

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

In the matter of an application under and in
terms of Article 126 of the constitution.

Case No: SC/FR/479/2012

1. Kariyawasam Katukohila Gamage
Chandrika,
139/A, Sudumetiya, Dodanduwa.
2. Hikkaduwa Liyanage Prashanthini,
984, 2nd Stage, Anuradhapura.
3. Pulukkutti Kankanamalage Jayarathna,
51, Gampola Gedara, Pugoda.
4. Kathaluwe Liyanage Thamara Nishanthi De
Silva,
61, Irrigation Quarters, Air Port Road,
Anuradhapura.
5. Aramudalige Chandrika Malkanthi
Wakkumbura, Attapitiya, Ussapitiya.
6. Geeganage Dammika Lalani,
78/2, Nuwara Eliya Road, Katukithula.
7. Arampola Mudiyanseelage Karunarathna
Arampola,
2734, 3rd Stage Piyawara, Parakum Uyana,
7th Lane, Anuradapura.

8. Rajapaksha Mudiyanseelage Lasanthi Inoka
Kandemulla,
121, Madabawita, Danowita.
9. Das Mudiyanseelage Herath Senevirathna
Bandara,
Molawatta, Wattegedara, Mahauswawe.
10. Oruwalage Lilani Manomani Perera,
47/8, Muwagama, Rathnapura.
11. Chandrika Pushpalatha Nawarathna,
No.75, Sri Sumangala Patumaga, Polwatta,
Katugastota.
12. Singappuli Arachchige Dayani Susantha,
45/D2, Gonagaha, Makewita.
13. Vijitha Badara Wasgewatta,
183B, Bulumulla, Kiribathkumbura.
14. Samanthi Shesha Amarasinghe,
Udagama Road, Balawinna, Pallebedda.
15. Dissanayaka Jayaweera Gaspe Ralalage
Nimalsiri Dissanayake,
"Senani", Walpitamulla, Dewalapola.
16. Panakoora Gamaralalage Ajantha Kumari
Wickramarathna,

286, Yaya 5, Rajanganaya.

17. Hettige Gangani Geethika Weerasekara,
152, Sarasavi Asapuwa, Hapugala,
Wakwella.
18. Dilshi Geetha Elizebeth Fernando,
7B, Official Quarters, Institute of Surveying
and Mapping, Diyathalawa.

Petitioners

Vs

1. P.B. Abeykoon,
Secretary,
Ministry of Public Administration and Home
Affairs,
Independence Square, Colombo 07.
- 1A. J. Dadallage,
Secretary,
Ministry of Public Administration and Home
Affairs,
Independence Square, Colombo 07.
- 1B. J.J. Ratnasiri,
Secretary,
Ministry of Public Administration and Home
Affairs,
Independence Square, Colombo 07.
- 1C. Padmasiri Jayamanna,

Secretary,
Ministry of Public Administration and Home
Affairs,
Independence Square, Colombo 07.

- 1D. S. Hettiarachchi,
Secretary,
Ministry of Public Administration and
Home Affairs, Provincials Councils & Local
Government,
Independence Square, Colombo 07.
2. Hon. W.D.J. Senevirathne,
Minister of Public Administration and Home
Affairs, Independence Square, Colombo 07.
- 2A. Hon. Karu Jayasooriya,
Ministry of Public Administration and
Home Affairs,
Independence Square, Colombo 07.
- 2B. Hon. Ranjith Madduma Bandara,
Ministry of Public Administration and
Home Affairs,
Independence Square, Colombo 07.
Currently
Minister of Public Administration,
Management and Law and Order
Independence Square, Colombo 07.
- 2C. Hon. Janaka Bandara Thennakoon,

Ministry of Public Administration, Home
Affairs, Provincials Councils & Local
Government,
Independence Square, Colombo 07.

3. Vidyajothi Dr. Dayasiri Fernando,
Chairman.

3A. Justice Sathyaa Hettige PC,
Chairman.

3B. Mr. Dharmasena Dissanayake
Chairman,
Public Service Commission,
No.177, Nawala Road,
Narahenpita, Colombo 05.

4. Palitha M. Kumarasinghe PC,
Member, Public Service Commission.

4A. Mrs. Kanthi Wijetunge,
Member, Public Service Commission.

4B. Mr. A. Salam Abbul Waid,
Member, Public Service Commission.

5. Sirimavo A. Wijeratne,
Member, Public Service Commission.

5A. Mr. Sunil S. Sirisena,
Member, Public Service Commission.

- 5B. Ms. D. Shirantha Wijayatilake,
Member, Public Service Commission.
- 6. S.C. Mannapperuma,
Member, Public Service Commission.
- 6A. Dr. Prathap Ramanujam,
Member, Public Service Commission.
- 7. Ananda Seneviratne,
Member, Public Service Commission.
- 7A. Mrs. V. Jegarasasingam,
Member, Public Service Commission.
- 8. N.H. Pathirana,
Member, Public Service Commission.
- 8A. Mr. Santi Nihal Seneviratne,
Member, Public Service Commission.
- 9. S. Thillanadarajah,
Member, Public Service Commission.
- 9A. Mr. S. Ranugge,
Member, Public Service Commission.
- 10. M.D.W. Ariyawansa,
Member, Public Service Commission.

10A. Dr. I. M. Zoysa Gunasekera
Member, Public Service Commission.

10B. Mr. D. L. Mendis,
Member, Public Service Commission.

11. A. Mohomed Nahiya,
Member, Public Service Commission.

11A. Mr. Sanath Jayathilaka,
Member, Public Service Commission.

12. T. M. L. C. Senaratne,
Secretary to the Public Service
Commission.

12A. Mr. H. M. Gamini Senevirathna
Secretary to the Public Service
Commission.

All 4th to 12th Respondents,
No. 177, Nawala Road,
Narahenpita,
Colombo 05.

13. N. Godakanda,
Director General,
Department of Management Service,
General Treasury,
Colombo 01.

13A. H. G. Sumanasinghe
Director General, Department of
Management Service, General Treasury,
Colombo 01.

13B. L.T. D. Perera
Director General, Department of
Management Service, General Treasury,
Colombo 01.

14. G.D.C. Ekanayake
Director General,
Department of National Budge,
General Treasury, Colombo 01.

14A. A.R. Desapriya
Director General,
Department of National Budge,
General Treasury, Colombo 01.

14B. A.K. Seneviratne
Director General,
Department of National Budge,
General Treasury, Colombo 01.

14C. P.B.S.C. Nonis
Director General,
Department of National Budge,
General Treasury,
Colombo 01.

15. W.M.N.J. Pushpakumara
Commissioner General of
Examinations,
Department of Examinations,
P.O. Box 1503, Colombo.
- 15A. B.S. Poojitha,
Director General,
Commissioner General of
Examinations,
Department of Examinations,
P.O. Box 1503, Colombo.
16. Hon. Attorney General,
Department of Attorney General,
Colombo 12.

Respondents.

1. Kiramanagoda Gedara Sumith
Chithrananda Ariyadasa,
6/39, 4th Lane, Sathmini Uyana,
Palugama, Dompe.
2. Samson Jayathilaka Hemanthi
Asangika,
No. 90, Government Quarters,
Wekunagoda, Galle.
3. Rajapaksha Rajakaruna Wanasinghe
Bandaranaike Mudiyanseelage
Samawathi, Gandarawatta,
Galketiyaagama,

Karawilagala, Palagala.

4. Rajaguru Mudiyanseelage Nandana
Gunarathna, Ihalagama,
Yanthampola, Uhumeeya.
5. Maduwa Guruge Pushpa
Swarnalatha Guruge,
No. 243/7, Hiripitiya, Pannipitiya.
6. Katukurunda Gamage Indika
Kumari,
No. 34, Welsons Niwasa,
Sadujana Mawatha,
Kanampitiya Road,
Galle.
7. Mathota Arachchilage Eranga
Saumya Kumari Jayawardana,
59/6, Kent Road, Dematagoda,
Colombo-09.
8. Minikange Kapila Kumaranayake,
1/13, Old Railway Avenue,
Ratnapura Road, Kuruwita.
9. Sri Mudiyanseelage Sampath Gedara
Karunathilaka,
96/2/1, Aluthwela, Theldeniya.
10. Anushanthi Bandumala Konegedara,

107/A, Kelanimulla, Angoda.

11. Hunuketaela Mudiyansele
Sunethra Thamara Kumari,
Palinguwa Junction,
Owala, Kaikawala,
Matale.
12. UdulaIndrani Munasinghe,
27, Liyanage Mawatha, Vijithapura,
Pelawatta, Battaramulla.
13. Mudali Gedara Shiroma Damayanthi
Rathnayaka,
No. 560/A, Tract 17,
Pahalaragahawewa.
14. Henarath Arachchilage Sudarshane
Deepika Senarath,
Marry Land Estate, Kadahapola,
Pahamune.
15. Gonapinuwala Thanthirige Waruna
Nishantha Thanthirige,
95, Walamulla Road,
Kurunduwatta, Dodanduwa.
16. Wickramasinghe Arachchige
Chandana Kumara Wickramasinghe,
Kiribamunegamayaya,
Polpitigama.

17. Yapa Mudiyanseelage Upul Bandara
Yapa Damitha, Near the Play
Ground, Jayaminipura,
Diyathalawa.
18. Ratu Waduge Sarathchandra,
42, Warakagoda,
Neboda.
19. Kukulagei Padmasiri Navarathna
Rathnagiri,
Ambagahawatta,
Baddegama.
20. Don Pathma Gunadeera Jayasekara,
Pasal Kanda,
Kobeythuduwa,
Batapola.
21. Salpadoruge Pathmakanthi
Deepthika Fernando,
67 D-2,
Wathumulla,
Udugampola.
22. Edirisinghe Appuhamilage Dona
Rasika Dilani Edirisinghe,
88/1, Bogahawatta, Kirindiwela.

23. Ranasinghe Arachchilage
Samanlatha Jayamini Jayasooriya,
No. 01, Pothanasiyamblewa,
Meegalewa.
24. Marasinhage Padmini Senehelatha,
70, Avissawella Road,
Bulathkohupitiya.
25. Herath Mudiyanseelage Anusha
Shyamalie Herath,
224/1, Dunuwangiya Roda,
Badulla.
26. Rambandage Hemasiri Ekanayake,
201, Jayasiripura,
Anuradhapura.
27. Korale Kankanamge Gayani
Thusharika Malkanthi,
No.88, Pothuvil Road,
Weliyaya,
Moneragala.

Intervenant-Respondents

BEFORE : **P. PADMAN SURASENA, J**
ACHALA WENGAPPULI, J
K. PRIYANTHA FERNANDO, J

COUNSEL : Saliya Pieris, PC with Thanuka Nandasiri for the
Petitioners.

Fazly Razik, DSG for the Respondents.

Manohara De Silva, PC with Harithriya Kumarage for the
Intervenient Respondents.

ARGUED &

DECIDED ON : 09/08/2023

P. PADMAN SURASENA, J:

Court heard the submissions of the learned President's Counsel for the Petitioners as well as the submissions of the learned Deputy Solicitor General appearing for the Respondents and also the submissions of the learned President's Counsel appearing for the Intervenient Respondents and concluded the argument of this case.

According to the Service Minute relevant to the recruitment of Class III officers in Sri Lanka Administrative Service which is published in the Gazette No. 1419/3 dated 14/11/2005 produced marked **P 1**, the vacancies in Class III officers in Sri Lanka Administrative Service must be filled only through two examinations which are identified in the said Service Minute as the Open Examination and the Limited Competitive Examination. The Petitioners in this application are candidates who had sat for the Limited Competitive Examination-2009¹ held for the recruitment of Class III officers in the Sri Lanka Administrative Service. As the Petitioners in this application have complained only about the filling of vacancies through the said Limited Competitive Examination-2009, this Court need not consider at all about the Open Examination.

¹ The Limited Competitive Examination-2009 was held in 2011.

Limited Competitive Examination-2009.

It is by the notice produced marked **P 3** that the applications from the candidates have been called for the Limited Competitive Examination-2009. This notice has been published in the Gazette dated 09/07/2010. It is important to observe that this Gazette has been published by the Secretary, Ministry of Public Administration and Home Affairs pursuant to an order of the Cabinet of Ministers. It has been specifically stated in Clause 02 of the said Gazette **P 3**, that the number of vacancies to be filled and the date of appointments will be decided by Public Service commission/the Cabinet of Ministers.

According to the Gazette No. 1419/3 dated 14/11/2005 produced marked **P 1** which is the Service Minute relevant to the recruitment of Class III officers in Sri Lanka Administrative Service, it has been stated in no uncertain terms, that the number of vacancies for the recruitment of officers to Class III in any given year, should be the number of vacancies existing for that post as at 30th June of the relevant year. As the Petitioners in their argument has urged us to draw a parallel between the Limited Competitive Examination-2009 and the Limited Competitive Examination-2010, let us next state below about the Limited Competitive Examination-2010.

Limited Competitive Examination-2010.

The number of vacancies to be filled through the Limited Competitive Examination-2010² has been specified in the Gazette No. 1754 dated 11/04/2012 produced marked **P 10**. According to the said Gazette (**P 10**), the Public Service Commission has decided on the number of vacancies to be filled by the Limited Competitive Examination-2010. The Learned President's Counsel appearing for

² The Limited Competitive Examination-2009 was held in 2012.

the Petitioners drew our attention to Paragraph 31C of the affidavit of the 03rd Respondent which is to the following effect.

The Public Service Commission considered in full the details regarding the number of vacancies in the Sri Lanka Administrative Service and concluded that as at 30/06/2010 there were 178 vacancies in Class II and III of the Sri Lanka Administrative Service (which is a combined service). However, on 01/07/2010, 144 officers were to be promoted to Class-I of the Sri Lanka Administrative Service. Such promotions to Class-I, would in turn create 144 vacancies in Class II / III of Sri Lanka Administrative Service. If such vacancies were not filled expeditiously the inconvenience to the Sri Lanka Administrative Service would be dire.

Thus, according to the above paragraph, the Public Service Commission had gone beyond the permitted number of vacancies in Sri Lanka Administrative Service as at 30/06/2010 of the relevant year as per the Service Minute (**P 1**), when calculating the number of vacancies to be filled by the Limited Competitive Examination-2010.

It is on the above basis, that the Petitioners advanced the argument that similar approach should have been taken to calculate the number of vacancies to be filled from the Limited Competitive Examination-2009.

The Petitioners have submitted documentation to establish that the number of vacancies namely 33, which had been filled from the Limited Competitive Examination-2009 is less than the number of vacancies calculated according to the approach taken for the Limited Competitive Examination-2010. According to the Petitioners, the number of vacancies as per the calculation method adopted in the Limited Competitive Examination-2010, would add 24 more vacancies to the 33 vacancies which had been filled by the Limited Competitive Examination 2009. It is on the above basis, that the Petitioners have stated that they have

every reason to believe that an additional number of 24 vacancies should have been filled on the Limited Competitive Examination 2009.³

It is in that backdrop that the Petitioners in their Petition have prayed *inter-alia* for,

- A) Leave to Proceed under Article 12 (1) of the Constitution in the first instance;
- B) A direction to the Respondents to submit the updated list of vacancies for the years of 2008, 2009, 2010 and 2011 in the Sri Lanka Administrative Service (SLAS) Class III;
- C) A direction on the Respondents to submit the marking scheme utilized for the interviews which were held for the Limited Competitive Examination-2009 and the relevant mark sheets of the candidates who were interviewed;
- D) An interim order restraining/preventing one or more or all of the Respondents from recruiting officers and or taking any steps to recruit to the Sri Lanka Administrative Service Class III from the Limited Competitive Examination held in 2012 until the final determination of this application;
- E) Declare that one or more or all the Respondents and/or the State have infringed the Fundamental Rights guaranteed to the Petitioners under Article 12 (1) of the Constitution;
- F) Direct one or more or all the Respondents to appoint the Petitioners to Class III of the Sri Lanka Administrative Service on the basis of the Limited Competitive Examination-2009 held in 2011 and back date the said appointment with effect from 15.12.2010 or such other date as Your Lordships' Court deems lawful;

³ Paragraph 48 of the Petition.

Out of the six prayers in the Petition, there are only two main final prayers in this application. They are prayers (E) and (F). All the other prayers are interim prayers asked for by the Petitioners to facilitate their further collection of the material and further prosecution of this case. Prayer (E) is a declaration to the effect that the Petitioners fundamental rights guaranteed under Article 12(1) have been violated. The prayer (F) seeks a direction on the Respondents to appoint the Petitioners to Class III of Sri Lanka Administrative Service on the basis of the Limited Competitive Examination-2009 held in 2011 and back date the said appointment with effect from 15.12.2010 or such other date as Court would deem lawful.

We observe that the Cabinet of Ministers as per the Cabinet decision produced marked **R 7A** had specifically decided the number of vacancies to be filled through the Limited Competitive Examination-2009. That number is 33 vacancies which was dully filled subsequent to the Limited Competitive Examination-2009 held as per the Gazette **P 3**. The Cabinet decision in **R 7A** was based on the Cabinet Memorandum produced marked **R 7B** submitted to the Cabinet of Ministers by the Minister of Public Administration and Home Affairs. Admittedly, the Public Service Commission was not functioning at the time the Cabinet of Ministers had decided on the number of vacancies to be filled through Limited Competitive Examination-2009 as per **R 7A** & **R 7B**. Therefore, in any event, it is not the Public Service Commission which had made the decision in **R 7A**. The said decision was taken by the Cabinet of Ministers. The Public Service Commission also has nothing to do with the Cabinet Memorandum **R 7B** as well.

The number of vacancies to be filled through Limited Competitive Examination-2010 was decided by the Public Service Commission. That was because by that time the Public Service Commission had been constituted and was functioning. Thus, in effect the number of vacancies to be filled through the Limited Competitive Examination-2009 and the number of vacancies to be filled through the Limited Competitive Examination-2010 have been decided at two different

times by two different bodies. i.e., the decision in respect of the Limited Competitive Examination-2009 was made by the Cabinet of Ministers and the decision in respect of the Limited Competitive Examination-2010 was made by the Public Service Commission.

The Petitioners complaint was that the same approach adopted by the Public Service Commission for the Limited Competitive Examination-2010 should have been adopted to decide the number of vacancies to be filled through the Limited Competitive Examination-2009.

Invariably this is in effect an argument that the Cabinet of Ministers also should have followed the same approach taken by the Public Service Commission at the Limited Competitive Examination-2010 when they (the Cabinet of Ministers) decided on the number of vacancies to be filled through the Limited Competitive Examination-2009. (in their decision as per **R 7A** & **R 7B**).

Thus, it is clear that the argument advanced by the Petitioners is directed to challenge the decision made by the Cabinet of Ministers as per **R 7A** which was based on the Cabinet Memorandum **R 7B**. This is because, if at all, it is the Cabinet of Ministers who should have considered such an approach when they made their decision regarding the number of vacancies to be filled through the Limited Competitive Examination-2009 which is set out in **R 7A** & **R 7B**. Moreover, in any case, the Public Service Commission was not functioning and was not a party to that decision in **R 7A** & **R 7B**. Indeed, the Public Service Commission has nothing to do with either the Cabinet Decision **R 7A** or the Cabinet Memorandum **R 7B**. It was in that backdrop that the learned Deputy Solicitor General drew the attention of Court to the fact that the Petitioners have failed to name the Cabinet of Ministers as Respondents to this Petition despite the fact that they are necessary parties in this case as it is their decision that is being challenged in this case.

It is true that the Petitioners have not made the Cabinet of Ministers as Respondents to this application. As has already been mentioned above, it is also true that it is the decision of the Cabinet of Ministers that is being challenged in this case. This is because the Petitioners' position is that the decision to fill only 33 vacancies through the Limited Competitive Examination-2009 is unlawful and hence has violated their fundamental right guaranteed under Article 12(1) of the Constitution. Who has made that decision? It is the Cabinet of Ministers. Thus, in our view, there is merit in the above submission made by the learned Deputy Solicitor General. It is clear that the Cabinet of Ministers have not been made parties to this application.

Furthermore, Part IV of the Supreme Court Rules would apply in respect of filing of fundamental rights applications under Article 126 of the Constitution. In terms of Rule 44 (1)(a), such Petition shall contain the circumstances and particulars of the 'executive and administrative action' by which the fundamental rights of the Petitioners have been or are about to be infringed. The facts and circumstances relating to such infringement must be clearly and distinctly set out in their petition.

As per Rule 44(1)(b), such Petitioner must name as Respondents not only the Attorney General but also the person or persons who have infringed their fundamental rights. Although in this case the allegation of the infringement of the Petitioners fundamental rights is by a decision made by the Cabinet of Ministers the Petitioners have failed to name the Cabinet of Ministers as respondents to this application as required under Rule 44(1)(b).

Furthermore, the Petitioners have not prayed that the said Cabinet decisions **R 7A** be quashed. The Petitioners have merely prayed for a direction on the Respondents to appoint the Petitioners to Class-III of Sri Lanka Administrative Service on the basis of the Limited Competitive Examination in 2009.

The Petitioners also have prayed for an alternative relief to direct the Respondents to fill 24 further vacancies (relying on the method by which the number of vacancies were calculated for the Limited Competitive Examination-2010) to Class-III of Sri Lanka Administrative Service on the basis of the Limited Competitive Examination-2009.

As has been already mentioned above, following the Limited Competitive Examination-2009, the number of vacancies (33) have been filled according to the decision made by the Cabinet of Ministers which is **R 7A**. The notice for calling for applications for the Limited Competitive Examination-2009 has been published by the Secretary, Ministry of Public Administration and Home Affairs. It is not a notice published by the Public Service Commission. (Public Service Commission was not even functioning at that time). The Cabinet of Ministers had decided to fill number of vacancies (33) on 19-05-2010. We observe that the Secretary, Ministry of Public Administration and Home Affairs had clearly stated at the end of the Gazette (**P 3**) that he had published this Gazette as per the direction by the Cabinet of Ministers. Thus, it was pursuant to that decision in **R 7A**, that the Secretary, Ministry of Public Administration and Home Affairs had published the Gazette (**P 3**) dated 09-07-2010 in order to take steps to call for the applications to fill those 33 vacancies.

Thus, as far as the filing of 33 vacancies from the Limited Competitive Examination-2009 is concerned, it was the Cabinet of Ministers which had decided that only 33 vacancies must be filled by the Limited Competitive Examination-2009. As has already been mentioned above, the Petitioners do not seek to quash the Cabinet decision in **R 7A**. We observe that if **R 7A** is quashed the Petitioners have no leg to stand in this instance as none of them can be considered for any appointment as it is on **R 7A** that they too had applied to sit for the Limited Competitive Examination-2009. In those circumstances, we are unable to see how we can direct the Respondents to appoint another set of 24 candidates who had sat for the same examination in 2009 without quashing the

afore-stated restriction in the Cabinet decision **R 7A**. There is no legal basis to take such a course of action.

The learned President's Counsel for the Petitioners also drew the attention of Court to pages 9A and 10A of the Gazette No. 1419/3 dated 14/11/2005 (**P 1**) at which it is stated that the Public Service Commission will decide the number of appointments to be made at one occasion. He sought to argue that according to the said clause the Public Service Commission has been empowered to decide the number of appointments to be made at one occasion. However, as pointed out by the learned Deputy Solicitor General, we take the view that this clause is not a reference to any power to decide the number of vacancies to be filled through any examination, but only a reference to the number of persons who may be given appointments after finishing the relevant recruitment process in a given year. Therefore, in our view those clauses would not help the Petitioners.

We also note the paragraph 31D of the affidavit filed by the 3rd Respondent, dated 22-03-2013 which states as follows:

“as such by letter dated 30-09-2011 as a one-off deviation from the Service Minute, the PSC permitted the said 144 vacancies arising one day after 30-06-2010 to be added to the 178 vacancies existing as at 30-06-2010. Of the 322 such vacancies 258 were permitted to be filled through the open competitive examination.”

The same view is also reflected in the document dated 30-09-2011 produced marked **R 10** which is the decision made by the Public Service Commission on the number of vacancies to be filled by the Limited Competitive Examination-2010.

R 10 states that the real number of vacancies to be filled through the Limited competitive examination-2010 must be taken as the number of vacancies existed at 30th June. However, it was because 144 Class II officers had been promoted to Class I with effect from 01-07-2010, another 144 vacancies had been added to

the number of vacancies existed as at 30th June of that year. That was how the 322 vacancies in Class III was calculated for the Limited competitive examination-2010. The Public Service Commission as per **R 10** having considered that aspect had approved to fill 258 vacancies in that year. The Public Service Commission had done this ‘as a one-off deviation from the service minute’. This could be seen from the two following paragraphs quoted respectively from **R 10** and **R 08**.

The following paragraph is quoted from the document dated 30-09-2011 produced marked **R 10** which is the decision made by the Public Service Commission on the number of vacancies to be filled by the Limited Competitive Examination-2010.

“03. ශ්‍රී ලංකා පරිපාලන සේවා ව්‍යවස්ථාව අනුව **ශ්‍රී.ලං.ප.සේ. III පන්තියට පත්කළ යුතු සංඛ්‍යාව වනුයේ එම වර්ෂයේ ජුනි 30 දිනට පවතින පුරප්පාඩු සංඛ්‍යාව වන නමුත්** 2010.07.01 දින සිට ශ්‍රී ලංකා පරිපාලන සේවයේ I පන්තියට නිලධාරීන් 144 දෙනෙකු උසස්කර ඇති බැවින් 2010.07.01 දිනට ශ්‍රී.ලං.ප.සේ III පන්තියේ සම්පූර්ණ පුරප්පාඩු 322ක් පවතී. ඔබේ සමාංක හා 2011.08.22 දිනැති ලිපියේ දෙවන ඡේදයේ සඳහන් කරුණුද සලකා බලා රාජ්‍ය සේවා කොමිෂන් සභාව **මේ අවස්ථාවට පමණක්** සේවා ව්‍යවස්ථාවේ 3(3) වගන්තියේ විධිවිධාන වලින් පරිබාහිරව උක්ත තරග විභාගයෙන් පුරප්පාඩු 258ක් පිරවීම අනුමත කර ඇති බව එම කොමිෂන් නියුගය පරිදි කාරුණිකව දන්වමි.”

The portions highlighted would clearly show that the decision made by the Public Service Commission on the number of vacancies to be filled by the Limited Competitive Examination-2010 is ‘a one-off deviation from the service minute’. That becomes further clear from the following paragraph quoted from the letter dated 22-08-2011 which has been produced marked **R 08**. Indeed, that is the letter referred to as “...ඔබේ සමාංක හා 2011.08.22 දිනැති ලිපියේ දෙවන ඡේදයේ සඳහන් කරුණුද ...” in the above paragraph quoted from **R10**. Contents of the second paragraph of **R 08** is as follows.

“එහෙත් රජයේ විශ්‍රාමික නිලධාරීන් නැවත සේවයේ නොයෙදවීමට ප්‍රතිපත්තිමය තීරණයක් ගෙන ඇති බැවින් පළාත් සභාවල පුරප්පාඩු පිරවීමේ දූෂිතකරතාවයන් මතුව ඇත. තවද ශ්‍රී ලං.ප.සේ. I පන්තියට උසස් කරන ලද නිලධාරීන්ද පළාත් සභාවල III පන්තියේ තනතුරු වල තවදුරටත් සේවයේ නියතු අතර III පන්තියේ නිලධාරීන් නොමැති වීම නිසා එම නිලධාරීන් I පන්තියේ තනතුරු වලට අනුයුක්ත කිරීම සඳහා ස්ථාන මාරු කිරීමට නොහැකි තත්වයක් උද්ගතව ඇත.”

Thus, it could be seen from the above paragraph in **R 08** that there was some exigency prevailed at that time.

The above facts would show that the Cabinet of Ministers by **R 7A** and **R 7B** had not deviated from the normal practice of calculating the vacancies according to the Service Minute (**P 1**). However, **R 10** shows that the Public Service Commission had deviated from the accepted general lawful practice of calculating the vacancies as at 30th June of the relevant year. Thus, if at all, if there is a violation of law, it must be in the decision made by the Public Service Commission as per **R 10** which has violated the accepted normal lawful practice of calculating the number of vacancies for a given year as per the Service Minute (**P 1**).

Moreover, that decision has only been made applicable to that year. Whether that is correct or wrong or permissible is another matter. In the instant application the Petitioners had neither challenged nor prayed to quash that decision. To the contrary, they seek to rely on that decision which is not strictly as per the law.

Another important thing we observe in this application is that the Petitioners have failed to rely on a particular legal basis to agitate that the Respondents should have filled 24 more vacancies than the 33 number of vacancies which had lawfully existed as at 30th June of that year. As has been mentioned above, the sole basis upon which the Petitioners appear to agitate for their claim is the fact that the Respondents had adopted a different method outside the method specified by law to calculate the number of vacancies to be filled through the Limited Competitive

Examination-2010. The Petitioners have not averred that they had a legitimate expectation. The Petitioners were content by mere stating in paragraph 48 of the Petition that they have every reason to believe that an additional number of 24 vacancies should have been filled on the Limited Competitive Examination 2009.

As the Limited Competitive Examination-2009 had preceded the Limited Competitive Examination-2010, the Petitioners would not have known that the Respondents would calculate the number of vacancies in a different way in the following year. Thus, leave alone legitimate expectation, the Petitioners could not have had any expectation of that nature when they applied and sat for the Limited Competitive Examination-2009. Therefore, it is not open for the Petitioners to advance a case on legitimate expectation (The Petitioners have not averred such ground specifically).

As has already been mentioned above, the method of calculation of the number of vacancies to be filled through the Limited Competitive Examination-2010 is outside the method set out in **P 1** and that decision does not conform to the published service minute. If the Petitioners had challenged the calculation of the number of vacancies to be filled through the Limited Competitive Examination-2010 it is then altogether a different scenario. As they had not, we are not called upon to consider the legality of the calculation of the number of vacancies to be filled through the Limited Competitive Examination-2010. Suffice to say that one wrong would not make the second wrong legal. Therefore, in our view, the Petitioners are not entitled to claim that the same deviation should have been done to calculate the number of vacancies to be filled through the Limited Competitive Examination-2009 also. That is to say that the Petitioners wished that the Cabinet of Ministers also should have ignored the provisions in the Service Minute **P 1**. In effect what the Petitioners are trying to do is not to uphold the law i.e., not to conform to the published service minute, but to blatantly go outside it. Then why should the published service minute there for?

On the other hand, as per paragraph 31D of the affidavit filed by the 3rd Respondent dated 22-03-2013, the decision set out in the letter dated 30-09-2011

produced marked **R 10**, it is clear that the deviated method of calculation of number of vacancies was limited only to that year '*as a one-off deviation from the service minute*' for whatever the exigency that may have prevailed at that time. As has already been mentioned above, we would not engage ourselves to consider the legality of the said '*one-off deviation*'.

This court by its order dated 04-10-2012, had granted leave to proceed to the Petitioners in respect of the alleged violations of their Fundamental Rights guaranteed under Article 12(1) of the Constitution. Thus, the question arises as to what law the Respondents had violated when they adopted the published method to calculate the number of vacancies existed as at 30th June of the relevant year. There is absolutely none.

Then, what is the legal basis for this Court to hold that any Respondent in this case has infringed the Petitioners' Fundamental Rights guaranteed under Article 12(1) of the Constitution? We cannot see any such basis whatsoever.

For the forgoing reasons, we hold that the Petitioners have not made out a case of any infringement of any fundamental right guaranteed under Article 12(1) of the Constitution. The Petitioners are therefore not entitled to succeed with this petition. We decide to dismiss this Petition but without costs.

Mr. Manohara De Silva, PC appearing for the Intervenant Respondents, in the course of his submissions drew the attention of Court to the fact that the Intervenant Respondents are a set of candidates who had not sat for the Limited Competitive Examination-2009 which is relevant to the case advanced by the Petitioners, but a set of candidates who had only sat for the Limited Competitive Examination-2010. Mr. Manohara De Silva, PC submitted that despite that fact his clients have also been prevented from being appointed to Class-III of Sri Lanka Administrative Service due to the presence of the interim order which had been granted by Court on 03/07/2013.

Both the learned President's Counsel for the Petitioners as well as the learned President's Counsel for the Intervenant Respondents admitted that they are not rivals to each other.

Petitioners in this application have neither challenged Limited Competitive Examination-2010 nor challenged the calculation of number of vacancies to be filled through that examination (2010).

As pointed out by Mr. Manohara De Silva PC, we observe that the Interim Order which had been granted by Court on 03/07/2013 was to restrain/prevent Respondents from recruiting officers and or taking any steps to recruit to the Sri Lanka Administrative Service Class-III from the Limited Competitive Examination held in 2012 until the final determination of this application. Therefore, out of an abundance of caution, we direct that the interim order granted by this Court on 03/07/2013 must no longer have any effect.

The Petition is dismissed without costs.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J

I agree.

JUDGE OF THE SUPREME COURT

K. PRIYANTHA FERNANDO, J

I agree.

JUDGE OF THE SUPREME COURT

CK/-