

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

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

SC (FR) Application No. 8/2025

W.S. Sathyananda,
'Nila Piyasa',
4, Hector Kobbekaduwa Mawatha, Colombo 7.

PETITIONER

Vs.

1. Professor Kapila Perera,
Secretary,
Ministry of Transport, Highways,
Ports and Civil Aviation,
No. 19, Chaithya Road, Colombo 1.
2. Hon. Bimal Rathnayake,
Minister of Transport, Highways,
Ports and Civil Aviation,
No. 19, Chaithya Road, Colombo 1.
3. Mr. S. Aloka Bandara,
Secretary,
Ministry of Public Administration,
Provincial Councils and Local Government,
Independence Square, Colombo 7.
4. Hon. Dr. A.H.M.H. Abayarathna,
Minister of Public Administration,
Provincial Councils and Local Government,
Independence Square, Colombo 7.
5. Sanath J. Ediriweera,
Chairman, Public Service Commission.
6. W.H.M.M.C.K. Dayaratne,

Secretary, Public Service Commission.

7. S.M. Mohamed
8. N.H.M. Chithrananda
9. Prof. N. Selvakkumaran
10. M.B.R. Pushpakumara
11. Dr. A.D.N. de Zoysa
12. R. Nadarajapillai
13. C. Pallegama
14. G.S.A. de Silva, PC

7th – 14th Respondents are Members of the Public Service Commission.

5th – 14th Respondents are at No. 1200/9, Rajamalwatta Road, Battaramulla.

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

RESPONDENTS

- Before:** Janak De Silva, J
Arjuna Obeyesekere, J
Dr. Sobhitha Rajakaruna, J
- Counsel:** Gamini Perera with Harshani Abeywardena and Manoj Kumar De Silva for the Petitioner

Navodhi De Zoysa, Senior State Counsel for the Respondents
- Argued on:** 12th March 2026
- Written Submissions:** Tendered on behalf of the Petitioner on 26th August 2025
Tendered on behalf of the Respondents on 5th August 2025
- Decided on:** 19th May 2026

Obeyesekere, J

- (1) By his petition filed on 17th January 2025, the Petitioner has complained to this Court that the Respondents have violated his fundamental rights guaranteed by Articles 12(1) and 14(1)(g) of the Constitution. Leave to proceed was granted on 5th March 2025 against all Respondents for the alleged violation of Article 12(1).

The case of the Petitioner

- (2) The Petitioner is a Special Grade Officer of the Sri Lanka Administrative Service. He possesses a Bachelor's Degree in Public Administration and a Master's Degree in Business Administration with accounting, finance and business economics. At the time this application was filed on 17th January 2025, the Petitioner had completed almost 30 years of service as a Public Officer. Having served in many Government Departments, Ministries and Agencies, both at the national and provincial level, including at the Treasury, the Petitioner had been appointed in November 2022 as the Secretary to the Ministry of Urban Development and Housing.
- (3) Pursuant to the Presidential Election held in September 2024, there was a significant reduction in the number of Cabinet Ministries. As a result, the Petitioner was not re-appointed as a Secretary to a Ministry. On 24th September 2024, the Petitioner had been assigned to the Internal Administration Division ["Officers pool"] at the Ministry of Public Administration with no specific duties or functions being assigned, until such time he was appointed to a suitable post commensurate with his experience and qualifications. It is unfortunate that senior public officers are kept in the "Officers pool" for several months, as in this case, with no duties being assigned, resulting in a complete under-utilization of human resources.
- (4) Having applied for various special grade positions within the Sri Lanka Administrative Service, the Petitioner states that by letter dated 14th December, 2024 [P14], he was appointed as the Additional Secretary, Ministry of Transport, Highways, Ports and Civil Aviation [Ministry of Ports] with effect from 16th December 2024, by the Ministry of Public Administration, subject to the covering approval of the Public Service Commission. The Petitioner states that he assumed duties in his

new post on 17th December 2024 and informed the Ministry of Public Administration and the Public Service Commission of such fact.

- (5) The Petitioner states further that he wanted to pay a courtesy call on the 1st Respondent, the Secretary to the Ministry of Ports but since the 1st Respondent was not in his office at that time he sent the following WhatsApp message [P17a] to the 1st Respondent around 11 in the morning of 17th December 2024:

“Dear Sir – I reported to work today under you as the Additional Secretary (Admin). Looking for a better time to contact you as courtesy call. Thank you. Sathyananda W.S – SLAS Special Grade.”

- (6) In response, the Petitioner had received the following message [P17b] from the 1st Respondent the same afternoon:

*“Dear Mr. Sathyananda,

Regret very much that we have consented with the concurrence of the Hon. Minister to another officer **who brought a request**, please. Accordingly, I shall inform the Public Administration Secretary, please. Apologies.”*

- (7) The Petitioner states that in spite of the above, he reported for duty on the next date – i.e., 18th December 2024 at the Ministry of Ports, as he was required to do in terms of P14. The Petitioner states further that around 12.30 that afternoon, the 1st Respondent had come to his office and told him to leave the office as his services were not required. The Petitioner claims that the language used by the 1st Respondent and his conduct was unbecoming of a senior public official.

- (8) The Petitioner had reported to the Ministry of Public Administration on 19th December 2024 and had communicated the above incident to the Public Service Commission by his letter dated 23rd December 2024 [P18/6R9] where he stated as follows:

“එදින ප.ව. 12.30 ට මාගේ රාජකාරි නිලකාමරයට පිවිසි එම අමාත්‍යාංශයේ ලේකම් මහාචාර්ය කපිල පෙරේරා මා එහි රාජකාරි කිරීම ඔහුට එකඟවිය නොහැකි බවත් එම කාර්යාලයෙන් පිටවන ලෙසත් මාවෙත දන්වන ලදී. එම වචන හා ඉරියව් ශිෂ්ඨ සම්පන්න උසස් රාජ්‍ය නිලධාරියෙකු ගෙන් අපේක්ෂා කල නොහැකි බව මාහට ප්‍රත්‍යක්ෂ විය.

මා රාජ්‍ය සේවයේ වසර 30 කට අධික කාලයක් විවිධ තනතුරු දරා අමාත්‍යාංශ ලේකම්වරයෙකු ලෙස වසර 2 ක් සේවය කර ඇති අතර මාගේ පාලනයෙන් බැහැර හේතුවක් මත එම ලේකම්වරයාගේ අවමානයටත් නොසලකා හැරීමටත් මුහුණ දුන්නෙමි.

මේවන විට ඉහල රාජ්‍ය නිලධාරීන්ගේ පත්වීම් බලධරයා වන රාජ්‍ය සේවා කොමසමේ අනුමැතිය ලැබී ඇතත් වරාය අමාත්‍යාංශ ලේකම්වරයාගේ තිතුවක්කාරී ක්‍රියාව මත එම තනතුරෙහි රාජකාරී කිරීමට නොහැකිවී ඇත.

රාජ්‍ය සේවයේ අත්දැකීම් බහුල පෞරුෂ නිලධාරීන්ගේ සේවය අත්‍යවශ්‍ය අවස්ථාවක එම සේවාව ලබාදීමට ඇති අවස්ථාව අහිමිකිරීම රටට අහිතකර වන අතරම විශ්‍රාම යාමට ආසන්න වයසේ පසුවන මා වැනි නිලධාරීන්ගේ මානසික කණස්සල්ල හා ඔවුන්ගේ අඹුදරුවන් ගේද සහපිවනය බදුවැටීම බලවත් අපරාධයක් හා සාපයක් වන බව ඉදුරාම දැනිමි.”

(9) Having languished in the Ministry of Public Administration for a further three weeks, presumably in the “Officers pool”, the Petitioner had been appointed as the Additional Director General, Department of Technical Education and Training at the Ministry of Education. The Petitioner retired from Public Service on 23rd September 2025 upon reaching the age of 60.

(10) It is in the above circumstances that the Petitioner filed this application complaining that:

- (a) All matters relating to public officers including their transfers are within the domain of the Public Service Commission;
- (b) The consent or the concurrence of the Secretary to a Ministry is not required when public officers are transferred by the Public Service Commission;
- (c) The 1st Respondent has no authority to challenge the decision of the Public Service Commission or to prevent the Petitioner from reporting for duty; and thus,
- (d) The 1st Respondent preventing him from continuing to serve at the Ministry of Ports is arbitrary and is violative of his fundamental rights guaranteed by Article 12(1).

The position of the Respondents

(11) The sequence of events that culminated in this application has been explained by the Secretary, Public Service Commission in her affidavit in the following manner:

- (a) The Petitioner had informed the Ministry of Public Administration by letter dated 6th December 2024 [6R1] that the post of Additional Secretary at the Ministry of Ports is due to fall vacant on 16th December 2024 and sought that he be appointed to the said post, as the Petitioner was attached to the “Internal Administrative Division” at the Ministry of Public Administration;
- (b) By letter dated 9th December 2024 [6R2], the Ministry of Public Administration had sought the approval of the Public Service Commission to appoint the Petitioner to the post of Additional Secretary, Ministry of Ports;
- (c) Subject to the covering approval of the Public Service Commission, the Ministry of Public Administration had directed the Petitioner in writing to report to the said Ministry with effect from 16th December 2024 [6R3/P14];
- (d) The Petitioner had accordingly reported for duty on 17th December 2024 [6R4];
- (e) The Public Service Commission had granted approval for the said appointment on 19th December 2024 [6R5];
- (f) By letter dated 18th December 2024 [6R6], the 1st Respondent had informed the Secretary, Ministry of Public Administration as follows:

“මෙම අමාත්‍යාංශයේ අතිරේක ලේකම් (පාලන හා මුදල්) තනතුරේ රාජකාරි කළ නිලධාරිනිය 2024.12.13 දින (ඉකුත් සතියේ සිකුරාදා දින) සේවයෙන් පසු විශ්‍රාම ගැනීම හේතුවෙන් පුරප්පාඩු වූ එම තනතුර සඳහා, එම නිලධාරිනියගේ විශ්‍රාම යාමට පෙර සිටම ලැබුණු ඉල්ලීම් සලකා බලා මෙම අමාත්‍යාංශයේ විෂය පථයට ගැලපෙන උචිත නිලධාරියෙකු හට මාගේ එකඟතාවය ලබා දී අවශ්‍ය කටයුතු ඉටු කිරීමට මත්තෙන් මෙම පත්වීම සිදු කර ඇත.

ඒ අනුව ඉහත කරුණු සැලකිල්ලට ගෙන, ඔබගේ 2024.12.14 දිනැති ලිපිය මගින් සිදු කරන ලද පත්වීම සම්බන්ධයෙන් මාගේ එකඟතාවය නොමැති බැවින්, එම අදාළ පත් කිරීම අවලංගු කිරීමට කටයුතු කරන මෙන් කාරුණිකව දන්වා සිටිමි. මේ සම්බන්ධයෙන් සිදු වූ අපහසුතාවය පිළිබඳ මාගේ කණගාටුව ප්‍රකාශ කරමි.”

- (g) An Additional Secretary, Ministry of Agriculture, Lands and Irrigation had informed the Secretary of that Ministry by letter dated 24th December 2024 [6R7], (i) that she is desirous of assuming the post to which the Petitioner had

already been appointed by the Public Service Commission, (ii) that the 1st Respondent has already provided his written approval, and (iii) to release her without a replacement.

- (h) The Secretary, Ministry of Agriculture, Lands and Irrigation had thereafter written to the Public Service Commission on the same date as 6R7 [6R8] recommending the request made by 6R7.
- (i) Referring to 6R3, 6R5, 6R6 and 6R7, the Additional Secretary, Ministry of Public Administration had by letter dated 27th December 2024 [6R10] informed *inter alia* the Secretary, Public Service Commission as follows:

“එබැවින්, ශ්‍රී ලංකා පරිපාලන සේවයේ විශේෂ ශ්‍රේණියේ ඩබ්ලිව්.එස්. සහනාන්දු මහතා ප්‍රවාහන, මහාමාර්ග, වරාය සහ සිවිල් ගුවන් සේවා අමාත්‍යාංශයේ අතිරේක ලේකම් තනතුර වෙත පත්කිරීම සඳහා ඔබේ සමංක හා 2024.12.19 දිනැති ලිපිය මගින් ලබා දෙන ලද අනුමැතිය අවලංගු කිරීමට තීරණය කරමි.

තවද, කෘෂිකර්ම, ඉඩම්, පශු සම්පත්, වාරිමාර්ග, ධීවර හා පලප සම්පත් අමාත්‍යාංශයේ වාරිමාර්ග අංශයේ අතිරේක ලේකම් (ව්‍යාපෘති පිරිස් හා ප්‍රගති කළමනාකරණ) ලෙස සේවයේ නියුතු ශ්‍රී ලංකා පරිපාලන සේවයේ විශේෂ ශ්‍රේණියේ මහත්මිය ප්‍රවාහන, මහාමාර්ග වරාය සහ සිවිල් ගුවන් සේවා අමාත්‍යාංශයේ අතිරේක ලේකම් තනතුරක් වෙත අනුයුක්ත වීමට ඉල්ලීමක් කර ඇති අතර, (ඇමුණුම් 02) නිලධාරිනිය අනුප්‍රාප්තිකයෙකු පසුව ලබාදීමේ පදනම මත නිදහස් කිරීමට අදාළ අමාත්‍යාංශ ලේකම් විසින් තීරණය ලබා දී ඇත. (ඇමුණුම 03)

ඒ අනුව, ශ්‍රී ලංකා පරිපාලන සේවයේ විශේෂ ශ්‍රේණියේ ඩබ්ලිව්.එස්. සහනාන්දු මහතා ප්‍රවාහන, මහාමාර්ග, වරාය සහ සිවිල් ගුවන් සේවා අමාත්‍යාංශයේ අතිරේක ලේකම් තනතුරක් වෙත පත්කිරීමට ලබා දුන් පත්වීම අවලංගු කිරීමටත් එමගින් පුරප්පාඩු වන ශ්‍රී ලංකා පරිපාලන සේවයේ විශේෂ ශ්‍රේණියේ තනතුර සඳහා ශ්‍රී ලංකා පරිපාලන සේවයේ විශේෂ ශ්‍රේණියේ මහත්මිය පත්කිරීමටත්, තීරණය කරන අතර, ඒ සඳහා රාජ්‍ය සේවා කොමිෂන් සභාවේ අනුමැතිය කාරුණිකව අපේක්ෂා කරමි.”

- (j) Having considered 6R10, by its letter dated 29th January 2025 [6R11] the Public Service Commission had informed the Secretary, Ministry of Public Administration that the approval granted by 6R5 for the appointment of the Petitioner to the Ministry of Ports shall stand and that the appointment of the Additional Secretary, Ministry of Agriculture to the post of Additional Secretary, Ministry of Ports has not been approved by the Public Service Commission.

- (12) However, 6R11 was issued (a) more than five weeks after the Petitioner had returned to the “Officers Pool”, and (b) a month after 6R10 had been received by the Public Service Commission. As expected, I must say, by then, events had overtaken the decision of the Public Service Commission, in that not only had this application been filed by the Petitioner on 17th January 2025 complaining that his fundamental rights have been violated, the Petitioner had been appointed by the Ministry of Public Administration as the Additional Director General, Department of Technical Education and Training at the Ministry of Education [6R12]. Probably in sheer frustration of being back in the “Officers pool” with no duties assigned, the Petitioner had assumed duties in the post of Additional Director General on 21st January 2025 [6R13], thereby rendering 6R11 almost redundant.
- (13) While the Public Service Commission had acted correctly by upholding its decision to appoint the Petitioner to the Ministry of Ports, it is regrettable that it did not act efficiently and expeditiously as the situation demanded. Had 6R9 or 6R10 received the early consideration that it deserved, this application would not have been before us and the dignity of the Petitioner would have been protected. The delay of over a month in addressing the predicament faced by the Petitioner displays a complete lack of concern for the rights and interests of the Petitioner. The Public Service Commission must bear in mind that it is performing a role conferred on it by the Constitution. Public officers cannot be at the mercy of the Public Service Commission, and hence, it must not only act independently but swiftly as delay may amount to the denial of the equal protection of the law that every citizen of this Country is entitled to.
- (14) Be that as it may, it is clear from the position taken up by the Public Service Commission that the transfer of the Petitioner from one position in the Public Service to another was a matter for the Public Service Commission and no other.
- (15) This brings me to the position of the 1st Respondent. In his affidavit, whilst admitting the receipt of the WhatsApp message from the Petitioner, the 1st Respondent has stated that (a) two other persons who were eligible to apply for the post that was vacant had spoken to him *out of courtesy* and had informed that they are willing to

apply for the said post, (b) he was not aware of the appointment of the Petitioner until the Petitioner produced his letter of appointment, (c) he '*amicably*' informed the Petitioner that a different candidate was to be appointed, (d) he has not prevented the Petitioner from reporting for duty, and (e) he has not acted maliciously towards the Petitioner.

- (16) According to the documents that have been tendered by the Respondents, the request by the Additional Secretary at the Ministry of Agriculture [6R7] that she be appointed to the vacancy in the Ministry of Ports had come only on 24th December 2024. By then, the Petitioner had already been told by the 1st Respondent that he is not welcome in the Ministry of Ports, and if I may put it lightly, to go back to where he came from since a candidate of the 1st Respondent's choice has already been identified to fill such vacancy.
- (17) In 6R6, the 1st Respondent had claimed that the public officer who had been identified to fill the vacancy possessed the expertise required for the Ministry of Ports [මෙම අමාත්‍යාංශයේ විෂය පථයට ගැලපෙන උචිත නිලධාරියෙකු]. While the 1st Respondent has not supported this position in his affidavit tendered to this Court, I must state that the preferred candidate was at the relevant time attached to the Irrigation Division of the Ministry of Agriculture, Livestock, Lands and Irrigation as an Additional Secretary in charge of projects (ව්‍යාපෘති පිරිස් හා ප්‍රගති කලමනාකරණ) whereas the post that had fallen vacant at the Ministry of Ports was for administration and finance (මාලා සහ මුදල්). Thus, the claim that an officer with relevant expertise had been identified to fill the vacancy does not appear to be correct.
- (18) To a liberal mind, the entire episode can be brushed aside as being trivial and not warranting any consideration by this Court. However, to my mind, the issue is far greater and far more serious than what meets the eye. The conduct of the 1st Respondent poses a threat to "public trust" which forms an integral part of the Constitutional values and ultimately undermines the Rule of Law of our Country. Thus, this application does not only concern the Petitioner but brings into play certain important Constitutional safeguards relating to the Public Service of this Country.

The Public Service Commission

- (19) In terms of Article 55(1) of the Constitution, *“The Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal.”* The facts of this application do not involve any question relating to policy, and therefore the said Article has no application.
- (20) Article 55(2) provides that, *“The appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Department shall vest in the Cabinet of Ministers.”* The impugned appointment of the Petitioner does not come within this Article, but falls within Article 55(3), in terms of which, *“Subject to the provisions of the Constitution, the appointment, promotion, **transfer**, disciplinary control and dismissal of public officers shall be **vested** in the Public Service Commission.”*
- (21) These powers and responsibilities vested by the Constitution in the Public Service Commission are sacred and held in trust for the Public, as demonstrated by Article 55(5) which provides that, *“The Commission shall be responsible and answerable to Parliament in accordance with the provisions of the Standing Orders of Parliament for the exercise and discharge of its powers and functions....”* Thus, while enormous power with regard to the public officers of this Country have been entrusted to the Public Service Commission, its actions are liable to be reviewed by this Court and by Parliament. The Secretary of a Ministry is in no better position.

Public Trust and the Rule of Law

- (22) The Public Trust Doctrine which forms an integral part of the Constitutional values of Sri Lanka postulates that when power is conferred upon a holder of a public office, such power can only be used to fulfill the objective of such conferment of power within its limits.

(23) The Public Trust Doctrine has been resorted to by this Court:

- (a) in responding to the exploitation of the natural and national resources of the country by recognizing a trusteeship over such resources and a shared responsibility towards the protection of the same;
- (b) in responding to the unreasonable or arbitrary exercise of discretion of public authorities, by recognising that discretionary powers whether Statutory or Constitutional, should only be exercised for the benefit of the People; and
- (c) in responding to issues pertaining to the maintainability of the Rule of Law, by recognising that no one is above the law but is accountable under the law.

(24) The aforementioned third strand that recognises the Public Trust Doctrine as promoting the Rule of Law is broader than the other two and in effect brings together those two strands of judicial interpretation under the wider category of “limitation of all powers of Government”. Therefore, in applying the Public Trust Doctrine in cases such as this, this Court is enforcing the Constitutional values that underlie the Rule of Law, against the arbitrary exercise of power by public officials.

(25) In **Heather Therese Mundy v Central Environmental Authority and others** [SC Appeal 58/2003; SC Minutes of 20th January 2004] Mark Fernando, J while recognizing the sovereignty of the People and the Rule of Law as the basis of the Public Trust Doctrine, stated that:

“...this Court itself has long recognized and applied the “public trust” doctrine: that powers vested in public authorities are not absolute or unfettered but are held in trust for the public, to be exercised for the purposes for which they have been conferred, and that their exercise is subject to judicial review by reference to those purposes.....Besides, executive power is also necessarily subject to the fundamental rights in general, and to Article 12(1) in particular which guarantees equality before the law and the equal protection of the law...”. [emphasis added]

(26) Proceeding a step further, in **Sugathapala Mendis and another v Chandrika Kumaratunge and others** [(2008) 2 Sri LR 339], Tillekewardena, J highlighted the nexus between public trust and the Rule of Law when she stated as follows:

“The "Public Trust Doctrine" is based on the concept that the powers held by organs of government are, in fact, powers that originate with the People, and are entrusted to the Legislature, the Executive and the Judiciary only as a means of exercising governance and with the sole objective that such powers will be exercised in good faith for the benefit of the People of Sri Lanka. Public power is not for personal gain or favour, but always to be used to optimize the benefit of the People. To do otherwise would be to betray the trust reposed by the People within whom, in terms of the Constitution, the Sovereignty reposes. Power exercised contrary to the Public Trust Doctrine would be an abuse of such power and in contravention of the Rule of Law.” [at page 352]

- (27) In **“Public Trust Doctrine: The Sri Lankan Version”** [International Centre for Ethnic Studies; 2010], Dinesha Samararatne has articulated the accommodation of the Public Trust Doctrine within the interpretation of the right to equality as follows:

“It could also be argued that the Public Trust Doctrine is no more than a progressive interpretation of the right to equality. Whenever the Sri Lankan Courts have relied on the doctrine, they have used Article 12(1) as a platform for its application. Gomez argues that the contemporary idea of equality includes the idea that no administrative or executive action can violate expressly set out procedure or the common law based principles of public law, such as legitimate expectation. As per that view, the Public Trust Doctrine would be an articulation of the collective right to equality of society:

“Discretionary powers given to public institutions are never untrammelled. They are to be used to achieve the purpose for which they were conferred. Arbitrary and unreasonable decisions are the antithesis of fair play and equal treatment and violate the ‘trust’ placed in public officials.” [M. Gomez, In the Public Interest - Essays on Public Interest Litigation and Participatory Justice (Legal Aid Centre, University of Colombo, Colombo, 1993)]

This approach to the Public Trust Doctrine emphasizes that any exercise of public power that does not fulfill the objective for which such power was conferred is arbitrary and therefore contrary to the right of all persons to be treated equally under the law. Viewed from this perspective, the Public Trust Doctrine can easily

be accommodated within an interpretation of the right to equality and equal treatment before the law.” [pages 49-50]

- (28) The nexus between the Rule of Law, the Public Trust Doctrine and the fundamental right to equality *vis-à-vis* the exercise of power by Public Officials has been considered by this Court in a series of cases. One of the earliest is **De Silva v Atukorale, Minister of Lands, Irrigation and Mahaweli Development and another** [(1993) 1 Sri LR 283]. In the context of an issue that arose over the acquisition of private property by the Government, Mark Fernando, J explaining the nature of the discretionary power granted to Public Officials in a system based on Rule of Law emphasised that, *“It was a power conferred solely to be used for the public good, and not for his personal benefit; it was held in trust for the public; to be exercised reasonably and in good faith, and upon lawful and relevant grounds of public interest.”* [at page 297]
- (29) Reiterating the rationale laid down in **De Silva v Atukorale and others** [supra], in **Bandara and another v Premachandra, Secretary, Ministry of Lands, Irrigation and Mahaweli Development and others** [(1994) 1 Sri LR 301], though not expressly referring to the Public Trust Doctrine, Mark Fernando, J impliedly resorted to it by emphasising that, *“The subjection of Article 55 (1) to the equality provision of Article 12 mandates fairness and excludes arbitrariness. Powers of appointment and dismissal are conferred by the Constitution on various authorities in the public interest, and not for private benefit, and their exercise must be governed by reason and not caprice; they cannot be regarded as absolute, unfettered, or arbitrary, unless the enabling provisions compel such a construction.”* [at page 312; emphasis added]
- (30) In **Jayawardena v Dharani Wijayatilake, Secretary, Ministry of Justice and Constitutional Affairs and others** [(2001) 1 Sri LR 132], the Petitioner complained that his fundamental rights under Article 12(1) and (2) of the Constitution were infringed by the purported cancellation by the 1st Respondent of his appointment as an Inquirer into Sudden Deaths and by the appointment of the 3rd Respondent to the said office. The Petitioner alleged that the 1st Respondent had no power to cancel his appointment and that in any event the said cancellation was without

cause or inquiry and hence invalid. In delivering the judgment of this Court, Mark Fernando, J stated as follows:

*“Respect for the Rule of Law requires the observance of minimum standards of openness, fairness, and accountability, in administration; and this means - in relation to appointments to, and removal from, offices involving powers, functions and duties which are public in nature - that the process of making a decision should not be shrouded in secrecy, and that **there should be no obscurity as to what the decision is and who is responsible for making it.** [at page 143]*

*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: *Bandara v. Premachandra (supra)*. I am of the view that this Court can, and indeed must, take judicial notice of the fact that, generally, a person holding an office which is public in character, is not removed without legal authority without cause, without complying with the *audi alteram partem* rule, and without notice. Since the Petitioner was not treated in accordance with “these essential requirements of justice and fair play,” he was denied the equal protection of the law.” [at page 159]*

Conduct of the 1st Respondent

- (31) Bearing in mind the factual circumstances of this application, I shall now review the conduct of the 1st Respondent under three heads, namely, the impact of the 1st Respondent’s conduct on the “trust” placed in him, the conduct of the 1st Respondent and its effect on the Constitutional safeguard against the arbitrary exercise of power, and the impact of the 1st Respondent’s conduct on “human dignity” recognized under the Constitution.
- (32) While Article 52(1) requires the President to appoint a Secretary for every Ministry of a Minister of the Cabinet of Ministers, Article 52(2) goes on to state that, “*The Secretary to a Ministry shall, subject to the direction and control of his Minister, exercise supervision over the departments of Government and other institutions in charge of the Minister.*”

- (33) A Secretary is the Chief Accounting Officer of a Ministry and as demonstrated by Article 52(2) exercises wide powers. However, it's important to note that where a public officer is vested with power, the rule of law requires that such power must be exercised with due care, within the prescribed limits, and for the purpose for which they were entrusted. In other words, a public officer must bear in mind that he is a trustee of the People and that the wide powers entrusted to him must be exercised in trust. The People of this Country have a right to expect such conduct from each and every public officer.
- (34) Even though a Secretary has powers of supervision as set out above, I am of the view that the powers of a Secretary do not overlap with the powers of the Public Service Commission in making appointments and transfers of public officers. Any interference by a Secretary with the powers of the Public Service Commission or any attempt by a Secretary to a Ministry to arrogate to himself or herself the powers of the Public Service Commission is a serious matter and is a violation of the Constitutional powers vested in the Public Service Commission.
- (35) In **Colombage Dona Bandulani Basnayake v Sunil Hettiarachchi, Secretary, Ministry of Education and others** [SC (FR) Application No: 311/2016; SC Minutes of 16th October 2023], Janak De Silva, J while referring to the rule making power exercised by the Cabinet under Article 55(4) of the Constitution held that:

“In Abeywickrema v. Pathirana and Others [(1986) 1 Sri. L. R. 120 at 138] Sharvananda C.J. held: “..... The power conferred on the Cabinet of Ministers is a power to make rules which are general in their operation, though they may be applied to a particular class of public officers. This power is a legislative power and this rule making function is for the purpose identified in Article 55(4) of the Constitution as legislative, not executive or judicial in character. A rule made in exercise of this power by the Cabinet has all the binding force of a statute, or regulation.”

The same rationale applies to the PSC Rules which have constitutional underpinning and were issued by the PSC in accordance with Article 61B and 58

(1) of the Constitution. It is important to follow them in all matters pertaining to public officers. Failure to do so will result in a violation of Article 12 (1) of the Constitution.”

(36) Rule 107 of the Procedural Rules of the Public Service Commission published in Extraordinary Gazette No. 2310/29 dated 14th December 2022 [the Rules] confirms that the appointment of an Additional Secretary is within the purview of the Public Service Commission.

(37) The seriousness with which this issue must be adjudged is reflected in the Constitutional safeguard contained in Article 61C(1) which in turn is reflected in Rule 11 of the Rules that seeks to protect the independence of the Public Service Commission. In terms of Article 61C(1):

“Every person who, otherwise than in the course of such person’s lawful duty, directly or indirectly by himself or by or with any other person, in any manner whatsoever influences or attempts to influence or interferes with any decision of the Commission, or a Committee or a public officer to whom the Commission has delegated any power under this Chapter, or to so influence any member of the Commission or a Committee, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred thousand Rupees or to imprisonment for a term not exceeding seven years, or to both such fine and imprisonment.”

(38) If I may reiterate, the 1st Respondent is accused of informing the Petitioner that although he has been duly appointed by the Public Service Commission, the 1st Respondent has already identified another officer to fill the vacancy that had arisen and therefore the Petitioner must return to the Ministry of Public Administration. Did the 1st Respondent have the power to do so? Certainly not. Instead, by his unwarranted conduct, the 1st Respondent has interfered with the powers of the Public Service Commission and thereby arrogated to himself the powers of the Public Service Commission. This conduct on the part of the 1st Respondent is clearly outside the confines of the Constitutionally recognized framework, undermines the Rule of Law and thereby contravenes the trust placed by the People in the 1st Respondent as a public officer.

Arbitrary exercise of power

- (39) Before me is a senior public officer with over 30 years of experience, languishing in the “Officers pool” for over three months, waiting to be appointed to a suitable post in the Public Service. At a time when public resources and finances are scarce, to keep such officers idling without assigning them to another post within the Public Service is by itself a waste of resources. To add insult to injury is the fact that finding a post appears to be the responsibility of the public officer concerned, as borne out by the facts of this case.
- (40) The appointment of the Petitioner by the Secretary, Ministry of Public Administration, subject to the covering approval of the Public Service Commission, is in order. As was required, the Petitioner had reported for duty at the Ministry of Ports and thereafter sought an appointment with the 1st Respondent to pay a courtesy call. It is at that point that the 1st Respondent informed the Petitioner by P17b that he had already consented with the concurrence of the Minister to the appointment of another officer who had sought to be appointed to such post.
- (41) The Petitioner has alleged *mala fides* on the part of the 1st Respondent which has been denied by the 1st Respondent. I see no basis to disagree with the 1st Respondent, who is a senior and respected academic, that he did not act in bad faith or with any malice towards the Petitioner. However, that is not the issue.
- (42) If the 1st Respondent had already identified a candidate to fill such vacancy because he or she had the necessary expertise required for such post, then, it was open for the 1st Respondent to have informed the Ministry of Public Administration and the Public Service Commission of that position and requested that such person be considered, setting out the reasons for such request.
- (43) It is perhaps important to reiterate what the Petitioner has stated in P18 – i.e., “මාගේ රාජකාරි නිලකාමරයට පිවිසි එම අමාත්‍යාංශයේ ලේකම් මහාචාර්ය කපිල පෙරේරා මා එහි රාජකාරි කිරීම ඔහුට එකඟවිය නොහැකි බවත් එම කාර්යාලයෙන් පිටවන ලෙසත් මාවෙත දන්වන ලදී. එම වචන හා ඉරියව් ශිෂ්ඨ සම්පන්න උසස් රාජ්‍ය නිලධාරියෙකු ගෙන් අපේක්ෂා කල නොහැකි බව මානට ප්‍රත්‍යක්ෂ විය.”

- (44) The 1st Respondent certainly does not have the power to tell the Petitioner who has reported for duty on the direction of the Public Service Commission to leave the office as he is not agreeable to the Petitioner continuing in the Ministry. Having schemes of appointments and promotions would not serve any purpose if the conduct that is complained of by the Petitioner is allowed to go unnoticed.
- (45) There is no doubt that the Petitioner was entitled to the equal protection of the law guaranteed by Article 12(1) and thereby to the safeguards that a public officer is entitled to. In **Karunathilaka and another v Jayalath de Silva and others** [2003 (1) Sri LR 35] Shirani Bandaranayake, J (as she then was) observed that, *“The basic principle governing the concept of equality is to remove unfairness and arbitrariness. It profoundly forbids actions, which deny equality and thereby becomes discriminative. The hallmark of the concept of equality is to ensure that fairness is meted out. Article 12(1) of the Constitution, which governs the principles of equality, approves actions which has a reasonable basis for the decision and this Court has not been hesitant to accept those as purely valid decisions.”* [at pages 41 and 42]
- (46) Having considered the application of the principle of equality enshrined in Article 12(1) in the context of appointments and promotions in the Public Service, Kodagoda, P.C., J, held in **W.P.S. Wijerathna v Sri Lanka Ports Authority and others** [SC (FR) Application No. 256/2017; SC Minutes 11th December 2020] that:

*“Particularly in the public sector, it would be necessary to develop, have in place, and enforce schemes of appointment and promotion which are compatible with the concepts of equality, for the purpose of (a) providing an environment in which the objectives of the organization are given effect in an efficient manner, (b) ensuring meritocracy, (c) **preventing arbitrary and unreasonable decision making and nepotism**, (d) preserving effective administration, (e) **preventing abuse**, (f) preventing corruption, (g) ensuring transparency, (h) maintaining the morale of the workforce, and (i) ensuring that the public has confidence in such public institutions. Once such schemes are promulgated, it is equally important and necessary to ensure that, they are enforced correctly, comprehensively, uniformly, consistently and objectively. Recruitment and appointment of persons to positions*

in the public sector cannot be left to be decided according to the whims and fancies of persons in authority. . .

It would thus be seen that arbitrariness and unreasonableness in decision-making in selections, appointments and promotions particularly in public sector institutions is inconsistent with the concept of equality. In fact, as pointed out repeatedly by numerous erudite judges, ‘arbitrariness is the anathema of equality’. In India’s former Chief Justice Bhagwati’s words, ‘equality and arbitrariness are sworn enemies’.” [emphasis added]

(47) Taking into consideration the above circumstances, I am of the view that the conduct of the 1st Respondent is arbitrary and is violative of Article 12(1).

Violation of dignity

(48) The Petitioner wrote P18 almost immediately after being told by the 1st Respondent to return to the Ministry of Public Administration. While I have already reproduced the contents of P18 in paragraph 8 of this judgment, the mental agony suffered by the Petitioner at that point of time is captured in the following paragraph of P18 –
“මා රාජ්‍ය සේවයේ වසර 30 කට අධික කාලයක් විවිධ තනතුරු දරා අමාත්‍යාංශ ලේකම්වරයෙකු ලෙස වසර 2 ක් සේවය කර ඇති අතර මාගේ පාලනයෙන් බැහැර සේතුවක් මත එම ලේකම්වරයාගේ අවමානයටත් නොසලකා හැරීමටත් මුහුණ දුන්නෙමි.”

(49) The preamble to the Universal Declaration of Human Rights (1948) to which Sri Lanka is a signatory stipulates that, “*recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world*” and goes on to provide in Article 1 that, “*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*” Article 1 of the Charter of Fundamental Rights of the European Union provides that, “*Human Dignity is inviolable. It must be respected and protected.*” Thus, human dignity is the foundational concept of the global human rights regime and is the ‘ultimate value’ that gives coherence to human rights.

- (50) “Dignity” as a constitutional value finds specific reference in the **Svasti** to the Constitution of Sri Lanka, which reads as follows:

*“The PEOPLE OF SRI LANKA having, by their Mandate freely expressed and granted on the Sixth day of the waxing moon in the month of Adhi Nikini in the year two thousand five hundred and twenty one of the Buddhist Era (being Thursday the twenty-first day of the month of July in the year one thousand nine hundred and seventy seven), entrusted to and empowered their Representatives elected on that day to draft, adopt and operate a new Republican Constitution in order to achieve the goals of a DEMOCRATIC SOCIALIST REPUBLIC, and having solemnly resolved by the grant of such Mandate and the confidence reposed in their said Representatives who were elected by an overwhelming majority, to constitute SRI LANKA into a DEMOCRATIC SOCIALIST REPUBLIC whilst ratifying the immutable republican principles of REPRESENTATIVE DEMOCRACY and **assuring to all People FREEDOM, EQUALITY, JUSTICE, FUNDAMENTAL HUMAN RIGHTS and the INDEPENDENCE OF THE JUDICIARY as the intangible heritage that guarantees the dignity and well-being of succeeding generations of the People of SRI LANKA and of all the People of the World, who come to share with those generations the effort of working for the creation and preservation of a JUST AND FREE SOCIETY:**” [emphasis added]*

- (51) Thus, the Constitution has assured to all our People, freedom, equality, justice and fundamental human rights as their intangible heritage that guarantees the dignity and well-being of the People. This is buttressed in Article 27 (2)(a) which provides that, *“The State is pledged to establish in Sri Lanka a Democratic Socialist Society, the objectives of which include the full realisation of the fundamental rights and freedoms of all persons.”*
- (52) In **Kandawalage Don Samantha Perera v Officer in Charge, Hettipola Police Station and others** [SC (FR) Application No. 296/2014; SC Minutes of 16th June 2020] Thurairaja, PC, J stated that, *“..... ‘Human Dignity’ is a constitutional value that underpins the Fundamental Rights jurisdiction of the Supreme Court. I am of the view that ‘Human Dignity’ as a normative value should buttress and inform our decisions on Fundamental Rights.”*

(53) Shirani Bandaranayake, J (as she then was) held in **Kanapathipilli v Sri Lanka Broadcasting Corporation and others** [(2009) 1 Sri LR 406; at page 412] that, *“The concept of equality, which is a dynamic concept, is based on the principle that the status and dignity of all persons should be protected whilst preventing inequalities, unfairness and arbitrariness....”* Reference was thereafter made to the following paragraph of Baroness Hale in **Ghaidan v Godin-Mendoza** [2004 3 All ER 411; at page 458], where, referring to the principle of equality, it was stated that, *“Democracy is founded on the principle that each individual has equal value. Treating some as automatically having less value than others, not only causes pain and distress to that person, but also **violates his or her dignity as a human being.**”* [emphasis added]

(54) In the recent case of **Sachith Prabath Wijeratna v Police Inspector B.S. Chandrasiri and others** [(SC (FR) Application No. 365/2020; SC Minutes of 10th February 2025)], Samayawardhena, J. emphasising that human dignity warrants individuals to be treated with equality, respect and fairness, held as follows:

*“Human dignity is the basis of human rights, of which fundamental rights are a species. **It is the recognition of human dignity that compels the protection of fundamental rights, ensuring that individuals are treated with equality, respect and fairness.** By safeguarding these rights, the law upholds the intrinsic worth of every person, which lies at the heart of a just and humane society.”* [emphasis added]

(55) Considering the above, I must emphasise that human dignity warrants the fair treatment of public officers and it is therefore essential to protect the dignity of a public officer. This was emphasized by Janak De Silva, J in **Colombage Dona Bandulani Basnayake v Sunil Hettiarachchi, Secretary, Ministry of Education and others** [Supra], when he stated as follows:

“An individual's dignity and freedom are guaranteed by the Preamble to the Constitution. In the case of teachers, it requires that they be assured of good working environment where they are able to render their services with dignity befitting of the sacred role they play in moulding future generations. Any action taken in relation to a public officer must conform to the rules that the State has adopted.”

(56) It is therefore clear that human dignity is the fundamental virtue sought to be protected through the securement of fundamental rights and the Rule of Law. The Rule of Law is assured through Article 12(1) of the Constitution and therefore, human dignity is the hallowed goal towards which Article 12(1) seeks to carve out a path, hewing down arbitrary obstacles.

(57) Viewed in that context, I hold that the conduct of the 1st Respondent is conduct that has undermined the dignity of the Petitioner.

Conclusion

(58) The conduct of the 1st Respondent is violative of Article 12(1) not only because he has acted arbitrarily and has breached the trust placed in him, but also because the 1st Respondent has violated the dignity that the Petitioner is entitled to enjoy as a human being and as a public officer. In the above circumstances, I declare that the 1st Respondent has violated the fundamental rights of the Petitioner guaranteed under Article 12(1) of the Constitution.

(59) I shall not make an order for compensation or costs since I am of the view that no amount of compensation or costs can restore the loss of dignity, the embarrassment and the humiliation that the Petitioner had to undergo as a result of the arbitrary actions of the 1st Respondent.

JUDGE OF THE SUPREME COURT

Janak De Silva, J

I agree

JUDGE OF THE SUPREME COURT

Dr. Sobhitha Rajakaruna, J

I agree

JUDGE OF THE SUPREME COURT