

**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 No. 64/2014**

1. Werage Sunil Jayasekera,  
38, Susara,  
Kadawathagama,  
Kadugannawa.
2. Amarakoon Mudiyanseelage Keerthi  
Amarakoon,  
“Amara Sevana”,  
Varahakkogada,  
Danturei.
3. Sampath Priyadarshana Gunathilake,  
“Narmada”,  
Hammalawa,  
Kuliyapitiya.
4. Kariyawasam Don Jayantha Weerasinghe,  
08/A, Abihamani,  
Vaharakkogada,  
Danturei.
5. Murukkuvadura Tilaka Asela Wijerathna,  
34/6 A, Sri Seewala Road,  
Nalluruwa,  
Panadura.

6. Amarakoon Achchilage Somapala  
Amarakoon,  
25/3E, Gohagoda Road,  
Katugastota.
7. Obada Kankanamlage Lalith Kumara,  
131, Pelahela,  
Dompe.
8. Atapattu Mudiyanseelage Thilak Nanda  
Wijerathne,  
488/2, Halbarawa,  
Talahena, Malambe.
9. Widanagamage Shantha Kumara  
Wickramanayake,  
Totupala Road,  
Weragampitiya, Matara.
10. Meemendra Kumara Aberathna,  
Weliyaya Road,  
Digana, Mahawa.
11. Singahalage Gamini Weerasinghe,  
345/B, Denipagoda,  
Muruthugahamulla,  
Gampola.
12. Jayakody Arachchige Pradeep Lalantha  
Priya,  
33/1, Koskandawala,  
Yakkala.
13. Chandana Elanperuma Kodituwakku,  
“Samaya”,  
Samagi Mawatha,  
Walgama, Matara.

14. Bopage Prince Wijerathna,  
Hospital Road,  
Puwakdeniya,  
Rambukkana.
15. Don Amarasiriwardenage Prasanna  
Sylvester Wijsekera,  
971/17, Maradana Road,  
Colombo 08.

**Petitioners**

**Vs.**

1. B.A.P. Ariyaratne,  
General Manager,  
Department of Railways,  
Maradana,  
Colombo 10.
- 1A. Vijaya Amaratunga,  
General Manager,  
Department of Railways,  
Maradana,  
Colombo 10.
- 1B. S.M. Abewickrama,  
General Manager,  
Department of Railways,  
Maradana,  
Colombo 10.
- 1C. M.J.D. Fernando,  
General Manager,  
Department of Railways,  
Maradana,  
Colombo 10.

**1D. W.A.D.S. Gunasinghe,  
General Manager (Acting),  
Department of Railways,  
Maradana,  
Colombo 10.**

2. Dhammika Perera,  
Secretary,  
Ministry of Transport,  
No. 1, D.R. Wijewardene Mawatha,  
Colombo 10.

2A. Nihal Somaweera,  
Secretary,  
Ministry of Transport,  
No. 1, D.R. Wijewardene Mawatha,  
Colombo 10.

2B. G.S. Vithanage,  
Secretary,  
Ministry of Transport,  
No. 1, D.R. Wijewardene Mawatha,  
Colombo 10.

2C. N.B. Monti Ranatunga,  
Secretary,  
Ministry of Transport,  
No. 1, D.R. Wijewardene Mawatha,  
Colombo 10.

3. Dayasiri Fernando,  
Chairman,

4. Palitha M. Kumarasinghe,  
Member,

5. Sirimavo A. Wijeratne,  
Member,
6. S.C. Mannapperuma,  
Member,
7. Ananda Seneviratne,  
Member,
8. N.H. Pathirana,  
Member,
9. S. Thillanadarajah,  
Member,
10. M.D.W. Ariyawansa,  
Member,
11. A. Mohamed Nahiya,  
Member,

3<sup>rd</sup> to 11<sup>th</sup> Respondents all at:  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita.

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

**Respondents**

13. Justice Sathya Hettige, PC,  
Chairman,
14. Kanthi Wijetunga,  
Member,

15. Sunil S. Sirisena,  
Member,

16. Dr. I.M. Zoysa Gunasekera,  
Member,

13<sup>th</sup> to 16<sup>th</sup> Added Respondents all at:  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita.

**Added Respondents**

17. Dharmasena Dissanayaka,  
Chairman,

17A. Hon. Justice Jagath Balapatabendi (Retired),  
Chairman,

18. A. Salam Abdul Waid,  
Member,

18A. Indrani Sugathadasa,  
Member,

19. D. Shirantha Wijayatilaka,  
Member,

19A. V. Shivagnanasothy,  
Member,

20. Prathap Ramanujam,  
Member,

20A. T.R.C. Ruberu,  
Member,

21. V. Jegarasasingam,  
Member,
- 21A. Ahamad Lebbe Mohamed Saleem,  
Member,
22. Santi Nihal Seneviratne,  
Member,
- 22A. Leelasena Liyanagama,  
Member,
23. S. Ranugge,  
Member,
- 23A. Dian Gomes,  
Member,
24. D.L. Mendis,  
Member,
- 24A. Dilith Jayaweera,  
Member,
25. Sarath Jayathilaka,  
Member,
- 25A. W.H. Piyadasa,  
Member,

17A to 25A Respondents above; all at  
Public Service Commission,  
No. 177, Nawala Road,  
Narahenpita.

**Further Added Respondents**

**Before:** Chief Justice Jayantha Jayasuriya, PC  
Justice E.A.G.R. Amarasekara  
Justice A.L. Shiran Gooneratne

**Counsel:** Senany Dayaratne with Ms. Nishadi Wickramasinghe **for the Petitioners.**

Rajitha Perera, SSC **for the 1C, 2C, 12<sup>th</sup>, 17<sup>th</sup>A - 25<sup>th</sup>A Added Respondents.**

**Argued on:** 12/10/2021

**Decided on:** 05/04/2022

### **A.L. Shiran Gooneratne J.**

The Petitioners in this application are employees who hold the rank of Sub Inspector of the Railway Protection Force who joined the Department of Sri Lanka Railways from its inception in the year 1988. The Petitioners claim that they have been kept stagnant at the position of Sub Inspector for 32 years wherein, in terms of the scheme of promotions, a Sub Inspector was eligible for promotion to the rank of Inspector upon completion of 7 years of satisfactory service and thereafter, to the rank of Assistant Superintendent upon completion of 6 years in the rank of Inspector. The Petitioners are aggrieved by the continuous failure and/ or inaction or tacit refusal on the part of the General Manager Department of Railways (1<sup>st</sup> Respondent) and 3<sup>rd</sup> to 11<sup>th</sup> Respondents to give effect to the recommendation made by the Human Rights Commission (HRC), dated 16/07/2007, marked 'P10', and the directions given by the Public Petitions Committee (PPC), order dated 13/06/2013, marked 'P14', to promote the Petitioners with effect from the date on which the Petitioners were eligible for promotions.

Hence, the Petitioners contend that their rights guaranteed under Article 12(1) of the Constitution is violated and their "legitimate expectations" denied due to the said continuous failure and/ or inaction or tacit refusal to enforce the said recommendations and/ or directions, and therefore to declare that an infringement has been caused by the said Respondents under Article 12(1) of the Constitution and also in the circumstances of this application, the Court make order granting 'just and equitable' relief in terms of Article 126(4) of the Constitution.

The Petitioners contend that they were recruited externally, at the inception of the Railway Protection Force (RPF), the successor to the Railway Security Service. With the establishment of the RPF on 1<sup>st</sup> November 1987, several employees had opted to retire and some had opted to remain in the Department of Railways and join the newly formed RPF. It is also contended that, in June 1997, on the recommendation of the Political Victimization Committee of the Ministry of Transport and the implementation of the Cabinet Memorandum marked 'P2a', and also the directions given by the Judgment of the Supreme Court in SC/FR/ 944/1999, approximately 50 of the said retired employees were reinstated with all annual increments applicable to their grade and placed in higher ranks than the Petitioners. It is also contended that according to a settlement reached in Application Bearing No. SC/FR/186/2005 dated 13/09/2011, approximately 150 employees who opted to remain in the Department by joining the RPF were also placed at a higher salary structure equal to one promotion from their current rank as contained in 'P4a' and 'P4b', respectively.

In the circumstances, the Petitioners contend that since 1988 to date, the Petitioners hold the rank of Sub Inspector for approximately 26 years, in denial of their legitimate expectation of securing promotions in terms of the applicable service minute. The Petitioners reiterate that in terms of the provisions of the Scheme of Recruitment and Promotions marked 'P6', the Petitioners would have been eligible to be promoted to the rank of Inspector and thereafter, to the rank of Assistant Superintendent in the year 1995 and 2001, respectively.

By letter dated 06/12/2012, the 2<sup>nd</sup> Respondent has sought necessary approval from the Public Service Commission to give effect to the recommendation of the Human Rights Commission to promote Sub-Inspectors to the rank of Assistant Superintendent as contained in 'P12'.

The Petitioners state that due to the failure of the 1<sup>st</sup> Respondent to give effect to the said recommendation made by the Human Rights Commission (HRC), the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, and 13<sup>th</sup> Petitioners forwarded Petition dated 12/07/2012 to the Public Petitions Committee Office, seeking relief. The Public Petitions Committee Office by letter dated 13/06/2013, marked 'P14', directed the 2<sup>nd</sup> Respondent to take steps to promote the said 5 Petitioners to the rank of Assistant Superintendent on a supernumerary basis pending the approval of the Public Service Commission (PSC).

Having taken into consideration the recommendation made by the Human Rights Commission, dated 16/07/2007 (P10), and the directions given by the Public Petitions Committee Office dated 13/06/2013, (P14), the Public Service Commission by letter dated 13/01/2014, (P16), decided that appointments cannot be made on supernumerary basis, the fact that examinations had been held, Petitioners also had the opportunity to obtain promotions through those examinations and it is open for them to obtain promotions based on the SOR. According to letter dated 21/05/2014, (1R9), the PSC has brought to the attention of the 1<sup>st</sup> Respondent, that existing vacancies should be filled in terms of the SOR and therefore no appointments can be made on a supernumerary basis.

Senior State Counsel appearing for the Respondents contend that due to the deliberate misrepresentation and suppression of material facts and the lack of *Uberrima Fides* of the Petitioners, this application should be rejected without going into the merits of the case. In the facts and circumstances of this case, the said contention is based on disputed matters and therefore, should be decided at a later stage.

For easy reference, the Petitioners to this application identified three categories of employees as stated below-

- I. The officers attached to the original Sri Lanka Railways Service **who opted to retire from the Department of Railways** in 1988, who were re-instated in the RPF in June 1997.

Accordingly, 50 employees were absorbed to the RPF and matters relating to their placements, promotions back wages were to be determined in accordance with the scheme applicable to the 1980 July strikers (P2 and P3).

- II. The officers attached to the original Sri Lanka Railways Service **who opted to remain in the Department of Railways** by joining the RPF at its inception.

According to the settlement reached in Application Bearing Number SC/FR/186/2005, the 1<sup>st</sup> to 3<sup>rd</sup> Petitioners of the said application, who were called “the beneficiaries” of the said settlement, were considered similarly placed contemporaries of officers who were recruited after retirement (category I above) and was placed at a higher salary structure equal to one promotion from their current rank. The settlement in that case was entered as Judgment of the Court, argued and decided on 13/09/2011, and in its terms of settlement as set out in paragraph 12 of the said application, the Court made special reference that the said settlement will not set a precedent.

- III. Officers **who were recruited to the RPF externally at the inception of the RPF**, similar to that of the Petitioners.

Therefore, it is clear that the settlement entered in Action Bearing Number SC/FR/186/2005, was on the basis that the officers belonging to categories 1 and 2 are contemporaries and similarly placed. It is pertinent to note that prior to arriving at the said settlement entered as Judgment of this Court, the Court specifically considered “*the unique facts and circumstances surrounding and/ or attendant upon the situation*”

*of the aforesaid beneficiaries to the settlement arrived therein, and more particularly the fact that the beneficiaries of the settlement were contemporaries of the 3<sup>rd</sup> to 52<sup>nd</sup> Respondents in the Ceylon Government Railway Security Service, and similarly placed*". It is contended that some of the Petitioners to the present application together with 14 others, sought to intervene in the said application, however, the said intervention was not permitted by Court.

As observed earlier, the Petitioners in the present action belong to the 3<sup>rd</sup> category who were recruited to the RPF at its inception. Therefore, the said Petitioners can be clearly distinguished from the officers belonging to category 1 and 2.

By Notice dated 07/01/2002, applications were called for the Post of Inspector from the rank of Sub Inspector as contained in '1R2'. According to the Scheme of Recruitment marked '1R1', applicable to the Petitioners, 4 Applicants were promoted to the rank of Inspector. The list of marks scored by the said Applicants are marked '1R4'.

Subsequent to the recommendation of the HRC dated 10/07/2007, marked 'P10', by notice dated 10/09/2009, marked '1R5', applications were once again called for the post of Inspector. Responding to the said notice dated 10/09/2009, the 1<sup>st</sup>, 3<sup>rd</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and the 13<sup>th</sup> Petitioner applied for promotions. According to the applicable Scheme of Recruitment, 13 promotions have been made to the rank of Inspector, however, none of the Petitioners were successful. A copy of the recommendations of the Board of Interview is marked as '1R7'.

### **Recommendations made by of the Human Rights Commission.**

HRC by its recommendation dated 16/07/2007, informed the Public Service Commission to formulate an effective and transparent scheme to promote the Petitioners in conformity with the applicable Scheme of Promotion. The Petitioners, *inter alia*, have prayed that this Court make order to give effect to the said

recommendation made by the Human Rights Commission dated 16/07/2007. In its recommendation, the HRC has taken into consideration 8 complaints filed by persons who were recruited as Sub Inspectors to the RPF on 02/05/1988, similar in rank to that of the Petitioners in this case. In the affidavits tendered to the HRC, the complainants drew attention of the said Commission to the Supreme Court Application Number SC/FR/944/99 filed by officers who retired, and sought to be absorbed to the RPF.

According to paragraph 11 of the affidavit tendered by the 1<sup>st</sup> Respondent, the reinstatement in 1997 of approximately 50 employees who retired in 1998, was to implement the Cabinet Memorandum marked 'P2a', the Cabinet Decision marked 'P2b' and the directions given by the Judgment of this Court in SC/FR/ 944/99, applicable to officers who are now identified as belonging to category 1. Also, in terms of the settlement arrived in SC/FR/186/2005, dated 13/09/2011, relief was granted to the aggrieved officers belonging to category 2, on the basis of similarly placed as officers belonging to category 1.

**Directions given by the Public Petitions Committee Office.**

The Public Petitions Committee Office considered the complaints of the 1<sup>st</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and the 13<sup>th</sup> Petitioner who were before them. The Complainants have conveniently overlooked the scheme of recruitment and the examination process referred to in '1R2' and '1R5'. The said Committee observed that the rest of the affected Petitioners are awaiting the implementation of the recommendation made by the HRC to the PSC and further observed that the 5 Petitioners before the said Committee cannot stay any longer for the implementation of the HRC recommendation and with no reasons given, directed the 2<sup>nd</sup> Respondent to back date and promote the said 5 Petitioners on supernumerary basis, on a suitable scheme. The said direction does not specify any particular rank to which the officers should be promoted and was made only in respect of the 5 Petitioners who were before the Committee. Therefore, the directive of the PPC, if implemented, would be akin to promotions made on a selective basis which

would benefit only 5 Petitioners out of similarly circumstanced Petitioners who are now before this Court. However, up to date no supernumerary promotions have been made to any of the Petitioners based on the said recommendation.

### **The Scheme of Recruitment.**

In this back drop, the Petitioners strongly contend that strict compliance with the Scheme of Recruitment cannot be implemented in extenuating circumstances. In support of this contention, the Petitioners have endeavored to list instances where strict compliance and/ or implementation of the Scheme of Recruitment was not followed.

Firstly, the Petitioners have drawn the attention of Court to document marked 'XX' in the counter affidavit filed in this case. The said letter refers to a competitive examination for the promotion of officers to the rank of Inspector to be held on 27/08/2011. The said letter states that if you chose not to sit for the said examination, the Department should not be held responsible. In other words, a decision not to sit for the examination would be at your own peril.

The Petitioners have also drawn attention to documents marked 'P4a and P4b', in paragraph 7, of the counter affidavit dated 02/11/2016, which refer to a Petition and the Judgment entered in SC/FR/186/2005, respectively. As observed earlier, in the said case, a settlement Judgment was entered between officers belonging to the said category 2 on the basis that they were similarly placed with officers belonging to the said category 1.

Secondly, it is submitted that the inordinate delay in holding examinations perpetuated the grievance of the Petitioners. The Petitioners admit that applications were called in the year 2002 and 2009 for promotions to fill existing vacancies and pursuant to examinations been conducted, officers were promoted to the rank of Inspector. Applications were called for the post of Inspector by notice dated 07/01/2002, marked

‘1R2’. According to the marks obtained, 4 promotions were made to the rank of Inspector as reflected in document marked ‘1R4’ and thereafter by notice dated 10/09/2009, marked ‘1R5’, a further 13 promotions were made to the rank of Inspector. Some of the Petitioners who applied, were not successful.

Thirdly, the inordinate delay in holding examinations in terms of the Scheme of Recruitment.

Fourthly, to compete with younger aspirants for promotions whose probability of being successful at the written examination was higher. The Petitioners strongly contend that they were kept stagnant for over 30 years in one rank and therefore, had to compete with younger persons usually superior to that of older persons.

Acting in terms of ‘1R8’, the Respondents have written to the PSC and the response is contained in ‘1R9 and 1R10’. The PSC has observed that the promotions to the next rank are based upon competitive examinations in terms of the Scheme of Recruitment and the Petitioners had the opportunity to sit for the said examination. The Petitioner’s failed to qualify at the competitive examination on two occasions and therefore cannot now claim to be promoted as of right. If the delay in holding the examinations deprived promotions, the Petitioners should have challenged the purported delay in holding examinations at the appropriate stage, with the available remedies in law.

The 1<sup>st</sup> Respondent by letter dated 26/11/2012, whilst making reference to letter dated 16/07/2007, has clearly informed the Public Service Commission that presently there are no existing vacancies to effect promotions and further sought directions from the PSC seeking to divert from the Scheme of Recruitment in order to promote the 5 Petitioners on a supernumerary basis on the directions given by the PPC. By letter dated 13/01/2014, marked ‘1R9’, the PSC has categorically stated that the Petitioners have been afforded an opportunity to face examinations and therefore, the conditions of the Scheme of Recruitment should be followed in order to promote the Petitioners to the

next rank. A similar conclusion was arrived by the PSC in their letter dated 13/01/2014, marked '1R10'.

The Petitioners in this application joined the Railways Protection Force in 1988. There is no disclosure that persons named by documents pleaded in the affidavit dated 29/11/2018, marked 'Z1' to 'Z8', are appointees recruited to the RPF in its inception in 1988.

As observed earlier, the recommendation to the PSC by the HRC, *inter alia*, was to formulate an effective and transparent scheme to promote the Petitioners in conformity with the applicable SOR. Never was it recommended by the HRC that the authorities divert from the existing SOR to effect promotions to the Petitioners. Adhering to the said recommendation, the 1<sup>st</sup> Respondent held an examination on 27/08/2011, for persons to be promoted to the rank of Inspector, as evinced by letter dated 21/05/2014, marked '1R9'. It is also to be noted that the directions given by the PPC if implemented, would have treated the rest of the Petitioners who were similarly circumstanced, differently. The Petitioner's reliance on legitimate expectation is founded in statements made by the HRC and the PPC.

**In the circumstances, can the Petitioners entertain a legitimate expectation to be promoted on a supernumerary basis arising on the recommendation of the HRC and/ or the direction given by the PPC.**

Promoting officers to the next rank on a supernumerary basis was never the criteria applicable to officers recruited to the newly established RFT. With the change in policy, the Petitioners can be identified as a distinct group of officers who were directly recruited to the Railways Department and also be clearly distinguished from the officers similarly placed belonging to category 1 and 2. None of the Petitioners were promoted on a supernumerary basis or any other criteria which would likely to have frustrated the procedural and/ or substantive rights of the Petitioners legitimate expectations to be

promoted to the next rank. What the Petitioners are now seeking is a change in policy from that of the existing scheme of promotions to that of promotions to be made on a supernumerary basis. In the circumstances have the Petitioners establish unfairness or abuse of process in the application of the scheme of recruitment to the Petitioners.

Lord Woolf MR, in *R vs. North & East Devon Health Authority, Ex parte Coughlan [1999] EWCA Civ 1871*, laid down at least three possible outcomes to be considered by a Court to satisfy itself as to the legitimacy of an expectation, as stated below-

- (a) The Court may decide that the public authority is only required to bear in mind its previous policy or other representation, giving it the weight, it thinks right, but no more, before deciding whether to change course.
- (b) On the other hand, the Court may decide that the promise or practice induces a legitimate expectation of, for example, being consulted before a particular decision is taken. Here it is uncontentionous that the Court itself will require the opportunity for consultation to be given unless there is an overriding reason to resile from it.
- (c) Where the Court considers that a lawful promise or practice has induced a legitimate expectation of a benefit which is substantive, not simply procedural, authority now establishes that here too the Court will in a proper case decide whether to frustrate the expectation is so unfair that to take a new and different course will amount to an abuse of power. Here, once the legitimacy of the expectation is established, the Court will have the task of weighing the requirements of fairness against any overriding interest relied upon for the change of policy. (emphasis is mine)

On the question of substantive legitimate expectation, in *Ariyaratne and Others vs. Illangakoon and Others (SC FR Application No. 444/2012* decided on 30/07/2019, Prasanna Jayawardena J. stated that the,

*“... phrase substantive legitimate expectation’ captures the situation in which the applicant seeks a particular benefit or commodity, such as a welfare benefit or a license, as a result of some promise, behaviour or representation made by the public body”.*

A similar view was expressed in *Meril vs. Dayananda de Silva and others (2001) 2 SLR 11.*

In *Sirimal & Others vs. Board of Directors of the Co-operative Wholesale Establishment & Others (2003) 2 Sri L.R. 23*, the Supreme Court, recognized a situation where substantive or procedural legitimate expectation would arise, where Weerasooriya J. held that,

*“if the legitimate expectations are protected only procedurally, the most employees could hope for, would be an order requiring of consultation before a change of policy is affected. If, however, the legitimate expectations are substantive the position is deferent, in that it is open to a court to require the public authority to confer upon the person the substantive benefit which he is expected to receive under the earlier policy”.*

As observed earlier, the asserted legitimate expectation of the Petitioners, derives from a statement made by a public body to consider formulating an effective and transparent scheme to promote the Petitioners in conformity with the applicable scheme of promotions and certainly not a statement to change the existing policy on promotions in favour of the Petitioners. The decision-making authority the PSC, was consistent in its directives that the Scheme of Recruitment be followed to fill vacancies and the existing vacancies were filled, accordingly. Therefore, the Petitioners mere expectation

or hope of being promoted on a supernumerary basis cannot be treated as an expectation which is legitimate or substantive, within the existing policy.

The above position was considered in *Siriwardana vs. Seneviratne and 4 Others (2011) 2 SLR 1*, where Dr. Shirani A. Bandaranayake, C.J. cited with approval the case of *India vs. Hindustan Development Corporation (1993) 3 SSC 499*, where it was stated that;

*"However earnest and sincere a wish, a desire or a hope may be and however confidently one may look to them to be fulfilled, they by themselves cannot amount to an assertable expectation and a mere disappointment does not attract legal consequences. A pious hope cannot amount to a legitimate expectation. The legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in a natural and regular sequence. Again, it is distinguishable from a mere expectation. Such expectation should be justifiable, legitimate and protectable. Every such legitimate expectation does not by itself fructify into a right and, therefore, it does not amount to a right in a conventional sense."*

According to *Andrew le seur, Maurice Sunkin, Jo E. K. Murkens, 'Public Law - Texts, Cases, and materials (Third Ed.)' (pg.732)-*

*"Legitimate Expectation arises where claimants argue that public bodies have said or done things that have created an expectation that they will act in accordance with past practice, policies, promises or representations." (For recent discussion refer - P. Reynolds, on 'Legitimate expectations and the protection of trust in public officials' [2011] Public Law 330.)*

The Petitioners are before this Court to assert their right to equal protection before the law. As seen before, this Court in a settlement Judgment clearly identified officers belonging to the 1<sup>st</sup> and 2<sup>nd</sup> categories as similarly placed and relief granted accordingly.

A promotion is to be effected according to the procedure laid down in the scheme of recruitment which requires a process of holding an examination. The scheme of promotion applicable to the Petitioners who belong to the 3<sup>rd</sup> category was applied to the Petitioners. Some of the Petitioners, who complied with the said Scheme were not successful. In the circumstances, the asserted relief by the Petitioners that they be promoted on a supernumerary basis would indeed be detrimental to the interests of the Respondents. For the reasons stated, the Petitioners would not be entitled to a declaration for an infringement of their fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The Petitioners have also pleaded that this Court exercising its wide discretion in terms of Article 126(4), make a just and equitable order as it may deem. As already mentioned, the PPC, with no just or reasonable criteria, identified 5 officers who were present before the Committee to be promoted on a supernumerary basis. If implemented, the right to equality before the law of the other Petitioners may have been infringed. As discussed before, a process which included a competitive examination and the award of marks on seniority and special qualifications was available to the Petitioners according to the applicable Service Minute for the next promotion. Some of the Petitioners complied with the said process as far back as the year 2002. None of the Petitioners sought to challenge the said established process regarding promotions, at that stage. Therefore, considering the circumstances of this case, I refrain from making an order in terms of Article 126(4) of the Constitution.

As observed earlier, The Respondents contend that due to the deliberate misrepresentation and suppression of material facts and the lack of *Uberrima Fides* of the Petitioners, this application warrants a dismissal based upon the same. The provisions contained in the Service Minute '1R1', reveals that the next promotion of the Petitioners to the rank of Inspector would include a competitive examination and the award of marks for seniority and special qualifications. On 07/01/2002 and 10/09/2009, by '1R2 and 1R5' respectively, applications have been called twice to fill

in vacancies to the post of Inspector. According to ‘1R3 and 1R6’, Some of the Petitioners applied for the examination held in 2002 and 2009 respectively and complied with the applicable Service Minute. The Petition does not contain any reference to the above.

However, the non-disclosure of conducting of examinations twice and that some of the Petitioners attempted and failed was admitted by the Petitioners in their counter affidavit.

The Petitioners filed this application on the premise that with the applicable Service Minute the Petitioners were eligible to be promoted to the next rank by satisfactorily completing the required number of years in service, but have been deprived of their promotions for the last 26 years. However as asserted above, the Petition did not disclose that some of the Petitioners had complied with the applicable Service Minute, but were not successful to be promoted to the next rank. The Petitioners in their counter objections have admitted that applications were called in 2002 for the rank of Inspector as evinced by ‘1R2’ and again in 2009 as evinced by ‘1R5’. Having contended that the Petitioners were denied of their promotions and/ or prospects of promotions based on the applicable Service Minute, it was incumbent on the Petitioners to have disclosed such vital and decisive facts in the Petition, essential to the adjudication of matters in dispute. The Petitioner’s conduct in suppression and misrepresentation of material facts, clearly lacked *Uberrima Fides*. This position is reflected in several Judgments delivered by this Court. (*Jayasinghe vs. The National Institution of Fisheries and Nautical Engineering and Others, (2002) 1 SLR 277, Liyanage and Another vs. Divisional Secretary Gampaha and Others, (2013) 1 SLR 06, Jahangir Sherifdeen vs. Principal Visakha Vidyalaya, SC/FR 01/2015, SCM 03/10/2016*).

Accordingly, this application has to be rejected on this ground as well.

Therefore, I hold that the Petitioners are not successful in establishing any inconsistency, inequality, or unreasonableness affecting an enforceable right, infringed by any of the Respondents, in terms of Article 12(1) of the Constitution.

The application is dismissed. I order no costs.

**Judge of the Supreme Court**

**Jayantha Jayasuriya, PC. CJ.**

I agree

**Chief Justice**

**E.A.G.R. Amarasekara J.**

I agree

**Judge of the Supreme Court**