

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

In the matter of an application under  
Article 126 read with Article 17 and  
the other Articles of the Constitution of  
the Democratic Socialist Republic of  
Sri Lanka

Rathnayake Mudiya Selage Somalatha  
Rathnayake  
No.22 F, Kudawewa,  
Dalukana, Polonnaruwa.

**SC (FR) No. 71/2020**

**Petitioner**

**VS.**

- 1) Neel Bandara Hapuhinna,  
The Secretary,  
Ministry of Mahaweli, Agriculture,  
Irrigation and Rural Development, No. 500,  
T. B. Jaya Mawatha, Colombo 10.
  - 1a) U. D. C. Jayalal,  
The Secretary,  
Ministry of Irrigation,  
No. 500, T. B. Jaya Mawatha,
- 2) B. A. S. Sunil Perera,  
Director General, Mahaweli Authority of Sri  
Lanka,  
No. 500, T. B. Jaya Mawatha, Colombo 10.
  - 2a) Keerthi B. Kotagama,  
Director General,  
Mahaweli Authority of Sri Lanka  
No. 500, T. B. Jaya Mawatha,  
Colombo 10.
- 3) K. C. A. Wimal Kumara  
Project Manager (C Zone),

Dehiaththakandiya Mahaweli Authority.

- 4) R. M. S. Rathnayake  
Block Manager.  
Block Manager's Office,  
Weheragala, Ruhunugama,  
Polonnaruwa.
- 5) W. G. Nevil Jayasiri, Block Manager, Block  
Manager's Office, Weheragala,  
Ruhunugama, Polonnaruwa.
- 6) Senaka Rajapaksha,  
Member of Pradeshiya Saba Dimbulagala,  
Pradeshiya Sabawa,  
No 124, Weheragala,  
Ruhunugama,  
Polonnaruwa.
- 7) Jagath Samarawickrama,  
Ex President of the Dimbulagala,  
Pradeshiya Saba,  
Lanka Filling Station,  
Siripura, Polonnaruwa.
- 8) Roshan Ranasinghe,  
Ex MP and Ex State Minister Mahaweli  
Development, Sirisangabo Pedesa,  
Polonnaruwa.
- 9) Honourable Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

Before : Janak De Silva, J  
Menaka Wijesundera, J  
K. M. G. H. Kulatunga, J

Counsel : Shriral Lakthilaka with Chathuranga Hathurusinghe instructed by N. P. J. Silva for the Petitioner.

Ganga Wakishta Arachchi, DSG instructed by Nimalika Gunathilake, SSA for the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 9<sup>th</sup> Respondents.

Written

Submissions : Written submissions on behalf of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 9<sup>th</sup> respondents filed on 9<sup>th</sup> February, 2026.

Argued on : 09.03.2026

Decided on : 21.05.2026

**MENAKA WIJESUNDERA J.**

The petitioner in the instant matter has sought a declaration from this court that his fundamental rights under Article 12 (2) of the Constitution have been violated. At the very outset, the counsel for the petitioner stated that relief under (ii) of the prayer to the petition has already been granted, but he is proceeding with the instant application.

When this matter was supported before this court on 18.05.2023, leave has been granted under Article 12 (1) and Article 12 (2) of the Constitution.

The said Articles state as follows,

*“12. (1) All persons are equal before the law and are entitled to the equal protection of the law.*

*(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds: Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any Public Corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office: Provided further that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such*

*employment or office where not function of that employment or office can be discharged otherwise than with a knowledge of that language”*

The petitioner in the instant matter had served as a divisional manager of Weheragala Sector until 06.02.2020, where she had been entrusted to manage and develop the matters of settler villagers. Powers to function as Divisional Manager C zone had been entrusted to her by letter dated 03.10.2016 (P1) by the director general of the Mahaweli Authority.

On 06.02.2020, the 3<sup>rd</sup> respondent, by way of a letter, had informed the petitioner that she had been transferred to the Rambakana Oya Division with immediate effect the said letter has been marked and produced as P9. In P9, it has been stated that the decision had been taken by the 2<sup>nd</sup> respondent as per letter 02.02.2020, which has been marked and produced as P10.

The petitioners’ grievance to P9 and P10 is that the effect of the transfer had been with immediate effect, which she claims was not based on general or specific service requirements or consequent to a prima facie case of misconduct by the petitioner; therefore, she has claimed that it has been carried out for politically motivated reasons. As such, she had claimed redress by way of filing the instant application.

She had also claimed that the office that she has been transferred to is situated in the Eastern Province, close to the Ampara District, which she claims is a very difficult area for a female officer to serve. Therefore, she had stated that the transfer by way of P9 and P10 is a violation of the provisions in the Establishment Code, which are 3.8.4, 3.8.6 and 4.1.

The respondents, in their objections, have taken up the position of the instant application being time-barred under Article 126(2) of the Constitution. An extract of the said Article has been reproduced below.

*Article 126 (2) - “Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an Attorney-at-Law on his behalf, within one month thereof”*

However, in exceptional circumstances, the court has exercised its discretion to entertain fundamental rights applications where the petitioner was prevented from acting within one month of the alleged violation, provided there was no lapse on the petitioner’s part.

The above analysis of Article 126 (2) has been upheld in cases such as **Gamaethige v. Siriwardena [1988] 1 Sri LR 384 at 401** decided by M. D. H. Fernando, J and more recently in **SC/FR/46/2021**, decided by Mahinda Samayawardhena, J, wherein his Lordship has extensively articulated what constitutes a violation of Article 126(2). The relevant extract is set out below,

*“The strict literal interpretation of this Article is that the time limit of one month set out in Article 126(2) is not open to interpretation and non-compliance warrants automatic dismissal of the application in limine without going into the merits of the complaint. In exercising the extraordinary and exclusive jurisdiction conferred upon this Court to protect the fundamental rights of the people, this Court, whilst emphatically emphasizing that the time limit of one month is mandatory and shall be complied with, has nevertheless relaxed the rigidity of the time tag in appropriate cases by adopting a liberal as opposed to a literal interpretation of Article 126(2). This is predominantly done by the adoption of the maxim *lex non cogit ad impossibilia*: the law does not expect a man to do the impossible. Hence, it is accepted that the period of one month begins to run not from the date of violation of the right but from the date of becoming aware of the violation of the right or from the time of being in a position to take effective steps to come before the Supreme Court. The test to be applied is objective, not subjective.”*

The alleged transfer pleaded by the petitioner is at P10, and it has been dated 2<sup>nd</sup> February 2020. In her petition, she claims that she received the said letter on 6<sup>th</sup> of February 2020. Therefore, upon evaluation of the timeline in P9 and P10 and the date of filing of the instant petition, I see no violation under Article 126(2) of the Constitution.

The other two submissions averred in the respondents' objections are that the petitioner and the 4<sup>th</sup> respondent in the application are one and the same. This I observe to be correct, but upon consideration of the relief prayed by the petitioner in her petition, I find that there is no relief sought from the 4<sup>th</sup> respondent; therefore, the said defect in the caption to the petition can be overlooked.

The respondents further contend that, subsequent to the filing of the present application, the petitioner, on her own accord, sought a transfer to the very same place of work to which she had previously been transferred pursuant to documents marked P9 and P10. This position has been brought to the attention of this Court by way of documents marked 2R2 and 2R3.

Having considered 2R2, I find that the petitioner's request was made to the Divisional Manager of the C zone of the Mahaweli Authority on the 17<sup>th</sup> of May 2021, and that, on the 08<sup>th</sup> of July, 2021, the said transfer was granted.

In view of the letters marked 2R2 and 2R3, I find that although the petitioner complained of being subjected to differential treatment by the 2<sup>nd</sup> Respondent through the issuance of P9 and P10, the said letters reveal that she had, in fact, requested a transfer to the same location, which she had previously refused to accept in 2020.

Therefore, I find the allegation of a violation of her fundamental Rights under Article 12(1) and 12(2) of the Constitution to be baseless and without merit. As such, I dismiss the instant application without costs.

**JUDGE OF THE SUPREME COURT**

**Janak De Silva, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

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

I agree.

**JUDGE OF THE SUPREME COURT**