

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

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

1. V.R.I. Gunawardena
No. 81, Araliya Uyana, Mattegoda.
2. L.M.Gurusinghe
20/19, 2nd Lane,
Cancer Hospital Road,
Maharagama.
3. S.W.R.A. Kulatunga,
No. 1144/16, Shanthi Mawatha,
Liyaganada,
Kottawa, Pannipitiya.

Petitioners

SC/FR/Application No 536/2012

Vs.

1. Dr. H.C. Ambawatte,
Director General of Technical Education
and Training,
P.O. Box 557, Olcott Mawatha,
Colombo 10.
- 1A. Mr. J.A. Ranjith,
Director General of Technical Education
and Training,
P.O. Box 557, Olcott Mawatha,
Colombo 10.
- 1C. Mr. S.C. Jagath,
Director General of Technical Education
and Training,
P.O. Box 557, Olcott Mawatha,
Colombo 10.

2. P.B.C.Kularathne,
Director- Administration, Department of
Technical Education and Training,
P.O. Box 557, Olcott Mawatha,
Colombo 10.

2A. Mr. G.D.S.Gunawardena,
Director- Administration, Department of
Technical Education and Training,
P.O. Box 557, Olcott Mawatha,
Colombo 10.

2C. Ms. K.A.M.L.C. Kulathilaka,
Director- Administration, Department of
Technical Education and Training,
P.O. Box 557, Olcott Mawatha,
Colombo 10.

3. Secretary, Ministry of Youth Affairs and
Skills Development,
“Nipunatha Piyasa”, No. 354/2,
Elvitigala Mawatha, Narahenpita,
Colombo 05.

3B. Dr. Susil Premajayantha,
Minister of Education,
Ministry of Education,
3rd Floor, Sethsiripaya Stage I,
Battaramulla.

4. P.B.Abeikoon,
Secretary, Minister of Public
Administration and Home Affairs,
Independence Avenue, Colombo 07.

4A. Mr. J. Dadallge,
Secretary, Ministry of Public
Administration and Home Affairs,
Independence Avenue, Colombo 07.

4B. Mr. J.J. Rathnasiri,
Secretary, Minister of Public
Administration and Home Affairs,
Independence Avenue, Colombo 07.

4D. Mr. M.M.P.K. Mayadunne,
Secretary, Ministry of Public
Administration
Home Affairs, Provincial Councils and
Local Government,
Independence Avenue, Colombo 07.

4E. Mr. K.D.N. Ranjith Asoka,
Secretary, Ministry of Public
Administration,
Home Affairs, Provincial Councils and
Local Government,
Independence Avenue, Colombo 07.

5. Director General,
Department of Pensions,
Maligawatte, Colombo 10.

5A. Mr. A. Jagath D. Dias,
Director General,
Department of Pensions,
Maligawatte, Colombo 10.

6. Dr. P.B. Jayasundera,
The Secretary to the Treasury,
Presidential Secretariat, Colombo 01.

6A. Dr. R.H.S. Samaratunga,
The Secretary to the Treasury,
Presidential Secretariat, Colombo 01.

6C. Mr. K.M. Mahinda Siriwardana,
The Secretary to the Treasury and Ministry
of Finance, Presidential Secretariat,
Colombo 01.

7. The Hon. Attorney General,
The Attorney General's
Department, Hulftsdorp,
Colombo 12.

Respondents

AND

SC FR : 560/2012

1. D.S. Wijeratne,
President, Technical Educational and
Training Teacher's Union,
Technical College,
Olcott Mawatha, Colombo 10.
2. H.P.H. Wickremaratne
3. W.B.S. de Silva
4. S. Parameswaran
5. A.S.C. de Silva
6. P.A. Kamalsiri
7. P.M.J. Wickremasuriya
8. A.A. Nawaratne
9. S.P.J. Silva
10. J. Sivanandan
11. M.K.G.I.Perera
12. W.D.A.Swarnalatha
13. T.V.B.Chandralatha,
14. All C/O Technical Educational
and Training Teacher's Union,
Technical College,
Olcott Mawatha, Colombo 10.

Petitioners

Vs.

1. P.B. Abeykoon,
Secretary to the Ministry of Public
Administration and Home Affairs,
Independence Square, Colombo 07.

1A. M.M.P.K. Mayadunne,
Secretary to the Ministry of Public
Administration and Home Affairs,
Provincial Councils and Local
Government,
Independence Square, Colombo 07.

2. P.B.Jayasundara,
Secretary to the Treasury and Ministry of
Finance and Planning,
The Secretariat, Colombo 01.

2A. K.M. Mahinda Siriwardana,
Secretary to the Treasury and Ministry of
Finance,
The Secretariat, Colombo 01.

3. H.C. Ambawatta,
The Director General,
Department of Technical Education and
Training,
P.O. Box 557,
Olcott Mawatha, Colombo 10.

3A. S.C. Jagath,
The Director General,
Department of Technical Education and
Training,
P.O. Box 557,
Olcott Mawatha, Colombo 10.

4. The Attorney General,
The Attorney General's Department,
Colombo 12.

Respondents

Before: **Murdu N.B. Fernando, PC.CJ.,**
Achala Wengappuli, J. and
Arjuna Obeyesekere, J.

Counsel: Manohara de Silva,PC with Nimal Hippola and S. Kariyawasam for Petitioner instructed by W.D. Weerarathna in SC.FR. No. 560/12
Pulasthi Hewamanna with Ms. Githmi Wijenarayana for Petitioner instructed by Sanjeeva Kaluarachchi in SC.FR. No. 536/12.
Dr. Avanthi Perera, DSG with Ms. I. Punchihewa, SC for Attorney General in both applications.

Argued on: 28/08/2024

Decided on: 07/07/2025

Murdu N.B. Fernando, PC. CJ.,

The Hearing in relation to SC/FR/536/2012 and SC/FR/ 560/2012 were taken up before this Bench on 28-08-2024, twelve years after these applications were filed and all Counsel agreed that they would be bound by a consolidated judgement.

The matters impugned in these applications pertains to the Sri Lanka Technical Education Service (“SLTES”), a service that governs the staff (principals, teachers and others) attached to Technical Colleges in Sri Lanka, their recruitment, salary structure *inter-alia*.

The Petitioners in SC/FR 536/2012 were pensioners retired from service when the application was filed in the year 2012 whilst the Petitioners in SC/FR 560/2012 were a Trade Union and its members consisting of the staff of Technical Colleges, some of whom have also retired by now.

The grievance

The principle grievance of the Petitioners is that their salaries and pensions had been arbitrarily reduced by the Respondents and a further sum of money is to be deducted from the salaries and pensions due to an overpayment made to the Petitioners as alleged by the Respondents.

The Petitioners state that consequent to the budget proposals for the year 2006, number of structural changes were made to the salary scales relevant to different cadres of public

servants. These changes were to be effective from 01.01.2006. *Vide* Public Administration Circular bearing No. 06/2006 dated 25-04-2006 (“PA Circular 06/2006”)

Thereafter, the said PA Circular 06/2006 underwent several amendments and variations. In certain instances, it was to rectify the salary anomalies that arose in different services and cadre *vis-à-vis* overall salary structure of the public service.

One such amendment, which had a beneficial effect on the Petitioners was PA Circular bearing No. 06/2006 (VII) dated 22-08-2008. Consequent to such circular, the Petitioners aver, the Petitioners’ salary scales were re-structured and they were granted three increments of Rs. 790.00, totaling a sum of Rs 2370.00. Based on this re-structure, the salaries and pensions were enhanced. The public servants who retired from service after the year 2008, had the benefit of calculating the pensions based on such enhanced salary scales.

The Petitioners aver, that they received such enhanced salaries and pensions from the year 2008 to 2012, until they were informed that the salary conversions made in 2008, consequent to PA Circular 06/2006 (VII) were erroneous and that steps will be taken to recover the overpayments already made.

The Petitioners further aver, that the reason for such deductions was an amendment/variation made to the aforesaid PA Circular 06/2006 (VII), by PA Circular bearing No. 06/2006 (X) dated 26-03-2012. The said 2012 circular indicates that certain salary conversions made to ‘officers who hold departmental posts to which salaries of All Island Services or equivalent salaries have been determined’, had not been made in the correct way and therefore, directed that such excess amounts be recovered. The case of the Petitioners was that based on the said PA Circular 06/2006 (X), the Department of Technical Education Training considered the three increments granted to the Petitioners as erroneous and took steps to adjust the salaries and pensions and to recover the purported overpayments.

Being aggrieved by the said directions and alleging such conduct to be unlawful, arbitrary, capricious, *mala fide* and in violation of the Fundamental Rights guaranteed under Article 12(1) of the Constitution, the Petitioners came before this Court and obtained Leave to Proceed and also interim relief restraining the Respondents from making any further deductions from the salaries and pensions as per the provisions of PA Circular bearing No. 6/2006 (X) dated 26-03-2012 until the final determination of these applications.

The version of the Respondents

The Respondents in their pleadings and the pre-hearing written submissions, took up the position that the petitions should be dismissed *in limine* and/or rejected in view of the petitions being time barred and on certain other preliminary objections.

The substantial objection of the Respondents was that the PA Circular bearing No. 06/2006 (VII) issued in 2008 had no relevance to the SLTES. Therefore, it was contended that the three increments granted to the Petitioners was a *bona-fide* error made by the Department of Technical Education and Training, and the Petitioners were not entitled in law to benefit from an administrative mistake. In the said circumstances, it was pleaded that the course of action followed to recover the erroneous payments, was in accordance with the law.

The case presented by the learned DSG on behalf of the Respondents, at the hearing was also on similar lines. *viz.*, the PA Circular 06/2006 (VII) had no bearing on the officers of the SLTES. It applied only to officers of the All Island Services and certain other services. However officers of certain other services including the SLTES had also converted their salaries based on this circular. This error had to be corrected. In order to rectify such wrong doing which arose upon the erroneous implementation of the said PA Circular 06/2006 (VII), the course of action taken by the Respondents to recover the overpayments from the Petitioners is just and fair.

The learned DSG further contended, that the Petitioners had been paid inflated salaries and pensions and were unjustly enriched, in view of a wrong interpretation given by the Department of Technical Education and Training and therefore, that the Petitioners were drawing salaries and pensions which they were not entitled to receive and thus, recovering of such overpayments was in order and permitted by law.

The learned DSG heavily relied upon PA Circular 06/2006 (X) and Section 43 A of the Minutes on Pension, to substantiate her argument. She also drew our attention to the observations made in the case of **G.M.Nimalsiri v. Col. PPJ Fernando and others SC/FR/256/2010 – S.C.M. 17-09-2015** to justify her contention that the Petitioners have no legitimate expectation in continuing to receive an incorrectly computed salary and pension.

We observe, that while the Respondents, have not filed post-hearing written submissions, the Petitioners have filed copious written submissions supported by numerous judicial concepts supported by case law to justify their contention, that the defence of *bona-fide* error and/or that the PA Circular No. 06/2006(VII) was interpreted and applied erroneously and incorrectly, is baseless. It was also the submission of the Petitioners that PA Circular No. 06/2006 (X) contained subsequent additions and new interpretations which rendered the provisions of the said circular to have retrospective effect, which is not in accordance with the law and therefore cannot be relied upon to penalize the Petitioners.

PA Circular bearing No. 06/2006

This circular dated 25-04-2006 introduced a new salary structure, applicable to all public servants, in the public service.

However, prior to implementing the new salary structure all posts/services in the public service had to be re-categorized and re-grouped by each Ministry based on definitions given in annexure II of the circular. Annexure III provided for the salary conversions applicable to the different services and posts and the new salary codes that will be applicable.

Admittedly, SLTES and the Petitioners were not in an All Island Service and were not included in the list provided for in annexure III to this circular.

Consequent to the issuance of PA Circular 06/2006, representations were made by members of SLTES to the National Salaries and Cadre Commission [the relevant authority as provided by the circular] and it was recommended that the salary scale SL-1-2006, will be applicable to the SLTES.

The principle submission of the State was that, although the SLTES was recommended the salary scale SL-1-2006, that the SLTES was not categorized as an All Island Service by the National Salaries and Cadre Commission.

Corollary, the position of the Petitioners was that SLTES was considered an All Island Service for all due purposes, though it was specifically not categorized as an All Island Service.

PA Circular bearing No. 06/2006 (VII)

This circular, as the number denotes, was the seventh amendment made to the aforesaid PA Circular 06/2006. It was amended on 22-08-2008.

First two paragraphs of the said circular reads as follows;

“Your attention is drawn to PA Circular 06/2006 [...]”

After the introduction of the SL-1-2006 salary scale by above circular with effect from 01.01.2006 to the All Island Services and **to the posts for which equivalent salaries have been assigned**, the officers promoted prior to the above date have received relatively a lower salary than the salary entitled to certain officers promoted from the new Grade III to the Grade II (formerly from Grade II/II to Grade II /1)”

02. In order to rectify the anomaly, it has been decided, to grant 3 salary increments (Rs 790 x3) of Grade II to the officers [...] of an All Island Service or **in any other post drawing equivalent salaries..”** (emphasis added)

Thus, it appears PA Circular 06/2006 (VII) was introduced to rectify a certain anomaly that had occurred consequent to issuance of the initial PA Circular bearing No 06/2006.

In order to rectify the anomaly referred to above, this circular provided a mechanism, to grant three salary increments, subject to fulfilling certain other conditions. (vide paragraph two)

The case of the Petitioners was that they too were paid the three increments since, their posts were considered as equivalent to salaries assigned to an All Island Service, as referred to in the aforesaid PA Circular 06/2006 (VII) and that such payments were made from the year 2008 onwards until it was abruptly stopped in the year 2012.

PA Circular bearing No. 06/2006 (X)

This circular was issued on 26-03-2012. Paragraph 02 of the said circular reads as follows;

“It has been reported to this Ministry that the salary conversions of officers, **who hold departmental posts to which the salaries of All Island Services or equivalent salaries have been determined**, have not been made in the correct way in accordance with the instructions given by the circular...”
(emphasis added)

Therefore, with a view to rectifying the salary conversions, two examples of salary calculations were attached to this circular.

Moreover, the circular at paragraph 04 laid down a mechanism for rectification of salary conversions, and recovering of excess amounts paid to officers. Paragraph 04, also referred to the persons entitled to the salary conversions as;

“Officers holding posts in All Island Services or certain departmental posts to which equivalent salaries have been determined **shall mean the officers for whom the provisions have been made to place them on relevant salary step along with four incremental benefits on passing first and second efficiency bar examinations within a satisfactory period of service of six years** from the date of appointment to the recruitment grade as per the provisions of the service minute.”
(emphasis added)

Consequent to issuance of the said circular, it's observed the 1st Respondent, Director General of the Department of Technical Education and Training dispatched a letter to all the Principals of the Technical Colleges, stating that officers of Grade II and I of SLTES are not entitled to get the three increments and therefore steps will have to be taken to recover the overpayments, within a period of six months.

Whilst the Petitioners consider the decision to recover the said payments, violates their Fundamental Rights, the Respondents justified the said decision upon the basis that a *bona fide* error has been made by the Respondents and therefore the recovery of such payments is lawful and valid.

Further, the Petitioners contend, that P.A. circular 06/2006 (X) and the aforesaid intimation by the 1st Respondent with the concurrence of the Ministries of Finance and Public Administration to recover the overpayments is unreasonable, unfair and untenable in law, as the Petitioners are also Grade II officers in the salary scale SL-1-2006 on the relevant date. The Petitioners submit that the subsequent definition given in PA Circular 06/2006 (X) in relation to the persons to whom the circular applies, cannot have a retrospective effect. Moreover, it will then be to the detriment of the Petitioners.

The Petitioners also submit that they have been treated unfairly and unequally *vis-à-vis* the other public officers in salary scale SL-1-2006 who are similarly circumstanced as the Petitioners and therefore aver that the PA Circular 06/2006 (X) is unlawful, arbitrary, capricious and *mala fides*.

Sri Lanka Technical Education Service (SLTES)

SLTES is governed by a Service Minute. According to the provisions therein its officers belong to three Grades, I, II and III. Grade III had segments A and B, which were subsequently amalgamated into one, *i.e.*, Grade III.

Though SLETS is not an All Island Service, the Petitioners' contention is that in view of the Petitioners being placed in SL-1-2006 salary scale, which is granted to All Island Services that they are entitled to the benefits mentioned in PA Circular 06/2006 (VII) and the three increments granted to the Petitioners are in order. Further, the Petitioners argue in view of the wording in PA Circular 06/2006 (VII) which states "that posts for which equivalent salaries have been assigned" that they fall within the provisions of PA Circular 06/2006 (VII) and therefore they should be granted the three increments. The Petitioners vehemently argued that they do not fall within the parameters of PA Circular 06/2006 (X).

It was also contended by the Petitioners that the 'meaning' or the definition or interpretation given in paragraph 04 of PA Circular 06/2006 (X) wherein reference is made to 'efficiency bar examinations' and other stipulations were not among the conditions stated in PA Circular 06/2006 (VII). In any event, it was averred that PA Circular 06/2006 (X) cannot have a retrospective effect. Therefore, the argument of the Petitioners was that the said PA Circular 06/2006 (X) will have no bearing on the Petitioners.

Further, it was submitted that some of the Petitioners had already retired and had drawn pensions and gratuity, based on the salary conversions specified in PA Circular 06/2006 (VII)

and for that reason too, reducing their pensions and the purported recovery of excess payments should not be resorted to as it has been granted legitimately.

The Petitioners further contended that they were never given a hearing, prior to taking the impugned decision. Further, such action breached the principles of national justice and amounts to a punishment. It was also contended the action of the Respondents was arbitrary and discriminatory.

***Bona fide* error**

The only submission put forward by the State, to meet the challenge of the Petitioners was that the granting of increments was a *bona-fide* error.

Learned DSG for the Respondents, vehemently argued that SLTES was neither an All Island Service nor a post for which equivalent salaries have been assigned. Explaining further, it was submitted, in order to receive the benefits as stipulated in PA Circular 06/2006 (VII), the posts to which equivalent salaries had been assigned, should fall within the definition in paragraph 04 of PA Circular 06/2006 (X) and the Petitioners do not come within the purview of the said section, as they do not possess the said criteria.

Moreover, it was contended that only the Sri Lanka Administrative Service and closed services such as the Inland Revenue Service will be entitled to the benefits stated in PA Circular 06/2006 (VII) *viz.*, the receipt of three increments. Therefore, it was argued that SLTES and the Petitioners cannot be classified as officers suffering an anomaly. Hence, extending and granting the said privilege of three increments to SLTES was a *bona fide* error which should be corrected.

Nevertheless, the Respondents did not pin the responsibility and the wrongful interpretation and application of PA Circular No 06/2006(VII) on a particular Respondent but took up the position that the increments were granted, consequent to the requests made by some officers in Grade II of SLTES.

Upon perusal of the detailed objections filed on behalf of the Respondents, it is apparent that the Respondents, in order to avoid liability have gone on to compare the salary steps and salary scales of SLTES *vis-à-vis* All Island Services to justify their contention that it was a genuine error. Moreover, the Respondents takes up the position that the Petitioners who may have fulfilled certain criteria laid down in PA Circular 06/2006 (VII) will not be entitled to the benefits stated therein as all the criteria are not fulfilled.

Furthermore, the case of the Respondents is that the definition stated in PA Circular 06/2006 (X) is not a new definition which has retrospective effect as contended by the Petitioners, but only a clarification of the manner, upon which 'certain departmental posts to

which equivalent salaries have been determined', can be classified and identified as an All Island Service.

The learned DSG on behalf of the Respondents further submitted, that PA Circular 06/2006 (VII) itself provided for recovery of salary increments paid contrary to the instruction given in PA Circular 06/2006 (VII) in six consecutive instalments, and therefore the action taken to recover overpayments cannot be faulted and/or be considered as a violation of a Fundamental Right.

In any event it was contended that the Petitioners who had retired were duly informed prior to steps being taken to recover the overpayments. It was further argued, in terms of Section 43A of the Minutes of Pension, such overpayments can be recovered, as its apparent that the Petitioners had been unjustly enriched at the expense of public funds.

To substantiate its stand, the Respondents relied upon the observations made, in relation to legitimate expectation in **Nimalsiri v. Colonel PPJ Fernando** (Supra) wherein it was held;

“It is apparent from the documents filed, that the payment of half the salary beyond the end of the second enlistment was an administrative error, an error cannot be a basis of a legitimate expectation. In order to succeed in an application made on the grounds of legitimate expectation, the expectation must be legitimate. Mistakes, decisions based on erroneous factual data or illegality cannot be the basis for a legitimate expectation. A similar view was expressed in Vasana v. Incorporated Council of Legal Education and others (2004) 1 SLR 154”

Its' observed that in the aforesaid **Nimalsiri case**, the matter in issue was the enlistment of a soldier for the third time, in the Sri Lanka Army. Under Soldiers Service Regulations only two enlistments are permitted and that too at the discretion of the authorities. The court held that the Petitioner has failed to establish that he has a legitimate expectation or he was entitled in law to be enlisted in the Sri Lanka Army for a third time. His case was that a payment of half salary beyond the second enlistment had been made to him giving him a legitimate expectation. On behalf of the Army it was contended, that it was an administrative error, and the court held there was no basis for the Petitioner in the said case to rely on legitimate expectation, upon an illegal payment.

The three increments granted in the instant case, which is based on PA Circular 06/2006 cannot be compared to the payments made or the half salary paid in **Nimalsiri case**.

In my view the factual matrix in the aforesaid **Nimalsiri case** can be easily distinguished from the instant case and the observations made therein should be looked at from the said perspective and not applied blindly to the matter in issue.

Having considered to the submission made on behalf of the Respondents, that the Petitioners cannot stake a claim for legitimate expectation on a genuine mistake, I now wish to consider the submissions of the Petitioners.

At the outset the Petitioners submitted that they should not be punished for a mistake or an oversight committed by the Respondents and relied upon the observations of Sisira J de Abrew, J., in the case of **D.B.D. Rajapakshe v. Abdul Majeed and others SC/FR/418/2015 S.C.M. 12-02-2021** to justify its contention.

In the said case it was observed,

“...the Petitioner was not entitled to be appointed to the post of clerk (permanent cadre) [...]. Who appointed the Petitioner to the post of clerk (permanent cadre)? It is the Director General of Irrigation (1st Respondent) who appointed the Petitioner to the permanent cadre acting on behalf of the Government [...]. If it is a mistake, whose mistake was it? It was the mistake of the 1st Respondent.[...] The Petitioner cannot be and should not be penalized for the mistake committed by the 1st Respondent. **It is an accepted principle in law that no man is permitted to take advantage of his own mistake.** This view is supported by the observations made by His Lordship Justice Sansoni in the case of Kanapathipillai vs. Meerasaibo 58 NLR 41 at page 43, wherein it was observed “no man is allowed to take advantage of his wrong [...] the Petitioner’s appointment to the post of clerk was cancelled on the basis of an alleged mistake committed by the Director General of Irrigation [...] On this ground alone this court should quash the letters [...] Further there is no any allegation that the Petitioner committed any wrongful act.” (emphasis added)

Legitimate expectation

In the aforesaid **Rajapakshe’s case**, the court examined the question of mistake together with the principle of legitimate expectation. The court considered the cases of **Dayarathne v. Minister of Health (1991) 1 SLR 393**, **Srimal and others v. Board of Directors of the Co-operative wholesale Establishment and others [2003] 2 SLR 32**, **Surangani Marapana v. Bank of Ceylon [1997]3 SLR 156**, **Pinnawala v. Sri Lanka Insurance Corporation [1997]3 SLR 85** and thereafter came to the conclusion, that the Petitioner in **Rajapakshe case** had a legitimate expectation and that the Petitioner’s Fundamental Rights guaranteed under Article 12(1) and 14(1)(g) have been violated by the Director General of Irrigation who acted on behalf of the Government.

Our attention was also drawn by the learned Counsel Mr. Hewamanna [who appeared for the Petitioners that had retired from service], to the case of **Athukorala v. H.M. Gunasekera, Secretary Ministry of Education SC/FR 232/2012 S.C.M. 28.10.2016** wherein Prasanna Jayawardena PC J., held that;

“....a public officer who has spent decades in the public service prior to his retirement, has earned his pension. He has served in the expectation of receiving a pension (and where applicable a gratuity) from the time he retires. He has retired on this. His plans for his old age and meeting the needs of his family during that time, are based, to a considerable extent, on his expectation that he will receive a monthly pension during his lifetime.”

Thus, in summary the contention of the Petitioners who are in service and who have retired from public service, was that the Petitioners cannot be penalized for a mistake and/or *bona fide* error committed by the Respondents as the Petitioners have a legitimate expectation to draw the salaries and the pensions, which they received for the last four years, from 2008 to 2012.

Countering the said position, the Respondents submitted that since the matter in issue was a *bona fide* error such overpayments can be recovered. The Respondents drew our attention to paragraph 07 of P.A circular 06/2006 (VII) and Section 43A of the Minutes of Pension to substantiate its position.

The said provisions are as follows;

PA Circular 06/2006 (VII)

“(07) The salary increments paid contrary to the instructions of this circular and [....] should be recovered by conservative 06 installments.”

Minutes on Pension

“(43A) There shall be deducted from the amount of any pension, annuity, allowance or gratuity payable under these Minutes to any public servant or any person who has retired from public service, any overpayment of funds...”

This Court has considered the aforesaid submissions and especially the contentions pertaining to *bona fide* error and legitimate expectation. We have also examined the PA Circular 06/2006 and the numerous amendments made thereto, especially PA Circular 06/2006 (VII) and PA Circular 06/2006 (X) and the necessity to issue many revisions to the initial circular, which indicates the lack of clarity in the language and the contents of the circular.

We are also mindful of the submissions made by the Respondents, that the correction of the anomaly referred to in PA Circular 06/2006 (VII) should have been in respect of only officers in the All Island Services and officers who are in posts for which equal salaries have been assigned by the National Salaries and Cadre Commission. We fail to understand if so, why the said fact could not have been stated clearly and explicitly in the circular itself.

However, we note that the SLTES officers have also been granted a salary scale, equal to officers in All Island Services, by the National Salaries and Cadre Commission, though SLTES is not an All Island Service as per the Service Minute of the SLTES.

Having examined all the above, we are of the view that the Respondents have failed to justify the legal basis upon which a decision was made to recover the sums already paid to the Petitioners during the years 2008 to 2012.

Does the delay on the part of the Respondent act as a detriment on the Petitioner?

We have gone over PA Circular 06/2006 (VII) and PA Circular 06/2006 (X) in great detail and we find the circular lacks clarity. Indecisiveness may have led to the provisions of the circular not being properly interpreted or it could be for some other reason not divulged to Court, that the purported mistake or error has occurred and repeated for a period of four years without correction.

In Dona Diana Pearly v. Premarathne, Acting Secretary Educational Service Board and another [1997] 3 SLR 77, Mark Fernando J., lucidly observed;

“The power of appointment entrusted to the appointing authority had not only to be exercised correctly and fairly, but when it came to the correction of an error-expeditiously as well. And it was not enough to correct the error, the Petitioner should also have been told what effect it had on her eligibility for a teaching appointment. That was an expectation, an interest, a safeguard, a protection which the petitioner had. While a delay of a few weeks was permissible, **I cannot assume that a delay of over eight months in correcting the error, and the failure of over a year to say how it affected her, were necessary, normal or usual**; that displayed a lack of concern for the rights and interest of candidates constituting, in the circumstances, a denial of the equal protection of the law” (emphasis added)

The observations referred to above clearly indicate that a correction of errors has to be done expeditiously and the failure of more than one year necessarily displays a lack of concern and affects the rights and interests of a party, which amounts to a denial of equal protection of the law.

In the instant case, even accepting the Respondents' submission that the correction of error was to withdraw the three increments granted to officers not belonging to the All Island Service and posts for which equivalent salaries have been assigned is justified, the decision for such process took place only in 2012, upon issuance of PA Circular 06/2006 (X) after four years. In the words of Mark Fernando, J., in the **Dona Diana case**, a delay of four years displays a lack of concern for rights and interests of persons.

However, it is seen that paragraph 04 of PA Circular 06/2006 (X) refers and defines persons entitled to salary conversions and paragraph 02 illustrate how to rectify the salary conversions and show the manner in which calculation should be made. Why couldn't the Respondents issue these guidelines earlier? Why was not it referred to in PA Circular 06/2006 (VII) itself? The Respondents have not given any justifiable reason for the omission and delay. In my view, the undue delay taken for the correction of an error, even if it can be referred to as an error, amply showcase that the Respondents have acted in a callous manner, without an iota of thought about public officers who will be affected by such provisions. Such action or inaction of the Respondents resulted in the Petitioners being denied the Fundamental Right of equal protection of the law.

The PA Circular 06/2006 (X) is also silent and does not refer to public officers who have retired, subsequent to the issuance of PA Circular 06/2006 (VII). Hence, it is apparent that PA Circular 06/2006 (X) is also ambiguous and has many gaps and shortcomings.

In such a situation, when there is no clarity and certainty in the language and the wording of the circular, should the Petitioners be penalized? Isn't it a mistake in calculation, which happened, due to the actions of the Respondents and not due to Petitioners before Court?

As stated earlier, the PA Circular 06/2006 (X) indicates the manner in which such rectifications should be done and also gives illustrations as to how calculations need to be done. Furthermore paragraph 04 states, who can be and should be identified in order to grant the benefits of PA Circular 06/2006 (VII). In any event, is this the policy of the Government? Whilst the PA Circular 06/2006 (VII) indicates it is issued with the concurrence of the National Salaries and Cadre Commission and the General Treasury, the PA Circular 06/2006 (X) only refers to the General Treasury and not the National Salaries and Cadre Commission, which bestowed the SL-1-2006 salary scale to the Petitioners.

The Respondents strenuously argued that the said provisions contained in paragraph 04 of PA Circular 06/2006 (X) has no retrospective effect and was only a clarification. Then what is the rationale to have such a definition in the said circular? Weren't the Respondents aware as to who should be considered to fall within the ambit of PA Circular 06/2006 (VII)?

I do not wish to delve into the area of retrospectiveness at this stage. Suffice is to state PA Circular 06/2006 (X) appears to clarify and categorize public officers, who should have been granted the benefit referred to in PA Circular 06/2006 (VII).

Our Courts have always accepted that the State is at liberty to alter policy. Nevertheless, it has also been held that it cannot ignore the expectations engendered by its actions and or conduct. Ref: **Dayaratne v. Minister of Health** [Supra].

Considering the aforesaid, it is apparent that by issuance of PA Circular 06/2006 (VII) the Petitioners were given a reasonable expectation that the salaries and pensions would be enhanced. Thus, the arbitrary reduction of the salary and the pension, post retirement by PA Circular 06/2006 (X) *i.e.*, by executive and administrative action, upon the basis it is erroneous and especially considering the conduct of the Respondents to withdraw the increments granted and to recover such payments from the Petitioners salaries and pension, after four years of granting of such payments, in my view violates the Fundamental Rights of the Petitioners guaranteed under Article 12(1) of the Constitution.

We have also considered the numerous grounds relied upon by the Petitioners to substantiate the case not only through the lens of a Fundamental Rights violation, but also through the concepts of judicial review, especially in respect of the Petitioners who have retired from public service and are now drawing a pension.

We are mindful, that the Petitioners have opted to come before this Court *vis-à-vis* go before the writ court, and has already obtained interim relief.

We have also considered the time bar objection and the other technical objections raised by the Respondents before Court and we see no merit in the said submissions.

Having examined the overall picture pertaining to the grievances of the Petitioners, both serving public officers and the retirees, we hold that the Petitioners' Fundamental Rights to the equal protection of the law guaranteed under Article 12(1) of the Constitution have been violated by the executive and or administrative actions of the Respondents.

We accordingly grant a Declaration that the Fundamental Rights of the Petitioners have been infringed under Article 12(1) of the Constitution.

Further, we declare that the Fundamental Rights of the Petitioners guaranteed by Article 12(1) of the Constitution, have been infringed by the actions of the 1st to 6th Respondents in SC/FR 536/2012 and the action of the 1st to 3rd Respondents, in SC/FR 560/2012 respectively.

We declare that the decisions made by the aforesaid Respondents, in the said two applications to recover the increments granted to the Petitioners are null and void. We direct that the said decisions be cancelled forthwith.

In view of the interim relief granted by this Court in October 2012, the Respondents were restrained from making any deductions from the salaries and pensions of the Petitioners, in terms of the provisions of PA Circular 06/2006 (X) dated 26.03.2012.

Hence, we refrain from awarding compensation to the Petitioners.

In view of the reasons more fully adumbrated herein, we allow SC/FR/ 536/2012 and SC/FR/ 560/2012 respectively.

Applications are allowed. Parties may bear their own costs.

Chief Justice

Achala Wengappuli, J.

I agree

Judge of the Supreme Court

Arjuna Obeyesekere, J.

I agree

Judge of the Supreme Court