

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

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

SC /FR/ Application No 153/2016

- 1. Rajapakshage Nishanthi Karunanayaka,**
No. 68, Katuwasgoda,
Veyangoda.
- 2. Irosha Niwanthi De Silva,**
No. 01, 9th Lane,
Colombo 03.
- 3. Hettikankanamalage Don Ayesha
Harshani Mali Perera,**
No. 21, Middle Class National Housing Scheme,
Mailagashandiya,
Anuradhapura.
- 4. Pathirana Mudiyansele Kalyani
Kusumalatha,**
No. 31/K, Pollebedda,
Mahaoya.
- 5. Attanayaka Mudiyansele Renuka
Kumari Wijerathna,**
Polwatta, Pollebedda,
Mahaoya.
- 6. Dissanayaka Mudiyansele Duleeka
Rukshani Thilakarathne,**
No. 273, Airport Road,
Anuradhapura.
- 7. Harshani Dilrukshi Wanninayaka,**
No. 810/B, Dharmapala Mawatha,
Wijayapura,
Anuradhapura.

8. **Kuruppu Arachchige Chathuri Niroshika,**
No. 304/27/3, Pinnagollawatta,
Nittambuwa.
9. **Thise Appuhamilage Dilka Nishani
Siriwardana,**
No. 30/79, Mayadunna,
Gonagolla,
Ampara.
10. **Mercy Thanuja Kumari Balaharuwa,**
Palugaswewa,
Eppawala.
11. **Kariywasam Majuwana Gamage
Sachee Rangana,**
Wagoda, Bogaha Handiya,
Elpitiya.
12. **Konara Mudiyanseleage Dushmanthi
Thilakasiri,**
Irrigation Quarters,
Monaragala
13. **Robol Lenora Imalka Sewwandi,**
No. 173/7A, Mihindu Mawatha,
Dehiwala.
14. **Kahandage Manjula Prabodini,**
Kodamawatta, Kurukudegama,
Pattiyagedara,
Bandarawela.
15. **Yaddehi Kandage Shirani Pushpa,**
No. 96, Diwulpitiya,
Boralesgamuwa.
16. **Kumarawanni Mudiyanseleage
Chathurangika Damayanthi,**
C/O K.W.M. Seneviratne, Bedirukka,
Mahaoya.

- 17. Rajapaksha Mudiyansele**
Chathurika Nishanthi Perera,
M42, Kandy Road,
Mahaoya.
- 18. Hewawasam Ederage Heshani Mashenka,**
No. 66, Dambadeniya,
Mahaoya.
- 19. Wattegedara Dinusha Kumuduni Bandara,**
1st Canal Road, New Town,
Padawiya.
- 20. Rathnayake Mudiyansele Jeewantha**
Kumara Jayasinghe,
Rajina Junction,
Thambuttegama.
- 21. Gulawita Purandarage Samanthi Deepika,**
No. 84E, Batuwita Road,
Olaboduwa,
Gonapala Junction.
- 22. Kottege Lathika Dulanjali,**
Road behind the Hospital,
Padawiya.

Petitioners

Vs,

- 1. Y. Abdul Majeed,**
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 07.
- 1A. S. S. L. Weerasinghe,**
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Buddhaloka Mawatha,
Colombo 07.

- 1B. **M. Thuraisingham,**
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Bauddhaloka Mawatha,
Colombo 07.

- 1C. **S. Mohanarajah,**
Director General of Irrigation,
Department of Irrigation,
No. 230, P.O. Box 1138,
Bauddhaloka Mawatha,
Colombo 07.

2. **Secretary,**
Ministry of Irrigation and
Water Resource Management,
No. 11, Jawatta Road,
Colombo 05.

3. **Secretary,**
Ministry of Public
Administration and Management,
Independence Square,
Colombo 07.

4. **Dharmasena Dissanayaka,**
Chairman,

5. **A.Salam Abdul Waid,**
Member,

- 5A. **Prof. Hussain Ismail,**
Member,

6. **D. Shirantha Wijayatilaka,**
Member,

7. **Prathap Ramanujam,**
Member,

8. **V. Jegarasasingam,**
Member,
9. **Santi Nihal Seneviratne,**
Member,
10. **S. Ranugge,**
Member,
11. **D.L. Mendis,**
Member,
12. **Sarath Jayathilaka,**
Member,

The 4th to 12th Respondents of all:

Public Service Commission,
No. 177, Nawala Road,
Narahenpita, Colombo 05.

13. **Secretary,**
Public Service Commission,
No. 177, Nawala Road,
Narahenpita,
Colombo 05.
14. **Director Establishment,**
Ministry of Public
Administration and Management,
Independence Square, Colombo 07.
15. **Director General,**
Department of Management Services,
Ministry of Finance,
Colombo 01.
16. **Hon. the Attorney General,**
Attorney General's Department,
Colombo 12.

Respondents

Before: **H.N.J. Perera CJ**
Sisira J. De. Abrew J
Vijith K. Malalgoda PC J

Counsel: Shantha Jayawardena with Chamara Nanayakkarawasam for the Petitioners
Dr. Avanti Perera SSC for the Respondents

Argued on: 05.11.2018

Judgment on: 07.02.2019

Vijith K. Malalgoda PC J

Petitioners to the present application had come before this court alleging the violation of their fundamental rights guaranteed under Article 12 (1) and 14 (1)(g) of the Constitution by the letters of appointment dated 18.08.2015 issued by the 1st Respondent.

This court on 08.09.2016, granted leave to proceed for the said violations as alleged by the Petitioners.

The Petitioners had been recruited to the Irrigation Department at various offices and project sites Island wide and at the time they were recruited all of them had passed the G.C.E. Ordinary Level Examination at least in 6 subjects including Language or Literature and Mathematics.

As submitted by the Petitioners, some of them have recruited as far back as year 2002 and have been granted casual or contract appointments, as Clerks, Management Assistants or Typists.

Having joined the Irrigation Department on casual and/or contract basis, the Petitioners continued to serve the department until Public Administration Circular 25/2014 was issued by the Ministry of Public Administration and Home Affairs on 12.11.2014. (P-24)

At the time the said circular was issued, the Petitioners have served the Irrigation Department as reflected in the following chart;

1 st Petitioner	11 years and 11 months
2 nd Petitioner	09 years and 02 months
3 rd Petitioner	07 years and 04 months
4 th Petitioner	06 years and 06 months
5 th Petitioner	06 years and 06 months
6 th Petitioner	05 years and 02 months
7 th Petitioner	06 years and 05 months
8 th Petitioner	05 years and 04 months
9 th Petitioner	04 years and 08 months
10 th Petitioner	04 years and 06 months
11 th Petitioner	03 years and 08 months
12 th Petitioner	03 years and 05 months
13 th Petitioner	02 years
14 th Petitioner	02 years and 02 months
15 th Petitioner	02 years and 09 months
16 th Petitioner	02 years and 04 months
17 th Petitioner	02 years and 05 months
18 th Petitioner	01 years and 04 months

19 th Petitioner	04 years and 05 months
20 th Petitioner	01 year and 09 months
21 st Petitioner	01 year and 04 months
22 nd Petitioner	10 months

The said circular which provided for casual/ contract employees to be made permanent, had provided as follows;

“The Government has decided as per budget proposals 2015 to grant permanent appointments with effect from 24.10.2014 to the employees who have been recruited and are still in the service on Temporary, Casual (on daily wages), Substitute, Contract or Relief basis to serve in Public Service, Provincial Public Service and State Corporations and Statutory Boards.

2. Accordingly, permanent appointments are granted to the employees who have completed a continuous and satisfactory service of 180 days in the posts belonging to following service categories as at 24.10.2014.

a) Primary Grade – Unskilled (PL 01) / (U-PL1)

b) Primary Grade –Semi Skilled (PL 02)/ (U-PL2)

c) Primary Grade –Skilled (PL 03)/ (U-PL3)

d) Management Assistant- Non Technical Segment 02 (MN 01)/ (U-MN1)

e) Management Assistant- Technical Segment 03 (MT 01)

f) Management Assistant- Non Technical C1 (MA 1-1)

g) Management Assistant- Non Technical C2 (MA 1-2)

3. It is sufficient for these employees belonging to service categories mentioned in (a), (b) and (c) above, to have passed at least Grade 08/ Year 09 for the purpose of granting permanent appointments. However, the employees belonging to the service categories mentioned in (d), (e), (f) and (g) above, shall have passed G.C.E. (O/L) Examination at least in 06 subjects including Language or Literature and Mathematics.
4. Relevant appointing authorities shall take action to grant permanent appointments with effect from 24.10.2014 to all employees, who become eligible as per the provisions of this circular, in the same posts to which they have been recruited under the service categories mentioned above.”

Since the 1st to the 22nd Petitioners referred to above had fulfilled the requirement under Public Administration Circular 25/2014 the appointing authority, the 1st Respondent had taken steps to implement the said circular by appointing the Petitioners to the posts, the Petitioners said to have been recruited by the Irrigation Department.

Accordingly the 1st Respondent had issued letters of appointment on 17.11.2014 appointing the 1st to the 22nd Petitioners to the post of clerk with effect from 24.10.2014 in the Irrigation Department. The said letters of appointment issued to the 22 Petitioners are produced marked P-28 (i) to (xxii).

As complained by the Petitioners before the Supreme Court, the 1st Respondent, the appointing authority by his letters of appointment dated 18.08.2015, ten months after the original letters of appointment issued to them, appointed them to the post of labourer with effect from 24.10.2014 and cancelled the earlier letters issued to them on 17.11.2014.

Being aggrieved by the said decision of the 1st Respondent to appoint the Petitioners as labourers by letter dated 18.08.2015, the Petitioners filed the instant application and in addition to the declaration of their fundamental rights had been violated by the said decision, the Petitioners have further prayed for a declaration that P29 (i) to P29 (xxii) are null and void and that P28 (i) to P28 (xxii) are legally valid.

As further submitted by the Petitioners, they were considered as clerks, Management Assistants, Typists for all purposes of the department and several documents were produced in support of the above contention. In this regard our attention was drawn to several documents including, letters of appointment with regard to the appointments of 3rd and 5th Petitioners for the post of clerks by P3(f), P5(d) and several service letters issued by their immediate supervising officer marked P3(e), P4(g), P5(e), P6(j), P9(h), P10 (i), P17(g) and P20(e) by 3rd, 4th, 5th, 6th, 9th, 10th, 17th and 20th Petitioners

In addition to the above documents, the Petitioners have produced under P-23 (a)-(l) the duty lists issued to some of the Petitioners to establish that the Petitioners were assigned with clerical jobs at their work places.

When considering the material placed before this court I have no doubt that all the Petitioners to the instant application were assigned with duties of Clerks, Computer Programmers, Typists etc. but not as labourers in their respective work places.

Paragraph 4 of the Public Administration Circular 25/2014, which identifies the eligibility criteria of a casual employee to be made a permanent, requires that,

“Who become eligible as per the provisions of this circular, in the same posts to which they have been recruited under the service categories mentioned above.”

Paragraph 5 of the said circular had further provided,

“Once relevant appointments are granted, it shall be reported promptly to the Director General Management Services in accordance with the specimen attached herewith in order to update the staff of each institution.”

As revealed before this court, once the appointments were made by the 1st Respondent as reflected in P28(i)-(xxii), steps had been taken to report the said appointments to the Director General Management Services under the above provision of the circular.

The 1st Respondent, who said to have issued P28-(i)-(xxii) had now taken up the position that, “when information relating to the appointments were reported to the Director General of Management Services as required by the said circular, it was observed by the said Director General that such appointments had been made contrary to the provisions of clause 4 of the said circular. In this regard the 1st Respondent had received specific instructions to adhere to the above provisions of the circular by letter dated 18.03.2015 which reads as follows;

- 2. “.....ස්ථීර පත්වීම ප්‍රධානය කර ඇති නාම ලේඛනය පරීක්ෂා කිරීමේදී රාජ්‍ය පරිපාලන චක්‍රලේඛ අංක 25/2014 හි විධිවිධානයන්ට පටහැනිව ස්ථීර කර ඇති බව නිරීක්ෂනය කරන ලදී.
- 3. එසේ ක්‍රියා කිරීම නිසා රාජ්‍ය සේවය තුළ දුෂ්කරතා රැසක් මතු වන හෙයින් වාරි මාර්ග දෙපාර්තමේන්තුවේ තාවකාලික, අතියම් (දෛනික) ආදේශක, කොන්ත්‍රාත් හෝ සහන පදනම මත බඳවාගෙන ඇති සේවකයින් සඳහා ස්ථීර පත්වීම ලබාදීමේදී රාජ්‍ය පරිපාලන චක්‍රලේඛ අංක 25/2014 හි 04 වන පරිච්ඡේදයේ සඳහන් පරිදි සේවකයන් බඳවාගත් තනතුරුවලට ස්ථීර කලයුතු හෙයින්, එම විධි විධාන ප්‍රකාරව කටයුතු කර වී බැව් මෙම දෙපාර්තමේන්තුව වෙත වාර්තා කරන ලෙස කාරුණිකව ඉල්ලමි.”

As further submitted by the 1st Respondent, subsequent letters of appointment issued to the Petitioner as reflected in P29 (i)-(xxii) had been issued, by carefully going through the relevant documents maintained at the respective offices and after being satisfied the exact post to which each and every Petitioner had been recruited by the Irrigation Department. It is the position taken by the 1st Respondent that all the Petitioners before this court had been recruited as casual/ contract labourers and their salaries were paid on check roll maintained at the respective offices, for the payment of salaries to the daily paid labourers.

Even though some of the Petitioners have made an attempt to challenge the above position, their own documents filed before this court had confirmed the position taken up by the 1st Respondent.

I have gone through some of the documents relied by the Petitioners which reads as follows;

- a) Service letter issued to the 1st Petitioner P1(h)

බඳවා ගන්නා ලද තනතුර : අභියම් ඉංග්‍රීසි යතුරු ලේඛකා-

දෛනික කම්කරු වැටුප් ගෙවීමේ පදනම මත

- b) Daily paid Employees service record. 2nd Petitioner P2(e)

සේවකයාගේ පදවිය : අභියම් (තදුවිත) කම්කරු

- c) Letter of appointment issued to 7th Petitioner P7 (g)(h)

“ඒ අනුව නේවාසික ඉංජිනේරු කාර්යාලය සඳහා..... අභියම්

(තදුවිත) කම්කරු පදනම මත පත්කරවා ගැනීම අනුමත කරමි”

- d) Service certificate issue to 8th Petitioner P8(f)

“.....යන අය කම්කරු තනතුරු නාමයෙන් සේවයේ යොදවාගෙන අවම

දෛනික වැටුපක් ගෙවනු ලැබුවද”

e) Letter of appointment issued to the 12th Petitioner P12(f)

“..... දෛනික කමිකරු වැටුප් මත තදුචිත කමිකරු සේවයට බඳවා ගැනීමට මෙයින් අනුමැතිය දෙමි”

f) Service certificate issued to 14th Petitioner P14 (l)

“..... යන අය කමිකරු තනතුරු නාමයෙන් සේවයේ යෙදව්‍යාගෙන අවම දෛනික වැටුප් ගෙවනු ලැබුවද.....”

Even though the 10th Petitioner was careful not to submit any document revealing the fact that she was originally employed as a labourer, the 1st Respondent had submitted the Daily Paid Employees Service Record to confirm that her designation is casual labourer (1CR2).

When going through the above documents, it appears that the Petitioners were recruited as casual labourers and paid the salary of a casual labourer even though some of them have been issued with letters of appointments, service letters and duty lists as Management Assistant, Clerks, Typists and/or Computer Operators.

As observed by me, the circular 25/2014 referred to above, had provided clear guidelines in order to make the casual /contract employees permanent in the government service, based on the service category to which the employee had been previously recruited. Director General Management Service by his letter dated 18.03.2015 advised the 1st Respondent to comply with the provisions of the said circular to avoid in equality among the other employees who will be absorbed to the government service based on the same circular.

In the case of ***C.W. Mackie and Company Ltd. V. Hugh Molagoda, Commissioner General of Inland Revenue and others [1986] 1 Sri LR 300*** the Supreme Court observed that,

“In order sustain the plea of discrimination based upon Article 12 (1) a party will have to satisfy the court about two things:

1. That he has been treated differently from others
2. That he has been differently treated from persons similarly circumstanced without any reasonable basis.”

The Petitioners in the present case has failed to establish both, that they have been treated differently from others and that they have been differently treated from persons similarly circumstanced when implementing the provisions of the Public Administrative circular 25 of 2014.

In the case of ***Elomre Perera V. Major Montegue Jayawickrema Minister of Public Administration and Plantation Industries and others [1985] 1 Sri LR 285*** the Supreme Court held that Article 14 (1) (g) only recognizes a general right in every citizen to do work of particular kind and of his choice. It does not confer the right to hold a particular job or to occupy a particular post of one's choice.

As observed by me the Petitioners wanted the provisions of Public Administration circular 25/2014 be applicable to them as reflected in P28(i)-(xxii) when they are absorbed to the Government service, but not as reflected in P29 (i)-(xxii). By P29 (i)-(xxii) all the Petitioners were absorbed into the government service as labourers and by issuing those letters of appointment, the Respondents have not violated the Article 14 (1) (g) of the Constitution.

For the reasons given above I see no merit in the application before this court. The Petitioners failed to establish that their fundamental rights guaranteed under Article 12 (1) and 14 (1) (g) had been violated by the conduct of the above Respondents.

This application is accordingly dismissed, I make no order with regard to costs.

Application dismissed. No costs.

Judge of the Supreme Court

H.N.J Perera, CJ

I agree,

Chief Justice

Sisira J. De. Abrew J

I agree,

Judge of the Supreme Court

