

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

In the matter of an application under
and in terms of Article 17 & 126 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.

S.C. (FR) No. 166/2021

1. Cader Mohamed Thowfeek,
No.112, Main Street,
Sammanthurai.

Petitioner

Vs.

1. South Eastern University of Sri Lanka,
University Park,
Oluvil.
2. Prof. M.M.M. Najim,
Vice-Chancellor,
South Eastern University of Sri Lanka,
University Park,
Oluvil.
- 2A.Dr. U.L. Abdul Majeed,
Acting Vice Chancellor,
South Eastern University,
Oluvil,
Sri Lanka.
3. Mr. H. Abdul Saththar,
Registrar,
South Eastern University of Sri Lanka,
University Park,
Oluvil.

3A.Mr.M.I. Nawfer,
Registrar,
South Eastern University,
Oluvil,
Sri Lanka.

4. Mr. A.M.G.B. Abeysinghe,
Registrar,
Rajarata University of Sri Lanka.

5. Dr. A.W.S. Chandana,
Senior Lecturer (Gr. II),
Sabaragamuwa University of Sri Lanka.

6. Dr. Anver M. Mustapha

7. Prof. A. Rameez,
Dean Faculty of Arts and Culture,
South Eastern University of Sri Lanka.

8. Dr. U.L.A Majeed,
Dean Faculty of Technology,
South Eastern University of Sri Lanka.

(2nd to 8th Respondents are the members
of the selection committee for the
appointment of post of Director/Physical
Education of the South Eastern
University of Sri Lanka of which 3rd
Respondent is the secretary)

All of members of selection committee,
South Eastern University of Sri Lanka,
University Park,
Oluvil.

9. University Grant Commission,
No. 20, Ward Place, Colombo 07.

10. Prof. Sampath Amaratunga,
Chairman,
University Grant Commission,
No. 20, Ward Place, Colombo 07.

10A. Senior Professor Kapila Seneviratne,
Chairman,
University Grant Commission,
No. 20, Ward Place,
Colombo 07.

11. S. Uthayanan,
Puliyadi Market Lane,
Manippay,
Jaffna.

12. I. Lakshman,
Sangarathai,
Vaddukoddai,
Jaffna.

13. Hon. Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before : Janak De Silva, J
Menaka Wijesundera, J
M. Sampath K.B. Wijeratne, J

Counsel : M. Nizam Kariapper, PC with Ilham Kariapper and
Chathurika Perera instructed by M.I.M. Iynullah for the
Petitioner.
Dr. Avanthi Perera, DSG for the Respondent.
Heard learned President's Counsel for the Petitioner and

learned Deputy Solicitor General.

Written

Submissions : Written submissions on behalf of the Petitioner on
25th of January 2025.
Written submissions on behalf of the 1st Respondent on
14th of March 2023.

Argued on : 25.09.2025

Decided on : 04.11.2025

MENAKA WIJESUNDERA, J.

The Petitioner in the instant matter is a resource person at the Teacher Professional Development Centre, Samanthurai, and alleges that his fundamental rights have been violated under Article 12 (1) of the Constitution due to the appointment of the 11th Respondent to the post of Director- Physical Education at the South-Eastern University of Sri Lanka.

The post of Director-Physical Education at the aforementioned university had been advertised on 26th of November 2020 which had been marked and produced as P10.

The Petitioner had submitted his application on 30th of December 2020 (P11) along with two other candidates. He claims that the other 2 candidates namely the 11th and the 12th Respondents, had subsequently withdrawn their applications.

The interview had been first scheduled on the 24th of March 2021 but it had been thereafter postponed to the 22nd of April 2021 and the 11th Respondent, who had withdrawn his application had also been present at the interview.

Thereafter, the Petitioner had been informed that the 11th Respondent who had obtained 76% of the marks had been selected for the above mentioned post.

Therefore, the Petitioner contends that the 11th Respondent who did not comply with the timeline for the application lacked the postgraduate diploma in physical education and the work experience which was required. Therefore, he claims that

the selection of the 11th Respondent was irregular and that it violated Article 12(1) of the Constitution.

The Petitioner claims that he possesses:

- (i) A Diploma in Physical Education.
- (ii) B.Ed. and M. Ed. Degrees.
- (iii) Reading for a PhD, and
- (iv) 23 years of experience in physical education instruction and training.

The Respondents in their written submissions and oral submissions claimed that the appointment process of the 11th Respondent had been transparent and conducted according to the guidelines of the University Grants Commission (UGC).

They further submit that the 11th Respondent had submitted his application through the Secretary of the Ministry of Education as required by the advertisement, and that this is the proper procedure for applicants employed in government departments. They also submit that an advance copy of the 11th Respondent had been received and that the marking scheme at the interview also had been very objective, based on UGC laid-down guidelines and the 11th Respondent had qualified to receive the highest marks among all the candidates.

The Respondents further claim that the university is required to appoint the most suitable candidate for the post and the Petitioners grievance amounts to mere disappointment at the outcome of the interview. Therefore, they claim that there was no discrimination or a violation of any Constitutional right of the Petitioner.

When this matter was supported for leave this court has granted leave to proceed under Article 12 (1) of the Constitution on 15.03.2022.

Upon considering the submissions of both parties both orally and written, I observed that the advertisement which had been marked as P10 clearly indicates that all candidates employed in government institutions must forward their applications through the heads of their institutions, while also allowing advanced copies to be sent directly. The 11th Respondent being an A Level teacher under the Ministry of Education had taken steps to send an advanced copy followed by the official application later forwarded to the Ministry of Education.

It has to be emphasized that the requirement to forward applications through institutional heads is a procedural safeguard intended to verify the applicant's

current employment status and conduct. However, when the candidate proactively complies with the advertisement by sending an advance copy directly, it fulfills the substantive purpose of the requirement.

In this context, the acceptance of the application of the 11th Respondents by the university authorities cannot be faulted. The requirement to forward the application through the proper channels is only procedural and non-compliance by the forwarding institution cannot be held against a candidate especially when the candidate had taken steps to send an advanced copy.

The Petitioners have alleged that the 11th Respondent did not possess the required academic qualifications but the Petitioner has failed to produce any documentary evidence to substantiate the said position. The Respondents have vehemently submitted that the selection committee consisting of suitably qualified people had assessed the candidates as per the approved guidelines of the UGC and had selected the 11th Respondent.

In public service recruitment, the role of a selection committee, particularly one constituted under university or UGC authority which commands a presumption of regularity and expertise. It is well-established in administrative law that unless there is a clear showing of arbitrariness, or procedural impropriety, courts must refrain from interfering with such selections.

Therefore, this Court cannot undermine the selection of a duly constituted expert panel unless the Petitioners have provided this Court with documentary evidence to show that the selection of the 11th Respondent was irrational, capricious or malicious which in my opinion is not evident in this case.

The Petitioner has raised serious concerns over the marking scheme, postponement of the interview and the lack of access to documents. The Respondents have maintained that the procedure adopted by the selection committee had been according to as stated before the applicable norms of the UGC. The concerns of the Petitioner are solely based on the fact that the 11th Respondent had not applied within the same timeline as rest of the candidates but the Respondent have offered a very reasonable explanation to this.

It must be appreciated that the evaluation process was conducted in accordance with structured criteria, as dictated by UGC. The Petitioner has not contested the objectivity of the scheme itself, nor has he presented comparative data showing that he was unfairly marked. The postponement of the interview, without more, does not render the process illegal or discriminatory unless there is demonstrable prejudice, which has not been shown in this case.

This Court observes that when the Petitioner alleges that his fundamental rights have been violated the burden rests on him to satisfy this Court that it is so.

The Petitioner has alleged that his fundamental rights have been violated under Article 12 (1) of the Constitution.

Article 12(1) provides that, "All persons are equal before the law and are entitled to the equal protection of the law." The Fundamental Right provided for by Article 12(1) protects "all persons", whereas the Fundamental Right provided for by Article 12(2) protects only a "citizen".

Wanasundera J., in the case ***Palihawadana Ralalage Wickremasinghe v Attorney General (1979) 1 FRD 1,20*** states;

"Article 12(1), which is the provision generally most relied on and wider in scope than 12(2), appears to embody two separate concepts; but the overall intention of this provision is to ensure equal administration of justice. In short, this Article states that all State action would be tested by the standard of legality and that all persons will be granted the equal protection of the law."

Wanasundera J., in the case of ***Jayanetti v Land Reform Commission (1984) 2 SLR 172, 184***, the argument has been rejected that,

"the word 'law' in Article 12(1) refers to legislation and not to executive or administrative action. Such a reading of Article 12(1) would result in emasculating the equality clause. There are clear indications in the Constitution itself that the fundamental rights are to be secured, respected and advanced by all organs of government. Besides, any proposed legislation contrary to fundamental rights would be struck down at the Bill stage itself and the question of discrimination by 'legislation' as such does not really arise"

While the concept of equality has an ancient history, it is in modern times that the concept of equality has taken a prominent role in the theory and practice of modern politics. Today equality has been recognized as a basic and essential requirement of democracy.

But, however, equality does not mean identical treatment, it requires similarly placed cases to be treated alike.

Amerasinghe J., in the case ***Perera v Monetary Board of the Central bank (1994) 1 SLR 152,180***

“...treating unequals equally [is] unjust and violative of Article 12(1) of the Constitution.”

As per Sharvananda CJ., in **Gooneratne v Chandrananda de Silva (1987) 2 SLR 165, 177**

“Article 12 of the Constitution conceives persons to be similarly situated when they are equally qualified. It provides that persons similarly circumstanced should be treated alike both in privileges conferred and liabilities inflicted -like should be treated alike. What is prohibited is discrimination between persons who are substantially similarly circumstanced.”

The exercise of power may result in a violation of Article 12(1) in two general scenarios: first, when the power is exercised in a way that treats unequally those who are in similar circumstances; and second, when the power grants discretionary authority to an individual or body in such a manner that it can be used to treat unequally those who are similarly situated. With regard to the second type of situation mentioned above, it has been observed that in **Palihawadana Ralalage Wickremasinghe v Attorney General (1979) 1 FRD 1, 8-9**

“It is not a reasonable classification but an arbitrary selection where selection is left to the absolute and unfettered discretion of the executive Government 'with nothing to guide or control its action' ... For in such a case, the difference in treatment rests solely on the arbitrary selection by the Executive. If the statute does not disclose any Government policy or object and confers on the Executive authority [discretion] to make selection at pleasure, the statute would be held, on the face of it, to be discriminatory. If however, the legislative policy is clear and definite and, as an effective method of carrying out that policy, a discretion is vested by the statute upon a body of administrators or officers.”

This Court recognizes that Article 12(1) is not violated merely because a candidate is not selected. The principle of equality ensures fairness in the process, not outcomes. Courts have repeatedly held that equality cannot be interpreted as a guarantee for success in selection processes, but rather a guarantee that the process is free of bias, arbitrary criteria, or unlawful preferences.

In the case of **Palihawadana Ralalage Wickremasinghe v attorney General (1979) 1 FRD 1**, per Wanasundera J., pp. 20-21:

“Equal protection carries with it, of necessity, the doctrine of classification; for, inequalities and disabilities whether natural, social, or economic may have to be taken into account if justice and fairness is to be achieved as a final result. Equal protection generally requires that all persons who are placed in similar circumstances should be treated alike and for this purpose it would be legitimate to differentiate between persons or things on the basis of clear and intelligible distinctions or differences which must have a rational relationship to the object to be achieved.”

There was a time when the view was held judicially that there can be no violation of the right guaranteed under Article 12(1) if the discrimination complained of occurred unintentionally, through a bona fide mistake. At that time the view was expressed by **Justice Sharvananda CJ.**, in the case of ***Mackie & Co. Ltd v Hugh Molagoda (1986) 1 SLR 300, 308*** that,

"The essence of the right of equality guaranteed by Article 12(1) and the evil which the article seeks to guard against is the avoidance of designed and intentional hostile treatment or discrimination on the part of those entrusted with administering the law. In order to sustain a plea of discrimination based on Article 12(1) a party will have to satisfy the court about two things, namely, (1) that he has been treated differently from others, and (2) that he has been differently treated from persons similarly circumstanced without any reasonable basis."

For a violation of Article 12(1), it is correct that there must necessarily be unequal treatment of equals.

In ***Perera v University Grants Commission (1980) 1 FRD 103,115*** Justice Sharvananda,

“A person relying on a plea of unlawful discrimination must set out with sufficient particulars his plea of showing how, between persons similarly circumstanced, discrimination has been made, which discrimination has been founded on no intelligible differentia. If the petitioner establishes similarity between persons who are subjected to differential treatment, it is for the State to establish that the differentia is based on a rational object sought to be achieved by it.”

It was said by **Wanasundera J., in *Nimala Wijesinghe v AG (1979) 1 FRD 40, 44-45*** that,

“Every wrong decision or breach of the law does not attract the constitutional remedies relating to fundamental rights. Where a transgression of the law takes place, due solely to some corruption, negligence or error of judgment, I do not think a person can be allowed to come under Article 126 and allege that there has been a violation of the constitutional guarantees”

“The same view has sometimes been expressed as follows: unequal treatment of equals does not always amount to a violation of Article 12(1), for, where equals are treated unequally due solely to an honest error of law or of fact in the process of classification of a person, there is no violation of Article 12(1).”

Therefore, equality is now a right as opposed to a mere privilege or an entitlement and in the context of the Sri Lankan fundamental rights conferred by our Constitution, is for the purpose of curing not only injustices taking place but manifestation of discrimination and a host of other injustices which have been recognized by the law.

While all fundamental rights of people are equally important the principle of Right to Equality is placed at the top because I suppose that all other rights stem from this. This has been very well expressed in the case of ***Wijeratne v Sri Lanka Ports Authority, SCFR 256 - 2017 SCMN 2020*** by Kodagoda J. with former Chief Justice Murdu Fernando and Thurairaja J. agreeing.

Justice Sharvananada had stated in ***Palihawadana vs Attorney General, 1978-79-80, 1 SLR*** the first case under fundamental rights jurisdiction in Sri Lanka,

“This is as it should be... for equality is a postulate of justice. The concept of equality is basic to man and evokes an immediate response amongst us all. Nothing causes more resentment than a feeling that someone else is getting something which one is not getting. As Thomas Payne said ‘the true and only basis of representative government is equality of rights’ justice is conceived on the basis that all human beings have equal rights in the sense that they should be treated alike. The notion of equality underlines all religious and political philosophies”.

Having the above-mentioned sentiments in mind I observe that the 11th Respondents application had been duly considered according to the criteria

which had been applied to the other candidates. Any discrepancy in the said marking scheme adopted at the interview or with regard to the consideration of the same at the interview have not been put forward before this Court by the Petitioner apart from mere verbal statements.

The Court reiterates that allegations, no matter how sincerely held, must be proven by material evidence. The Petitioner's claims of irregularity rest on presumptions and unverified assumptions, which do not meet the threshold required under Article 12(1). In the absence of cogent proof of unfair treatment, the grievance raised becomes subjective rather than constitutional.

There was a time when the view was held judicially that there can be no violation of the right guaranteed under Article 12(1) if the discrimination complained of occurred unintentionally, through a bona fide mistake. At that time the view was expressed by **Justice Sharvananda CJ.**, in the case of ***Mackie & Co. Ltd v Hugh Molagoda (1986) 1 SLR 300, 308*** that,

“The essence of the right of equality guaranteed by Article 12(1) and the evil which the article seeks to guard against is the avoidance of designed and intentional hostile treatment or discrimination on the part of those entrusted with administering the law. In order to sustain a plea of discrimination based on Article 12(1) a party will have to satisfy the court about two things, namely, (1) that he has been treated differently from others, and (2) that he has been differently treated from persons similarly circumstanced without any reasonable basis.”

For a violation of Article 12(1), it is correct that there must necessarily be unequal treatment of equals. In ***Perera v University Grants Commission (1980) 1 FRD 103,115*** Justice Sharvananda,

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Therefore, I find that the Petitioner has not suitably established before this Court that his rights under Article 12(1) have been violated although his grievance towards the 11th respondent is understandable because of the expectations he

would have had, but mere expectations are not sufficient to be appointed to a post but has to satisfy the relevant criteria to be appointed. Therefore, this Court has to decide on the said criteria and not mere allegations, submitted before us which have to be supported by acceptable evidence.

In conclusion, the recruitment process in question appears to have adhered to procedural and substantive fairness as required by constitutional standards. The Court finds no arbitrary or unlawful conduct that rises to the level of a fundamental rights violation.

As such, for the reasons stated above, I find no merit in the instant application and it is dismissed without costs.

JUDGE OF THE SUPREME COURT

Janak De Silva, J.

I agree.

JUDGE OF THE SUPREME COURT

Sampath K. B. Wijeratne, J.

I agree.

JUDGE OF THE SUPREME COURT