

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

In the matter of an Application in respect
of the violation of Fundamental Rights in
terms of Article 17 and 126 of the
Constitution of the Democratic Socialist
Republic of Sri Lanka.

Nithijanatham Baskaran,
C/O:N. Sivathiruchenthuranathan,
Kaithady West,
Kaithady,
Jaffna.

SC/FR Application No. 261/2019

PETITIONER

Vs.

1. University of Jaffna,
Thirunelvelvy,
Jaffna.

2. Prof. Ratnam Wikneswaran,
Former Vice Chancellor,
University of Jaffna,
Thirunelvelvy,
Jaffna.

2A. Prof. K. Kandasamy,
Competent Authority,
University of Jaffna,
Thirunelvelvy,
Jaffna.

3. Dr. K. Suthakar,
Dean, Faculty of Arts,
University of Jaffna,
Thirunelvelvy,
Jaffna.
4. Dr. (Mrs.) B. J. Rasanen,
Head, Department of Sociology,
University of Jaffna,
Thirunelvelvy,
Jaffna.
5. Mrs. A. Rajakumar,
Senate Nominee (Council Member)
University of Jaffna,
Thirunelvelvy,
Jaffna.
6. Mr. P. E. Eswaradasan
Council Nominee (Council
Member)
University of Jaffna,
Thirunelvelvy,
Jaffna.
7. Prof. Jayadeva Uyangoda,
Council Nominee (Council
Member)
University of Jaffna,
Thirunelvelvy,
Jaffna.

8. Dr. A. A. Kadirgamar,
63, Rakka Lane,
Nallur,
Jaffna.

9. University Grant Commission,
Ward Place,
Colombo 07.

10. The Registrar,
University of Jaffna,
Thirunelvelvy,
Jaffna.

11. Hon. Attorney General,
Attorney-General's Department,
Hulftsdorp,
Colombo 12.

RESPONDENTS

Before: **Justice A. L. Shiran Gooneratne**
Justice K. Priyantha Fernando
Justice Sobhitha Rajakaruna

Counsel: K.V.S. Ganesharajan with Mangaleswary Shanker and Vithusha Loganathan instructed by S. Ragul for the **Petitioner**.

Fazly Razik, DSG instructed by Rizni Firdous, SSA for the **1st to 7th** and **9th to 14th Respondents**.

Ermiza Tegal with Nisara Wickramasinghe instructed by Darshika Ariyanayagam for the **8th Respondent**.

Argued on: 05/12/2025

Decided on: 10/02/2026

A. L. Shiran Gooneratne J.

By Application dated 21/06/2019, the Petitioner sought relief from this Court, alleging infringement of his Fundamental Rights under Articles 12(1), 12(2), and 14(1)(g) of the Constitution. The Petitioner is aggrieved by the decision of the Selection Board of the University of Jaffna (1st Respondent), comprising the 2nd to 7th Respondents, their failure to appoint the Petitioner as Senior Lecturer (Grade II) in Sociology following an interview held on 16/11/2018 and the appointment of the 8th Respondent by the Council at its 432nd Meeting on 18/11/2018. The Petitioner prayed for declarations to quash the appointment of the 8th Respondent and for recognition of his entitlement to the post of Senior Lecturer (Grade II). On 31/08/2022, this Court granted Leave to Proceed under Articles 12(1) and 14(1)(g) of the Constitution.

The Respondents, apart from raising several Preliminary Objections, also contended that the 8th Respondent was eligible and duly appointed to the post of Senior Lecturer (Grade II), whereas the Petitioner did not satisfy the eligibility criteria specified for that post. It was further contended that the Petitioner was only eligible for consideration as Lecturer (Unconfirmed), and that his allegations were unsubstantiated and failed to disclose an infringement of Fundamental Rights.

It is observed that the University of Jaffna, by Notice dated 07/11/2017, called for applications for Senior Lecturer (Grade I), Senior Lecturer (Grade II), and Lecturer (Probationary) in Sociology. Two vacancies were to be filled, one for Senior Lecturer (Grade I), which was duly filled in October 2018, and another for Senior Lecturer (Grade II), which was filled by appointing the 8th Respondent in November 2018. The applicable University Grants Commission Circulars, including Nos. 721/1997, 996/2012, and 08/2016, prescribed the qualifications and procedures, while

Establishment Code Circulars Nos. 16/2005 and 17/2005 governed the interview process.

Three applications were received for the post of Senior Lecturer (Grade II), from the Petitioner, the 8th Respondent, and one M. Manoranjithan. The latter was excluded for lack of a relevant postgraduate degree. The 8th Respondent possessed a Ph.D. in Anthropology, which was considered relevant to Sociology, and was called for an interview for the position of Senior Lecturer (Grade II). The Petitioner did not meet the criteria for Senior Lecturer (Grade II), but was eligible for Lecturer (Unconfirmed) under Circular No. 996, and was accordingly interviewed for that post. Thus, the Petitioner and the 8th Respondent were interviewed for two distinct posts, and their marks were not comparable.

The Selection Board recommended the 8th Respondent for appointment as Senior Lecturer (Grade II). The Council, vested with authority under Section 71 of the Universities Act No. 16 of 1978, approved the recommendation at its 432nd Meeting on 18/11/2018. The 8th Respondent was issued his letter of appointment on 03/12/2018 and thereafter engaged in teaching, examination work, supervision of dissertations, and research activities. Subsequently, by an advertisement dated 15/10/2019, the University again called for applications. The Petitioner applied and, with due process, was appointed as Lecturer (Unconfirmed) on 02/09/2020.

In considering the Petitioner's claim, it is evident that he did not meet the prescribed qualifications for Senior Lecturer (Grade II). He was considered only for Lecturer (Unconfirmed), for which he was eligible. The 8th Respondent's qualifications were duly recognized as relevant, and his appointment was made in accordance with the relevant Circulars and statutory authority.

The Petitioner has further alleged that, as per document P13(a), from about 23/05/2018, he raised complaints to the Dean of the Faculty of Arts, asserting that the 8th Respondent did not possess the relevant educational qualifications to be eligible for appointment as Senior Lecturer (Grade II). These complaints mirror the

allegations advanced in the instant Petition, which was filed more than one year later, on 21/06/2019.

The Petitioner's position remains that he applied for both the posts of Lecturer (Probationary) and Senior Lecturer (Grade II), that he was eligible to apply for the latter post. He maintains that the 8th Respondent was not eligible to be appointed, and therefore seeks the reliefs prayed for in his Petition.

The Court further observes that the Petitioner is mistaken both in law and in fact in his reliance upon University Grants Commission Circular No. 721 of 21/11/1997 as the applicable Scheme of Recruitment. The Petitioner has failed to take into account the subsequent amendment introduced by Circular No. 996 dated 09/10/2012, which governs all recruitments made after that date. On this erroneous basis, that the Petitioner claims to fulfil the requirements for appointment as Senior Lecturer Grade II.

Commission Circular No. 996/2012, paragraph 03, under Senior Lecturer Grade II (Non-Medical/Dental), Special Notes (1), makes it clear that the Petitioner could only be considered for appointment as Lecturer (Unconfirmed);

Senior Lecturer Grade II (Non- Medical/Dental)

Special Notes:

(1) “*Candidates who shall possess the academic qualifications required for Lecturer (Probationary) Non-Medical/Dental in the Scheme of Recruitment and who have obtained a Master's or Doctoral Degree but less than 06 years of experience as specified in the Scheme of Recruitment for Senior Lecturer by open advertisement may be considered for appointment of Lecturer (out Unconfirmed) at the initial step of U-AC 3(01) [then B-04(a)] subject to a three year period of probation.”*

Moreover, the Petitioner graduated from the University of Jaffna on or about 10/07/2013 and applied for the post of Senior Lecturer Grade II by 16/11/2018. At the time of the interview, he did not possess the mandatory requirement of six years of post-qualification experience stipulated by Circular No. 996. Therefore, it is manifest that he was not eligible to be considered for the post of Senior Lecturer Grade II.

As is evident from document P14(d) annexed to the Petition, the Vice Chancellor of the University of Jaffna, in response to the Human Rights Commission, clearly stipulated that Circular No. 721 had been amended by Circular No. 996 and that the latter circular would apply to all recruitments after 09/10/2012. The Vice Chancellor expressly stated that under the Scheme of Recruitment in Circular No. 996, the Petitioner was not eligible to be appointed as Senior Lecturer Grade II. Having accepted appointment as Lecturer (Unconfirmed) in September 2020, the Petitioner is now estopped from asserting entitlement to the post of Senior Lecturer (Grade II). Therefore, the appointment of the 8th Respondent was made lawfully and in accordance with the applicable Circulars and statutory provisions.

It is observed that the 8th Respondent was eligible to be appointed in terms of the relevant UGC, EC Circulars. At all relevant times the Members of the Council, the Selection Board, and the 2nd Respondent have acted in accordance with reason and the law. Therefore, the Petitioner has failed to substantiate his allegations.

In these circumstances, the Petitioner cannot claim a violation of Article 12(1) or Article 14(1)(g) of the Constitution, as he did not fulfil the required qualifications to be appointed to the post of Senior Lecturer Grade II. His claim is thus misconceived and devoid of merit.

Following the decision of the Council on 18/11/2018 to appoint the 8th Respondent, the Petitioner lodged a complaint dated 19/11/2018 with the Human Rights Commission, marked P14(a). Upon the request of the Commission, the Vice Chancellor of the University submitted a reply dated 05/12/2018, together with annexes, marked P14(d). Notwithstanding the said request, the Human Rights

Commission did not pursue the matter any further. More than six months thereafter, on 21/06/2019, the Petitioner instituted the present Action before this Court. It is therefore contended that the Petition has been filed outside the time permitted by Article 126(2) of the Constitution.

It is evident that the recommendation of the Selection Board was made on 16/11/2018, and that the Council approved the appointment of the 8th Respondent on 18/11/2018. The Petitioner, however, instituted the present application only on 21/06/2019. Article 126(2) of the Constitution mandates that an application alleging the infringement of a Fundamental Right shall be filed within one month of the alleged infringement.

The Petitioner lodged a complaint dated 19/11/2018 with the Human Rights Commission of Sri Lanka. However, the Commission did not proceed with the matter, nor did any inquiry continue to attract the operation of Section 13(1) of the Human Rights Commission of Sri Lanka Act.

Section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 reads thus;

13. (1) “Where a complaint is made by an aggrieved party in terms of section 14, to the Commission, within one month of the alleged infringement or imminent infringement of a fundamental right by executive or administrative action, 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.”

In ***Thilangani Kandambi vs. State Timber Corporation & Others S.C.F.R.*** Application No: 452/2019 (S.C.M. 14.12.2022), this Court identified four key

principles on the application of Section 13(1) of the Act concerning Article 126(2) of the Constitution;

- a. "The initial view was that mere production of a complaint made to the HRCSL within one month of the alleged infringement is sufficient to get the benefit of the provisions in section 13(1) of the HRCSL Act [Romesh Coorey v Jayalath (2008) 2 Sri.L.R. 43, Alles v. Road Passenger Services Authority of the Western Province, (S.C.F.R. 448/2009, S.C.M. 22.02.2013)].*
- b. However, the present position is that a petitioner must show evidence that the HRCSL has conducted an inquiry regarding the complaint or that an inquiry is pending. Simply lodging a complaint is inadequate. [Subasinghe v. Inspector General of Police, SC (Spl) 16/1999, S.C.M. 11.09.2000; Kariyawasam v. Southern Provincial Road Development Authority and 8 Others, (2007) 2 Sri.L.R. 33; Ranaweera and Others v. Sub-Inspector Wilson Siriwardene and Others (2008) 1 Sri.L.R. 260; K.H.G. Kithsiri v Faizer Mustapha, (S.C.F.R. 362/2017, S.C.M. 10.01.2018); Wanasinghe v. Kamal Paliskara and Others, (S.C.F.R. 216/2014, S.C.M. 23.06.2021)].*
- c. A party cannot benefit from the provisions in section 13(1) of the HRCSL Act where the complaint to the HRCSL is made one month after the alleged violation [Alagaratnam Manoranjan v. G.A. Chandrasiri, Governor, Northern Province, (S.C.F.R. 261/2013, S.C.M. 11.09.2014)].*
- d. The provisions of section 13(1) of the HRCSL are not available to a petitioner who has made a complaint to the HRCSL only to obtain an advantage by bringing his application within Article 126(2) of the Constitution [K.H.G. Kithsiri v Faizer Mustapha, (S.C.F.R. 362/2017, SCM 10.01.2018)]."*

This Court finds that, even taking as the relevant date from the date on which the complaint was lodged before the Human Rights Commission, the Petitioner delayed in invoking the jurisdiction of this Court for a period well in excess of six months. The

Human Rights Commission did not proceed with the matter thereafter, nor did any inquiry continue to attract the operation of Section 13(1) of the Human Rights Commission Act. In the circumstances, the complaint made to the Human Rights Commission and the subsequent inaction cannot operate to extend, suspend, or arrest the constitutional time limit prescribed by Article 126(2) of the Constitution. Accordingly, this application is *ex facie* time-barred.

The Petitioner has failed to establish, on the facts placed before this Court, any infringement of the Fundamental Rights guaranteed under Article 12(1) or Article 14(1)(g) of the Constitution. In any event, the Petitioner has not satisfied the mandatory threshold prescribed by Article 126(2) of the Constitution, nor brought himself within the statutory exception contemplated by Section 13(1) of the Human Rights Commission of Sri Lanka Act, the application being clearly time-barred. Accordingly, the Preliminary Objection on the time bar is upheld, and the application is dismissed *in limine*.

Application is dismissed. Parties shall bear their own costs.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree

Judge of the Supreme Court

Sobhitha Rajakaruna, J.

I agree

Judge of the Supreme Court