

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

In the matter of an application
under Articles 17 and 126 of the
Constitution of Sri Lanka.

1. Priyankara Witharanage
Chandika Lalith Kulathunga,
No. 68, Dela, Ratnapura
2. Jagath Warnaka Ranathunga
"Wasana", Devalamulla,
Puhulwella.
3. Hapuachchige Lalani
Chandrakanthi,
No.101, Pelpitigoda,
Poruwadanda.

S.C.(F.R.) Application No. 298/2013.

4. Hapurugala Gamladdalage
Samantha Kumara Jayaratha,
Suhadha Mawatha,
Erathna Road, Eknaligoda,
Kuruwita.
5. Weligamage Don Bandu Kumari
Shiromani,
No.327/7a, Moragala Road,
Bulugahapitiya, Eheliyagoda.
6. Darmasri Pathirajage Sudath
Madusanka,
17th Post, Suriyagoda,
Bamunakotuwa.
7. Mahadurage Premakeerthi,
Jamburegoda Road,
Mudugamuwa, Weligama.

8. Agampodi Malani Mendis,
Kadegedara,
Thiyaduwa, Akurassa.
9. Anusha Niranjala Ranawaka,
Mirissagedarawatta,
Henegama, Akurassa.
10. Udagama Rankothgedara Vajira
Nilanshani Wijerathna,
32nd Post, Hunganwela,
Nalanda.
11. Medagam Medde Gedara
Kanchana Geethamali
Premachadra,
No.235, Yatihalagala,
Pallegama, Haloluwa.
12. Kahakotuwa Chitra Padma
Kumari
Kalinguarachchi,
"Geethani", 1 Ela Road,
Polonnaruwa.
13. Aluthgedara Swarna Manel
Aluthgedara,
529/B, Danduwagolla,
Bambaragaswewa, Galewela.
14. Charitha Prathapasinghe,
"Pathuma", Makandura,
Mathara.
15. Sesiya Wasam Batuwattage
Indumathi Sriyani,
"Karunasiri", Nawela,
Merihawatta,
Bandarawela.

16. Edirisinghe Mudiyansele
Shriwanthi Dammika Kumari
Edirisinghe,
No.02, Weragama Kaikawala (Off
Mathale).
17. Ranepura Hewage Chandrika
Malkanthe
"Amarasiri" C/O Wijesiri,
Diyalape North, Diyalape,
Akuressa.
18. Wijesekara Gamachchige
Sanjeewani
"Sousiri", Pathegama, Weligama.
19. Hettiachchi Mudiyansele
Sagarika Dmayanthi,
Meda Kadigamuwa, Ihala
Kadigamuwa.
20. Kuruppu Achchi Ralalage
Dammika Shriyani Kuruppu,
No.1/3, Oyabodawatta,
Galamuna,
Kaleliya.
21. Weerasooriya Wijesundara
Rajapaksha Wasala
Mudiyansele Udaya Bandara
Weerasooriya,
62/7. Uda Peradeniya,
Peradeniya.
22. Ranasinghe Kodikara Kilipitige
Dulpathmendra,
Ukwattagoda, Thiyaduwa,
Akurassa.
23. Ekanayake Mudiyansele Manel
Kumari Ekanayake,

Galagedara, Wariyapola.

24. Kulathunga Mudiyansele
Nishanthi Priyadarshani Kumari,
Temple Road, Kumbuk Wewa.
25. Muthukuda Arachchilage Dona
Priyanka Mariya Deepthi,
Maeliya, Kuda Maeliya.
26. Wanasinghe Arachchige
Chaminda Jayalal Wanasinghe,
"Sampath Sewana", Galthuna,
Manikdiwela.
27. Siriwardena Pathiranage
Dayapala,
No.159/6, Moraketiya Road,
Embilipitiya.
28. Indeera Wijerathna
Weerabaddana,
No.112/1, Danhena, Deyyandara.
29. Sakrage Banumathie
Swarnathilaka
Indigolwatta, 6th Post,
Humbuluwa, Alawwa.
30. Nadakandige Kanchana Anupa
Kandage,
"Irosha", Pallegama,
Kolawenigama.
31. Rajapaksha Wahalawannaku
Mudiyansele Kamani
Rajapaksha,
"Dananjaya", Dalupathyayawatta,
Maspotha.

32. Gattiyawala Yatinuwarage
Anusha Jeewanee Darmakeerthi,
No.233, Pallemulla, Halloluwa.
33. Parawahera Kankanamge Rasika
Sanjeewani,
"Gamage", Yatigala,
Modarawana.
34. Aruni Kanchana Jasinghe,
"Jayani", Diddenipotha,
Makandura,
Matara.
35. Rathnayaka Mudiyansele
Shyama Sewwandi Rathnayake,
C/O Darmasena Rathnayake,
Behind of Upali Cushion, Hospital
Junction, Hingurakgoda.
36. Dilani Nilangika Kumari
Jayawickrama,
A/18/B, Railway Quarters,
Kotalawalapura, Rathmalana.
37. Mahawela Gamage Sunil Santha,
No.88, Nikawewa, Thanamalwila.
38. Sanjaya Kumara Kekilla Arachchi,
No.12, Allewela Village,
Sirimalgoda, Badulla.
39. Jayawardana Kankanamge
Menaka,
Jamburegoda Road,
Mudugamuwa,
Weligama.
40. Wijethunga Mudiyansele
Nandasiri Wickramasekara,
10th Mile Post, Ridimaliyadda,
Mahiyanganaya.

41. Kottwalniyage Sampath Siri
Kapila Kumara,
No.75, Ginganga Mawatha,
Gintota.
42. Athukoralalage Champika
Nishanthi Athukorala,
No.340/A/1, Wilegoda,
Eheliyagoda.
43. Weerasinghe Kankanamge Mala
Nishanthi,
Kahatapitiya Mawatha,
Panapitiya, Kaluthara.
44. Weediya Hewage Indika
Priyadarshani,
Balagollagama, Balalla.
45. Pathtinihewage Nalani Priyanka,
Karangamuwa, Katupotha.
46. Kariyapperuma Mudiyansele
Wimali Ramyakumari
Kariyapperuma,
Rekogama, Balalla, Mahawa.
47. Kandekumbure Mudiyansele
Praba Dayanthi Bandara
Kandekumbura,
No.04, Eramuduliyadda,
Sangarajapura.
48. Kalyani Dayarathna,
Dewalagalawatta,
Pahala Kottamulla, Weuda.
49. Herath Mudiyansele Anula
Kumari,
No.21/9A, Aruppala, Kandy.

50. Adikari Arachchilage Volga
Shamindani Adikari,
Pandiwela, Kuliypitiya.
51. Nanayakkara Aparekkage Vindya
Ishanthi,
No.326/25, Samagipura,
Pelenwatta, Pannipitiya.
52. Sudesh Dillimuni
Dilena, Kuwe, Kamburupitiya.
53. Gama Ralalage
Ranganasandaruwan Bandara,
"Ratnapaya", Kandegedara,
Maharachchimulla.
54. Sella Hennadi Galappaththige
Piyumika Dinushini Gayathrei,
Pepiliyana Road, Gangodawila,
Nugegoda.
55. Dayawansha Giniwellage Anoma
Sandamali Priyarathna,
"Shanthi", Gonna, Kohilegedara.
56. Buddrage Anusha Udayangani
Gunasena,
Mahagama, Kohilegedara,
Kurunegala.
57. Jayasekara Withanage Kemika
Nilmini,
"Sameera", Nanawalawatta,
Midigama, Ahangama.
58. Yapa Mudiyanseelage Champika
Niroshani Abeyrathna,
No.7/2, Muthukude Walauwa,
Narampanawa.

59. Perumpulle Mudiyansele
Chamila Udayangani Bandara,
No. 191/1a, Paligedra, Mihira
Mawatha, Piliyandala.
60. Jayasekara Siriwardana
Dissanayaka Mudiyansele
Chathura Tharanga Bandara,
"Rathnawila", Lahugala.
61. Hewa Gamage Padmasiri
Ampitigoda, Beragama,
Makandura, Mathara.
62. Achini Widanagamage
"Rathna Sewana",
Koramburuwana,
Ransagoda.
63. Jawara Gedara Sunethra
Damayanthi,
No.129/2/A, Bulugahalanda
Watta,
Gaspe, Banduragoda.
64. Sandya Padma Kanthi
Kambikoratuwa, Mawarala Road,
Mulatiyana.
65. N.G. Pradeeth Milanka
No.40/10, Hiththetiameda,
Mathara.
66. Warnakula Kankanamlage
Priyantha Shobani Rathnasiri,
Udakumbura, Kanangama,
Dehiowita.
67. Wijesinghe Mahawattage
Chandrani,

No. 3/170, Steewan Mawatha,
Dampe, Meegoda.

68. Wetthasinghe Pathiranage
Anusha Shyamalee
Wimalarathna,
No. 143/1, Wanathawatta,
Wilekumbura, Meethirigala.
69. Wageesha Ranmali Wijedeera,
121, Lebima, Kadurupokuna-East,
Tangalle.
70. Dedigama Mudiyansele Mallika
Dedigama,
1 Mile Post, Medaweragama,
Kaikawala, Mathale.
71. Tennakoon Pathiranage Nirmala
Tennakoon,
Elhena, Hunganwela, Nalanda.
72. Thilakarathana Mudiyansele
Manel Damayanti Thilakarathna,
No.136/4, Thawalankoya,
Ukuwela.
73. Karunarathnage Yasantha
Niroshana,
No.53, Awariwatta,
Alubomulla.
74. Deldeniya Ralalage Dhammika
Neranjala Kumari Deldeniya.
No.63, B.O.P.313,
Pulasthigama,
Polonnaruwa.
75. Jayakody Pathirannehelage
Anusha Thilani Jayakody,
No.273/7, Samagi Mawatha,

Annasiwatta, Galoluwa,
Minuwangoda.

76. Yapa Mudiyansele Wathsala
Jeewani Kumari,
Pallegama, Kuda Elibichchiya.
77. Ranathunga Mudiyansele
Buddhika Saman Jayawardana,
Ehalagama, Theppanawa,
Kuruwita.
78. Maraka Mudiyansele Renuka
Kumari Jayasena,
No.110, Shasthrawelliya,
Kekirawa.
79. Bandara Gedara Herath
Mudiyansele Eranga Suresh,
No. 86, Dehigama Junction,
Akiriyankumbura.
80. Indika Isurusiri Senevirathna,
No.145, Kekirawa Road,
Galenbindunuwewa.
81. Ilamperuma Arachchilage
Ayirangani,
"Sandakelum",
Panakanniya, Landewela.
82. Wijethunga Mudiyansele
Malani Wijethunga.
"Jayasiri",
Dawunpatina Mawatha,
Diyathalawa.
83. Koralegedara Shantha
Rupasinghe Koralegedara,
Miniranketiya, Laggala,
Pallegama.

84. N.P. Rukmani Therangama,
Sumithra Niwasa,
Gawilipitiya,
Aranayaka.
85. Henaka Rallage Chandrika
Nishani Samaranayaka,
"Chandrika",
Uggala,
Degalathiriya,
Undugoda.
86. Sathkumara Mudiyansele
Chaminda Hemantha
Sathkumara,
Thonigala, Anamaduwa.
87. Wehalla Gamage Chandrani,
No.270, Mahawatta,
Alubomulla.
88. Ediriweera Arukattu Patabendige
Jayanthi Ashoka,
165, V.C. Mawatha,
Ehala Walahapitiya,
Nathtandiya.
89. Diluka Shyamali Pathirage,
No.94/A, Madampe,
Halhota.
90. Dehinga Gawuri Hamanthi
Mendis,
No. 23/520, Dikhena, Urban
Houses,
Munagama, Horana.
91. Ireshika Udayangani Abeysinghe,
No.32/2, Kuppana, Pokunuwita.

92. Godawa Pathiranage Rasanga
Sampath,
Pathirawana, Wilpita,
Akuressa.
93. Nadeeka Mali Samarasinghe
Gunasekara,
"Kalyani", Mulana Road,
Makandura, Mathara.
94. Dilani Shanika Amaradiwakara
Samarasinghe,
No.256/1, Diddenipotha,
Makandura, Mathara.
95. Manjula Jathunga Dahanayaka,
No.25, Raja Uyana, Makandura.
96. Godakanda Kankanamge
Lashantha Ranjana,
"Gorakagahawatta",
Wijayananda Mawatha,
Anangoda, Galle.
97. Henrath Piyathissage Lakshman
Jayakody,
"Sunethra Niwasa",
Meegahawatta, Atugoda,
Damunupola, Kegalle.
98. Heenkenda Mudiyansele
Sriyani Kumari Heenkenda,
Sathipola Asala, Hettipola,
Wilgamuwa.
99. Rathnayaka Mudiyansele
Chandrarathna Bandara,
Udatanna Watta Kade,
Dulgolla, Bandarawela.
100. Desika Padmini Manatunga,

No, 07, Suwinithagama, Badulla.

101. Abeyranasinghe Mudiyansele
Chathuri Rangika Gunathilaka,
No.57, Digogedara, Eheliyagoda.
102. Welagama Gedara Indrani
Menike,
No.69, Nawakadadora,
Pussellawa.
103. Hennayaka Mudiyansele
Janaka Chaminda,
Madame Kandura, Kandana,
Springweli.
104. Kathgoda Tanthirige Naleesha
Jeewani Kumari,
No.02, Wiwekarama Mawatha,
Godakanda.
105. Wahumpura Dewage Priyantha
Pushpa Kumara Karunarathna,
No.234/1, Waga- South,
Thummodara.
106. Nanayakkara Bandungodage
Chandima,
"Sandapaya", Pinaduwa,
Sandarawala, Baddegama.
107. P.P.G. Thilak Priyantha,
Dallanda, Akuramboda.
108. Delpagoda Gamage Sarath
Kumara Jayaweera,
Ketapala, Ganegoda, Elpitiya.
109. Krishani Kumasaru,
Nawalakanda, Uda Hawupe,
Kahawatta.

110. Wickramasinghe Mudiyansele
Nishanka Bandara,
Arangala, Naula.
111. Mannapperuma Mudiyansele
Nayanananda Bandara
Abeyrathana,
Akkarawatta, Mahananneriya.
112. Dissanayaka Mudiyansele
Renuka Kumari,
Aluthwatta, Wilawa, Balalla.
113. Pitiduwa Koralage Manjula
Kumari,
No.249/1, Tourist Bangalore,
Industrial Ministry, Bambarakele,
Nuwara Eliya.
114. Hewa Anthonige Dilani
Chathurika Premakeerthi,
"Vishmitha", Kapukoratuwa,
Narawelpita -South, Hakmana.
115. W. Nilusha Sampath Sirimanna,
No. 117/3, Pararadupara,
Balangoda.
116. Senarath Rathnayaka Sujatha
Priyadarshani,
"Thilina", Nikaattagoda,
Ambagasdowa.
117. Ganga Krishanthi Kannagara,
No.208, "Mihiraya Pokuna",
Kommala, Bentota.
118. Hitihami Mudiyansele
Indrakumari,
No.40, Sirimalwatta,

Gunnapana.

119. Harshani Samarakoon,
Kurunduwatta, Beragama-North,
Makandura.
120. Kekunawela Pathiranage Sandya
Kumari,
No.377, Walliwala,
Weligama.
121. Wijesundara Nallaperuma
Niranjala Priyani,
No.141/5, Bogaha Koratuwa,
Saddhatissa Mawatha, Walgama,
Mathara.
122. Pushpa Samarasinghe,
"Singhawila", Diddenipotha,
Mulana, Makandura.
123. Hewa Halpage Nirosha
Sanjeewani,
"Githmini", Deniyawatta,
Mulana, Makandura.
124. Maheeka Chathurangi Kumasaru,
No.629/15, Weda Niwasa,
Isuru Mawatha, Walgama,
Mathara.
125. Nishadi Nirupama Nanayakkara
Yapa,
"Sanjaya", Polgahamulla,
Dickwella.
126. Dammanthota Gedara Amali
Lashanthika Dammanthota,
No. 101, Aralaganwila,
Polonnaruwa.

127. Ranawaka Herath Mudiyansele
Nishanthi Ranawaka Herath,
No.42, Koruppa, Mahiyanganaya.
128. Parawahera Kankanamge Tekla
Harshani Prasangika,
Walakuluge Watta, Thusitha
Sewana, Akurugoda, Thelijawila.
129. Rampati Dewage Jagathsiri
Kulathunga,
No.52/C, "Wedagedara",
Niyadurupola.
130. Kurugoda Gamlathge Chamila
Manohari Priyangika,
No.319, Malasinghegoda Road,
Hokandara-East, Hokandara.
131. Nupehewage Mangalika
Nishanthi,
"Vipula", Thalpapwila,
Kakanadura, Mathara.
132. Shilpadi Pathilage Rishani
Niranjala Maduwanthi,
Pahala Gedara,
Galpothtepola, Alawwa.

Petitioners

Vs.

1. Wasantha Ekanayaka,
Former Secretary,
Ministry of Culture and Arts,
8th Floor, Sethsiripaya,
Battaramulla.
- 1A. D. Swarnapala,
Former Secretary,

Ministry of Internal Affairs,
Wayamba Development and
Cultural Affairs,
8th Floor, Sethsiripaya,
Battaramulla.

- 1B. J.J. Rathnasiri,
Former Secretary,
Ministry of Higher Education and
Cultural Affairs,
8th Floor, Sethsiripaya,
Battaramulla.
- 1C. Bernad Wasantha Silva,
Former Secretary,
Housing Constructions and
Cultural Affairs,
8th Floor, Sethsiripaya,
Battaramulla.
- 1D. Bandula Harischandra,
Secretary,
Ministry of Buddhasana,
Cultural, Religious Affairs,
8th Floor,
Sethsiripaya, Battaramulla.
- 1E. Professor Kapila Gunawardana,
Secretary,
Ministry of Buddhasana,
Cultural, Religious Affairs,
8th Floor,
Sethsiripaya, Battaramulla.
- 1F. Somarathna Vidanapatirana
Secretary,
Ministry of Buddhasana,
Cultural, Religious Affairs,
8th Floor,
Sethsiripaya, Battaramulla.

2. Central Cultural Fund,
No.212/1, Bauddhaloka
Mawatha,
Colombo 7.
3. T.B. Ekanayaka,
Former Minister of Culture and
Arts,
8th Floor,
Sethsiripaya, Battaramulla.
- 3A. S.B.Navinna,
Former Minister of Internal
Affairs, Wayamba Development
and Cultural Affairs,
8th Floor,
Sethsiripaya, Battaramulla.
- 3B. Wijedasa Rajapaksha,
Former Minister of Higher
Education and Cultural Affairs,
8th Floor,
Sethsiripaya, Battaramulla.
- 3C. Sajith Premadasa,
Former Minister of Housing
Constructions and Cultural
Affairs,
8th Floor,
Sethsiripaya, Battaramulla.
- 3D. Mahinda Rajapaksa,
Minister, Buddhasasana, Cultural
and Religious Affairs,
8th Floor,
Sethsiripaya, Battaramulla.
- 3E. Vidura Wickramanayake,
Minister, Buddhasasana, Religious
and Cultural Affairs,
8th Floor,

Sethsiripaya, Battaramulla.

4. Prof. Dayasiri Fernando,
Former Chairman,
5. Srima Wijeratne,
Former Member,
6. Palitha Kumarasinghe,
Former Member,
7. S.C. Mannapperuma,
Former Member,
8. Ananda Seneviratne,
Former Member,
9. N. H. Pathirana,
Former Member,
10. S. Thillanadarajah,
Former Member,
11. M.D.W. Ariyawansa,
Former Member,
12. A. Mohamed Nahiya,
Former Member,
All of the Public Service
Commission,
No.177, Nawala Road,
Narahenpita, Colombo 5.
13. M.E. Lionel Fernando,
Former Co-Chairman,
National Salaries and Cadre
Commission.
14. K.N.S. Wimalasuriya Mathew,
Former Co-Chairman,

National Salaries and Cadre
Commission,

15. Ariyapala de Silva,
Former Member,
16. S.H. Siripala,
Former Member,
17. Sunil Chandra Mannaperuma,
Former Member,
18. D.W. Subasinghe,
Former Member,
19. Gunapala Wickramaratne
Former Member,
20. M. Mackey Hashim,
Former Member,
21. Carlo Fonseka,
Former Member,
22. H.M. Somawathie Kotakadeniya,
Former Member,
23. Don Gnanaratna Jayawardena,
Former Member,
24. Lloyd Fernando,
Former Member,
25. Leslie Devendra,
Former Member,
26. S. Sivanandan,
Former Member,
27. B. Wijeyaratne,
Former Secretary,

All c/o National Salaries and
Cadre Commission,
Room Nos. 2-116, B.M.I.C.H.,
Bauddhaloka Mawatha,
Colombo 7.

28. Director General of
Establishments,
Ministry of Public Administration,
Colombo 7.
29. Attorney General
Attorney General's Department,
Colombo 12.
30. Neville Piyadigama,
Co-Chariman,
31. J.R. Wimalasena Dissanayake,
Co-Chariman,
32. Wimaladasa Samarasinghe,
Member.
33. V. Jegarasasingham,
Member,
34. G. Piyasena,
Member,
35. Rupa Malini Peiris,
Member,
37. Dayananda Widanagamachchi,
Member,
38. B.K. Ulluwishewa,
Member,
39. Sujeewa Rajapakse,
Member,

40. H.W. Fernando
Member,
41. Prof. Sampath Amaratunga,
Member,
42. Dr. Ravi Liyanage,
Member,
43. W. K. H. Wegapitiya,
Member,
44. Keerthi Kotagama,
Member,
45. Reyaz Mihular,
Member,
46. Priyantha Fernando,
Member,
47. Leslie Shelton Devendra,
Member,
48. W.W.D.S. Wijesinghe,
Member,
49. G.D.S. Chandrasiri,
Member,
50. W.H. Piyadasa,
Member,
All of the National Pay
Commission,
Room Nos. 2-116, B.M.I.C.H.,
Buddhaloka Mawatha,
Colombo 7.
51. Sathya Hettige,
Former Chairman,

Public Service Commission,
No.177, Nawala Road,
Narahenpita.

52. Kanthi Wijetunga,
Former Member,
53. Sunil A. Sirisena,
Former Member,
54. I.N. Soyza,
Former Member,
All of the Public Service
Commission,
No.177, Nawala Road,
Narahenpita.
55. Dharmasena Dissanayaka,
Chairman,
56. A. Salam,
Member,
- 56A. Prof. Hussain Ismail,
Member,
57. V. Jagarajasingham,
Member,
58. Nihal Seneviratne,
Member,
- 58A. Sudharma Karunathilaka,
Member,
59. Dr. Prathap Ramanujam,
Member,
60. S. Ranugge,
Member,

61. D.L. Mendis,
Member,
62. Sarath Jayathilaka,
Member,
63. Dhara Wijethilaka,
Member,
- 63A. G.S.A.de Silva,
Member,
All of the Public Service
Commission,
No.177, Nawala Road,
Narahenpita, Colombo.
64. K.L.L. Wijeratne,
Former Chariman,
65. Nimal Bandara,
66. Dayananda Widanagamachchi,
67. Charitha Ratwatte,
68. Prof. Kithsiri Liyanage,
69. Lesly Devendra,
70. Suresh Shah,
71. Sanath Jayantha Ediriweera,
72. T. Regunathan,
73. Thamal Musthapaha,
74. Prof. Gunapala Nanayakkara,
75. Nandapala Wickramasuriya,

76. Sujatha Cooray,
77. Jerrey Jayawardena,
78. S. Thilleinadaraja,
79. Dr. AnuraEkanayaka,
80. Sembukutti Swanajothi,
81. P.K.U. Nilantha Piyaratne,
82. N.H. Pathirana,
83. W.T. Dayananda,
84. T.B. Maduwegedara,
85. Dr, Wimal Karandagoda,
86. A. Kadirawelupillai,
Former Members,
All of the National Pay
Commission,
Room Nos. 2-116, B.M.I.C.H.,
Bauddhaloka Mawatha,
Colombo 7.
87. S. Ranuge,
Chairman,
National Salaries and Cadre
Commission,
88. C.P. Siriwardena,
89. Damitha de Soysa,
90. Lalith Kannangara,
91. Janaka Sugathadasa,

92. C. Wagishwara,
93. C. Senarathne,
94. Kingsly Fernando,
95. G.S. Edirisinghe,
96. M.C. Wickramasekara,
97. Palitha Abeykoon,
98. D. Abeysuriya,
99. Leslie Devendra,
Members of the National Salaries
and Cadre Commission,
Room Nos.2-116, B.M.I.C.H.
Buddhaloka Mawatha,
Colombo 7.
100. Upali Wijayaweera,
Chairman,
National Pay Commission,
101. Chandrani Senaratne,
102. Gotabhaya Jayaratne,
103. Sujatha Cooray,
104. Madura Wehalla,
105. M.S.D. Ranasiri,
106. Dr. Ananda Hapugoda,
107. Sanjeewa Somaratne,
108. Ajith Nayanakantha,

109. Dr. Ravi Liyanage,
110. Sanath Ediriweera,
111. prof. Ranjith Senarathna,
112. RM. Amarasekara,
113. Major Gen. (Rtd.) Siri Ranaweera,
114. W.H. Piyadasa,
All of the National Pay
Commission,
Room Nos. 2-116, B.M.I.C.H.,
Bauddhaloka Mawatha,
Colombo 7.
115. Dharmasena Dissanayake
Chairman, Public Service
Commission,
116. Dr. P. Ramanujam,
117. V. Jegarasasingam,
118. S. Ranuge,
119. D. Laksiri Mendis,
120. Sarath Jayathilake,
121. Sudarma Karunaratna,
122. G.S.A. De Silva,
All of the Public Service
Commission,
No.177, Nawala Road,
Narahenpita, Colombo.
123. Jagath Balapatabendi
Chairman,

Public Service Commission.

124. Indrani Sugathadasa,
125. V. Shivaganasothy,
126. T.R.C. Ruberu,
127. Mohamed Lebbe Mohomed Saleem,
128. Leelasena Liyanagama,
129. Dian Gomes,
130. Dilith Jayaweera,
131. W.H. Piyadasa,
All of the Public Service
Commission,
No.1200/9,
Rajamalwatta Road,
Battaramulla.

Respondents

BEFORE : BUWANEKA. P. ALUWIHARE, PC., J.
ACHALA WENGAPPULI, J.
ARJUNA OBEYESEKERE, J.

COUNSEL : Manohara de Silva PC with Ms. Kaveesha
Gamage for the Petitioner.
Ms. Indika Demuni de Silva, PC, SG with Ms.
Indumini Randeny, SC for the Respondents.

ARGUED ON : 16th June, 2022.

DECIDED ON : 09th November, 2023

ACHALA WENGAPPULI, J.

The 132 Petitioners, who are currently serving as Assistant Cultural Development Officers while being attached to their respective Regional Cultural Centres, established by the Ministry of Culture and Arts, have collectively invoked jurisdiction conferred on this Court under Articles 17 and 126 of the Constitution, on an alleged infringement of their fundamental rights guaranteed under Article 12(1) of the Constitution. Their complaint of infringement is based on categorisation of the post of Assistant Cultural Development Officer as Management Assistant - Non Technical - Segment 2 and placement of that post in salary scale of MN-1-2006-A in the approved Scheme of Recruitment. The Petitioners further complain that the National Salaries and Cadre Commission (hereinafter referred to as "NSCC") had infringed their fundamental right to equality by its decision to reject the 1st Respondent's request to grant approval to amend the Scheme of Recruitment (hereinafter referred to as "SOR"), in which they were categorised as Supervisory Management Assistant and placing in salary scale of MN-3- 2006-A. They allege their rights were further infringed by the NSCC, by approving the said SOR, which contain the impugned categorisation and placement and recommending same to the Public Service Commission, in terms of Public Administration Circular No. 6/2006.

The Petitioners have named the members of the NSCC as 13th to 27th Respondents and, by way of an amended petition dated 13.02.2014, added the members of its succeeding entity, National Salaries Commission, as the 30th to 50th Respondents.

The Petitioners, in their amended petition have prayed for *inter alia* the following reliefs from this Court;

- i. a declaration that the Petitioners fundamental rights guaranteed by Article 12(1) of the Constitution has been infringed;
- ii. to declare *null* and void the decision/recommendation of the National Salaries Commission and/or the 13th to 27th Respondents to refuse the proposal of the 1st Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and place them in Salary scale MN-3-2006-A;
- iii. to declare *null* and void the decision of the 1st and/or 3rd Respondent to implement the recommendation of the National Salaries and Cadre Commission to categorise Assistant Cultural Development Officers as Management Assistants - Non-Technical - Segment 2 and place them in salary scale MN-1-2006-A;
- iv. to declare *null* and void the decision of the 1st and/or 3rd Respondent to categorise Assistant Cultural Development Officers as Management Assistants - Non- Technical - Segment 2 and place them in salary scale MN-1-2006-A;
- v. to make order directing the NSCC and/or the 13th to 26th Respondents and/or the 3rd and/or 28th Respondents to recommend the proposal of the 1st Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and to place them in salary scale MN-3- 2006-A;

- vi. to make order directing the 1st Respondent and/or the 3rd Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and to place them in salary scale MN-3-2006-A;
- vii. in the event the proposed Scheme of Recruitment, by which the educational qualifications required for recruitment to the post of Assistant Cultural Development Officer was brought down to one pass at the GCE(A/L) Examination has been approved by the Public Service Commission, make order cancelling the decision of the Public Service Commission (4th to 12th Respondents) to approve the same inasmuch as it is contrary to the policy decision taken by the Cabinet of Ministers acting under Article 55(4) of the Constitution;
- viii. to declare *null* and void the decision of the 1st and/or 3rd Respondent to make recruitments to the post of Assistant Cultural Development Officers from among those who have passed only one subject at the GCE(A/L) Examination, contrary to the policy decision taken by the Cabinet of Ministers acting under Article 55(4) of the Constitution;
- ix. to direct the National Pay Commission and/or the 30th to 50th Respondents to recommend the proposal of the 1st Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and place them in salary scale MN-3-2006-A.

It is evident from the wide spectrum of reliefs sought by the Petitioners, that their complaint of infringement of right to equality stems from the decision of the NSCC, in refusing to accept a proposal submitted by the 1st Respondent to categorise the post of Assistant Cultural Development Officers as Supervisory Management Assistants and place them in salary scale MN-3-2006-A by amending the approved SOR for that post. They also challenge the recommendation made by NSCC to the Public Service Commission to lower the qualifications required for recruitment to the post of Assistant Cultural Development Officers.

When the instant petition was supported for leave to proceed, learned Solicitor General, who represented the Respondents, raised a preliminary objection on their behalf and sought for its dismissal *in limine*. Her objection was that the placement of the Petitioners in salary scale of MN-1-2006 was made by the NSCC in the year 2006, as evidenced by the appointment letters issued to them at the time of confirmation of their appointments to the post of Assistant Cultural Development Officer. Therefore, she contended that the challenge on the validity of the decision to place them in the said salary scale, being the core complaint of the Petitioners before this Court, is clearly time-barred. The learned President's Counsel sought to counter the said objection by presenting a contention that the Petitioners became aware of the decision made by the NSCC only on 09.10.2012, when it rejected the proposed amendment to the Scheme of Recruitment, which sought to place them in salary scale MN-3-2006-A.

After hearing submissions of the parties on the said preliminary objection, this Court made order on 24.02.2014, that the issue of time bar

would be re-considered upon completion of pleadings, in order to satisfy itself whether the material presented before Court discloses the fact that there had been a failure to invoke jurisdiction within the prescribed time period.

It must be noted that at that stage of the proceedings, only the amended petition and its annexures were available before Court and none of the Respondents had tendered their Statement of Objections. The 27th Respondent tendered his Statement of Objections on 16.02.2016 and the 55th Respondent tendered Objections on 29.02.2016, followed by counter affidavit of the Petitioners tendered on 20.06.2017.

Hence, this Court should consider the said preliminary objection at the very outset of this judgment, in the light of factors disclosed by the completed set of pleadings and make an appropriate determination on the question of time bar.

The prayer to the amended petition of the Petitioners, as quoted above, sets out the nature of multiple reliefs sought from this Court. The entitlement to the substantial relief prayed by the Petitioners, being a declaration of infringement of their fundamental rights guaranteed to them under Article 12(1), is dependent on the validity of the impugned decision to place them on salary scale of MN-01-2006-A and categorisation of the post of Assistant Cultural Development Officers as Management Assistant - Non Technical - Segment 2, as they also seek annulment of these decisions. In addition, the Petitioners challenge the validity of the rejection of the proposed amendments to the SOR. There had been a series of subsequent decisions made by the Respondents, consequent to the said initial decision, by which the impugned categorisation and applicable salary scale were determined after the

issuance of Public Administration Circular No. 06/2006 (hereinafter referred to as P.A. Circular No. 6/2006), culminating with the decision to reject the proposed amendment to the SOR (P17). The NSCC decided to continue with its earlier decision, even after having re-considered the issue upon representations made by the concerned parties (P22).

The Petitioners seek annulment of all these decisions. Table No. 1, that appears below contain the nature of the reliefs along with the dates on which the impugned decisions were arrived at.

Table No. 1

Sub-Paragraph of the prayer	Nature of the relief	Date of the impugned decision
(c)	Annulment of the decision to refuse the proposal to categorise Petitioners as Supervisory Management Assistants in MN-3-2000-A	09.10.2012 (P19)
(d)	Annulment of the decision to implement the categorisation of Petitioners as Management Assistants - Non Technical - Segment 2 in MN-1-2006-A	22.06.2012 (27R11)
	Annulment of the decision to categorise Petitioners as Management Assistants - Non- Technical - Segment 2 in MN-1-	1 st - with PA Circular

(e)	2006-A	No. 6/2006 2 nd - with approval of SOR on 22.06.2012 (27R11)
(h)	If a decision is taken to bring down the educational qualifications to one pass at G.C.E.(A/L) its annulment	Date of approval of SOR (P10) 22.06.2012 (27R11)
(i)	Annulment of the decision to make recruitment to the post of Assistant Cultural Development Officers from those with one pass at G.C.E.(A/L)	Date of SOR (P10) on 22.06.2012 (27R11)

The decision to place the Petitioners in salary scale MN-01-2006 after re-categorisation, in terms of the P.A. Circular No. 6/2006, was made in the year 2006 itself. This is evident from the Letters of Appointment issued to 3rd and 36th Petitioners on 24.07.2006 (P8C) and 04.08.2006 (P8A) respectively. This placement was made on the recommendation of the 1st Respondent and pending approval by the NSCC. The Petitioners claim they did voice their objections to the said placement at that point of time but was told that it would be rectified with the finalisation of their SOR. However, the Petitioners did not annex any document to their amended petition, which tends to indicate either they did make representations against that decision after it was

made known to them or was told that their concerns would be addressed to, once the formulation of the SOR (P10) is finalised.

The 27th Respondent, being the Secretary to National Salaries Commission (hereinafter referred to as NSC), refuted the claim of the Petitioners that only in 2012 a SOR was formulated for the post of Assistant Cultural Development Officers, as the draft SOR was first submitted to the NSCC by the 1st Respondent in the year 2005 and an amended SOR was once again submitted with the same salary scale MN-1-2006 in the year 2006 (27R3D).

According to the Petitioners, the Scheme of Recruitment (P10) was presented for consideration and approval of the NSCC by the 1st Respondent on 25.05.2012. However, the 1st Respondent had already tendered a proposed Scheme of Recruitment to NSCC on 19.05.2006 seeking its approval (27R3D) on identical terms. Be that as it may, the NSCC conveyed its approval to the SOR (P10) by letter dated 22.06.2012 (27R11) to the Director General of Establishments. The said SOR contained categorisation of Assistant Cultural Development Officers as Management Assistant - Non -Technical - Segment 2, in terms of the P.A. Administration Circular No. 6/2006 and placed them in salary scale of MN-1-2006-A. The NSCC also conveyed its decision to the 1st Respondent by letter dated 09.10.2012 (P19).

The Petitioners made representations to the 1st Respondent against the said SOR only on 17.05.2012 (P16A). This is the first time that the Petitioners have ever indicated their opposition in any form to their categorisation and salary scale. The contents of P16A does not refer to the fact that the Petitioners did present their grievances to any of the Respondents any time prior to that particular instance, either on

the question of categorisation or on the applicable salary scale, after the implementation of P.A. Circular No. 6/2006.

The proposed SOR (P17), with which the Petitioners agree, was also prepared by the 1st Respondent and submitted to NSCC on 13.09.2012 and the decision to reject the said proposed Scheme of Recruitment was arrived at by the Commission on 09.10.2012 (P19).

The 3rd Petitioner and some of her colleagues have lodged a complaint with HRCSL on 06.11.2012 (P20) alleging that, despite having been assigned with multiple duties, they were placed in salary scale MN-01-2006 instead of MN-03-2006, disregarding their objections. The 3rd Petitioner's complaint to the HRCSL was made within a month of the rejection of the 2nd proposed amendment to the SOR (P17). However, the NSCC had, by then, already made its decision on 04.10.2006, to place the Assistant Cultural Development Officers in salary scale MN-01-2006-A (27R2C) and approved the said categorisation as reflected in SOR (P10). The NSCC, by letter addressed to the Director General of Public Administration on 22.06.2012 (27R11) conveyed its approval. The 1st Respondent too had recommended the said categorisation and the salary scale throughout but entertained a different view and indicated it to NSCC only in the latest of his recommendation (P18).

The 1st Respondent, by his letter dated 21.11.2012 (P21), requested the NSCC to re-consider its decision (P19). The NSCC had re-considered its decision and informed the 1st Respondent on 17.01.2013 that the Commission found no reason to change its already reached decision as to the categorisation, as reflected in the Scheme of

Recruitment, and the salary scale in relation to the post of Assistant Cultural Development Officer (P22).

In view of the interrelatedness of the contents of the recommendation and directions and the dates on which the said decisions were arrived at by the Respondents, it is helpful if the said series of decisions, made in relation to the categorisation of the Petitioners as Management Assistants – Non- Technical – Segment 2 with salary scale of MN-1-2006-A, are arranged in a chronological order for the consideration of the time bar objection in its proper context. Table No. 2, which appears below, should satisfy that requirement.

Table No. 2

Date	Requests made to NSCC by the 1st Respondent and Petitioners on categorisation and salary scale and the decisions made by NSCC	Marking given to the documents
19.05.2006	Proposed SOR endorsed by the 1 st Respondent to be sent to NSCC after P.A. Circular No.6/2006, with salary scale MN-01-2006	27R3D
13.12.2006	Proposed SOR tendered to NSCC with salary scale MN-01-2006 (27R3D)	27R3
20.09.2007	Approval of NSCC on salary scale MN-01-2006	27R2B

17.05.2012	Request of Petitioners to the 1 st Respondent to place them on a higher salary scale	P16A
25.05.2012	Proposed SOR sent to NSCC with the categorisation of Management Assistants who perform "Single Functional" duties with salary scale MN-01-2006	P10
22.06.2012	Recommendations of NSCC with categorisation of Management Assistant - Non Technical - Segment 2 and salary scale MN-01-2006 sent to Director General of Establishments	27R 11
15.08.2012	Report of the Committee appointed by the 1 st Respondent with recommendation to place Petitioners in the categorisation of Supervisory Management Assistants and salary scale MN3-2006-A	P16B
13.09.2012	Proposed amended SOR with the categorisation of Supervisory Management Assistants and salary scale MN3- 2006-A in line with P16B	P17
21.09.2012	Recommendation by the 1 st Respondent to the proposed amendment to SOR P17	P18

09.10.2012	Rejection of P17 and 18 by NSCC	P19
06.11.2012	Complaint to HRCSL by 3 rd Petitioner and Others	P20
21.11.2012	Request of 1 st Respondent to re-consider its decision P19	P21
17.01.2013	Rejection of the request to re-consider the decision P19 made by P21	P22

The Petitioners tendered their petitions before this Court, alleging infringement of their fundamental rights, only on 28.08.2013. Thus, at first glance, it would appear that the Petitioners have invoked jurisdiction of this Court well after the stipulated time period of one month from the date of the last decision in the said series of the decisions, against each of which infringements of fundamental rights are alleged. However, an in-depth review of the available material, as revealed from the pleadings itself, indicate that at least one of the reliefs prayed for by the Petitioners, namely the impugned decision of the NSCC to reject P17 and 18 (paragraph (c) to the prayer), is not time barred and therefore could be considered by this Court.

The reasons are as follows;

The original petition of the Petitioners is lodged with the Registry of this Court on 28.08.2013 whereas their amended petition, by which the members of the newly constituted NSC are added to its caption (30th to 50th Respondents), was tendered on 13.02.2014. Of the several Petitioners who are before this Court, only the 3rd Petitioner had challenged the decision of the NSCC (P19) to reject the proposed amendments to SOR before the Human Rights Commission of Sri Lanka (hereinafter referred to as "HRCSL") within the statutorily specified period of time (P20). Nonetheless, the 3rd Petitioner failed to annex any communication or at least an acknowledgement issued by the HRCSL on her complaint indicating that the matter is under its consideration. More importantly, the 3rd Petitioner failed to disclose the names of other colleagues who joined with her in the complaint to HRCSL (P20). There is no material placed before this Court indicating whether there are any Petitioners among those who joined with her in the lodgment of the said complaint to the HRCSL. It could be that another group of Assistant Cultural Development Officers, who opted not to join the Petitioners in the instant application, supported the 3rd Petitioner with her in that complaint.

Paragraphs 64 and 65 of the amended petition of the Petitioners indicate that the inquiry into the 3rd Petitioner's complaint had been concluded and recommendations of the said Commission is pending. No supporting material were placed before this Court to indicate this position. However, the written representations of the NSCC, tendered to the NSCC (P23A) confirms that an inquiry into complaint by the 3rd Petitioner, under reference No. HRC/4070/201 to HRCSL was conducted by the said Commission. The 27th Respondent further

admits in his Statement of Objection that the said Commission is yet to make its recommendation.

As already noted, the alleged infringements complained to this Court are in relation to the placement of the Petitioners in salary scale MN-01-2006-A and rejection of the proposed amendment to the SOR(P17), which meant to categorise their post as Supervisory Management Assistant and to place them in the salary scale of MN-03-2006-A. In view of the objection of time bar taken up by the learned Solicitor General, only the relief prayed for in sub paragraph (c) of the prayer of the Petitioners qualifies to be considered. If the Petitioners are successful in establishing their entitlement to paragraph (c) of the prayer, then they are also entitled to succeed in obtaining relief as prayed for in paragraph (f) to the prayer as well.

This is due to the reason that the letter conveying the rejection of the proposed amendment to the SOR is dated 21.09.2012 (P18) and the 3rd Petitioner had lodged a complaint with the HRCSL on 06.11.2012, within a month of the said decision, in terms of Section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996. Therefore, she is entitled to the benefit of the statutory provision which states that *" ... the period within which the inquiry into such complaint is pending before the Commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution."*

It is relevant to note in this context, the manner in which the Petitioners have described the alleged infringement in their amended petition. Paragraph 67 of the said amended petition reads thus;

“[T]he Petitioners state that ... the decision of the 13th to 26th Respondents (National Salaries and Cadre Commission) to refuse the recommendation of the 1st Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and placed them in salary scale of MN-03-2006-A and the decision of the 1st to 3rd Respondents to make recruitment to the post of Assistant Cultural Development Officers from among those who have passed only one subject at the G.C.E. (A/L) is arbitrary, capricious, unreasonable ...”.

The Petitioners did not present their allegation of infringement of their fundamental rights by executive or administrative action of the Respondents as a continuing act of violation. The paragraph quoted above is clear that the executive and administrative complained of by the Petitioners is restricted to *“refuse the recommendation of the 1st Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and place them in salary scale of MN-03-2006-A”*. The said refusal by NSCC was conveyed to the 1st Respondent on 09.10.2012 (P19) and the original petition was lodged only on 29.08.2013.

The resultant position therefore is that only the 3rd Petitioner is entitled to pursue the infringement of her fundamental rights before this Court, and that too is confined to the relief prayed for in paragraph (c) and (f), which could be related to the complaint made to the HRCSL within one month of the said decision. As rightly contended by the learned Solicitor General, the decisions that were made thereafter and impugned in the instant application are clearly time barred in terms of the Article 126(2) of the Constitution, which imposes a mandatory requirement to invoke jurisdiction of Court, within one month since the

infringement committed by executive or administrative action. The 2nd request of the 1st Respondent made to the NSCC, subsequent to the one already made in P18, urging it to reconsider the decision P19, was on 21.11.2012 (P21). The NSCC rejected that request on 17.01.2013 (P22). The decision P 22 is also caught up with the time bar objection and on that account, should be excluded from consideration. Hence, the decisions of the NSCC, contained in 27R3D, 27R3, 27R2B, P10 and P22 could not be considered for its validity.

The decisions that are to be considered by this Court are thus restricted to the refusal by the NSCC to re-consider its decision on P17 and P18, which was conveyed to the 1st Respondent by letter dated 09.10.2012 (P19).

In view of the above findings, this Court must then consider the entitlement of the 3rd Petitioner to the reliefs prayed by her. The claims of other petitioners ought to be dismissed, owing to the fact that they failed to present their claim of infringement of fundamental rights before this Court within the stipulated time period imposed by Article 126(2). Since the 3rd Petitioner is one among many who presented an identical allegation of infringement of her fundamental rights along with the other Petitioners, for convenience in the presentation of this judgment, the term 'Petitioners' used in the preceding part of the judgment, would be continued in the latter part as well.

In paragraph (c) of her prayer, the 3rd Petitioner seeks a declaration from Court stating that the decision and/or recommendation of the National Salaries and Cadre Commission (13th to 27th Respondents) to refuse the proposal of the 1st Respondent to categorise Assistant Cultural Development Officers as supervisory

Management Assistants and place them in salary scale of MN-3-2006-A is *null and void*, whereas in paragraph (f) she seeks an order of Court directing the National Salaries and Cadre Commission (13th to 27th Respondents) and 28th Respondent to recommend the proposal of the 1st Respondent for an amended SOR, as contained in P17.

In order to consider the allegation of the Petitioners that their right to equality was infringed in the context of the decisions of the NSCC that are not time barred, it is necessary for this Court to consider the circumstances under which the post of Assistant Cultural Development Officer was originally created, the nature of the responsibilities that were conferred on the said post, the parameters under which the said post was categorised as Management Assistants - Non Technical - Segment 2 and placed in salary scale MN-1-2006-A in terms of Public Administration Circular No. 6 of 2006 and the reasonableness of the refusal of the proposal by the 1st Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and place them in Salary scale MN-3-2006-A and the reasonableness of the decision to lower the entry qualifications.

In the year 1988, the Ministry of Cultural Affairs and National Heritage, initiated an island wide programme to establish 300 Regional Cultural Centres with a view to arrest the gradual erosion of cultural values and practises from our society and to preserve them for future generations. These Cultural Centres were intended to provide opportunities for youth to enhance their innate aesthetic talents and also meant to dissuade them from engaging in anti-social activities. Each of these Cultural Centres were to be staffed by four employees, i.e., a Cultural Development Officer, a Cultural Assistant, an Office

Assistant and a Security Officer. Recruitment process to fill the said posts commenced in the year 1999 with public notices inserted in the national newspapers calling for applications.

The Petitioners, having fulfilled the eligibility criterion for the post of Cultural Assistants (P2) by successfully completing four subjects at the G.C.E.(A/L) Examination and six subjects at the G.C.E.(O/L) Examination with four Credit passes including Mathematics and Sinhala, along with pass in Sinhala Typing at the G.C.E.(O/L) Examination or completion of a typing/computer course at a recognised institute, and being below 45 years of age, applied for the said post. After interviewing the Petitioners, they were recruited as Cultural Assistants by the Central Cultural Fund (2nd Respondent) on contract basis and were assigned to the newly established Regional Cultural Centres. Recruitment of Cultural Assistants continued after the first batch of recruitment had taken place in the year 1999, as and when new Cultural Centres were established.

On 08.12.2004, in addressing the grievance of these Cultural Assistants, the Cabinet of Ministers approved their absorption into Public Service. They were initially recruited by the Central Cultural Fund on contract. The said decision was made consequent to the recommendations of a Cabinet Sub-Committee on Establishment Matters (P6), which was established to resolve certain issues faced by the Ministry and Cultural Assistants, who served in their posts for several years without being confirmed in their posts.

The said report included following recommendations;

- a. Cultural Officers and other staff who have been recruited on contract basis in accordance with the Scheme of Recruitment and who have already satisfied the requisite qualifications be absorbed into such posts on permanent basis with effect from the date of the Cabinet decision,
- b. The said officers are to be placed two increments above the relevant salary scale applicable to theirs posts, but personal to them in consideration of their experience along with previous service in the field,
- c. The recruitment of remaining staff to be made in a phased-out basis and a total of 300 Assistant Cultural Development Officers to be recruited from among those who have passed the G.C.E.(A/L) Examination.

Consequent to the Cabinet decision on 22.12.2004, (P7) made on the recommendation of its sub Committee the Petitioners were absorbed into the Public Service, appointed to the post of Assistant Cultural Officers of the Ministry of Cultural Affairs and National Heritage and were confirmed in their posts (P8D). Thus, the post of Cultural Assistant was thereafter re-designated as Assistant Cultural Officers in terms of the said Cabinet decision. However, the appointment letters issued to the Petitioners described the post as Assistant Cultural Development Officer (P8A).

The Assistant Cultural Development Officers were tasked to assist the Cultural Officer, who was placed as the Officer-in-Charge of the several Cultural Centres (vide proposed Scheme of Recruitment in 2006 (27R3D));

“අනුයුක්තව සිටින සංස්කෘතික මධ්‍යස්ථානයේ ආයතනික කටයුතුවලට සහ මධ්‍යස්ථාන භාර නිලධාරියාට සහායවීම, පුස්තකාලය භාරව කටයුතු කිරීම, හා සාරධර්ම පිරි සමාජයක් ගොඩනැගීමේ කාර්යයට සම්බන්ධව කටයුතු කිරීම, සංස්කෘතික මධ්‍යස්ථානයේ ස්ථාන භාර සංස්කෘතික ප්‍රවර්ධන නිලධාරී නොමැති අවස්ථාවල සියලුම අධීක්ෂණයන් සිදුකිරීම.”

The Petitioners primarily relied on three factors in mounting their challenge on the correctness of the decisions to place the post of Assistant Cultural Development Officer in the salary scale of MN-1-2006-A, alleging that the said decision was made arbitrarily and unreasonably. First, they contended that they ought to have been categorised as Supervisory Management Assistants in view of the supervisory functions they perform. Secondly, they contended the post of Assistant Cultural Development Officer should have been categorised as Supervisory Management Assistant instead of their current categorisation as Management Assistants - Non Technical - Segment 2, as they perform multiple duties, which would make them entitled to be placed in salary scale MN-3-2006-A. In support of these two factors, Petitioner relied on a comparison with the categorisation adopted by the NSCC in relation to the post of Postal Services Officers along with the salary scale approved for that service. Thirdly, Petitioners contended that the SOR recommended by the NSCC had lowered the entry qualifications.

Learned Solicitor General, representing the Respondents, strongly resisted the contention of the Petitioners to place themselves in the salary scale of MN-3-2006-A and to re-categorise their post as Supervisory Management Assistant.

Having considered the circumstances under which the post of Assistant Cultural Development Officer was created, the nature of the responsibilities that were conferred on to the said post in the preceding paragraphs, it is opportune at this stage to consider the reasonableness of the decisions of the NSCC to reject the proposal by the 1st Respondent to categorise Assistant Cultural Development Officers as Supervisory Management Assistants and place them in Salary scale MN-3-2006-A, in the light of the parameters set by the P.A. Circular No. 6 of 2006, under which the said post was categorised as Management Assistants - Non Technical - Segment 2 and to place them in salary scale MN-1-2006-A.

In view of the contention placed before this Court by the learned President's Counsel on behalf of the Petitioners, the issue of applicable salary scale arose with the implementation of the Government policy through P.A. Circular No. 6/2006, and therefore it is relevant to devote some space in this judgment to consider the changes made to the public service as a whole by the said circular.

With a view to implement the budget proposals approved by the Parliament in the year 2006, the Government decided to set up a new salary structure for the employees in Public Service based on a systematic categorisation of various posts and, issued Public Administration Circular No. 06/2006. The said circular was revised from time to time to address issues that had arisen in its implementation. The underlying policy consideration of the Government in the issuance of the said Circular was not only to increase salaries of the Public Service, but also to implement a scheme in which each of the posts in the service are re-categorised into 16 pre-

specified groups with a attribution of a new nomenclature to describe such posts.

The P.A. Circular No. 6/2006 also intended to place the public employees of a particular post within an appropriate salary scale, selected among a set of 36 pre-determined salary scales, as indicated in Annexure III of that circular and thereby reducing the 137 different salary scales that existed under the scheme put in place by the Public Administration Circular No. 9/2004.

This Court, in *Padma Akarawita and Others v Dr. Nanda Wickramasinghe and Others* (SC(FR) Application No. 320/2007 – decided on 02.11.2010), made the following observation on P.A. Circular No. 6/2006;

“It is important to note that PA Circular, No. 06/2006, which deals with the Budget proposals is not a document prepared merely for the purpose of increasing the salary of government employees. On the contrary, the said document had been prepared for the purpose of restructuring the Public Service salaries based on Budget proposals for 2006. Accordingly, the proposal referred to in PA Circular, No. 06/2006 is different to all the other Circulars referred to by the petitioners. By these proposals, as stated by the 5th respondent, 126 different salary scales that had existed previously had been reduced to 37.”

In terms of the P.A. Circular No. 6/2006, all posts in the Public Service needed to be re-categorized based on the definitions given in Annexure II and in terms of Annexure III which provided an index to

salary conversion. However, the post of Assistant Cultural Development Officer was not included in the said list of posts set out in Annexure III and therefore did not receive its categorisation under Annexure II. In terms of the said circular, any posts/service that are not included in the annexure III, the relevant Ministry/Department ought to take prompt action to submit their proposals to the National Salaries and Cadre Commission (NSCC) for its recommendations to the Public Service Commission with a SOR in accordance with the appropriate definition set out in the Annexure II. That requirement was fulfilled by the 1st Respondent in the year 2006 but eventually received approval of NSCC and was recommended to the Public Service Commission only in the year 2012. Incidentally, the SOR of the Postal Services Officers of the Unified Postal Services (55R1) which the Petitioners compared themselves with also had been recommended by the NSCC to the Public Service Commission on 30.11.2011 (55R1).

It is already noted, in terms of P.A. Circular No.6/2006, each Ministry and Department is expected to re-categorise/re-group all posts/services of public officers under its employment, based on the definitions given in the Annexure II and in terms of Annexure III - "Index to Salary Conversion". The said Circular identified four Service Levels and admittedly the Petitioners are considered as Secondary Level public officers and are accordingly categorised as Management Assistants. In terms of the special set of instructions issued for recruitment of Management Assistants - Non Technical - Segment 2 with salary scale MN-01-2006-A (P11), Management Assistants are generally defined as public officers who facilitate and assist the administrative, managerial and executive grades. Their entry

qualifications would differ in keeping with the duties assigned to them and are accordingly further divided to form two sub-categories, i.e. Management Assistants - Non Technical and Management Assistants - Technical.

The Management Assistants - Non Technical, are recruited purely on educational qualifications. No technical expertise was required for that post at the point of recruitment. The Service Level of Management Assistants - Non Technical are further divided into two segments by the said Circular. Segment 1 consists of Management Assistants - Non Technical, whose basic educational qualifications at the recruitment are G.C.E. (O/L) or (A/L) and should possess skills of a defined nature, in addition to the said educational qualifications and are assigned with multi-duties. Circular referred to the posts such as Department of Posts Clerks, typists, stenographers, storekeepers, shroffs, bookkeepers etc. as posts that fall under this categorisation. Segment 2 in which the Petitioners are categorised into, consists of employees whose basic educational qualifications, in terms of the SOR, are a pass at the GCE- OL or AL examination and not required to possess skills of any defined nature as an entry qualification but assigned to perform multi-functional duties. There is no dispute that as at present, the Petitioners are categorised as Management Assistants - Non Technical - Segment 2.

In relation to Service Level of Management Assistants, Annexure II of P.A. Circular No. 6/2006, also creates and recognises yet another distinct category, termed as Supervisory Management Assistants, who are defined therein as Supervisory Management Assistants (Non Technical/Technical). In the said set of special instruction to complete

the recruitments to the posts fall under the said categorisation (P13) the category of Supervisory Management Assistant is broadly defined as follows;

“ ආයතනයන්හි විධායකයේ කාර්යයන්ට උපස්ථම්භක වන සේ විධායකය විසින් නිශ්චිත කොට පවරනු ලබන පිරිස් පාලනය, මුදල් භාරකාරීත්වය හා මුදල් පරිහරණය අධීක්ෂණය හා මෙහෙයුම් යන කාර්යයන් ඇතුළත් බහුකාර්ය (Multi-Functional) ස්වරූපයේ කාර්යයන් ඉටුකරන සේවා ගණයකි”.

The qualifications that are set out in P13 in relation to Supervisory Management Assistants (Non Technical) are, passes in six subjects at the G.C.E.(O/L) examination, with credit passes for Sinhala/Tamil/English, mathematics and two other subjects in one attempt. In addition, pass in G.C.E. (A/L) examination in one attempt along with completion of a course, recognised by Vocational Training Commission, in word processing/ typewriting/stenography.

Thus, if a post held by an employee was to be categorised as Supervisory Management Assistant (Non Technical) Segment 1, then the post he or she hold should possess the following qualifications;

- a. In addition to passing G.C.E.(O/L) in six subjects with credit passes for Sinhala/Tamil/English, mathematics and two other subjects in one attempt, passing G.C.E.(A/L) in three subjects in one attempt,
- b. should possess skills of a defined nature at the time of recruitment,
- c. being assigned supervisory functions,
- d. being assigned with multi -functional duties.

The dispute presented to Court by the Petitioners, in their entitlement of being categorised as Supervisory Management Assistants, arises from the assertion that they fulfil all of these qualifications. They relied heavily on the factors of having the entry qualifications to be categorised as such and being assigned with “supervisory” functions coupled with multiple duties. The Respondents however strongly contend that the post of Assistant Cultural Development Officer does not satisfy all of these qualifications, which made the Petitioners disqualified to be categorised as Supervisory Management Assistants. Learned Solicitor General particularly relied on the job description to impress upon this Court that the Petitioners do not function in a supervisory capacity and are not assigned with multiple duties, in terms of P.A. Circular No. 6/2006.

The first of the two contentions referred to above shall be considered now.

Learned President’s Counsel’s contention was that the post of Assistant Cultural Development Officer, instead of categorising as Management Assistants (Non Technical) Segment 2, who are expected to perform a single function, should have been correctly categorised as Supervisory Management Assistants, in view of the multiple nature of functions they perform, which are also supervisory in nature. It was also submitted on behalf of the Petitioners that in terms of the P.A. Circular No. 6/2006, a Management Assistant who perform supervisory functions, irrespective of whether they are of Non Technical or Technical, should be categorised as Supervisory Management Assistants and as such, they should have been placed at salary scale MN-3-2006-A. The Petitioners averred in their pleadings that they

“supervise” the Office Assistant attached to the Cultural Centre. In their counter affidavit, the Petitioners stated that they have been assigned with duties of managing finances of Cultural Centres, managing affairs of the stores, to take part in the annual inventory inspections and also to serve in various units of the Ministry and Universities, in support of the said claims.

Learned President’s Counsel, invited our attention to the duties that are assigned to Assistant Cultural Development Officers by making reference to contents of P12, where it is specifically stated that the sole responsibility of managing the library of the Centre is vested with the Assistant Cultural Development Officer, in addition to them being given the ‘supervisory’ responsibility of keeping the Cultural Centre and its premises clean, and by placing the Office Assistants under their ‘supervision’. He further referred to the observation made by the Committee appointed by the 1st Respondent in its report (P16B) stating that the Assistant Cultural Development Officers function as the ‘supervising officer’ of the Office Assistant and the Security Officer, who are attached to each Centre. Learned Counsel further submitted that this factor was highlighted by the 1st Respondent, in his recommendation, forwarded to the NSCC to categorise the Petitioners as Supervisory Management Assistants (P21).

The Petitioner’s claim of performing supervisory functions is based on the factual assertion that the Office Assistant and Security Officer attached to Cultural Centres are placed under their supervision. However, in terms of the assignment of official duties (P12), an Assistant Cultural Development Officer must discharge his duties under the direct supervision of the Cultural Officer, who was appointed

as the Officer-in-Charge of the Centre and invested with its overall responsibility. As submitted by learned Solicitor General, paragraph 4 of P12 indicates that it is the Assistant Cultural Development Officer's "responsibility"- "(වගකීම)" to ensure the cleanliness of the Centre through the Office Assistant assigned to that Centre. No reference to any supervision over the members of minor staff was made in P12.

In the report of the Committee, appointed by the 1st Respondent which inquired into and made recommendation on the grievances of Assistant Cultural Development Officers, the only reference of them performing a supervisory function is made in relation to the placement of the Office Assistant and the Security Officer attached to the Cultural Centre. However, the document P12, which sets out the responsibilities of the Office Assistant, indicate a contrary position. Both these documents confirm the fact that the Office Assistant was placed under the direct supervision of the Officer-in-Charge, and not under the "supervision" of the Assistant Cultural Development Officer. In the proposed amendment to the SOR (P17) of the 1st Respondent, a similar position is reflected in relation to the job description of the Office Assistant as well as of the Security Officer assigned to a Cultural Centre. Documents 27R3G and 27R3H describe the job description of the Office Assistants and Security Officers, respectively and indicate that the Office Assistant and Security Officer, assigned to a Cultural Centres, are placed under the direct supervision of the Cultural Officer, negating the Petitioner's assertion.

There is another perspective in which the validity of the Petitioner's claim of performing supervisory functions should be considered. The document containing the job description of the

Assistant Cultural Development Officers (P12) specifies the time period they should function in their respective Cultural Centres. The Cultural Centre should be kept open from 8.00 a.m. to 8.00 p.m. for a period of 12 hours on a daily basis. In any given day, the Cultural Officer and the Assistant Cultural Development Officer are expected to function at the Centre for a period of nine hours, including 1-hour lunch break. The Assistant Cultural Development Officers are expected to report to work at 11.30 a.m. and remain in the centre until 8.30 p.m. The Cultural Officer, being the Officer-in-Charge of the Cultural Centre, who should report to work at 8.30 a.m., will remain at the Centre until 5.30 p.m. and only from that time onward the Assistant Cultural Development Officer will function without the former's physical supervision and that too for the remaining three hour period until closing time of the Centre at 8.30 p.m. This is the only time the Petitioners are expected to perform any form of 'supervision' over the two members of minor staff and that too in the acting capacity and on behalf of the Cultural Officer. This factor does not make the Petitioners are assigned with supervisory duties in terms of P.A. Circular No. 6/2006, because, anyway they are expected to cover duties of the Cultural Officer during his absence, being the normal working arrangement for this type of establishments, that are manned by a limited staff.

In view of the above, I am more inclined to accept the submissions of the learned Solicitor General that the post of Assistant Cultural Development Officer is not conferred with any supervisory functions over the Office Assistant or the Security Officer of the Centre and therefore are not entitled to be considered as Management

Assistants who are "*in charge of supervisory functions*" in terms of P.A. Circular No. 6/2006.

Learned President's Counsel's contention on the issue of performing multifunctional duties was that the relevant documentation clearly indicate that they do perform multi-functional duties, in terms of the special set of instructions issued for recruitment of Supervisory Management - Non Technical with corresponding salary scale MN-03-2006-A (P13). The contention that the post of Assistant Cultural Development Officer was erroneously categorised as Management Assistants - Non Technical - Segment 2 and were placed in salary scale MN-1-2006-A by the NSCC, was founded on the claim that they are expected to perform "*multi-functional*" duties and supervises other employees. In support of the said contention, learned President's Counsel had listed out different functions the Assistant Cultural Development Officers are expected to perform, which included functions related to managing finances, field duties, library management, "*supervisory*" functions and assignment of other duties. Thus, they contend, the performance of these multiple duties should satisfy the definition contained in paragraph 3.2 at page 2 of Annexure II for "*multi-functional*" duties and thereby made them entitled to be placed at the salary scale of MN-03-2006-A.

The Respondents challenged the validity of the said contention, which meant to impress upon this Court that the said categorisation is an erroneously made decision by the NSCC. Learned Solicitor General, in her submissions contended that the fact of assignment of several duties does not mean the Petitioners are in fact assigned with "*multi-functional*" duties in terms of P.A. Circular No. 6/2006. She further

submitted that the recommendations made by the Committee appointed by the 1st Respondent in P16B, did so only upon an erroneous application of the definition of “*multi-functional*” duties in the said P.A. Circular No. 6/2006 and therefore the NSCC was correct in rejecting the 1st Respondent’s recommendations, which in effect was made based on that report.

If the decision to categorise the Petitioners as Management Assistants (Non Technical) Segment 1 is found to be made on an erroneous basis as they claim, then that factor would support the position that they should have been categorised as Supervisory Management Assistants. In order to qualify to be categorised as Supervisory Management Assistants, the Petitioners must satisfy this Court that they are assigned with “*multi-functional*” duties in terms of the P.A. Circular No. 6/2006, in order to qualify for such a categorisation.

The Petitioners contend that they possess all four qualifications referred to above to be categorised as Supervisory Management Assistants, a claim consistently refuted by the Respondents.

The job description for the post of Assistant Cultural Officer as contained in the draft SOR prepared by the 1st Respondent in 2006 (27R3D), indicates that the Assistant Cultural Development Officers are assigned with following functions;

“අනුයුක්තව සිටින සංස්කෘතික මධ්‍යස්ථානයේ ආයතනික කටයුතුවලට සහ මධ්‍යස්ථාන භාර නිලධාරියාට සහායවීම, පුස්තකාලය භාරව කටයුතු කිරීම, හා සාරධර්ම පිරි සමාජයක් ගොඩනැගීමේ කාර්යයට සම්බන්ධව කටයුතු කිරීම, සංස්කෘතික මධ්‍යස්ථානයේ ස්ථාන භාර සංස්කෘතික

ප්‍රචාරක නිලධාරී නොමැති අවස්ථාවල සියලුම අධීක්ෂණයන් සිදුකිරීම.”

(emphasis added)

What are these “supervisory” functions that are expected of the Petitioners?

The approved SOR of 2012 (P10), under its paragraph 4 sets out the job description of the Assistant Cultural Development Officers are assigned with. The said paragraph describes 11 different duties. These duties indicate functions related to library activities, clerical work in relation to all correspondence, preparation of vouchers, maintaining attendance registers of students and to act for the Cultural Officer during his absence. The summary description of the post is described in the said job description as “අනුයුක්තව සිටින සංස්කෘතික මධ්‍යස්ථානයේ ආයතනික කටයුතුවලට මධ්‍යස්ථාන භාර නිලධාරියාට සහායවීම, පුස්තකාලය භාරව කටයුතු කිරීම, සංස්කෘතික සේවා සැපයීම හා සාරධර්ම පිරි සමාජයක් ගොඩනැගීමේ කාර්යයට සම්බන්ධව කටයුතු කිරීම” .

It is important to note in this context of the general instructions issued in terms of P.A. Circular No. 6/2006, in completion of the Scheme of Recruitment for Management Assistants - Non Technical Segment 2 who are entitled to be placed in the salary scale of MN-1-2006-A, (55R5A). In the said set of instructions, the general definition given to Management Assistants - Non Technical Segment 2 are as follows:-

“ආයතනයන්හි විධායක කළමනාකරණ හා පරිපාලන කාර්යයන්හි නියුතු වූවන්ගේ කාර්යයන්ට උපස්ථම්භක හා/හෝ පහසුකාරක කර්තව්‍යයන් අතුරින් තාක්ෂණික ස්වභාවයේ නොවන්නාවූද, ඒක ස්වරූපයේ වූද (Single Functional) කාර්යයන් මෙම සේවා ගණයට පැවරේ. මෙම ගණයේ කාර්යයන් අතුරින් පත්කිරීම් බලධරයා විසින් විශේෂයෙන්

නියම කොට දක්වන ලද කාර්යයන් මෙම සේවා ගණයට අයත් නිලධාරීන් විසින් ඉටුකරනු ලැබිය යුතුය.”

It is evident from the above quoted descriptions, the assignment of official functions to the post of Assistant Cultural Development Officer are of single functional in terms of the P.A. Circular No. 6/2006, although they are expected to carry out the functions that are specifically assigned to them by the relevant appointing authority (පත්කිරීම් බලධරයා විසින් විශේෂයෙන් නියම කොට දක්වන ලද කාර්යයන් මෙම සේවා ගණයට අයත් නිලධාරීන් විසින් ඉටුකරනු ලැබිය යුතුය), which may include the ones that are referred to in the approved SOR of 2012 (P10), under paragraph 4. It seemed that the Petitioners had no serious objection to the said categorisation at that point of time, although they merely stated in their petition that when they made representations over this issue and it was promised to rectify same with formulation of the SOR for the post of Assistant Cultural Development Officers. This was eventually done in the year 2012.

Then only a Collective of Assistant Cultural Development Officers made representations to the 1st Respondent by letter dated 17.05.2012 (P16A) registering their protest for the said categorisation and placement of the impugned salary scale of MN-01-2006. It is stated therein that when the Assistant Cultural Development Officers were recruited in the year 2000, their entry qualifications were set well above the entry qualifications of Management Assistants, but their salary scale is placed lower to that of the other Management Assistants. It is also stated that the said grievance is a direct result of their absorption to the State Management Service. The Committee appointed by the 1st Respondent, after hearing the trade unions who made representations

before them, made recommendation to place the Assistant Cultural Development Officers in the salary scale of MN-03- 2006-A and made a factually erroneous observation that the Office Assistant and Security Officer of the Cultural Centres were being supervised by them, in accepting the Petitioner's claim that they do perform supervisory functions. The Committee further recommended that the SOR should be amended to reflect the changes they recommend.

In the proposed amendments to SOR (P17), the general job description for the post of Assistant Cultural Development Officer, re-categorised as Supervisory Management Assistant - Non Technical (MN-03-2006-A) reads “ ආයතනයන්හි විධායකයේ කාර්යයන්ට උපස්වෛභක වන සේ විධායකය විසින් නිශ්චිත කොට පවරනු ලබන පිරිස් පාලනය, මුදල් භාරකාරීත්වය හා මුදල් පරිහරණය අධීක්ෂණය හා මෙහෙයුම් යන කාර්යයන් ඇතුළත් බහුකාර්ය (Multi-Functional) ස්වරූපයේ කාර්යයන් ඉටුකරන සේවා ගණයකි”. This description is identical to the one provided in the general guidelines issued to complete the Scheme of Recruitment to Supervisory Management Assistants - Non Technical (MN-03-2006-A), (55R5C). However, the functions that are assigned to the said post under the proposed amended SOR differed from the functions that are already assigned under the approved SOR (P10), only in respect of two aspects. In relation to the functions that are associated with the library, the proposed amended SOR made it the sole responsibility of the Assistant Cultural Development Officer and in relation to the Office Assistant and Security Officer, he was expected only to “assist” the supervision of minor staff. Clearly, there was no assignment of supervisory function to the Petitioners even in the said proposed amendment to SOR but only

an assignment to “assist” the Cultural Development Officer, in the supervision of minor staff.

The NSCC, by its letter dated 09.10.2012 rejected the said proposed amendments to SOR, indicating there was no sufficient reasons to change its decision to place them in the salary scale MN-1-2006 (P19). Within a month of the said letter, the 3rd Petitioner and others lodged a complaint with the HRCSL under reference HRC/4070/2012 (P20). During the ensuing inquiry before the Commission, the NSCC provided further reasons for its decision in P23A, by way of a reply to specific issues that had been raised. In that letter the NSCC clarified its position that although the Petitioners were placed initially under TB 2-1, before placing them under MN-1-2006 in terms of P.A. Circular No. 6/2006, the mere fact of placement of some others who too were initially under salary scale TB 2-1 in MN-2-2006, does not make the Petitioners entitled to be placed under the salary scale MN-2-2006. This is due to the reason that subsequent salary revisions implemented under different Circulars had introduced changes in the applicable salary scales and with the implementation of P.A. Circular No. 6/2006, and it was therefore imperative for the categorisation of posts/service of the entire Public Service into several categories as stipulated in that circular.

During the process of re-categorisation, the relevant Ministries and Departments were expected to take into consideration the responsibilities that are assigned to each of such posts/services. The NSCC cites an example to highlight its point by stating that no direct comparison could be made to the former salary scales to the new set of salary scales introduced by the P.A. Circular No. 6/2006, by way of a

particular salary scale corresponding to the former salary scale. As a result, some of the posts that were placed under the former salary scale TB 2-1 were subsequently placed under MN-2-2006 while several others were not. It was further stated by the NSCC that Schedule 1 to P.A. Circular No. 6/2006 specifically provides under item 6, by stating in order to be categorised as Supervisory Management Assistants, the post/service should have G.C.E.(O/L)/(A.L) with supervision responsibilities as basic qualifications.

Moreover, it is stated in the general instruction to setting up the Scheme of Recruitment for Management Assistants (Non-Technical) who are placed in the salary scale MN-3-2006-A (55R5C), they should perform functions that are classified as “ආයතනයන්හි විධායකයේ කාර්යයන්ට උපස්ථම්භක වන සේ විධායකය විසින් නිශ්චිත කොට පවරනු ලබන පිරිස් පාලනය, මුදල් භාරකාරීත්වය හා මුදල් පරිහරණය අධීක්ෂණය හා මෙහෙයුම් යන කාර්යයන් ඇතුළත් බහුකාර්ය (Multi-Functional) ස්වරූපයේ කාර්යයන්” .

It is observed that, in relation to the duties that are connected with the library of the Cultural Centre, job description P12 expects an Assistant Cultural Development Officer to carry them out as his “primary” function, but that too under the supervision of the Cultural Officer, who was placed with overall responsibility for the affairs of the Centre, including its library.

In this context, it is opportune at this stage to consider another important aspect highlighted by the learned President’s Counsel for the Petitioners during his submissions. The Petitioners, in their attempt to establish that they were treated differently to another group of employees, who are similarly circumstanced as they are, pointed out that the Postal Services Officers – Grade 1B of Segment B of the Unified

Postal Services, who also have similar entry qualifications and perform multifunctional duties as the Petitioners, were placed in the higher salary scale MN-3-2006-A. To illustrate their point, the Petitioners relied on a paper advertisement inserted by Postmaster General (P15), calling for applications for the said post by which it is indicated that applicants to the post of Postal Services Officer - Grade 1B of Segment B, once appointed, were entitled to be placed in salary scale MN-3-2006-A.

This particular contention of the Petitioners appears to have been founded on an erroneous assumption regarding the nature of the criterion employed in the categorisation of posts. It appears that the Petitioners are under a misapprehension that the entry level educational qualifications are the sole criterion. Clearly the entry level qualification is not the sole criterion that is considered for the purpose of categorisation, but only one among several others. Annexure II of P.A. Circular No. 6/2006, sets out the multiple criteria that should be employed for the re-categorisation and re-grouping of posts. Item 1 of the said Annexure II reads thus;

“The categorisation of employees has been based on the following criteria;

- a) Entry Qualifications/Scheme of Recruitment
- b) Promotional Procedures
- c) Nature of Duties
- d) Simplicity
- e) Practicability
- f) Consistency/Compatibility.”

It may be a fact that when the Petitioners were recruited, their entry qualifications were comparable to the ones applicable to the recruitment for the Postal Services Officers. But the subsequent change of the policy of the Government, implemented through the P.A. Circular No. 6/2006, had introduced a paradigm shift in the categorisation of posts in the Public Service by adopting the several distinct criteria, as set out therein. This particular aspect was recognised in *Padma Akarawita and Others v Dr. Nanda Wickramasinghe and Others* (supra)

Learned Solicitor General highlighted the differences in the entry qualifications, assignment of responsibilities and instances which clearly indicate the supervisory character of the duties that are assigned to Postal Services Officers of Grade 1B of Segment B in the Unified Postal Service. She thus contended that the two posts could not be compared and are distinct in all aspects, in terms of the P.A. Circular No. 6/2006. She relied on the applicable Scheme of Recruitment to the said post, 55R1.

Perusal of 55R1 and P15 revealed that the entry requirements to the post of Postal Services Officer - Grade 1B of Segment 2 were that each applicant must pass six subjects in G.C.E.(O/L) examination in not more than two attempts and should have at least four credit passes for subjects including Sinhala/Tamil/English literature and Mathematics. The applicants also must pass three subjects in G.C.E.(A/L) examination and, in addition, must be computer literate in a specified area of a study program which is not less than 720 hours and conferred by an institution approved by the Tertiary and Vocational Education Commission.

In contrast, the entry qualifications for the post of Assistant Cultural Development Officer in terms of the SOR (P10) and proposed SOR (P17) are six passes in G.C.E.(O/L) examination in one sitting and at least a pass in one subject in G.C.E.(A/L) examination. In relation to professional qualification, an applicant must have either followed a course in word processing and typewriting in an institution accepted by Tertiary and Vocational Education Commission or achieved competency to a similar level.

The comparison referred to above as to the entry requirements concerns one of the criteria adopted to the categorisation of Supervisory Management Assistants. That criterion is possession of a skill of a defined nature at the time of recruitment. The SOR of the Unified Postal Services (55R1) as well as the advertisement referred to by the Petitioners, calling for applications for the Unified Postal Services and in setting out the required qualifications for recruitment for the post of Postal Services Officer of that service, clearly specifies under the heading “professional qualifications” that each applicant must possess a qualification of a study programme on a specified area, which is of not less than 720 hours of study, approved by the Tertiary and Vocational Education Commission. None of the Petitioners nor any of the new recruits that are to be selected under the SOR (P10) were expected to fulfil such an entry requirement at the time of recruitment.

It seems that the contention that the SOR (P10) had lowered the entry level educational qualifications is directly relevant to their contention based on the claim of differential treatment with the Postal Services Officers. The Petitioners were recruited with the educational qualifications (as per P2) and with the approved SOR (P10), the lowered

entry level qualifications would only apply to new recruits and not to the Petitioners, who were already confirmed in their service. This was made on a policy decision to align with the present categorisation of Assistant Cultural Development Officers with the categorisation of a Management Assistant - Non Technical - Segment 2. Even if the said entry level qualifications on which the Petitioners were recruited are retained, that factor alone will not qualify the post of Assistant Cultural Development Officer to be categorised as Supervisory Management Assistant - Non -Technical.

Thus, it seems that the entry qualifications and professional qualifications that are applicable to the two posts are not comparable. Even if it is comparable, the Respondent's contention is that the educational qualifications are not the sole criterion considered by the NSCC in recommending a salary scale to a post or service in terms of the P.A. Circular No.6/2006, and it is one among five other different factors that should be taken into consideration. Thus, the perceived similarity between the entry requirements between the two posts, as entertained by the Petitioners by placing reliance on entry qualifications that were applied at the time they were recruited on contract basis with that of the entry requirement of the Postal Services Officer, would not advance their cause any further.

This is primarily because, the nature of the duties that are assigned to an Assistant Cultural Development Officer, a criterion imposed by Annexure II for re-categorisation of the posts, indicate a striking dissimilarity between that post and the post of Postal Services Officer. In the applicable SOR (55R1) to the Postal Services Officers, the definition of functions to the said post is stated as follows;

“ශ්‍රී ලංකා තැපැල් දෙපාර්තමේන්තුව යටතේ පවත්නා තැපැල් කාර්යාල, පාලන ගිණුම් කාර්යාල, ඇතුළු සියළුම දෙපාර්තමේන්තු ඒකක වල විධායක කළමනාකරණ සංවර්ධන හා සේවා කාර්යයන් හි නියැලී කාර්ය මණ්ඩලයේ ක්‍රියාවලීන් සඳහා අවශ්‍ය වන්නාවූ පරිපූරක පහසුකරණ හා සහායක කාර්යයන් මෙහෙවීම හා අධීක්ෂණයෙහිලා ගැනෙන පිරිස් පාලන, මූල්‍ය හා වාණිජ කටයුතු, සම්බන්ධීකරණ හා මෙහෙයුම් කටයුතු, පරිපාලන හා ගිණුම් කටයුතු ඇතුළු බහු කාර්ය ස්වභාවයේ කාර්යයන් ඉටු කිරීම, අධීක්ෂණය හා මෙහෙයවීම ඉටු කරනු ලබන නිලධාරී ගණයකි.”

The functions that are assigned to the post of Postal Services Officer in the said SOR are as follows;

“කාර්යයන්

- අ. තැපැල් කාර්යාලවල සමස්ථ කාර්යභාර නලධාරියා ලෙස කටයුතු කිරීම
- ආ. තැපැල් සේවා ඵලදායී ලෙස පවත්වාගෙන යාමට අදාළ සියළුම සේවා කටයුතු ඉටු කිරීම
- ඇ. තැපැල් භණ්ඩ අලෙවිය, ගිණුම් තැබීම, මූල්‍ය භාරකාරත්වය, ගනු දෙනු ඉටුකිරීම, සන්නිවේදන කටයුතු අධීක්ෂණය
- ඈ. වත්කම් හා දේපල වල භාරකාරත්වය, පරිපාලනය හා ආරක්ෂාව සැපයීම
- ඉ. කාර්ය මණ්ඩල පරිපාලනය හා අධීක්ෂණය
- ඊ. පාලන/ගිණුම් හා අනෙකුත් දෙපාර්තමේන්තු ඒකක වල විධායක හා කළමනාකරණ ක්‍රියාවලීන්ට සහාය දැක්වීම
- උ. ලිපි හා තැපැල් භාණ්ඩ තේරීම් කටයුතු මෙහෙයවීම හා අධීක්ෂණය
- ඌ. ලිපි හා තැපැල් භාණ්ඩවල භාරකාරත්වය හා ආරක්ෂාව සඳහා අවශ්‍ය කටයුතු කිරීම
- ඹ. තැපැල් නුවමාරුව, බෙදාහැරීම හා තේරීමට අදාළ විධායක හා කළමනාකරණ ක්‍රියාවලීන්ට සහාය වීම
- එ. තනතුරට අදාළව දෙපාර්තමේන්තු ප්‍රධානියා විසින් කලින් කලට පවරනු ලබන වෙනත් රාජකාරී. ”

It is clear from the list of functions reproduced above from the relevant SOR, the post of Postal Services Officer is placed as the senior most officer who is placed in charge of a Post Office and is expected to

supervise its sales, accounts, financial, transactions, communications, staff, sorting of postal items and their custody. The term “අධීක්ෂණය” appears in three specific instances, in addition to placing the responsibility of overall supervision of the Post Office and its entire staff on the Postal Services Officer and thus conceding to the supervisory nature of the functions in the definition section itself.

The document containing the assignment duties to the post of Assistant Cultural Development Officer (P12) lists out following duties;

01. ඔබ ප්‍රාදේශීය සංස්කෘතික මධ්‍යස්ථානයේ සංස්කෘතික නිලධාරීගේ සෘජු අධීක්ෂණය යටතේ රාජකාරී කල යුතුය.
02. සංස්කෘතික මධ්‍යස්ථානයේ හා එහි බඩු බාහිරාදියේ වගකීම සංස්කෘතික නිලධාරී වෙත පැවරී ඇතත්, එම ගොඩනැගිලි හා බඩු බාහිරාදිය පරිහරණය කිරීමේදී ඔබගේද සම්පූර්ණ වගකීම යටතේ පරිහරණය විය යුතුය.
03. සංස්කෘතික නිලධාරී බොහෝ විට විවිධ රාජකාරී කටයුතු සඳහා මධ්‍යස්ථානයෙන් බැහැරව යන පුද්ගලයකු බැවින් සියළුම බඩු බාහිරාදිය සම්බන්ධයෙන් ඔබද වගකීමට බැඳී සිටී. එබැවින් එම බඩු බාහිරාදියේ ආරක්ෂා පිළිබඳව වඩාත් සැලකිල්ලෙන් කල යුතුය.
04. සංස්කෘතික මධ්‍යස්ථානයට අයත් සියළුම ගොඩනැගිලි ශාලා භූමිය පවිත්‍රව තබා ගැනීමේ වගකීම ඔබ සතුවන අතර, එම කටයුතු සංස්කෘතික මධ්‍යස්ථානයට අනුයුක්ත කර ඇති කාර්යාල කාර්ය සහායක මගින් ඉටුකරවා ගැනීම ඔබගේ වගකීම වේ.
05. පුස්තකාලය භාරව කටයුතු කිරීම හා ස්ථානභාරගේ අධීක්ෂණය යටතේ එය විධිමත්ව පවත්වාගෙන යාම ඔබේ රාජකාරී අතුරින් ප්‍රමුඛ රාජකාරියකි.
06. කාර්යාලීය කටයුතු ලිපිගොනු පවත්වා ගැනීම, පාඨමාලා සඳහා සංස්කෘතික නිලධාරීන්ගේ උපදෙස් පරිදි අවශ්‍ය ලියකියවිලි සහ වෙනත් අවශ්‍යතා ඉටු කිරීම, විවිධ ක්‍රියාකාරකම් සඳහා පැමිණෙන සියළුම දෙනාගේම

අවශ්‍යතාවයන් ඉටු වන පරිදි කටයුතු කිරීම ඇතුළු එදිනෙදා කටයුතු නොපිරිහෙලා ඉටු කිරීමද ඔබගේ කාර්ය වේ.

- 07. ඔබගේ ප්‍රධානියා වශයෙන් කටයුතු කරන්නේ සංස්කෘතික නිලධාරී බැවින් ඔහුගේ උපදෙස් පරිදි කටයුතු කල යුතු අතර කළමනාකරණ මණ්ඩලය ප්‍රාදේශීය ලේකම් හා සංස්කෘතික ඒකකයේ අධ්‍යක්ෂකගේ උපදෙස් පිලිපැදීම අත්‍යවශ්‍ය වේ.
- 08. සංස්කෘතික නිලධාරීගේ අනුදැනුමක් නැතිව කිසිදු ආයතනයකට හෝ කෙනෙකුට ලිපි එවීම එම අයගේ උපදෙස් අනුව කටයුතු කිරීම වැනි ක්‍රියාකාරකම් වලින් වැළකිය යුතුය. සංස්කෘතික මධ්‍යස්ථානයේ ආරක්ෂාව විනය හා ගෞරවය රැකෙන පරිදි කටයුතු කිරීම ඔබගේ විශේෂ වගකීම වේ.
- 09. ඉහත සඳහන් රාජකාරී වලට අමතරව සංස්කෘතික නිලධාරී, ප්‍රාදේශීය ලේකම් සංස්කෘතික නිලධාරී, ප්‍රාදේශීය ලේකම් හා සංස්කෘතික ඒකකයේ අධ්‍යක්ෂ විසින් වරින් වර පවරනු ලබන රාජකාරී ඉටු කිරීම ඔබගේ වගකීම වේ.

It is very evident from the considerations that are referred to above, the attempt made by the Petitioners to compare themselves with the post of Postal Services Officers in support of their contention that they were treated unequally when compared with others who are similarly circumstanced should necessarily fail for the reason that the very nature of functions that are assigned to Postal Services Officers are clearly of supervisory in nature in terms of the P.A. Circular No.6/2006, whereas the functions that are assigned to the Petitioners are not.

When the nature of responsibilities of the Postal Services Officer is compared with that of Assistant Cultural Development Officers, in relation to the applicable salary scale, the 27th Respondent states at paragraph 39(e) in his Statement of Objections that prior to implementation of the Government policy reflected in the P.A. Circular No. 6/2006, the applicable circular in relation to determination of the

salary scale was Public Administration Circular No. 9/2004. In terms of said circular, the Petitioners were absorbed into Public Service in 2006, and were placed on the salary scale of TB-2-1 (Rs. 101, 880 - 14X1,320 - 6X1,160 - 129,720), whereas the officers of the Public Management Assistants Service, had already been placed at a higher salary scale of TB 2-2 (Rs. 108,480 - 9X1,320 - 8X1,560 - 134,500). The Petitioners merely denied this statement of the 27th Respondent by paragraph 45 of their counter affidavit. They only reiterated their claim that they perform both supervisory functions and multiple duties but did not make any specific statement as to applicable salary scale to the post of Assistant Cultural Development Officers in terms of the Public Administration Circular No. 9/2004, contradicting the 27th Respondent's position.

Since the Petitioners grievance over the categorisation and salary scale is founded on the claims that they perform multi-functional and supervisory duties, it is of interest to peruse Annexure III to P.A. Circular No. 6/2006, to have a general overview as to the other posts that are placed in salary scale of MN- 01- 2006-A with the Petitioners along with the posts that had been placed in the salary scale of MN-03-2006.

The posts of Sub Post Masters, Welfare Officers, Co-operative Inspectors, Court Clerks, Court Interpreters, Court Stenographers, Court Typists and Grama Niladhari Class I are placed in the salary scale of MN- 01- 2006-A, whereas officers of the Unified Postal Service Group A Grade III Segment B, Group B, Grade I and Grade II are placed in the salary scale of MN-03-2006, along with Station Master of Supra Grade, Class I and II, and Librarians (non-graduates).

Learned Solicitor General, in her submissions contended that the fact of assignment of several duties does not by itself make the Petitioners as Public Officers who are assigned with “*multi-functional*” duties in terms of P.A. Circular No. 6/2006 and the Index to Salary Conversion seem to indicate that it had been the underlying rationale adopted uniformly by the NSCC in the determination of salary conversions between posts that are placed in salary scales MN-01-2006 and MN-3-2006.

Thus, the NSCC in determining not to accept the proposed Scheme of Recruitment (P17) not only considered the nature of duties, a criterion set out by P.A. Circular No. 6/2006, that are assigned to the post of Assistant Cultural Development Officers, but also considered and applied the other different criteria as well, as the 27th Respondent avers in his Statement of Objections.

In view of the foregoing, it is evident that the 3rd Petitioner failed to establish that the impugned decision made by the NSCC (P19) to reject the proposed amended Scheme of Recruitment (P17) recommended by the 1st Respondent by his letter dated 21.09.2012 (P18), was not made on the scheme set out by the set of guidelines that had been laid down in the P.A. Circular No. 6/2006 as amended in the re-categorisation of the post of Assistant Cultural Development Officer and in the determination of the applicable salary conversion.

Since the scope of this application is to consider whether the rejection of the proposed Scheme of Recruitment (P17) to amend the existing Scheme of Recruitment (P10) is violative of the fundamental right to equality of the 3rd Petitioner, it is very relevant to refer to the pronouncement made by *Sripavan* CJ in *Disanayake and Others v*

Secretary, Ministry of Public Administration and Home Affairs and Others (2015) 1 Sri L.R. 362. His Lordship stated (at p. 367) that “[A] scheme of recruitment once formulated is not good forever, it is perfectly within the competence of the appropriate authority to change it, rechange it, adjust it and re-adjust it according to the compulsions of changing circumstances. The Court cannot give directions as to how the Public Service Commission should function except to state the obligation not to act arbitrarily and to treat employees who are similarly situated equally. Once the Public Service Commission lays down a scheme, it has to follow it uniformly.”

In the judgment of *Gunaratne and Others v Ceylon Petroleum Corporation and Others* (1996) 1 Sri L.R. 315, Fernando J stated (at p. 324) in relation to Article 12 of the Constitution that it “prohibits arbitrary, capricious and/or discriminatory action”.

The basis on which the NSCC decided not to accept the proposed amended Scheme of Recruitment for the post of Assistant Cultural Development Officers indicative from the contents of the letter P19, which states;

“ඔබ අමාත්‍යාංශයේ තනතුරු වල බඳවා ගැනීමේ පරිපාටි පිළිබඳව මීට පෙර කරන ලද සාකච්ඡා වලදී ඉවමාරු වූ අදහස්ද, සහකාර සංස්කෘතික ප්‍රවර්ධන නිලධාරීන්ගේ රාජකාරී හා වගකීම් ආදී කරුණු ද සලකා බැලීමෙන් පසු එම තනතුර සඳහා MN-01-2006 යන වැටුප් පරිමානය යෝජනා කරන ලදී. එම තීරණය වෙනස් කිරීමට තරම් කරුණු ඉදිරිපත් වී නොමැති බව කාරුණිකව දන්වමි”.

Therefore, it is my considered view that the impugned decision in P19, cannot be termed as an arbitrary, capricious, or discriminatory decision, and it did not discriminate among persons who are similarly circumstanced.

The petition of the 3rd Petitioner is accordingly dismissed without costs, along with the petitions of the other Petitioners, whose grievances are time barred.

JUDGE OF THE SUPREME COURT

BUWANEKA ALUWIHARE, PC, J.

I agree.

JUDGE OF THE SUPREME COURT

ARJUNA OBEYESEKERE, J.

I agree.

JUDGE OF THE SUPREME COURT