

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

In the matter of an Appeal in terms of Article 17  
and 126 of the Constitution of the Democratic  
Socialist Republic of Sri Lanka

K.N. Kanthi Silva  
Batalanda,  
Ragama.

**(SC/FR/446/16)**

Dissanayake Mudiyanselage Udayasiri,  
No. 190/A-2, Bulugahawela Road,  
Panadura.

**(SC/FR/227/16)**

**Petitioners**

**SC FR 446/2016 with**

**SC FR 227/2016**

**Vs,**

1. G. A. N. Jayantha,  
Former Commissioner of Provincial Revenue Service,  
Department of Provincial Revenue Service of the  
Western Province,  
No. 204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
  
- 1A. D.A.S. Dedigama,  
Commissioner of Provincial Revenue Service,  
Department of Provincial Revenue Service of the  
Western Province,  
No. 204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.
  
2. H. T. Kamal Pathmasiri,  
Former Secretary,  
Ministry of Provincial Councils and Local Government,  
No. 330, Dr. Colvin R. de Silva Mawatha (Union Place)  
Colombo 02.

2A. S. D. A. B. Boralessa,  
Secretary,  
Ministry of Provincial Councils and Local Government,  
No. 330, Dr. Colvin R. de Silva Mawatha (Union Place)  
Colombo 02.

3. M. A. B. Daya Senarath,  
Former Chief Secretary of Western Province,  
Office of the Chief Secretary,  
“Saraswathi Mandiraya”  
No. 32, Sri Marcus Fernando Mawatha,  
Colombo 07.

3A. Pradeep Yasarathne,  
Chief Secretary of Western Province,  
Office of the Chief Secretary,  
Denzil Kobbekaduwa Mawatha,  
Battaramulla.

4. V. Rajapaksha,  
Former Secretary,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

4A. Hemantha Samarakoon,  
Secretary (Acting),  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

5. K. Sarath Gunathilake,  
Former Chairman  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

5A. Sunil Abewardena,  
Chairman  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

6. Sunil Fernando,  
Former Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

6A. H. Sumanapala,  
Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

7. S. K. Liyanage,  
Former Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

7A. Kanthi Wijetunga,  
Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

8. K. Paranalingam,  
Former Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

8A. P. G. H. A. Mahendra Silva,  
Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

8B. Ziyath Gaffoor,  
Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

9. J. Paranamanna,  
Former Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

9A. M. I. M. Rezwie,  
Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

9B. Naganathan Sivahumaran,  
Member,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

10. K.C. Logeswaran,  
The Governor of the Western Province,  
The Secretariat of the Governor of the Western  
Province,  
5<sup>th</sup> Floor, Rotunda Building, No. 119,  
Galle Road, Colombo 03.

10A. M. Asad S. Sally,  
The Governor of the Western Province,  
The Governor's Office of the Western Province,  
10<sup>th</sup> Floor, No. 628,  
Janajaya Building, Nawala Road,  
Rajagiriya

11. Hon. Attorney General,  
Department of the Attorney General,  
Colombo 12.

**(SC/FR/446/16)**

01. G. A. N. Jayantha,  
Former Commissioner of Provincial Revenue Service,  
Department of Provincial Revenue Service of the  
Western Province,  
No. 204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

1A. D. A. S. Dedigama,  
Commissioner of Provincial Revenue Service,  
Department of Provincial Revenue Service of the  
Western Province,  
No. 204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

1B. G. Amarasekara,  
Commissioner of Provincial Revenue Service,  
Department of Provincial Revenue Service of the  
Western Province,  
No. 204, Denzil Kobbekaduwa Mawatha,  
Battaramulla.

02. Director General of Management Services,  
Department of Management Services,  
The Secretariat,  
Colombo 01.

03. Secretary,  
Ministry of Public Administration and Management,  
Independent Square,  
Colombo 07

04. K. C. Logeswaran,  
The Governor of the Western Province,  
The Secretariat of the Governor of the Western  
Province,  
5<sup>th</sup> Floor, Rotunda Building, No. 119,  
Galle Road, Colombo 03.

4A. Hemakumara Nanayakkara,  
The Governor of the Western Province,  
The Secretariat of the Governor of the Western  
Province,  
5<sup>th</sup> Floor, Rotunda Building, No. 119,  
Galle Road, Colombo 03.

4B. M. Azath S. Sally,  
The Governor of the Western Province,  
The Governor's Office of the Western Province  
10<sup>th</sup> Floor, Janajaya Building, Nawala Road,  
Rajagiriya

4C. A. J. M. Muzammil,  
The Governor of the Western Province,  
The Governor's Office of the Western Province  
10<sup>th</sup> Floor, Janajaya Building, Nawala Road,  
Rajagiriya

4D. Dr. Seetha Armbepola,  
The Governor of the Western Province,  
The Governor's Office of the Western Province  
10<sup>th</sup> Floor, No. 204, Denzil Kobbekaduwa Mawatha,  
Battaramulla

05. Secretary,  
Ministry of Provincial Councils and Local Government,  
No. 330, Dr. Colvin R. de. Silva Mawatha (Union Place),  
Colombo 02.

06. Secretary,  
Provincial Public Service Commission of the Western  
Province,  
No. 109, Main Street, Battaramulla.

6A. K. Sarath Gunathilake,  
The Chairman of the Western Provincial Public Service  
Commission

6AA.Padmadasa Kodithuwakku,  
The Chairman of the Western Provincial Public Service  
Commission

6B. Sunil Fernando,  
Member of the Western Provincial Public Service  
Commission

6BB.Sunil Abeywardena,  
Member of the Western Provincial Public Service  
Commission

6C. S. K. Liyanage,  
Member of the Western Provincial Public Service  
Commission

6CC.Kanthi Wijetunga,  
Member of the Western Provincial Public Service  
Commission

6D. K. Paranalingam,  
Member of the Western Provincial Public Service  
Commission

6DD.Nissamudeen Udayar Mohamed Ameen,  
Member of the Western Provincial Public Service  
Commission

6E. J. Paranamanna,  
Member of the Western Provincial Public Service  
Commission

6EE.Thambipillai Muthukumaraswamy,  
Member of the Western Provincial Public Service  
Commission

**Members of the Provincial Public Service Commission of  
the Western Province, All of 109, Main Street, Battaramulla**

07. Chief Secretary of Western Province,  
 Office of the Chief Secretary,  
 “Saraswathi Mandiraya”  
 No. 32, Sir Marcus Fernando Mawatha,  
 Colombo 07.

08. Secretary,  
 National Salaries and Cadre Commission,  
 Room No. 02-116, B.M.I.C.H,  
 Bauddaloka Mawatha,  
 Colombo 07.

- 8A. Don Herbert Neville Piyadigama
- 8B. Jayalath Ranasinghe Wimalasena Dissanayake
- 8C. Gunasekara Liyanage Wimaladasa Samarasinghe
- 8D. Ginigaddarage Piyasena
- 8E. Ranatunga Appuhamilage Dona Rupa Malini Peiris
- 8F. Dayananda Widanagamachchi
- 8G. Sembakuttige Swarnajothi
- 8H. Benedict Karunajeewa
- 8I. Sujeeva Rajapakse
- 8J. Harsha Warnakula Fernando
- 8K. Prof. Sampath Amaratunga
- 8L. Dr. Ravi Liyanage
- 8M. Wegapitiya Kattadiyalage Hemachandra Wegapitiya
- 8N. Keerthi Kotagama
- 8O. Reyaz Mihular
- 8P. Priyantha Fernando
- 8Q. Leslie Shelton Devendra,
- 8R. Wijesingha Wellappili Don Sumith Wijesinghe,
- 8S. Don Somaweera Chandrasiri
- 8T. Walgama Hewamaluwage Piyadasa

09. Hon. Attorney General,  
Department of the Attorney General,  
Colombo 12.

**(SC/FR/227/16)**

**Respondents**

Before: **Justice Priyantha Jayawardena PC**  
**Justice Vijith K. Malalgoda PC**  
**Justice L.T.B. Dehideniya**

Counsel: Manohara de. Silva, PC, with Hirosha Munasinghe and Imalka Abeyratne **for the Petitioner in SC FR 446/2016**

Saliya Peiris, PC, with Thanuka Nandasiri **for the Petitioner in SC FR 227/2016**

Uditha Egalahewa, PC, with Sachinthana Rajamuni **for the Intervenient Petitioners in SC FR 227/2016**

Ms. Sureka Ahmed **SC for the 1<sup>st</sup> to 7<sup>th</sup> and 9<sup>th</sup> Respondents in SC FR 227/2016 and for all the Respondents in SC FR 446/2016**

**Argued on: 03.02.2020**

**Decided on: 06.07.2020**

**Vijith K. Malalgoda PC J**

SC FR 227/16 and SC FR 446/16 were taken up for argument together on a decision of this court, made when SC FR 446/16 was supported for leave to proceed on 31.03.2017.

Out of the two applications, SC FR 227/16 was supported for leave on 13.01.2017. On that day court after considering the submissions of both parties, granted leave to proceed for the alleged violation of the Petitioner's Fundamental Rights enshrined on Article 12 (1) of the Constitution with interim relief as prayed in paragraph (b) to prayer of the Petition dated 1<sup>st</sup> July 2016 to the effect;

"that the Respondents not to fill the existing vacancies for the post of Deputy Commissioner of Provincial Revenue Service of the Western Province until the final hearing and determination of this application"

The next application before us, namely SC FR 446/ 2016 was filed before the Supreme Court along with a motion dated 14<sup>th</sup> December 2016 (one month prior to the application 227/16 was supported) and in this application the Petitioner alleged violation of the Petitioner's Fundamental Rights guaranteed under Article 12 (1) and 14 (1) (g) of the Constitution by not promoting her to the vacant post of the Deputy Commissioner Class 1 of the Provincial Revenue Service of the Western Province.

This matter too was supported for leave to proceed before this court 27.03.2017 and leave to proceed was granted.

When considering the violations alleged by the two Petitioners it is observed that the position taken up by the two Petitioners in their complaints before this court, are not the same but are exactly the opposite of the other. In this background this court will be considering the material in each case separately and in granting the final relief this court will be mindful of the said positions taken by both parties.

After the leave to proceed had been granted in SC FR 446/16, the Petitioner in SC FR 227/16 made an attempt to intervene in SC FR 446/16, but the said request was turned down by this court on 10.10.2018 but allowed both matters to be taken up for hearing together before the same bench. In the meantime, two Intervenient Petitioners filed papers in SC FR 227/16 for intervention and the said application was allowed by his court on 01.10.2019.

**Position taken by the Petitioner in SC FR 227/2016**

The Petitioner in SC FR 227/16 was a Senior Assessor [Class II Grade I] belongs to the Provincial Revenue Service and was attached to the Department of the Provincial Revenue of the Western Province. Having joined the said service as a Tax Officer in the year 1996, he was promoted to the post of Senior Tax Officer in the year 2001. With effect from 01.12.2004 he was promoted to the post of Assessor and was promoted as Senior Assessor with effect from 1<sup>st</sup> December 2010. According to the Petitioner his next promotion would be to the post of Deputy Commissioner which is a Class I position.

On 30<sup>th</sup> April 2015 a vacancy occurred in the post of Deputy Commissioner of the Western Provincial Revenue Service at Gampaha office and the Petitioner being the most Senior Assessor in the said service of the Western Province having the required post graduate qualification, preferred an application to the 6<sup>th</sup> Respondent through the head of his Department. (P-12)

However the 1<sup>st</sup> Respondent by letter dated 20<sup>th</sup> October 2015 addressed to the Petitioner, had informed him, that the Petitioner's request to hold an interview to consider his application to fill the existing vacancy of Deputy Commissioner would not arise since the filling of vacancies in the said cadre is done in terms of Clause 9.1 of the existing service minute. (P-13C)

In this regard Petitioner had further submitted that the filling of vacancy in the cadre of Deputy Commissioner in terms of Clause 9.1 of the existing service minute is completely based on seniority

alone, and therefore it is not in conformity with the terms of Public Administrative Circular 6 of 2006 and in the said circumstances he lodged a complaint at the Human Rights Commission. (P-14A)

In support of his contention, Petitioner had produced the existing service minute of the Provincial Revenue Service of the Western Province marked P-8, a covering letter addressed to Deputy Commissioners Colombo, Maharagama, Kalutara, Gampaha and Stamp Division by the Provincial Revenue Commissioner Western Province dated 11.07.2013 marked P-10 and the annexed draft service minute for the Provincial Revenue Service -Western Province marked P-10B, a model scheme of recruitment by the National Pay Commission marked P-11A and a letter dated 02.01.2016 addressed to the Provincial Revenue Commissioner from the Chief Secretary of the Western Province under the heading "බස්නතිර පළාතේ ආදායම සේවා ව්‍යවස්ථාව රාජ්‍ය පරිපාලන වකුමේල 06/2006 අනුව ගෙවීම" marked P-17.

According to P-8, the existing service minute, procedure in promotion to the post of Class I Deputy Commissioner is identified under section 9 as follows;

“| පන්තියේ නියෝජනය කොමිෂන් තහතුරට උසස් කිරීම  
පළාත් ආදායම සේවයේ පේෂණ්ධත්වය පදනම් කරගෙන සතුවුලායක සේවා කාලයක් සහිත || පන්තියේ |  
ගෙවීමේ පේෂණ්ධ තක්සේරු තිබාරීන් උසස් කිරීමෙන් බදාවාගනු ලැබේ”

In P-17, the Chief Secretary of the Western Province had observed the lapses in the above provision as follows;

..... “එමත්ම රා. ප. ව 6/2006 අනුව එක් එක් වැටුප් ක්‍රම යටතේ බදාවා ගැනීම සිදුකිරීමට අදාළ අවම අධ්‍යාපන සුදුසුකම් කවරේද යන්නත්, ගෙෂ්‍රිගත උසස්වීම් ලබාගැනීමේදී සපුරා ගතයුතු සුදුසුකම් පිළිබඳවත් නිර්ණායක හඳුන්වාදී ඇති අනර්, දැනට ක්‍රියාත්මක සේවා ව්‍යවස්ථාවේ එම නිර්ණායක වලට අනුකූල නොවන අවස්ථාවන් පවතින බව නිරීක්ෂණය කරමි. උදාහරණයක් ලෙස SL | වැටුප් පරීමාණයේ තහතුරුවල || ගෙෂ්‍රියේ සිට | ගෙෂ්‍රියට උසස්වීම සඳහා කෙශ්‍රයට අදාළව පශ්චාත් උපාධියක් සම්පූර්ණ කර නිඩු වන නමුත් SL | වැටුප් ක්‍රමයට අදාළ තක්සේරුකරු තහතුවේ || ගෙෂ්‍රියේ සිට | ගෙෂ්‍රියට උසස්වීම සඳහා දැනට අනුමත ආදායම ව්‍යවස්ථාව තුළ පශ්චාත් උපාධිය ලබා නිඩුමේ අවශ්‍යතාව ඇතුළත්ව

නැත. එබඳවා ගැනීමේ හා උසස් කිරීමේ කුමවේදයක් හා සුදුසුකම රා. ප. ට 6/2006 ති නිර්ත්තායක වලට ගෙවෙන අයුරීන් සකස් විය යුතුය."

According to P-10B the draft service minute circulated for calling observation from the Deputy Commissioner on 11.07.2013, measures were already recommended for the lapses identified by the Chief Secretary in the year 2017, in the following manner.

11.2 || වැනි ගේනියේ සිට | වැනි ගේනියට උසස් කිරීම:

11.2. 1 සපුරාලිය යුතු සුදුසුකම:

- i. නිලධර් ගතායේ || වැනි ගේනියේ වසර භත (07) ක සකිය හා සතුවුදායක සේවා කාලයක් සම්පූර්ණ කර නිඩු හා නියමිත වැටුප් වර්ධක 07ක් උපයාගෙන නිඩු
- ii. දෙවන කාර්යක්ෂමතා කඩුම් පරීක්ෂණය නියමිත දිනට සමත්වීම
- iii. උසස් කිරීමේ දිනට පූර්වාසන්නතම වසර 05 තුළ සතුවුදායක සේවා කාලයක් සම්පූර්ණකර නිඩු
- iv. අනුමත කාර්යසාධන අභයාධීමේ පරිපාටිය අනුව උසස්වීම් සඳහා පෙරානුව වූ වසර 07 තුළම සතුවුදායක මට්ටමට හෝ ඊට ඉහළ කාර්යසාධනයක් පෙන්වුම්කර නිඩු
- v. විශ්ව විද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව විසින් පිළිගත් විශ්ව විද්‍යාලයකින් හෝ උපාධි ප්‍රධානය කිරීමේ ආයතනයක් වශයෙන් විශ්ව විද්‍යාල ප්‍රතිපාදන කොමිෂන් සභාව විසින් පිළිගෙන ඇති ආයතනයකින් හෝ පළාත් රාජ්‍ය සේවා කොමිෂන් සභාව විසින් පිළිගත් උසස් අධ්‍යාපන ආයතනයකින් 07 පරිධිශේෂයේ සඳහන් විෂයන්ගෙන් කවර විෂයකට හෝ ආයතන විෂය කේත්තුයකින් පශ්චාත් උපාධියක් ලබා නිඩු

Whilst advertizing to the requirements under Public Administration Circular 6 of 2006, the Petitioner had further submitted that the 1<sup>st</sup> Respondent and his predecessors and the 6<sup>th</sup> Respondent had taken steps to implement the provisions of the Public Administration Circular 6/2006 within the Western Province with regard salary structures in compatible with the salaries of the employee of the Central Government and took up the position that it is the duty of the 1<sup>st</sup> and the 6<sup>th</sup> Respondent to implement the rest of the requirements under the said circular.

In this regard I am mindful of the decision by this court in ***Kamalawathie and Others Vs. The Provincial Public Service Commission, North-Western Province and Others (2001) 1 Sri LR 1*** where Fernando (J) had observed,

“While powers in respect of education have been devolved to provincial councils, those powers must be exercised in conformity with national policy. Once national policy has been duly formulated in respect of any subject, there cannot be any conflicting provincial policy on that subject.”

As further observed by me, the Respondent before this court, did not challenge the requirement to implement the provisions of Public Administration Circular 6 of 2006 within the Western Province but took up the position that there is a delay in implementing some of the provisions of the said circular.

The 1<sup>st</sup> Respondent had responded to the complaint of the Petitioner in the following manner.

- a) The new salary structure introduced subsequent to the Public Administration Circular 6/2006 was included in the new service minute dated 7<sup>th</sup> April 2009 which had been duly approved by the Governor of the Western Province under section 32 of the Provincial Councils Act (IRI)
- b) At the time of the new service minute being introduced, the guidelines pertaining to service minutes were not issued by the Public Service Commission.
- c) At the time the said service minute was implemented pursuant to Public Administration Circular 6 of 2006, there was no requirement to submit it before the National Pay Commission or the National Salaries and cadre Commission for their approval.
- d) According to section 9 of the said service minute the appointment of Deputy Commissioner Class I was based on Seniority only.
- e) Secretary to the Ministry of Local Government and Provincial Councils by letter dated 10.06.2013 informed the Chief Secretaries of all the Provinces to submit their observations

and recommendations to a draft service minute submitted by the Southern Provincial Council and the Chief Secretary of the Western Province by letter dated 05.07.2013 forwarded the said document to the 1<sup>st</sup> Respondent for his observations (IR2)

- f) P-10B the said document was circulated among the officers of the Provincial Revenue Service by P10A
- g) A draft service minute agreed by the Trade Unions and all the Provincial Revenue Commissioners was submitted to the Deputy Chief Secretary by letter dated 16.07.2013 (IR3 or IR3A)
- h) Since then a large number of letters were exchanged between several Government agencies including the office of the Chief Secretary Western Province, 1<sup>st</sup> Respondent, Secretary to the Western Province Governor, Department of Management Service, but until the vacancy in question occurred, i.e. the vacancy of Deputy Commissioner Provincial Revenue Service-Gampaha, there was no finality to the service minute of the Revenue Service of the Western Provincial Council (IR4-IRII )
- i) In the said circumstances, the service minute introduced on 07.04.2009 was the only service minute which was in operation by that date.
- j) The petitioner had submitted an application through his Superior Officer (i.e. Deputy Commissioner Revenue Service of the Western Province-Maharagama) for the above vacancy requesting to hold an interview, (P-12) but by letter dated 28.10.2015, 1<sup>st</sup> Respondent had informed the Petitioner that there is no requirement to hold an interview under the provisions of the prevailing service minute and that he had already submitted his recommendation to fill the said vacancy (P-13C)

k) Based on the prevailing service minute, the name of the Most Senior Officer in Class II Grade I, one Mrs. K. N. K. de Silva's (Petitioner in SC FR 446/16) name was recommended to the above post by letter dated 02.04.2015 (IR28)

l) On the directives received from the Chief Secretary, an application received from the said Mrs. K. N. K. de Silva for the above post was forwarded to the Chief Secretary along with the seniority list of the Officers of the Provincial Revenue Service (IR30 and IR31). According to IR31 the Petitioners seniority was observed 8 positions below Mrs. K. N. K. de Silva. The said recommendation was approved by the Provincial Public Service until a permanent appointment is made, subject to 3 months acting with effect from 30.04.2015 and thereafter covering up the duties of the said post. (IR32)

As revealed before this Court, even up to the date the instant case was taken up for hearing, the service minute of the Revenue Service of the Western Province has not been amended to include the necessary amendments required under public Administration Circular 06/2006, including the amendment for the promotion from Grade II to Grade I, even though the Chief Secretary Western Province had observed several lapses and given directions to the 1<sup>st</sup> Respondent by letter dated 02.01.2016 (P-17).

The 1<sup>st</sup> Respondent in his affidavit filed before this court on 23<sup>rd</sup> October 2017 had taken up the position that by 10.03.2016 he had duly submitted the report by the Chief Secretary in order to amend the prevailing service minute but as revealed before us, so far the service minute had not been amended.

#### **Position taken by the Petitioner in SC FR 446/2016**

The Petitioner in SC FR 446/2016 was the Most Senior Assessor (Class II Grade I) belonging to the Provincial Revenue Service -Western Province at the time a vacancy had occurred in the post of Deputy Commissioner (Class I) of the Western Provincial Revenue Service on 29.04.2015.

As submitted by the Petitioner, by 2<sup>nd</sup> April 2015, the 1<sup>st</sup> Respondent had written the 3<sup>rd</sup> Respondent, Chief Secretary of the Western Provincial Council with a copy to the 4<sup>th</sup> Respondent, the Secretary to the Western Provincial Public Service Commission, that there will be vacancy in the Post of Deputy Commissioner of the Western Provincial Revenue Service and recommending the Most Senior Officer in Class II Grade I with a satisfactory service, namely the Petitioner, under section 9.1 of the service minute of the Western Provincial Revenue Service (P-7). Several letters exchanged with regard to the filling of the said vacancy was produced marked P-8 to P-14 by the Petitioner before this court.

The Petitioner was appointed to the Post of Deputy Commissioner in the Provincial Revenue Service until a permanent appointment is made, subject to 3 months acting and thereafter on a covering up basis with effect from 30.04.2015 by 1R32 filed along with the objection in the Fundamental Rights application SC FR 227/2016 and I have already referred to the above in this Judgment.

The Petitioner dissatisfied with her not being appointed to the permanent cadre under section 9.1 of the service minute of the Provincial Revenue Service of the Western Province, had first complaint to the Human Rights Commission and thereafter filed the instant application for alleged violation under Article 12 (1) and 14 (1) of the Constitution.

However as referred to in this Judgment, by the time the instant application was filed, SC FR 227/2016 had already been filed and leave to proceed had been granted on 03.01.2017 with an interim order preventing the filling of vacancy in the cadre of Deputy Commissioner of Provincial Revenue Service in Western Province. When the instant application was supported for leave to proceed on 27.03.2017, the said interim order was in operation.

Both the Petitioners is SC FR 227/2016 and SC FR 446/2016 argued legitimate expectation of them being appointed to the post of Deputy Commissioner in the Provincial Revenue Service, with the vacancy occurred in the said service with effect from 30.04.2015.

The Petitioner in SC FR 227/2016 claimed legitimate expectation on state policy that required an amendment to the remaining scheme of Recruitment and the draft scheme of Recruitment which was in the calculation since 2013.

However, the positions of the Petitioner in SC FR 446/2016 was based on the Scheme of Recruitment which was in operation at the time the vacancy occurred, since she was the most senior officer in Class II Grade I with a satisfactory service.

In the case of ***Siriwardana Vs. Seneviratne and Others SC FR 589/2009*** SC minute dated 10.03.2011 and ***2011 [2] BLR 336 Shirani Bandaranayake J*** (as she then was) observed the following requirements in identifying the presence of legitimate expectation in alleged violation of Article 12 (1) of the Constitution

- a) A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.
- b) Accordingly, the question that would have to be looked into would be as to whether there was a promise given to the Petitioner or a regular procedure that future vacancies would be filled on the basis of a previously held examination on which there had been selectins made on the results of the said examination
- c) The applicability of the doctrine of legitimate expectation imposes in essence a duty to act fairly
- d) More hope or an expectation cannot be treated as having a legitimate expectation.

In the case of ***Kurukulasooriya Vs. Edirisinghe and Others SC FR 577/209*** SC Minute 23.02.2011 and **2012 BLR 66 Shirani Bandaranayake J** (as she then was) had further observed;

“Legitimate expectation has been described as a concept which derives from an undertaking given by someone in authority. There is no compulsion for such an undertaking to be in written formula, but would be sufficient if that could be known through the surrounding circumstances.”

In the absence of any promise or undertaking that the draft Scheme of Recruitment would give effect to, at the time the vacancy occurred, it is also important to consider the effect of the draft Scheme of Recruitment with the employees who will be affected by the said draft, if it is implemented by the employer. The above position was considered in the case of,

In ***R (Bancoult) Vs. Secretary of State for Foreign and Commonwealth Affairs (No. 2) [2008] 61, [2009] 1 AC 465*** as follows;

“The legitimate expectation may entail either

- 1) No more than that the decision-maker will take his existing policy into account or
- 2) An obligation on the decision-maker to consult those affected before changing his policy or
- 3) An obligation for the decision-maker to confer a substantive benefit on an identified person or group

Those categories represent an ascending hierarchy which must be reflected in the precision, clarity and irrevocability of any alleged representation or promise on which the expectation is said to be based, to rely successfully on a substantive expectation a claimed must be able to show that the promise was ambiguous, clear and devoid of relevant qualification, that it

was made in favour of an individual or small group of persons affected; that it was reasonable for the claimant to rely on it, and that he did rely on it generally, but not invariably, to his detriment.”

This position was once again considered by this court in ***Dayarathne Vs. Minister of Health and Indigenous Medicine [1999] 1 Sri LR 393*** as follows;

“When a change of policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatments arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the Executive.”

When considering the matters already discussed in this Judgment it is observed by me that the legitimate expectation, the Petitioner in SC FR 227/2016 relied upon, is a mere expectation based on the change of policy, which was not implemented at the time the vacancy occurred. His claim that the Respondents have failed to implement the said recommendations, has no bearing on his case before us. In these circumstances, I hold that the Petitioner in SC FR 227/2016 has failed to establish his case before this court.

As further discussed in this Judgment, at the time the Petitioner in SC FR 446/2016 has supported her case before this court, SC FR 227/2016 had already been supported and a stay order preventing the Respondents (are same in both cases) filling the existing vacancy for the post of Deputy Commissioner- Provincial Revenue Service, and the said vacancy could not be filled pending SC FR 227/2016 before this court. As further submitted by the Respondents in SC FR 446/2016 before this court, the 1<sup>st</sup> Respondent had in fact recommended the name of the Petitioner in SC FR 446/2016 being the most Senior Officer in Class II Grade I with a satisfactory service to fill the said vacancy. In

these circumstances I see no basis to conclude that the Respondents before us had acted in violation of the Fundamental Rights guaranteed under Article 12 (1) of the Petitioner in SC FR 446/2016.

Both Applications before this court are accordingly dismissed.

The Petitioners to bear their costs.

**Judge of the Supreme Court**

**Justice Priyantha Jayawardena PC**

I agree,

**Judge of the Supreme Court**

**Justice L. T. B. Dehideniya**

I agree,

**Judge of the Supreme Court**