

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 the Democratic Socialist Republic of Sri Lanka

SC (FR) Application No: 17/2016

Sooriyapperumalage Ashoka Abeysiri,
No. 116, Yatiyana, Nittambuwa.

PETITIONER

Vs.

1. The Chairman,
Lanka Phosphate Limited.
- 1A. Anil Ranasinghe,
Chairman, Lanka Phosphate Limited.
- 1AA. Sujeewa Indrajith Karunasinghe,
Chairman, Lanka Phosphate Limited.
2. H.R.U.D. Bandara,
General Manager, Lanka Phosphate Limited.
3. D.G.U. Chamara,
Finance Manager, Lanka Phosphate Limited.
4. S.D. Rupasinghe,
Deputy Finance Manager,
Lanka Phosphate Limited.
5. Lanka Phosphate Limited.

1st – 5th Respondents at
No. 73/1/1, New Kelani Bridge Road, Colombo 14.
6. R.M. Madduma Bandara,
Supplies Officer, Lanka Phosphate Limited,
Eppawela.

7. Hon. Attorney General,
Attorney General's Department, Colombo 12.
8. The Secretary,
Ministry of Finance, Colombo 01.
9. The Secretary,
Ministry of Agriculture, Battaramulla.

RESPONDENTS

Before: Mahinda Samayawardhena, J
Arjuna Obeyesekere, J
M. Sampath K. B Wijeratne, J

Counsel: D. P. L. A Kashyapa Perera for the Petitioner

Chathura Galhena with Dharani Weerasinghe and Devmini Bulegoda for
the 1st – 5th Respondents

Sureka Ahmed, Senior State Counsel for the 7th – 9th Respondents

Argued on: 17th September 2025

Written Submissions: Tendered by the Petitioner on 26th July 2019, 19th July 2023 and 2nd
October 2025

Tendered by the 1st – 5th Respondents on 14th October 2025

Decided on: 6th November 2025

Obeyesekere, J

- 1) There are two issues that arise for determination in this application. The first is whether the post of Supplies Manager in Lanka Phosphate Limited, a State owned enterprise and the 5th Respondent to this application, is a post that has been approved by the Department of Management Services. The second issue is, if so, is the failure on the part of the 5th Respondent to pay the Petitioner the salary that is payable for the post of Supplies Manager violative of the fundamental rights of the Petitioner guaranteed by Article 12(1) of the Constitution.

The case for the Petitioner

- 2) The Petitioner holds a degree in Business Management from the University of Kelaniya. Having served as an audit supervisor in the private sector, the Petitioner had joined the 5th Respondent as a Supplies Officer (Executive Grade VI) with effect from 3rd January 2005.
- 3) In November 2013, the Petitioner had submitted a memorandum to the Chairman of the 5th Respondent in which he requested that he be appointed to the post of Supplies Manager (Executive Grade II). In the said Memorandum, the Petitioner had stated that:
 - (a) In the absence of a Supplies Manager, he has performed the functions in that office although he was only the Supplies Officer, thus ensuring the effective functioning of the Supplies Division;
 - (b) Although he is holding a post in Executive Grade VI, his professional qualifications and experience are sufficient for him to be appointed to a post in Executive Grade II.
- 4) Having taken into consideration the said request of the Petitioner and his experience, commitment and expertise, the Acting General Manager of the 5th Respondent had submitted a Memorandum to the Board of Directors in December 2013 [the Board] recommending the appointment of the Petitioner to the post of Supplies Manager, and sought the approval of the Board to appoint the Petitioner to the post of Supplies Manager.
- 5) The Board, having considered the said Memorandum had recorded its decision in the following manner:

*"The Chairman brought to the notice of the Board **the necessity and the importance of re-establishing the post of 'Supply Manager'** whereas the existing post is titled as 'Supply Officer', due to the reason that supply duties were very critical since millions of rupees had been spent annually for the procurement of goods and services including machinery and spare parts. Therefore, the Board noted the necessity for handling the said duties by a Senior Manager.*

The Board also noted that Mr. Abeysiri had been covering all supplies duties under the direct supervision of the General Manager and had been working 9 years since January 2005. It was also noted that Mr. Abeysiri was performing well as Supplies Officer in the best interests of the Company.

*The Board unanimously granted approval for the promotion of Mr. Abeysiri to the post of Supplies Manager with effect from 1st January 2014 and for Mr. Abeysiri to be placed on the salary step of Rs. 38,530 **subject to the approval of the Department of Management Services.***

- 6) There are three important matters that are borne out by the above decision of the Board of the 5th Respondent.
- 7) The first is, as at that time, the post of 'Supplies Manager' did not exist in the 5th Respondent and hence, a new cadre position had to be created for which the approval of the Department of Management Services was required. The Petitioner has disputed this position and claimed that the post of 'Supplies Manager' formed part of the organisational structure of the 5th Respondent at that time. However, other than submitting two undated flow charts said to contain the organisational structure, the Petitioner has not submitted any other material to substantiate his position. I am therefore satisfied that the position of the 5th Respondent contained in the said Memorandum reflects the correct position in this regard.
- 8) The second matter that is borne out by the said decision is that the Board was mindful that its approval alone was not sufficient to appoint the Petitioner to the post of Supplies Manager since there did not exist a cadre position for the said post. It is for this reason that the Board recorded in its decision that the appointment was subject to the approval of the Department of Management Services.
- 9) The third is, even if the said post did exist, the Board did not follow a competitive procedure to select the most suitable candidate.
- 10) Even though the Board had taken the above decision, it does not appear that steps were taken by the 5th Respondent to obtain the approval of the Department of Management Services. In spite of that, the Chairman of the 5th Respondent had issued the Petitioner a letter of appointment on 22nd September 2014 appointing

the Petitioner to the said post of Supplies Manager with effect from 1st January 2014. To my mind, the said letter was *ultra vires* the powers of the Chairman since the condition subject to which the appointment had been made by the Board had not been satisfied.

- 11) Even though a letter of appointment had been issued, the Petitioner continued to be paid the same salary that he had received as Supplies Officer. In June 2015, the Petitioner had requested that he be paid the salary of the Supplies Manager. With the 5th Respondent having failed to do so, the Petitioner had filed Writ Application No. WR 313/2015 in the Court of Appeal under and in terms of Article 140 of the Constitution and sought a Writ of Mandamus directing that he be paid all benefits due to him as Supplies Manager and arrears of salary.
- 12) While that application was pending before the Court of Appeal, the Petitioner had been transferred to the Supplies Division at Eppawela. Aggrieved by the said decision, the Petitioner had filed this application complaining that his fundamental rights guaranteed by Article 12(1) of the Constitution has been violated as a result of the said transfer, and seeking an interim order (a) staying the said transfer, and (b) the payment of salary and other benefits that he claimed he was entitled to as the Supplies Manager.
- 13) This matter had been supported for leave on 2nd March 2016. While this Court had not been inclined to grant any relief with regard to the transfer, leave to proceed had been granted for the alleged violation of the Petitioner's fundamental rights guaranteed by Article 12(1) on the basis that he has not been paid the salary relevant to the post of Supplies Manager.
- 14) I must state that the Petitioner, as part of full disclosure, had tendered with his petition, a copy of the application that he had made to the Court of Appeal. Since the issue that needs to be determined in this application as well as in the aforementioned Writ application is identical, and since it would be an abuse of process to maintain both applications, upon inquiry by Court at the hearing of this application, the learned Counsel for the Petitioner submitted that the Petitioner will not be proceeding with the said writ application and that the Petitioner would withdraw that application in due course.

Approval of the Department of Management Services

- 15) I shall now consider the position of the 5th Respondent.
- 16) The learned Counsel for the 5th Respondent admitted that the Board agreed to appoint the Petitioner to the post of Supplies Manager but submitted that since there did not exist a cadre position for the said post at that time, the said appointment was subject to the approval of the Department of Management Services as clearly recorded in the aforementioned decision of the Board.
- 17) The learned Counsel for the 5th Respondent admitted further that the 5th Respondent had not taken any steps to implement the above decision of the Board. This failure to seek approval of the Department of Management Services had been raised at a meeting of the Audit and Management Committee of the 5th Respondent held on 2nd May 2014, where the said Committee, *"having considered the issue mentioned by the Internal Auditor regarding the promotion granted to an officer to the designation of 'Supplies Manager', directed the Management of the Company to take necessary steps to regularise the said promotion as the said designation was not included in the Scheme of Recruitment of the Company."*
- 18) It appears that in spite of the above decision of the Audit Committee, the 5th Respondent did not take steps to seek the approval of the Department of Management Services, and that the position remained the same even at the time the Chairman of the 5th Respondent issued the Petitioner with the letter of appointment on 22nd September 2014. I have already stated that the Chairman of the 5th Respondent acted *ultra vires* his powers by issuing the said letter since approval of the Department of Management Services had not been obtained to create the post of 'Supplies Manager'. The Petitioner cannot therefore claim an entitlement to a salary of a cadre position that does not exist within the 5th Respondent.
- 19) Pursuant to the filing of the aforementioned writ application, and realising that the Petitioner has been placed in a precarious position for no fault of his, the 5th Respondent initiated discussions with the Department of Management Services. By letter dated 7th December 2015, the Department of Management Services had informed the Secretary, Ministry of Agriculture as follows:

“උක්ත කරුණ සම්බන්ධයෙන් වූ ඕබේ සමාංක හා 2015.10.08 දිනැති ලිපිය හා ලංකා ෆෝස්ට් ලිමිටඩ් (රාජ්‍ය සමාගම) නිලධාරීන් හා මෙම දෙපාර්තමේන්තුවේ නිලධාරීන් සමඟ 2015.10.02 දින පැවැත් වූ සාකච්ඡාව හා බැඳේ.

02. ඒ අනුව ලංකා ෆෝස්ට් ලිමිටඩ් (රාජ්‍ය සමාගම) සඳහා සංශෝධිත කාර්ය මණ්ඩලය “ඇමුණුම 1” හි දැක්වෙන පරිදි අනුමත කරමි.
03. සියළුම තනතුරු සඳහා බඳවා ගැනීම් සහ උසස් කිරීම් සිදු කිරීමේ දී ඔබගේ උක්ත ලිපිය මගින් මෙම දෙපාර්තමේන්තුව වෙත ඉදිරිපත් කර ඇති ලංකා ෆෝස්ට් ලිමිටඩ් (රාජ්‍ය සමාගම) බඳවා ගැනීමේ හා උසස් කිරීමේ පරිපාටිය අනුමත කිරීමෙන් පසුව එම විධිවිධානවලට අනුකූලව පමණක් සිදු කළ යුතු බව කාරුණිකව දන්වමි.
04. මගේ අංක DMS/E2/56/8/355/2/11 හා 2011.07.26 දිනැතිව අනුමත කර ඇති ලංකා ෆෝස්ට් ලිමිටඩ් (රාජ්‍ය සමාගම) කාර්ය මණ්ඩලය මෙයින් අවලංගු වන අතර, මෙම දෙපාර්තමේන්තුවේ විධිමත් අනුමැතියකින් තොරව අනුමත කාර්ය මණ්ඩලයට අතිරේකව නව තනතුරු ඇති කිරීම හෝ අනුමත තනතුරුවල සිදුවන පුරප්පාඩු පිරවීම ද නොකළ යුතු බව වැඩිදුරටත් කාරුණිකව දන්වමි.”

20) Although the approved cadre positions of the 5th Respondent had been annexed to the above letter, it did not include the post of Supplies Manager but only provided for the post of Supplies Officer.

21) The 5th Respondent had made further written representations to the Department of Management Services in March 2016 by which it pointed out that the Petitioner possessed the educational qualifications and experience that were required for the post of Manager, and requested that the post of Supplies Manager be included in the cadre positions of the 5th Respondent. The Department of Management Services had responded as follows:

“ එබැවින් ආයතනයේ තනතුරුවලට සේවකයින් උසස් කිරීමේදී, අනුමත බඳවා ගැනීමේ පරිපාටියේ සඳහන් විධිවිධානවලට පටහැනිව යමින් අනුමත කාර්ය මණ්ඩලයේ නොපවතින තනතුරු සඳහා පුද්ගලයින් පත් කිරීමේ හැකියාවක් අධ්‍යක්ෂ මණ්ඩලයට නොමැති බව අවධාරණය කරනු කැමැත්තෙමි.

කෙසේ වෙතත්, මගේ සමාංක හා 2015.12.07 දිනැති ලිපියෙන් අනුමත තනතුරු අතර, සහකාර සැපයුම් කළමනාකාර (HM 1-1) වශයෙන් නව තනතුරක් පවතින බැවින්, ඊට අදාළ බඳවා ගැනීමේ පරිපාටි සකස් කර මෙම දෙපාර්තමේන්තුවෙන් අවශ්‍ය අනුමැතිය ලබා ගැනීමට කටයුතු කරන මෙන් කාරුණිකව දන්වමි. එම සුදුසුකම් සපුරාලන්නේනම් අදාළ නිලධාරියා සහකාර සැපයුම් කළමනාකාර (HM 1-1) තනතුරට බඳවා ගැනීම සම්බන්ධයෙන් මෙම දෙපාර්තමේන්තුවේ විරුද්ධත්වයක් නොමැති බව වැඩිදුරටත් කාරුණිකව දන්වමි.”

22) Thus, the position that prevails as of now is that the Department of Management Services has not granted approval for the creation of the post of Supplies Manager and therefore the appointment of the Petitioner to the post of Supplies Manager which was subject to the approval of the Department of Management Services is not

a valid appointment. In these circumstances, the Petitioner cannot claim an entitlement to be appointed to the non-existent post of Supplies Manager and/or to the salary and other benefits that are payable to the Supplies Manager.

- 23) There is one matter that I must advert to prior to concluding. The 1st – 5th Respondents have not made any allegation of wrongdoing on the part of the Petitioner nor disputed his qualifications to be eligible to be appointed to the post of ‘Supplies Manager’ if such a post did exist. This judgment shall not be an impediment to the creation of such a post with the approval of the Department of Management Services, provided the need for such a post exists, and the 5th Respondent considering the Petitioner to such post, provided the Petitioner satisfies the eligibility requirements that may be specified for such post in the Scheme of Recruitment and Promotion, and the selection is in accordance with the procedure set out in the said Scheme.

Conclusion

- 24) In the above circumstances, I am of the view that the fundamental rights of the Petitioner guaranteed by Article 12(1) of the Constitution have not been violated by the 1st – 5th Respondents. This application is accordingly dismissed, without costs.

JUDGE OF THE SUPREME COURT

Mahinda Samayawardhena, J

I agree

JUDGE OF THE SUPREME COURT

M. Sampath K. B Wijeratne, J

I agree.

JUDGE OF THE SUPREME COURT