

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

*In the matter of an application for mandates in  
the nature of writ of Certiorari and Mandamus  
under and in terms of Article 140 of the  
Constitution of the Democratic Socialist  
Republic of Sri Lanka.*

**CA/WRIT/132/2021**

1. Inland Revenue Assessor's Union  
Inland Revenue Building  
Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.
  
2. V.D. Rathnayake  
President  
Inland Revenue Assessor's Union
  
3. M.W.P. Sandamali  
Secretary  
Inland Revenue Assessor's Union

2<sup>nd</sup> and 3<sup>rd</sup> Petitioners of:

Inland Revenue Building  
Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

**PETITIONERS**

Vs.

1. H.A. Chandana Kumarasingha  
Director General  
Establishments Division,  
Ministry of Public Services,  
Provincial Councils and Local  
Government  
Independence Square,  
Colombo 07.
  
2. J.J.Rathnasiri  
Secretary  
Ministry of Public Services,  
Provincial Councils and Local  
Government  
Independence Square,  
Colombo 07.
  
3. H.M.W.C.Bandara  
Commissioner General  
Inland Revenue Building  
Sir Chittampalam A. Gardiner  
Mawatha,  
Colombo 02.

**RESPONDENTS**

**Before:** Sobhitha Rajakaruna J.  
Dhammika Ganepola J.

**Counsel:** Shantha Jayawardena with Niranjana Arulpragasam and Rasara Jayasinghe  
for the Petitioners  
Amasara Gajadeera SC for the Respondents

**Argued on:** 22.09.2022, 14.10.2022, 22.02.2023, 24.07.2023

**Written submissions:** Petitioners - 21.02.2023  
1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents - 11.05.2023

**Decided on:** 18.10.2023

**Sobhitha Rajakaruna J.**

The Petitioners state that the instant Application has been made for and on behalf of the Senior Deputy Commissioners ('SDC') of the Inland Revenue Department (IR Department), out of which 276 are members of the 1<sup>st</sup> Petitioner Union. The main contention of the Petitioners is that the officers of the IR Department who are promoted to Grade I of the Inland Revenue Service or to the post of SDC are entitled to official vehicles, including the entitlement of using such vehicles for private traveling or in lieu of such, a traveling allowance. The Petitioners are making this claim in terms of the Public Administration Circular No. 22/99 dated 08.10.1999 marked 'P4', as amended by the Public Administration Circular No. 22/99 (XXX) dated 17.11.2014 marked 'P6'.

For a public officer to be entitled to such an official vehicle, it is the Petitioners' contention that he must meet the criteria outlined in 'P6', which in the view of the Petitioners, consist of the following three specific conditions:

- i) The officer must be in Grade I of an All Island Service or a Departmental Service,
- ii) The Officer must be appointed on a permanent basis to a post approved by the General Treasury, and
- iii) The officer must be on the salary scale of SL 1-2006 as per Public Administration Circular 06/2006.

The Petitioners assert that the SDC are Grade 1 officers in the Sri Lanka Inland Revenue Service and their post which is entitled to the salary scale of SL 1-2006 is permanent as approved by the General Treasury. As such, the Petitioners claim that they have satisfied the above three conditions for them to be entitled to an official vehicle or other facilities under 'P6'.

The said circular 'P6' provides for official transport facilities to Public Officers; Provincial Public Officers; Judicial Officers. At this stage, it is important to conduct an in-depth analysis of 'P6' in order to ascertain the specific requirements for the Petitioners to be entitled to an official vehicle or other privileges set down in the said Circular. The provisions most relevant to the issues of this case are Clause 2. 1:1:1 (XXXI) or 2:2:1 (XXI) [which are identical] of the said 'P6'.

“1:1:1 (XXXI) Officers in Class I of an All Island Service or a Departmental Service appointed on a permanent basis to a post approved by the General Treasury as a permanent post in Class I of an All Island Service or a Departmental Service which is entitled to the salary scale SL 1-2006 as per the provisions of the Public Administration Circular 06/2006.

2:2:1 (XXI) Officers in Class I of an All Island Service or a Departmental Service appointed on a permanent basis to a post approved by the General Treasury as a permanent post in Class I of an All Island Service or a Departmental Service which is entitled to the salary scale SL 1-2006 as per the provisions of the Public Administration Circular 06/2006.”

The above paragraph 1:1:1 (XXXI) in the copy of the said Circular published in Sinhala language provides more clarity. It reads:

*“1:1:1 (XXXI) රාජ්‍ය පරිපලන චක්‍රලේඛ 06/2006 හි විධිවිධාන අනුව SL 1-2006 වැටුප් පරිමාණය හිමි, දීප ව්‍යාප්ත සේවාවක හෝ දෙපාර්තමේන්තුගත සේවාවක I පන්තියේ ස්ථිර තනතුරක් වශයෙන් මහා භාණ්ඩාගාරය විසින් අනුමත කර ඇති තනතුරකට ස්ථිර පදනමින් පත් කරන ලද අදාළ දීප ව්‍යාප්ත සේවයේ හෝ දෙපාර්තමේන්තුගත සේවයේ I පන්තියේ නිලධරයන් “*

On a careful perusal of the relevant provisions, I take the view that, in slight contrast to the Petitioners' stand in this regard, the following requirements must be satisfied for entitlement of the benefits under 'P6'.

- a) The public officer's salary scale should be SL 1-2006 as per the provisions of the Public Administration Circular No. 06/2006.
- b) The public officer should be in Class I of an All Island Service or a Departmental Service
- c) The officer's post should be a permanent post in Class I of an All Island Service or a Departmental Service, approved by the General Treasury
- d) The public officer should have been appointed on a permanent basis to such post

I am convinced as per the material submitted to this Court that the Petitioners fall within the criteria mentioned in the above paragraphs a), b) and c). The question that arises in the instant Application is, whether the Petitioners have been appointed to a permanent post on a permanent basis without any hindrance or subject to any conditions, as intimated in the above paragraph d). This arises based on the submissions made on behalf of the Respondents that the post of SDC is an official designation given merely to the seniority. The contention of the Respondents is that the post of SDC is the **designation** of officers in Grade I who were promoted from Grade II to Grade I, but not assigned the **post** in Grade I of the Sri Lanka Inland Revenue Service. This submission revolves around the Service Minute of the Sri Lanka Inland Revenue Service published in the Gazette Extraordinary No. 1804/50 (dated 05.04.2013) marked 'P12'.

Now I must draw my attention to the background to such Service Minutes. The Service Minute 'P12' are published by the Public Service Commission ('PSC') which has been constituted under Article 54 (1) of the Constitution<sup>1</sup>. In terms of Article 55(1), the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, promotions, transfers, disciplinary control and dismissal. The appointment, promotion, transfer, disciplinary control and dismissal of public

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<sup>1</sup> 1978 Constitution of the Republic of Sri Lanka

officers is vested in the PSC by virtue of Article 55(3), subject to the provisions of the Constitution. Accordingly, the powers of the PSC are well entrenched in the Constitution.

The PSC, in view of Article 61B, has the power to formulate rules, regulations and procedures relating to the public service. Under such powers, the PSC, among other matters, deals<sup>2</sup> with the formulation and publication of procedural rules, issuance of circulars and general instructions relating to the public service as well as the setting up of Service Minutes and Schemes of Recruitment. At the inception of the PSC, there were no Service Minutes in respect of several services of the Government. However, it is noted that the PSC currently has taken steps to implement a Service Minute for almost each approved service in the public service and a Scheme of Recruitment for several posts in semi-government institutions.

The usual practice, as I am aware, is that the PSC when drafting a Service Minute or Scheme of Recruitment uses its discretion to approve, reject or approve subject to conditions the requirements forwarded by a Secretary to a Ministry in relation to appointments, promotions etc,. The purpose of a Service Minute and a Scheme of Recruitment, as I can understand, is to uphold fairness, transparency and consistency when making appointments and promotions to the posts in public service and other related services. In my opinion, the PSC's obligation with regard to Service Minutes and Schemes of Recruitment is to formulate criteria in line with the concepts of the Rule of Law in response to any requests for appointments, promotions, etc, made by the Secretaries of the relevant Ministries and other designated authorities based on the public administration's policies. The general perception is that the PSC when exercising such powers collaborates with the Ministry of Public Administration, National Pay Commission and the Department of Management Services. In this regard, the Public Administration Circulars also play a vital role. As such, the Service Minutes which is material to this case are legal instruments formulated by the PSC under its powers flowing from the Constitution.

The crux of the argument relied on by the Respondents is that the Public Administration Circulars cannot override the Service Minutes approved by the PSC. The Respondents' prime

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<sup>2</sup> See <<https://www.psc.gov.lk/index.php?lang=en>>

argument emanates from the Note attached to Clause 12(1) of the Service Minute marked 'P12' which deals with the appointment to the post of SDC. The said Note reads:

*“The post of Senior Deputy Commissioner is the designation of officers in Grade I who were promoted from Grade II to Grade I, but not being assigned the post in Grade I of the Sri Lanka Inland Revenue Service. This post is an official designation given merely to the seniority and not having any change in the role, responsibility or benefits relating to the post”*

In view of the said Clause 12(1), the qualifications required for the post of Commissioner and SDC are equivalent and such qualifications are: *“to be an officer in Grade I of the Sri Lanka Inland Revenue Service”*. The qualifications for the post of Deputy Commissioner are: *“to be an officer in Grade II of the Sri Lanka Inland Revenue Service”*. Thus, it appears the SDC is a post that falls between the post of Commissioner and Deputy Commissioner, two posts each of which requires distinct qualifications. This position is further reinforced in line with the contents of the above Note attached thereto. It can be assumed that the intention of the PSC or the Secretary to the relevant Ministry is merely to promote the Deputy Commissioners in Grade II of the Sri Lanka Inland Revenue Service to its Grade I, without assigning the post of Commissioner (in Grade I). On the other hand, the said promotion is only a Grade-to-Grade promotion and not a Post-to-Post promotion. Thus, the concern that emanates from the fact of promoting a Deputy Commissioner to the post of SDC is whether such appointments are in a conditional nature rather than being made unconditionally as in other usual promotions.

I am aware that during the recent past, the PSC has given approval for such promotions without assigning the post related to the respective Grade. The reason for this may be to confer benefits to certain categories of officers who serve in one particular Grade for a long period without being promoted to the next substantive post. I consider this concept or policy as a method of facilitating such stagnated officers by granting them the salary of the higher post but without assigning other benefits associated with such substantive higher posts. In the meantime, the scenario in the instant Application can be viewed as a better privilege since the SDC was given a designation that raises their status in addition to the higher salary scale.

Upon an independent study I have done on the aforesaid policy, I have come across several instances where the Government has adopted the above policy in order to cater to officers

who are stagnating at the maximum point of their salary scales. Accordingly, certain categories of employees of the public service have been granted salary increments for stagnating at the maximum point of their salary scale as of a specific date. Mostly such arrangements were made after issuing the Public Administration Circular No. 06/2006 and its amendments on restructuring of public service salaries based on budget proposals presented to Parliament in the year 2006. In fact, this Court inquired from the learned Counsel for the Petitioner and the learned State Counsel on these points of view at the hearing stage of this case.

Having observed the above legal surroundings in respect of the Service Minutes, I take the view that the Service Minute marked 'P12' approved by the PSC is specific on the point where the post of Senior Deputy Commissioner (SDC) is only a designation assigned to the officers in Grade I of the Sri Lanka Inland Revenue Service who are promoted from Grade II to Grade I. In a nutshell, the Petitioners lack the privilege to meet the criteria described in the above paragraph d) of the requirements outlined by me earlier in this Judgement, for them to claim benefits under 'P6'.

Therefore, I am not inclined anyway to express that the Note attached to Clause 12(1) of 'P12' is irrational. In this backdrop, I hold that the appointment to the post of SDC cannot be regarded as an appointment on a permanent basis comparable to those specified in Clause 2.1:1:1 (XXXI) and 2:2:1 (XXI) of the 'P6' since such appointments are clogged by a legitimate restriction preventing them from claiming benefits assigned to the post of Commissioner. I do not intend to engage in an exercise here whether the Service Minute (such as 'P12') approved by the PSC supersede the Public Administration Circulars (such as 'P6'). But my task is to give an effective interpretation to the Note attached to Clause 12(1) of 'P12' based on all the above circumstances. Due to the restrictions laid down in the Note attached to Clause 12(1) of 'P12' the Petitioners will not be entitled to the benefits relating either to the post of SDC or Commissioner.

Furthermore, by promoting the Deputy Commissioners to Grade I from Grade II of the relevant service, their role as a Deputy Commissioner will not be changed. This is further established in Clause 21.6 of 'P12' which states: "*Duties performed or scheduled to be performed by the Senior Assessors, as per the provisions of the statutes, any other regulations and circular incidental*



*thereto, which are coming under or to be brought under the administration of the Commissioner General of Inland Revenue, will be performed by Senior Deputy Commissioners and Deputy Commissioners mentioned in this Minute.”*

For the reasons said forth above, I take the view that there are no valid grounds for me to hold the impugned letter marked ‘P11’ ultra vires/capricious/irrational/unreasonable as claimed by the Petitioners. The Director General of Establishments, who is the author of the said ‘P11’, has lawfully expressed his observations based on the Note attached to Clause 12(1) of the said Service Minute marked ‘P12’.

The Respondents have taken up several objections on maintainability of the instant Application. Not having necessary parties before Court, futility and lashes are some of those objections. The Respondents argue that the Petitioners cannot invoke the writ jurisdiction of this Court in an indirect manner to challenge the Service Minutes approved by the PSC and such assertions are made on the doctrine of colourability. In view of my above findings and based on the circumstances of this case, there is no necessity for me to make an additional effort to analyze the Respondents’ objections which were sought to be addressed at the initial stages.

Hence, I hold that the Petitioners are not entitled to any of the reliefs prayed for in the prayer of the Petition. I proceed to dismiss the Application without costs.

**Judge of the Court of Appeal**

**Dhammika Ganepola J.**

I agree

**Judge of the Court of Appeal**