe, SSA, for the 1st - 16th and 22nd
Respondents.

Written
Submissions : Latest written submissions on behalf of the Petitioners
filed on the 27th of March, 2026.
Latest written submissions on behalf of the 1st - 16th and
22nd Respondents filed on the 30th of March, 2026.

Argued on : 28.01.2026

Decided on : 23.07.2026

MENAKA WIJESUNDERA J.

The Petitioner in the instant matter has sought a declaration that his rights under Articles 12(1) and 14(1)(g) of the Constitution have been violated. He has further sought that the Respondents be directed to promote the Petitioners to

the post of Engineering Services Grade III. When the matter had been supported for leave, this court granted leave under Article 12(1) and 14(1)(g) of the Constitution. At the time leave was granted on the 22nd December 2021, the counsel for the Petitioners stated to the court that he is not pursuing the relief sought under (g) of the prayer to the petition, which states as follows: *“Quash the appointments of 16th to 21st Respondents”*.

In the instant matter, the Petitioners have been officers of the Sri Lanka Technological Service and, at the time of filing the petition, they were serving as Technical Officers in the Department of Engineering Service of the Central and Sabaragamuwa provinces.

The Petitioners averred that the 1st and 2nd Petitioners were appointed to and joined the Technological Service on the 22nd of June, 1989, and the 8th of June, 1989, respectively, in the capacity of Middle-Level Technical Officers Grade III, whilst the 3rd Petitioner was appointed to the Engineering Service of the Sabaragamuwa Province on the 16th of September, 2002. The said letters of appointment have been marked as **“P1(a)”**, **“P1(b)”** and **“P1(c)”**.

The Petitioners also claim that they were adequately qualified for the said appointments, having been recruited under the relevant recruitment scheme and subsequently confirmed. The letters of confirmation are marked as **“P2(a)”**, **“P2(b)”**, and **“P2(c)”**. The 1st, 2nd, and 3rd Petitioners were further promoted to the post of technical officer Grade II with effect from 1st July 1994, 2nd May 1997, and 18th February 2005, respectively.

In the meantime, the Petitioners had obtained a National Certificate in Technology (Civil Engineering). They claim that the National Certificate in Technology is Equivalent to the National Diploma in Technology (Civil) (NDT) as set out in the Public Administration Circular 46/90 dated 30.10.1990, marked and produced as **“P5(a)”**.

Thereafter, they were promoted to Technical Officer Grade I and subsequently to the Special Grade of the Sri Lanka Technological Service, following which they performed duties in the capacity of Technical Officers in the Special Grade.

The 1st and 3rd Petitioners further claimed that they had obtained National Vocational Qualification Level V, and the Petitioners state that the 3rd Respondent, by order of the Public Service Commission, called for applications from specific technical officers for recruitment to Grade III of the Sri Lanka Engineering Service on a limited recruitment basis. According to the Petitioners, the relevant Gazette has been marked and produced as **“P8”**. They further claim

that, according to the said Gazette, there had been 69 cadre vacancies in the Grade III engineering Service and 13 vacancies under the category of Civil 7.

As the Petitioners were qualified to apply for the category of Civil 7, they duly submitted their applications on 20.12.2020 and were subsequently called for interviews, in which they participated. Thereafter, the Petitioners became aware that appointments had been made under the said gazette, with such appointments being backdated to 26.02.2021. However, the Petitioners state that only five officers were selected and appointed, while the Petitioners, despite possessing the requisite qualifications, were not appointed. The Petitioners contend that such omission constitutes a violation of Section 4.1 of “**P8**” read together with Public Administration Circular 46/90.

Subsequently, the Petitioners had become aware that the 16th to the 20th Respondents, who were admittedly junior to them, were appointed. The Petitioners contend that such appointments constitute an infringement of their fundamental rights guaranteed under Articles 12(1) and 14(1)(g).

The Respondents have filed their objections and have denied the fact that the Petitioners' rights have been violated. They have further admitted that the Petitioners have applied for the vacancies in the category of Civil 7, Grade III of the Sri Lanka Engineering Service, and that the appointments of the selected candidates were backdated to 26.02.2021. They have further stated that although several vacancies existed, only five candidates had qualified to fill those vacancies, and accordingly, they were selected.

The Respondents have also stated that the gazette marked as “**7R2**” (which is the same Gazette produced as “**P8**”) has laid down the criteria for the appointments, but they had categorically stated that the said gazette gives discretion to the relevant appointing authority to incorporate the provisions to service minutes and recruitment scheme, as appropriate. They have further averred that Circular No. 46/90, marked as “**P5(a)**”, has never been incorporated into the Service Minute of the Sri Lanka Engineering Service and, therefore, is inapplicable to recruitment to the said service.

The Service Minute governing recruitment to the Sri Lanka Administrative Service is predicated on both seniority and merit, as reflected in the prescribed marking scheme (**7R2**), whereby 60 out of 100 marks are allocated for seniority and 40 out of 100 marks are allocated for merit. Therefore, they had claimed that the Petitioners had not been qualified within that range.

They have further stated that, in terms of Section 1.3 of the Gazette Notification, marked as “**7R2**”, officers serving in Provincial Councils were eligible to apply for vacancies in the Civil 7 category.

Nevertheless, the said Gazette marked “**7R2**” provides that recruitment shall be made on the order of marks awarded for seniority and merit. They have further stated that recruitment to the Sri Lanka Engineering Service is governed by the provisions of the relevant Service Minute contained in Gazette No. 1836/6, marked as “**7R1**”, and that Public Administration Circulars which have not been published in the Gazette are inapplicable to such recruitment.

Therefore, they claim that the Petitioners have relied on the wrong circular; thus, Circular 46/90, upon which the Petitioners have relied, has no applicability for recruitments to the Sri Lanka Engineering Service.

As such, they have stated that the Petitioner’s application is misconceived in law and should be dismissed.

Having considered the submissions of both parties, I observe that the Petitioners have joined the Sri Lanka Technical Service as Middle-Level technical officer Grade III in 1989 and had been attached to the Central province and the Sabaragamuwa province, subsequently they have been promoted to Grade II and Grade I in the same service as a result of which they had been placed in a special service grade of the Sri Lanka Technological Service.

Thereafter, relying on the Gazette notification marked and produced as “**P8**”, they had applied for grade III of the Sri Lanka Engineering Service. The Petitioners had been called for an interview and had participated therein on 26/02/2021. However, although five candidates were appointed, the Petitioners were not selected. Therefore, the Petitioners claim that their rights have been violated under Article 12(1) and Article 14(1)(g).

I shall first examine the alleged violation of Article 12(1) claimed by the Petitioners. An extract of Article 12(1) of the Constitution is set out below,

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

Courts have consistently observed and upheld that Article 12(1) is not violated merely because a candidate has failed to secure selection or promotion. The guarantee of equality embodied in Article 12(1) is concerned primarily with the fairness, legality, and impartiality of the decision-making process, rather than with ensuring a favourable outcome for every applicant. Accordingly, unless the decision-making process is shown to have been arbitrary, discriminatory, biased,

or otherwise unlawful, no infringement of Article 12(1) can be said to arise solely by reason of non-selection of a candidate.

The Petitioners in the instant matter have claimed that the Public Administration Circular 46/90 should be read along with “**P8**”. The aforementioned circular has provided that alternative qualifications be accepted and included in the schemes of recruitment, and one such qualification is the National Diploma in Technology. The circular has further provided that the National Certificate in Technology in Civil Engineering with 5 years’ experience in technical service will be accepted as an alternative to the National Diploma in Technology.

However, subsequently, when the service minute applicable to the Sri Lanka Engineering Service was published in the Gazette No. 1836/6 dated 11/11/2013 (**7R1**), the provisions of the Public Administration Circular 46/90 had not been incorporated into the said service minute. Therefore, the Public Administration Circular 46/90 is not applicable for the recruitment of vacancies in the Sri Lanka Engineering Service, which is strictly governed by provisions contained in the Service Minute applicable to the said service. The correct Public Administration Circular, which has governed the said recruitments for the Sri Lanka engineering service, was the Public Administration Circular of 2006, which came into effect on 11/11/2013 via Gazette No. 1836/6 (**7R1**). The Respondents had correctly concluded that the Petitioners had relied upon a circular, which had not been published and which, therefore, was not the applicable Service Minute governing recruitment to the Sri Lanka Engineering Service.

Hence, I am of the view that the Respondents acted in accordance with the applicable Public Administration Circulars governing the public service. Although such action may not have operated to the benefit or satisfaction of the Petitioners, the Respondents were nevertheless under a duty to comply with and give effect to the Circulars that had been duly published. The Sri Lanka Engineering Service is no exception; hence, all those who seek appointments under whichever category in the public service must fulfil the qualifications stipulated in the Circulars published in the Gazette by the Ministry of Public Administration, Provincial Councils and Local Government of Sri Lanka. In the instant matter, the Respondents rightfully acted in terms of the Gazette marked “**7R2**” and the relevant circulars published in Gazette No. 1836/6 (**7R1**).

At this juncture, I would like to quote Justice Wanasundera in the case of ***Palihawadana Ralalage Wickremasinghe v Attorney General (1979) 1 FRD 1***, where his Lordship stated the following,

“Equal protection carries with it, of necessity, the doctrine of classification; for, inequalities and disabilities whether natural, social, or economic may have to be taken into account if justice and fairness is to be achieved as a final result. Equal protection generally requires that all persons who are placed in similar circumstances should be treated alike and for this purpose it would be legitimate to differentiate between persons or things on the basis of clear and intelligible distinctions or differences which must have a rational relationship to the object to be achieved.”

Therefore, taking into account the above rationale, I cannot conclude that the Petitioners have been differently treated among equals because the other candidates who have been selected have qualified as per the relevant qualifications of the relevant Gazette, whereas the Petitioners did not have the same qualifications.

As such, I see no violation of the Petitioners' rights guaranteed under Article 12(1).

In respect of 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, I am of the view that such a claim does not arise independently of Article 12(1) of the Constitution.

In this regard, reference to the Indian Constitution becomes necessary due to its close constitutional affinity with the Sri Lankan Constitution, particularly for the purpose of analysing the nexus between Articles 12(1) and 14(1)(g) in matters concerning *legitimate claims to promotion*.

In the present matter, Article 16(1) of the Indian Constitution may be regarded as the corresponding provision to Article 14(1)(g) of the Sri Lankan Constitution, as it guarantees equality of opportunity in matters relating to public employment and appointments under the State. Extracts of Article 14(1)(g) of the Sri Lankan Constitution and Article 16(1) of the Indian Constitution are set out below,

Article 14(1)(g) of the Constitution of Sri Lanka states as follows,

“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.”

Article 16(1) of the Constitution of India states as follows,

“There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”

However, unlike in the Indian constitutional framework, the Sri Lankan Constitution separately recognizes the right to equality under Article 12(1) and the freedom to engage in a profession under Article 14(1)(g). Accordingly, in determining the legality of a promotion granted to a public officer, Article 14(1)(g) should be interpreted together with Article 12(1) to give full effect to the constitutional protection afforded to professional advancement and equal treatment. Consequently, in the absence of any established violation of Article 12(1) arising from arbitrary or unequal treatment in the present case, it cannot be concluded that there has been any infringement of Article 14(1)(g).

As such, with due consideration given to the material placed before this Court, I see no violation of the fundamental rights guaranteed under Article 12(1) and 14(1)(g) of the Petitioner.

Hence, the instant application is dismissed without costs.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

A. L. Shiran Gooneratne, J.

I agree.

JUDGE OF THE SUPREME COURT