

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.

Case No. S.C.(F/R) No. 03/2009

1. Sumith Aluthkorala.
42/C, Western Malamulla,
Panadura.

PETITIONER

Vs.

1. Western Province Provincial Road
Development Authority,
No. 50, Kithulwala Road,
Colombo 08.

And presently

No. 59, Sebastian Hill,
Colombo 12.

2. W. Jayasekara
Former Chairman,
Western Province Provincial Road
Development Authority,
Kithulwatta Road,
Colombo 08.

- 2a. Rohan Kulasiri,
Former Chairman,
Western Province Provincial Road
Development Authority,
No. 50, Kithulwatta Road,
Colombo 08.

2b. Upali Kodikara
Chairman,
No. 59, Sebastian Hill,
Colombo 12
Kithulwatta Road, Colombo 08.

3. I.A.M. Jousie,
Former Director,

3a. N. Bandula Prama Kumara,
Director,

4. Lakshman Hettiarachchi
Former Director,

4a. P.K.D. Thisera,
Director,

5. Sepala Ruparatne,
Former Director,

5a. J.E.L.T. Rathnayake,
Former Director,

5b. T.M.W. Mudali,
Director,

6. Silva Priyaratne,
Former Director,

6a. I.J. Mirando
Former Director,

6b. N.I. Senaratne,
Director,

7. P. Sivapada Sundaram,
Former Director,
- 7a. U.O. Janmuthupura,
Former Director,
- 7b. T.G.W. Rajapaksha,
Director,
All of the Western Province Provincial Road
Development Authority,
No. 50, Kithulwatta Road,
Colombo 08.
8. R.M.S. Bandaranayake,
General Manager,
Western Province Provincial Road
Development Authority,
No. 50, Kithulwatta Road,
Colombo 08.
9. A. Ramanayake,
Former Secretary,
Provincial Ministry of Roadways and
Co-operatives,
Denzil Kobbekaduwa Mawatha,
Battaramulla.
- 9a. Sunil Abayawardena,
Former Secretary,
Provincial Ministry of Roadways and
Co-operatives,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

9b. Champa N. Perera,
Secretary, Provincial Ministry of Roadways
and Co-operatives,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

10. Lalith Wanigaratne
Former Provincial Ministry of
Roadways and Co-operatives,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

10a. W.A. Nimal Lansa,
Former Provincial Ministry of Road
Development Housing and Constructions,
Live Stock Development, Fisheries and
Tourism,
Denzil Kobbekaduwa Mawatha,
Battaramulla.

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

RESPONDENTS

BEFORE

: **Yasantha Kodagoda, P.C., J.**
Janak De Silva, J.
Arjuna Obeyesekere, J.

COUNSEL

: Manohara de Silva, PC with Hirosha Munasinghe for
the Petitioner

Rajitha Perera, DSG for the 1st, 8th and 11th
Respondents

Argued On : 17.03.2025

Decided On : 16.09.2025

Janak De Silva, J.

The Petitioner was a member of the Panadura Pradeshiya Sabha. He was appointed as a Road Development Officer (Colombo District) of the 1st Respondent, the Western Province Provincial Road Development Authority. The appointment was on a contract basis with effect from 22.02.2001 for a period of six (6) months. This appointment was continuously extended for a six (6) month period at a time. The last extension was up to 31.07.2008. He was paid his salary up to this date.

According to the Petitioner, it has been the practice, at the end of a particular period of contract, to extend the Petitioner's contract automatically and to subsequently issue a formal letter intimating the renewal of the contract. After the expiration of the contracts, the Petitioner reported to duty continuously and the formal letters intimating the extension of the contract have been issued several months later and in some instances even upon the expiration of the contractual period. The Petitioner was paid his salary with arrears only after the necessary administrative arrangements have been made with regard to the renewal of his contract which usually took several months.

As such the Petitioner continued to report to duty and carried out his normal functions and duties after 31.07.2008. However, his salary was not paid from August, 2008. The Petitioner anticipated that as has been the practice, the formal intimation of the extension of his contract would be made at a later stage and that his salary would be paid with arrears.

However, by letter dated 26.11.2008, the 8th Respondent informed the Petitioner that his services had been terminated with effect from 31.07.2008. Petitioners claims that he received this letter only on 04.12.2008. The Petitioner complains of infringement of his fundamental rights.

Leave to proceed has been granted under Article 12(1).

It is the contention of the Petitioner that the then Chairman of the 1st Respondent sought to absorb the Petitioner into the permanent cadre and his recommendation was approved by the Board of Directors of the 1st Respondent. However, no further action had been taken.

The Petitioner contends that the termination was due to the leadership he gave to a forest cultivation project carried out under the Jathika Saviya Gama Neguma Development Plan for 2007 on a portion of state land called “Galgoda Kele”. However, the Divisional Secretary of Panadura, Municipal Council of Panadura and the Provincial Waste Management Authority of the Western Province sought to utilise this land for a garbage disposal project to be implemented by a private company. The Petitioner filed a fundamental rights application No. SC (FR) 538/2008 impugning this action. According to the Petitioner the termination of his contract was as a result of this action.

The Respondents deny infringing any fundamental rights of the Petitioner. It was contended that in terms of the contractual appointment, the salary of the Petitioner was to be paid only upon the presentation and approval of various progress reports at various stages during a month. The Petitioner failed to comply with the terms and conditions of his appointment. It is further contended that the application is time barred. The Respondents further contended that the Petitioner failed to report to the Head Office of the 1st Respondent in Colombo. It was contended that the period of service of the Petitioner came to an end on 31.07.2008.

The crux of the complaint of the Petitioner is that the 1st Respondent terminated his contract unlawfully and thereby infringed Article 12(1) of the Constitution.

Article 12(1) of the Constitution guarantees equal protection of the law and not equal violation [***Mackie & Co. v. Molagoda* (1986) 1 Sri LR 300, 309-313; *Gamaethige v. Siriwardena* (1988) 1 Sri LR 384 at 404; *Jayasekera v. Wipulasena and Others* (1988) 2 Sri LR 237; *Jayasuriya v. Vandergert, Secretary, Ministry of Foreign Affairs and Others* (S.C.F.R., 620/97 S.C.M. 30.10.1998); *Dissanayake v. Priyal De Silva* (2007) 2 Sri LR 134; *Ceylon Electricity Board v. Hon. Athauda Seneviratne and Others* (S.C. Appeal No. 167/2014; S.C.M. 23.05.2025)]].**

In order to be entitled to a declaration that the alleged termination of his services infringes Article 12(1), the Petitioner must first establish that his appointment on a contract basis to the 1st Respondent is lawful. Where the appointment is not in accordance with law, this Court cannot grant any relief for the termination of such employment as it will amount to perpetuating an unlawful appointment.

Moreover, this Court is exercising just and equitable jurisdiction. Equity cannot give validity to unlawful decisions.

In this context, I observe that all the documents on which the Petitioner relies on to establish his appointment has been given by the Chairman or the General Manager of the 1st Respondent.

The 1st Respondent was established by Section 2(1) of the Western Province Provincial Road Development Authority Statute No. 04 of 1989 (Statute). In terms of Section 11(1) of the Statute, the power to appoint staff to the 1st Respondent is vested in the Provincial Public Service Commission. The Chairman or the General Manager of the 1st Respondent does not have any power to make appointments. As such, the contractual appointment given to the Petitioner is devoid of any legal effect and null and void.

Accordingly, the Petitioner cannot claim any infringement of his fundamental rights guaranteed by Article 12(1) of the Constitution based on an unlawful appointment.

Application dismissed. I make no order as to costs.

JUDGE OF THE SUPREME COURT

Yasantha Kodagoda, P.C., J.

I agree.

JUDGE OF THE SUPREME COURT

Arjuna Obeyesekere, J.

I agree.

JUDGE OF THE SUPREME COURT