

**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  
read with Article 17 of the  
Constitution of the Democratic  
Socialist Republic of Sri Lanka.*

**SC (FR) Application No:**

**81/2025**

R.K. Janaka Sathyajith

Rajapakse,

No. 124/5, Dutugamunu Street,

Kalubovila, Dehiwala.

**PETITIONER**

**Vs.**

01. Mr. Anil Jasinghe,

Secretary, Ministry of Health.

02. Dr. Asela Gunawardana,

Director General of Health

Services, Ministry of Health.

03. Dr. P.W.C. Lal Panapitiya,

Deputy Director General,

Medical Services I,

Ministry of Health.

04. Dr. Priyantha Atapattu,  
Director Tertiary Care Services,  
Ministry of Health.

*All of 01<sup>st</sup> to 04<sup>th</sup> Respondents are  
of:  
“Suwasiripaya,”  
No. 385, Ven. Baddegama  
Wimalawansa Thero Mawatha,  
Colombo 10.*

05. Mr. Sanath J. Ediriweera,  
Chairman,

06. Mr. N.H.M. Chithrananda,  
Member,

07. Mr. G.S.A de Silva P C,  
Member,

08. Dr. A.D.N. de Zoysa,  
Member,

09. Mrs. S.M. Mohamed,  
Member,

10. Mrs. Ranjani Nadarajapillai,  
Member,

11. Mr. M.B.R. Pushpakumara,  
Member,

12. Prof. N. Selvakkumaran,

Member,

13. Dr. Sanath Panawennage,

Member,

14. Mrs. T.M.L.C. Senarathna,

Chairman,

Health Service Committee,

15. Dr. Ananda Hapugoda,

Member,

Health Service Committee,

16. Mr. Nimal Saranathissa,

Member,

Health Service Committee,

17. Mrs. W.A.C Wickramathilaka,

Secretary,

Health Service Committee,

*All of 05<sup>th</sup> to 17<sup>th</sup> Respondents are*

*of:*

The Public Service

Commission,

No. 1200/9, Rajamalwatta Road,

Battaramulla.

18. Dr. S.P.A Liyanage Ranaweera

Deputy Director General

National Hospital (Acting),

National Hospital of Sri Lanka,

Colombo 10.

19. Dr. Sheahan Waas,

President,

Sri Lanka College of Radiologists,

“Wijerama House,”

No. 6, Wijerama Mawatha,

Colombo 07.

20. Hon. Attorney General,

Attorney General’s Department,

Colombo 12.

### **RESPONDENTS**

#### **Before**

: Mahinda Samayawardhena, J.

: K. Priyantha Fernando, J.

: Sampath B. Abayakoon, J.

#### **Counsel**

: Saliya Peiris, P.C. with Geeth Karunaratne,

Manujaya de Silva and Dhimarsha Marso

instructed by Bagya Ayeshani for the Petitioner.

: Viveka Siriwardena, P.C., A.S.G. with Nayanathara

Balapatabendi, S.C. for the 1<sup>st</sup> to 4<sup>th</sup>, 14<sup>th</sup> to 18<sup>th</sup>

and 20<sup>th</sup> Respondents.

**Argued on** : 21-10-2025

**Written Submissions** : 01-08-2025 (By the 1<sup>st</sup> to 4<sup>th</sup>, 14<sup>th</sup> to 18<sup>th</sup> and 20<sup>th</sup> Respondents)

: 29-07-2025 (By the Petitioner)

**Decided on** : 03-12-2025

**Sampath B. Abayakoon, J.**

The petitioner in this application is a medical specialist in the field of Radiology and a Consultant Radiologist serving at the National Hospital of Sri Lanka at the time of filing this fundamental rights application.

He has alleged that his fundamental rights guaranteed under Articles 12(1) and 14(1)(g) were infringed by one or more or all the respondents mentioned in the petition. It has been specifically averred by him at paragraph 9 of the petition that he is instituting this action not solely on his own behalf, but also in the interest of all the patients who are currently receiving or willing to receive services and treatment in the future from the new Computed Tomography (CT) Unit of the National Hospital of Sri Lanka, as well as in the broader interest of the healthcare system of the country.

In other words, it has been claimed that the petitioner is instituting this action as a public interest litigation, rather than seeking relief for himself.

When this matter was considered for leave to proceed on 28-05-2025, this Court granted leave to proceed in terms of Articles 12(1) and 14(1)(g) of the Constitution.

The said Articles, under which leave to proceed with this application was granted, reads as follows-

**12. (1) All persons are equal before the law and are entitled to the equal protection of the law.**

**14. (1) Every citizen is entitled to-**

**(g) The freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.**

At the hearing of this application, this Court heard the submissions of the learned President's Counsel who represented the petitioner as well as the learned Additional Solicitor General (ASG) who made submissions on behalf of the respondents opposing the application before the Court. This Court also had the benefit of considering the documents tendered to the Court in support of their respective stands, and also the written submissions by the parties in determining this application.

**The Facts**

The petitioner has been transferred as the Consultant Radiologist of the newly established Computed Tomography (CT) Unit of the National Hospital of Sri Lanka (NHSL) and has continued to serve in that capacity since its inception in the year 2021 to date.

It is an admitted fact that in the health system of Sri Lanka, there is a system of naming certain posts designated as end posts and transferrable posts. The distinction lies in the fact that a Consultant Medical Officer who receives his transfer to an end post is considered entitled to remain in the same post until his retirement from the service, unless the said consultant chooses to be transferred out of the said post. In a situation where a certain post has been designated as a transferrable post, the Consultant Medical Officer who serves in such a post will only be able to serve a maximum of 4 years at the said post and he will be subjected to be transferred from the said post under the Annual Transfer Scheme applicable to such Medical Officers.

Admittedly, when the petitioner was transferred to the above-mentioned Computed Tomography (CT) Unit of NHSL, the said post was a post designated as a transferrable post, and he has had clear knowledge of that fact.

It has been the position of the petitioner that the above-mentioned Unit is a highly specialized Unit where a CT Coronary Angiogram (CTCA) capable machine with advanced technology capabilities has been installed. He has taken up the position that this is a machine obtained by the Ministry of Health as one of its largest capital investments made, which amounts to a value of approximately Rs. 500 million. It is also an equipment where large number of patients undergo Cardiac (CT) imaging to identify various cardiac related illnesses.

It has been submitted that this is a Unit that should be operated by a Consultant Radiologist who is not only experienced, but also specifically trained in advanced cardiac imaging techniques, and the petitioner underwent such training before he assumed duties as the Consultant Radiologist in the said Unit, and is the only Consultant attached to the same.

He has averred that after his assumption of duties to the said Unit; there was an understanding between the Sri Lanka College of Radiologists and the Ministry of Health to the effect that the said Consultant post associated with the said Unit should be designated as an end post in recognition of its highly specialized nature and due to the importance of ensuring continuity in delivery of service. It has been his position that designating the said post as a transferrable post, where Consultants appointed to the said post receive transfers every four years, would hamper the specialized service provided by the Unit and the smooth functioning of the teaching and training programs. It has been claimed that the necessity to maintain high standards of service delivery and patient care will also suffer as a result.

It has been contended that as for the previous understanding in relation to making this position an end post, the Ministry of Health called for applications for the placement of end posts for the year 2025 by the General Circular Letter dated 07-11-2024 (P-9A), where it has been stated that the New Computed Tomography Unit has been converted to an end post.

It has been his position that however, when the list where several other posts have also been proposed to be designated as end posts was sent to the Public Service Commission for its approval, for no valid reason, the Public Service Commission by its letter dated 30-11-2024 has informed the 1<sup>st</sup> respondent, namely the Secretary to the Ministry of Health, that sufficient justification has not been provided for creating new end posts, and there should be a justification report prepared by a committee of experts before a decision can be made in that regard (the letter marked P-10 along with the petition).

It has been his position that there is a specific directive that until such a report becomes available, no applications should be called for the filling of the posts mentioned as end posts in the list submitted for approval of the Public Service Commission.

It has been his complaint that despite this directive, the Ministry of Health on or about 02-03-2025, proceeded to publish the annual transfer list of the Specialist Medical Officers for the year 2025, whereupon all the posts that had been proposed to be designated as end posts through the list marked 9-C, which was the list sent for the approval of the Public Service Commission including the post where he is serving, had continued to be mentioned as transferrable posts. As a result, he too was transferred from the Unit (P-11A and P-11B).

He has contended that this was in clear violation of the instructions given to the Ministry by the letter marked P-10 and without the required justification report that should be submitted to the approval of the Health Service Committee before calling for any applications for the said posts.

It has been his position that the failure to designate the said post as an end post constitutes a serious injustice to the healthcare system of Sri Lanka due to the critically important and highly specialized nature of the services provided by the said Unit. While justifying the above statement in further detail, he has averred that the failure by the relevant authorities to designate the post held by him as an end post constitutes an arbitrary and erroneous exercise of authority without proper consideration of relevant facts and expert

opinions, and amounts to a procedurally flawed administrative act. It is on this basis that the petitioner has claimed that his fundamental rights have been infringed, praying for several reliefs as prayed for in the prayer of his petition, the main among them being the designation of the position of Consultant Radiologist of the Unit he serves as an end post, where he can apply to hold that post beyond his transferrable period of four years as at present.

### **The Submissions**

It was on the same basis the learned President's Counsel made his submissions before the Court to argue that this is a matter of public importance, and due to the sensitive and the highly specialized nature of the post, it should be designated as an end post. To substantiate his view, he submitted the documents marked as C-6 and C-7 filed along with the counter affidavit of the petitioner, where the statistics relating to the usage of the New Cardiac CT have been provided. He was of the view that the failure by the Health Ministry to appoint an Expert Committee and file its report amounts to a clear violation of the fundamental rights guaranteed in terms of the Constitution when it comes to the rights of the petitioner and the public in general.

In her submissions before this Court, it was the position of the learned ASG that, although the petitioner seeks to portray the application filed as a one instituted for the common good of the country, this was not an application filed with such an intention, but with the intention of serving in the post by himself until he reaches his age of retirement. She submitted several reasons as to why the petitioner's application should fail and urged the Court to dismiss the application for want of any merit.

### **The Conclusion**

Having the above factual matrix in mind and the relevant submissions made in that regard, I will now proceed to consider whether the fundamental rights guaranteed under the Constitution have been violated as alleged in terms of the Articles under which leave to proceed with this matter was granted.

In that context, I find it necessary to consider Article 14(1)(g) before I move on to consider the provisions of Article 12(1) for the purposes of this judgment.

It is my view that the petitioner has been appointed to the newly established Computed Tomography (CT) Unit in the year 2021 based on his qualifications as a Consultant Radiologist. At the time of his appointment, it was well within his knowledge that the said position was a transferrable post where he would have to go on transfer after four years of service. That is the very reason why he has applied for annual transfers (P-12) where he has been given a transfer to the 2<sup>nd</sup> station mentioned by him in relation to his preference, which is the Teaching Hospital Kalubowila. His 1<sup>st</sup> choice has been the place where he has been working, that is, the New Computed Tomography Unit of NHSL.

His annual transfer from the transferrable post has been on the same capacity as a Consultant Radiologist. There was no impediment for him to assume duties at his new station and continue with his profession as a Specialist Medical Officer. There is nothing to suggest or accept that his entitlement to engage in his profession has been hampered or violated in any manner by the said transfer.

It was held in the case of **W. M. K. De Silva Vs. Chairman, Ceylon Fertilizer Corporation (1989) 2 SLR 393, at page 394;**

**“Per Amerasinghe, J.: That Article (Article 14(1)(g)), recognizes the right of every citizen to use his powers of body and mind in any lawful calling: to pursue any livelihood and avocation. It confers no obligation to give any particular kind of work or indeed any right to be continued in employment at all.”**

**At page 401;**

**Per Jameel, J.,**

**“Article 14(1)(g) ensures the freedom to engage in any lawful occupation of one’s choice, but this provision does not extend to a right to be employed by a particular master or in a particular place of work.”**

In the case of **Elmore Perera Vs. Major Montague Jayawickrema Minister of Public Administration and Plantation Industries and Others (1985) 1 SLR 285 at 287**, it was observed by **Sharvananda, C.J.,;**

*“Article 14(1)(g) only recognises a general right in: every citizen - to do work of a particular kind and of his choice. It does not confer the right to hold a particular job or to occupy a particular post of one’s choice.”*

Therefore, even though this Court granted leave to proceed in terms of Article 14(1)(g) of the Constitution at the time leave to proceed was considered based on the facts placed before the Court, I am of the view that there was no violation of fundamental rights guaranteed to the petitioner under the said Article.

This leaves the question whether the fundamental rights guaranteed under Article 12(1) of the Constitution have been infringed by the respondents towards the petitioner or to the public in general as claimed.

As I have considered previously, the newly established New Computed Tomography Unit of the NHSL has been established in the year 2021 as a transferrable post. When the petitioner was transferred to the newly created post as a Consultant Radiologist, it was well within his knowledge that he would have to go on transfer after four years of service as his posting was to a transferrable post. It is my considered view that at the time he accepted the posting, there cannot be any legitimate expectation for him that he would be able to continue holding the said post until his retirement as if it was an end post.

Although the documents submitted to the Court show that the petitioner has undergone some special training in handling the equipment, in my view, that would not qualify him to be permanently stationed in the Unit unless the said post is designated as an end post. It appears that Sri Lanka College of Radiologists, the professional body where the petitioner is also a member and an office bearer, has agitated with the Director General of Health Service requesting the post to be declared as an end post.

This may have resulted in the Secretary to the Ministry of Health publishing the document P-9B, where it has been stated that the Consultant Radiologist position at the New Computed Tomography Unit has been converted to an end post.

However, it is manifestly clear that it should be the Health Service Committee of the Public Service Commission that should take such a decision, and not the Secretary to the Ministry of Health.

The document marked P-10 clearly demonstrates that fact where the Health Service Committee has directed the Secretary to the Ministry of Health that such naming of several new end posts including the post in question should be justified by submitting a report of an Expert Committee. The letter P-10 also indicates that there had been several objections for the proposal to create several end posts. This goes on to justify the decision by the Health Service Committee to call for an Expert Committee opinion with regard to the said proposal.

Although the petitioner has made submissions to show that by the letter marked P-10, the Health Service Committee has directed the Secretary to the Ministry of Health to not call for applications in relation to the posts proposed to be designated as end posts, I am in no position to agree.

As correctly pointed out by the learned ASG, the transfers within the Specialist Medical Officers of the Ministry of Health come under two streams, namely the end post category and the transferrable post category. It is clear that the letter marked P-10 refers to what is listed as the proposed end post vacancy list (document marked P-9C). What has been stated in the letter is to not call applications for transfers on the basis of the proposed end post vacancy list as the posts mentioned are not end posts, since the Health Service Committee of the Public Service Commission has not decided to create such end posts for the year 2025. This means that the application for filling of the said posts should be on the basis of transferrable posts for that year.

It is clear that it was on the said basis that the transfer list has been published for the year 2025.

This goes on to show that the creation of end posts in the hospital system is a decision that has to be taken after a very careful consideration of several factors and should not be based on requests made by interested parties only. That may be the very reason why the Health Service Committee of the Public Service Commission has decided to call for an Expert Committee Report before making such a decision, which in my view may take time depending on several factors.

I find that the delay in submitting such a report does not in itself constitute a violation of the petitioner's fundamental rights as it has not hampered his transfer from a transferrable post after the completion of his period of service in the said post.

It was observed by **Sharvananda, C.J.** in the case of **C. W. Mackie and Co. Ltd Vs. Hugh Moragoda, Commissioner General of Inland Revenue and Others (1986) 1 SLR 300 at 309**:

*"The equal treatment guaranteed by Article 12 is the equal treatment in the performance of a lawful act via Article 12, one cannot seek the execution of any illegal or invalid act. Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, found in law in contradistinction to an illegal right which is invalid in law... in the exercise of its powers under Article 126(4) of the Constitution, this court can issue a direction to a Public Authority or official commanding him to do his duty in accordance with the law. It cannot issue a direction to act contrary to the provisions of the law or to do something which the law, would be in excess of its powers."*

Besides that, there cannot be any argument that it is the Health Service Committee of the Public Service Commission who should decide on the creation of end posts and not this Court, as this Court lacks necessary expertise in deciding such matters.

I am in agreement with the contention of the learned ASG that though the petitioner has attempted to present this application as a public interest litigation, it is not so. It appears that the petitioner's intention has been to have the post in which he is presently serving designated as an end post and continue in that position until his retirement.

I find that such an action does not serve the interests of the public but in fact would be against the general good of the public.

The documents tendered to the Court show that the petitioner has been given the responsibility with several other Specialists in the field of Radiology and Cardiology by the Post-Graduate Institute of Medicine in developing a training program in Imaging Cardiology and Cardiothoracic Radiology with the intention of developing the knowledge of other Radiologists in this field (document marked C-4) for the very purpose of creating a pool of Consultant Radiologists who have the ability to perform functions in the field where the petitioner has already undergone specialized training.

In my view, other Consultant Radiologists who have similar specialist qualifications as the petitioner should be afforded the opportunity of serving in the Unit, enabling them to gain experience and knowledge in operating the Unit.

In my view, a Consultant Radiologist who has specialized in the field of Radiology, if given an opportunity, will not have any difficulty in discharging the functions of the Unit where the petitioner now serves, as any other Consultant Radiologist would be equally qualified and trained in operating the machines used for testing purposes.

It is my considered view that denying such an opportunity for others to serve in the Unit would give rise to an imminent infringement of fundamental rights of all other Consultant Radiologists who are qualified to hold such a transferrable post.

For the reasons as considered above, I find no basis to conclude that the fundamental rights guaranteed under Article 12(1) of the Constitution were

violated or likely to be violated as contended by the petitioner under any circumstances.

Accordingly, the fundamental rights application is dismissed.

There will be no costs.

**Judge of the Supreme Court**

**Mahinda Samayawardhena, J.**

I agree.

**Judge of the Supreme Court**

**K. Priyantha Fernando, J.**

I agree.

**Judge of the Supreme Court**