ANANDA DHARMADASA AND OTHERS
v
ARIYARATNE HEWAGE AND OTHERS

SUPREME COURT
DR. SHIRANI BANDARANAYAKE,
BALAPATABENDI, J. AND
SRIPAVAN, J.
S.C. (F.R.) APPLICATION NO. 206/2006
MAY 14TH, 2006

Fundamental Rights – Violation of Fundamental Rights guaranteed under Article 12(1) of the Constitution – Equality before law – Equal treatment by law – Article 126(2) of the Constitution – Time frame within which an application has to be made to the Supreme Court.- lex non cogit ad impossibilia.

The petitioners complained that due to the non-appointment of the petitioners to Class III in the Sri Lanka Educational Administrative Service (SLEAS), the respondents had violated their Fundamental Rights guaranteed in terms of Article 12(1) of the Constitution. The respondents *inter alia* took up a preliminary objection that the petition has not been filed within the time frame stipulated in terms of Article 126 of the Constitution.

Held:

(1) Although the time limit specified under Article 126(2) of the Constitution is mandatory, in cases where there is no delay or fault on the part of the petitioner and on the application of the principle *lex non cogit ad impossibilia*, the Supreme Court has a discretion to entertain an application made out of time.

(2) The concept of equality postulates the basic principle that equals should not be placed unequally and at the same time unequals should not be treated as equals, without any purposive differentiation.

(3) the object of Article 12(1) of the Constitution is to treat all persons equally, so that there would be equal treatment by law, unless there is some rational reason or intelligible differentia which distinguishes the persons, who have been grouped together to treat them differently.

Per Dr. Shirani Bandaranayake, J. -

"It has to be borne in mind that every differentiation would not constitute discrimination and accordingly classification could be founded on intelligible differentia. A classification, which is good and valid cannot be arbitrary and such classification could be found if the following conditions are satisfied:

(i) that the classification must be founded on an intelligible differentia which distinguish persons that are grouped in from others who are left out of the group; and

(ii) that the differentia must bear a reasonable or a rational relation to the objects and effects sought to be achieved."

(4) The petitioners were not qualified to have been considered for the appointment for the post of Class III of Sri Lanka Educational Administrative Service. In such circumstances, it would not be correct for the petitioners to state that there was no justification for the treatment meted out to them.

Cases referred to:

(1) *B.M. Jayawardena* v *Attorney-General and others* (Fundamental Rights Decisions, Vol.1 pg. 175).

(2) *A.K.T.J. Gunawardena and others* v *E.L. Senanayake and others* (Fundamental Rights Decisions, supra. pg. 778).

(3) *M. Thadchanamoorthi* v *Attorney-General* and *Mahenthiran* v *Attorney-General* (Fundamental Rights Decisions, supra, pg. 129).

(4) *K.G. Sarathchandra* v *The People's Bank,* S.C. (Application) No. 104/2004 – S.C. minutes of 20.06.2007.

(5) *Hewakuruppu* v *G.A. de Silva, Tea Commissioner and others,* S.C. (Application) No. 118/84 – S.C. minutes of 10.11.1984.

(6) *Edirisuriya* v *Navaratnam and others* (1985), 1 SLR 100.

(7) *Siriwardene* v *Brigadier J. Rodrigo* (1986) 1 SLR 384.

(8a) *Gamaethige* v *Siriwardena* (1988) 1 SLR 385.

(8b) *Nama Sivayam* v *Gunawardena* (1989) 1SLR 394.

(9) *Gomez* v *University of Colombo* (2001) 1 SLR 273.

(10) *Royappa* v *State of Tamil Nadu* AIR 1974, S.C. 555.

(11) *Venkat Raj* v *State of Andhra Pradesh,* AIR (1985) S.C. 724.

(12) *Ram Krishna Dalmia* v *Justice Tendolkar* AIR (1958) S.C. 538.

APPLICATION complaining of violation of Fundamental Rights.

J.C. Weliamuna with *Maduranga Ratnayake* for petitioner.
Uditha Egalahewa with *Ranga Dayananda* for 1st to 5th respondents.
N.M. Mohideen for 6th and 7th respondents.

Cur.adv.vult.

October 9, 2008

DR. SHIRANI BANDARANAYAKE, J.

The petitioners, who are Planning Officers attached to the Divisional Education Offices within the purview of the Provincial Ministry of Education of Uva Province, complained that due to the non-appointment of the petitioners to Class III in the Sri Lanka Educational Administrative Service (hereinafter referred to as SLEAS) with effect from 10.11.1999, the respondents had violated their Fundamental Rights, guaranteed in terms of Article 12(1) of the Constitution.

This Court granted leave to proceed for the alleged infringement of Article 12(1) of the Constitution.

The facts of this application, as submitted by the petitioners, *albeit* brief, are as follows:

The petitioners had joined the public service as Graduate Assistant Teachers, as set out in the following table:

	School	Date of appointment
1st petitioner	Badulla Nagolla Vidyalaya	02.01.1984
2nd petitioner	Monaragala Viharagala Vidyalaya	04.12.1985
3rd petitioner	Karawila Kanishta Vidyalaya	26.04.1982
4th petitioner	Bulupitiya Kanishta Vidyalaya	16.08.1987
5th petitioner	Kandakepuulpatha Maha Vidyalaya	16.04.1985
6th petitioner	Ampara Galapitigala Maha Vidyalaya	01.10.1979
7th petitioner	Badulla Wewegama Maha Vidyalaya	26.12.1985
8th petitioner	Kudalunuka Kanishta Vidyalaya	02.01.1984
9th petitioner	Kehelpotha Yaya 12 Kanishta Vidyalaya	27.12.1984

The then Deputy Director of Education of Badulla, by his letter dated 06.03.1992 had called for applications from teachers in the Uva Province to be attached to Divisional Education Offices as Planning Assistants (P2). In terms of the said letter only Graduate

Teachers were eligible to be considered for the posts of Planning Assistants and the purpose of recruiting such Planning Assistants from and among the Assistant Teachers was to properly manage the planning units of the Divisional Education Offices. After calling the petitioners for an interview, they had received letters from the then Secretary to the Provincial Ministry of Education of the Uva Province, appointing them as Planning Officers attached to Divisional Education Offices (P5). Accordingly 23 Planning Officers were appointed to the 23 Divisional Education Offices in the Uva Province (P6).

By the decision dated 03.08.1994, the then Cabinet of Ministers had approved a Cabinet Memorandum submitted by the then Minister of Education and Cultural Affairs where it was stated, *inter alia*, that the Cabinet of Ministers had approved the creation of 375 posts on a supernumerary basis in Class III of SLEAS and had approved the appointment to the said Class III of SLEAS, the officers, who were performing in the scheduled posts of SLEAS and those officers appointed to function in the posts parallel to those of SLEAS, with effect from 01.06.1993 (P8).

The petitioners claimed that in terms of the said Cabinet decision, the petitioners became entitled to be appointed as Planning Officers to Class III of SLEAS with effect from 01.06.1993 as they had been performing as Planning Officers, which is a scheduled post in SLEAS (P9). However, in terms of the said Cabinet decision (P8) no appointments were made to Class III of SLEAS immediately.

By letter dated 01.09.1999 Additional Secretary (Planning and Management) of the Ministry of Education informed all Provincial and Zonal Directors of Education to furnish details of those non-SLEAS officers, who were performing in the scheduled posts in SLEAS for the purpose of formulating a government policy in respect of the said officers (P10).

Although the said document (p10) was received by the Zonal Directors of Education, where petitioners were attached to, they had informed the petitioners that P10 was not applicable to them and consequently the Zonal Directors of Education had not submitted the details of the petitioners. However, the Planning

Officers of other Zones whose details had been submitted by the respective Zonal Directors of Education were called for an interview and the petitioners on their own had submitted their details to the Ministry of Education (P11). Thereafter the Secretary to the Education Service Committee had requested the petitioners to tender several documents for verification (P12).

Subsequently the then Minister of Education and Higher Education submitted a Cabinet Memorandum No. 87/99 dated 03.11.1999 to the Cabinet of Ministers for approval (P13), which was approved on 10.11.1999 (P14). However, on 29.12.1999, the petitioners learnt that 12 Planning Officers were appointed to Class III of SLEAS (P15).

The remaining 11 officers were not appointed and they had made representations to the authorities resulting in two interviews being held in year 2000 and in 2001 (P16, P17(a), P17(b)). Since the outcome of the interviews were not disclosed, one of the petitioners had made representations to the Ombudsman (P19) and the Ombudsman had directed the relevant authorities that the qualified officers must be appointed.

Since the petitioners were not appointed, they wrote to the relevant provincial authorities, which were forwarded to the Public Service Commission (P22). Thereafter, a Senior Assistant Secretary of the Ministry of Education, by his letter dated 23.05.2006 (P23) had informed that the Public Service Commission had declined to implement the Cabinet decision, marked P8. The petitioner's position is that this application was filed on 13.06.2006, on the basis of the aforementioned letter.

When this matter was taken up for hearing, learned Senior State Counsel for the respondents took up a preliminary objection that the petition has not been filed within the time frame stipulated in terms of Article 126 of the Constitution. The contention of the learned Senior State Counsel for the respondents was that the petitioners were aware that in or around 29.12.1999 that 12 Planning Officers were appointed to Class III of the SLEAS, pursuant to the Cabinet decision of 03.08.1994 (P8), but they had come before this Court only on 13.06.2006. Accordingly the contention of the learned Senior Counsel was that this application should be dismissed in *limine*.

Article 126 of the Constitution deals with the fundamental rights jurisdiction and its exercise and Article 126(2) specifically deals with the time frame within which an application has to be made to the Supreme Court. Article 126(2) of the Constitution thus states that,

> *"Where any person alleges that any such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive or administrative action, he may himself or by an attorney-at-law on his behalf,* ***within one month thereof,*** *in accordance with such rules of Court as may be in force, apply to the Supreme Court by way of petition in writing addressed to such Court praying for relief or redress in respect of such infringement ...."* (emphasis added).

The applicability of Article 126(2) of the Constitution has been considered in several decided cases.

In the early decisions of *B.M. Jayawardena* v *Attorney-General and others*[1] and *A.K.T.J. Gunawardena and others* v *E.L. Senanayake and others*[2], the Supreme Court had held that the applications should be dismissed as they were not made within one month of the petitioners becoming aware of the alleged discrimination against them. A similar view was taken by Wanasundara, J. in *M. Thadchanamoorthi* v *Attorney-General* and *Mahenthiran* v *Attorney-General*[3].

Accordingly, as stated by Bandaranayake, J. in *K.G. Sarathchandra* v *The People's Bank*[4] it is apparent that the Court has constantly proceeded on the basis that the time limit of one month in terms of Article 126(2) of the Constitution is mandatory.

The decision in *K.G. Sarathchandra (supra)*, also noted the instances in which the Court could exercise its discretion in the applicability of Article 126(2) of the Constitution.

For instance, in *Mahenthiran* v *Attorney-General (supra)* and in *Hewakuruppu* v *G.A. de Silva, Tea Commissioner and others*[5], this

Court had noted that although in terms of the provisions of Article 126(2) of the Constitution, an application regarding a violation of Fundamental Rights should be filed within one month of the alleged infringement, the Court has a discretion 'in a fit case, to entertain an application made outside the specific time of one month'. However, for that discretion to be exercised, the Court had held that, it is necessary for the petitioners to provide an adequate excuse for the delay in presenting the petition. This position was discussed in details in *Edirisuriya* v *Navaratnam and others*(6), where it was held that,

> *"The time limit of one month set out in Article 126(2) of the Constitution is mandatory. Yet, in a fit case the Court would entertain an application made outside the limit of one month provided an adequate excuse for delay could be adduced. If the petitioner had been held incommunicado, the principle lex non cogit ad impossibilia would be applicable."*

This position was reaffirmed in *Siriwardene* v *Brigadier J. Rodrigo*(7), where it was further emphasized that an application regarding any infringement must be filed within one month from the date of the commission of the administrative or executive act, but if the petitioner establishes that he had become aware of the alleged infringement only on a later date, the one month will run from that date.

The watershed of all the decisions, which considered the applicability of Article 126(2) of the Constitution, in my view, was *Gamaethige* v *Siriwardena*(8a), which brought in a new approach in interpreting the said provision.

Considering the question of the applicability of Article 126(2) of the Constitution, Mark Fernando, J., referred to the Judgments, which had discussed the constitutional provision pertaining to time limit and stated that,

> *"The time limit of one month prescribed by Article 126(2) has thus been consistently treated as mandatory; where however by the very act complained of as being an infringement of a petitioner's fundamental right, or by an independent act of the respondents concerned, he is denied such facilities and freedom (including access to*

legal advice) as would be necessary to involve the jurisdiction of this court, this court has discretion, possibly even a duty, to entertain an application made within one month after the petitioner ceased to be subject to such restraint. The question whether there is a similar discretion where the petitioner's failure to apply in time is on account of the act of a third party, or some natural or man-made disaster, would have to be considered in an appropriate case when it arises .... While the time limit is mandatory, in exceptional cases on the application of the principle lex non cogit ad impossibilia, if there is no lapse, fault or delay, on the part of the petitioner, this court has a discretion to entertain an application made out of time."

This position was well considered and adopted by Sharvananda, C.J., in *Nama Sivayam* v *Gunawardena*[8b], where it was clearly stated that Article 126(2) must be given a generous and purposive construction. It was further held that,

"To make the remedy under Article 126 meaningful to the applicant, the one month prescribed by Article 126(2) should be calculated from the time that he is under no restraint. If this liberal construction is not adopted for petitions under Article 126(2) the petitioner's right to his constitutional remedy under Article 126 can turn out to be illusory .... A literal interpretation, of the period of limitation will defeat the petitioner's right to his constitutional remedy."

Accordingly, on a careful consideration of all these decisions, it is quite clear that although the time limit specified under Article 126(2) of the Constitution is mandatory, in cases, where there is no delay or fault on the part of the petitioner and on the application of the principle *lex non cogit ad impossibilia*, the Supreme Court has a discretion to entertain an application made out of time.

In this matter, the petitioners in their petition dated 13.06.2006, had claimed that, in terms of the Cabinet decision of 03.08.1994 (P8), the petitioners became entitled to be appointed to Class III of SLEAS with effect from 01.06.1993. Thereafter, the petitioners had learnt that some of the Planning Officers of other zones, whose details were

submitted by the respective Zonal Directors of Education, were called for interviews and the petitioners had tendered their details to the Ministry of Education in November 1999 (P11).

The said details were sent by the Zonal Directors of Education on the basis of a letter dated 01.09.1999 by the Additional Secretary (Planning and Management) of the Ministry of Education, who had requested from all Provincial and Zonal Directors of Education to furnish details of those non-SLEAS officers, who were performing in the scheduled posts in SLEAS, for the purpose of formulating a government policy regarding these officers' promotions.

Accordingly, the petitioners were aware by September 1999 that they were not entitled to be considered for the appointments to Class III of the SLEAS in terms of the Cabinet decision of 03.08.1994 (P8).

During the said period, the then Minister of Education and Higher Education had submitted a Cabinet Memorandum No.87/99 dated 03.11.1999 to the Cabinet of Minister for approval, which sought *inter alia* that the officers performing in the scheduled posts, to be appointed to Class III of SLEAS on supernumerary basis (P13).

The petitioners having made the aforementioned submission had categorically stated that, on or about 29.12.1999, they had learnt that 12 Planning Officers were appointed to Class III of SLEAS, although the petitioners had not even received a response to their applications. In support of their contention, the petitioners had filed a true copy of a letter of appointment issued to one of the said 12 Planning Officers (P15). This document dated 24.12.1999 states that in terms of the approval granted by the Cabinet of Ministers dated 10.11.1999, recipient of that letter (P15) has been appointed to Class III SLEAS on supernumerary basis with effect from 10.11.1999.

Accordingly, the petitioners had prayed that they be appointed as Assistant Directors (Planning) Class III of SLEAS with effect from 10.11.1999.

It is therefore not disputed that by 29.12.1999, the petitioners had known that the appointments to Class III of SLEAS were made to 12 Planning Officers.

Notwithstanding the above, since 29.12.1999, the petitioners, as has been referred to earlier, had embarked on a voyage to obtain administrative relief without endevouring to invoke the fundamental rights jurisdiction guaranteed in terms of Article 126(2) of the Constitution.

In *Gamaethige* v *Siriwardena (supra)*, Mark Fernando, J. had clearly stated that the time limit prescribed by Article 126(2) of the Constitution begins to run when the infringement takes place and in pursuit of other remedies, does not prevent or interrupt the operation of the time limit specified in Article 126(2) of the Constitution.

This position, as referred to in *K.G. Sarathchandra* v *The People's Bank (supra), was clearly stated in Gomez v University of Colombo*[9].

In that matter, the petitioner was appointed as a Probationary Lecturer in Law in the University of Colombo by letter dated 03.04.1990. In terms of clause 8 of the said letter, the petitioner was required to pass the prescribed proficiency test in Sinhala/Tamil within a period of one year or obtain exemption from sitting the test by teaching in Sinhala or Tamil during the first year of appointment. Clause 8 also stipulated that failure to pass the proficiency test or to gain exemption, would result in the termination of appointment without compensation. Even by 16.04.1999 the petitioner had not complied with the aforesaid conditions of appointment. He did not sit for the proficiency test nor did he lecture in Sinhala.

Accordingly by letter dated 23.08.1999, the Vice Chancellor of the University informed the petitioner that the Council had decided to terminate the petitioner's services with effect from 01.09.1999 for non-compliance with his letter of appointment dated 02.04.1990. The petitioner complained that the said termination of his services was in violation of his fundamental rights guaranteed in terms of Article12(1) of the Constitution.

This Court held that the termination was a consequence of his failure to comply with Clause 8 of his letter of appointment dated 03.04.1990 and if he was complaining of such clause then he should have challenged the said clause within one month from that date. The petitioner in *Gomez* v *University of Colombo (supra)* had come before this Court only on 23.09.1999. In the circumstances, the Court dismissed the application on the basis that the application was time barred.

In the present application, as stated earlier, the petitioners were aware that the letter dated 01.09.1999 (P10) was not applicable to them and accordingly that they were not considered for the appointments to Class III of the SLEAS as contemplated by the Cabinet decision of 03.08.1994 (P8). Moreover, the petitioners had become aware in or around 29.12.1999 that 12 Planning Officers were appointed to Class III of the SLEAS pursuant to the aforementioned Cabinet decision. It is common ground that the petitioners had come before this Court only on 13.06.2006. On a consideration of the aforementioned, it is apparent that the petitioners had not invoked the fundamental rights jurisdiction guaranteed to them, in terms of the provisions stipulated in Article 126(2) of the Constitution.

In the circumstances, for the reasons stated above, I uphold the preliminary objection raised by the learned State Counsel for the respondents.

Although this application could be dismissed *in limine* on the basis of the preliminary objection raised by the learned Senior State Counsel for the respondents, both parties were heard on the merits of the matter. I would therefore, now turn to consider whether there was a violation of the petitioner's fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

The petitioners' complaint is that out of the 22 officers who were similarly circumstanced, only 12 were appointed to Class III of SLEAS on 10.11.1999.

Admittedly, the petitioners were appointed as Planning Officers attached to the Divisional Education Offices of the Uva Province with effect from 04.10.1992 and the said letters were issued by the then Secretary to the Ministry of Education of the Uva

Province (P5). However, it is to be noted that the said letters of appointment (P5) had clearly indicated that the petitioners were only attached to the Zonal Department of Education as Planning Officers, in order to assist the Zonal Directors of Education. Except for the said attachment there was no such absorption at that point of the petitioners to the SLEAS.

The petitioners' allegation was that in terms of the Cabinet decision dated 03.08.1994 (P8) and Cabinet decision dated 10.11.1999 (P14) they were entitled to be appointed to Class III of SLEAS.

The Cabinet decision of 03.08.1994 (P8), which was later suspended by a subsequent Cabinet decision of 31.08.1994 refers to the *'appointment to Class III of the Sri Lanka Educational Administrative Service of the Performing Circuit Education Officers (Assistant Directors of Education), the officers performing in the scheduled posts of the Sri Lanka Educational Administrative Service and those officers appointed to function in the posts parallel to those of the Sri Lanka Educational Administrative Service'.*

The Cabinet decision of 10.11.1999 (P14), on which the petitioners have relied upon, refers to the '*appointment of the officers performing in the posts relating to different subject areas, in the special cadre of the Sri Lanka Educational Administrative Service into the permanent cadre of the Sri Lanka Educational Administrative service'.*

The Cabinet decision of 10.11.1999 (P14) as well as the Cabinet Memorandum of 03.11.1999 (P13), however had categorically stated that these appointments would be made on a supernumerary basis provided that such officers are found to be possessing the necessary qualifications in terms of the Minutes of the service. The said Cabinet decision therefore stated that,

> *".... approval was granted to appoint the officers into the Class III of the Sri Lanka Educational Administrative Service as personal to them, on a supernumery basis provided they are found to be possessing the necessary qualifications in terms of the Minutes of the service".*

Another important point in this regard was clearly stipulated in the relevant Cabinet Memorandum of 03.11.1999 (P13). The said Memorandum clearly stated that these appointments would be given to officers, who have been 'appointed to perform' in such posts. Accordingly in order to be qualified to be considered under the Cabinet decision of 10.11.1999 (P14), it would be necessary for the officers to have fulfilled the following conditions:

1. the officers should have been appointed to perform in the posts relating to different subject areas in the Special Cadre of the SLEAS; and
2. the officers should possess the necessary qualifications in terms of the Minutes of the service.

A careful examination of both Cabinet decisions clearly indicates that the said decisions referred to officers, who had been performing duties in specified positions. Accordingly, the Cabinet decision of 03.08.1994 (P8) stated that it would be applicable to 'performing Circuit Education Officers (Assistant Directors of Education) performing in the scheduled posts of the SLEAS'. The Cabinet decision of 10.11.1999 (P14) on the other hand referred to officers performing in the posts relating to different subject areas, in the Special Cadre of the SLEAS.

It is not disputed that the petitioners only held substantive positions of Assistant Teachers at the time they were attached to the Zonal Department of Education (P1 and P5). The petitioners were to function only as Planning Officers to assist the Deputy Zonal Directors of Education. Since the appointments, which were made in October 1992, there had been no change in their substantive positions. The petitioners, at no time have contended that they have functioned in any other position other than in the posts of Assistant Teachers and Planning Officers.

It is in the light of the above, that it would be pertinent to consider the application made by the 1st petitioner on 29.11.1999 (P12) in response to a letter he had received from the then Secretary to the Education Service Committee requiring the 1st petitioner to tender documents for verification. This was in response to a letter sent by the petitioners, when they had become aware that other officers had been called for interviews (P11).

The application that was sent to the 1st petitioner clearly stated that applications were only being considered from among those performing as Assistant Directors of Education. In fact the letter dated 29.11.1999 (P12) clearly indicates that, it was sent as they had received information to the effect that the 1st petitioner has been functioning as an Assistant Director of Education. The relevant parts of the said letter are as follows.

"ශ්‍රී ලංකා අධ්‍යාපන පරිපාලන සේවයේ විශේෂසේවක සංඛ්‍යාවට අයත් විවිධ විෂයය ක්ෂේත්‍ර යටතේ කාර්ය නියුක්ත සහකාර අධ්‍යාපන අධ්‍යක්ෂකවරුන් ශ්‍රී ලංකා පරිපාලන සේවයට පත්කිරීම සඳහා සලකා බැලීම.

ඔබ ශ්‍රී ලංකා අධ්‍යාපන පරිපාලන සේවයේ විශේෂ සේවක සංඛ්‍යාවට අයත් විෂයය ක්ෂේත්‍රයන් යටතේ කාර්යයෙහි නියුක්ත සහකාර අධ්‍යාපන අධ්‍යක්ෂ තනතුරක් දරන බවට අධ්‍යාපන හා උසස් අධ්‍යාපන අමාත්‍යාංශයෙන් නොරතුරු ලැබී ඇත.

...."

The letter further indicated that along with the other details, the 1st petitioner should forward the copy of the letter of appointment to the post of performing Assistant Director of Education.

It is therefore apparent that in terms of the Cabinet decision of 10.11.1999 (P14) only the performing Assistant Directors of Education were qualified to be considered for appointment to Class III of SLEAS. The petitioners admittedly were only performing functions as Planning Officers and had been only assisting the Zonal Director of Education in the Uva Province and were not qualified to have applied for the appointment to Class III of SLEAS.

The petitioners alleged that their fundamental rights guaranteed in terms of Article 12(1) were violated as there was no justification for the non-appointment of the petitioners to Class III of SLEAS and since 12 Planning Officers were appointed to Class III of SLEAS, that the petitioners were discriminated against and were singled out.

Article 12(1) of the Constitution which deals with the right to equality, reads as follows:

"All persons are equal before the law and are entitled to the equal protection of the law."

The concept of equality postulates the basic principle that equals should not be placed unequally and at the same time unequals should not be treated as equals. referring to this concept Bhagawati, J. in *Royappa* v *State of Tamil Nadu*[10], had stated that equality, which is a dynamic concept is antithetic to arbitrariness. In his words,

> *"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies."*

The object of Article 12(1) of the Constitution is to treat all persons equally, so that there would be equal treatment by law, unless there is some rational reason or intelligible differentia which distinguishes the persons, who have been grouped together to treat them differently *(Venkata Raj* v *State of Andhra Pradesh*[11].

It also has to be borne in mind that every differentiation would not constitute discrimination and accordingly classification could be founded on intelligible differentia. As stated in *Ram Krishna Dalmia* v *Justice Tendolkar*[12] a classification, which is good and valid cannot be arbitrary and such a classification could be found if the following conditions are satisfied:

(1) that the classification must be founded on an intelligible differentia which distinguish persons that are grouped in from others who are left out of the group; and

(2) that the differentia must bear a reasonable or a rational relation to the objects and effects sought to be achieved.

The contention of the petitioners was that 12 officers were selected to be appointed to Class III of SLEAS and that the petitioners and those 12 officers, belonged to one group. Therefore, the petitioners claimed that by the non-selection of the petitioners to Class III of SLEAS, the respondents had singled them out and that such decision is in violation of Article 12(1) of the Constitution.

Considering the circumstances of this matter, it is obvious that the intention of the respondents was to select the persons, who were suitably qualified and they had decided not to select the petitioners since they were not qualified for Class III of SLEAS. The right to equality, as stated earlier, means that, equals should not be treated unequally and at the same time unequals cannot be treated equally, without any purposive differentiation. In this matter it is quite clear that the petitioners and the 12 officers, who were selected to Class III of SLEAS do not belong to the same category. Moreover it is to be noted that the said 12 officers, who had been appointed were not made respondents in this application. Also, no particulars of the said officers' qualifications and the basis on which they were absorbed into the Department of Education were revealed by the petitioners. In such circumstances, it would neither be possible nor relevant to consider them with the petitioners as there is no material to indicate that the said officers and the petitioners were similarly circumstanced. More importantly, as pointed out earlier, it was quite clear that the petitioners were not qualified to have been considered for the appointment for the post of Class III of SLEAS. In such circumstances it would not be correct for the petitioners to state that there was no justification for the treatment meted out to them.

For the reasons aforementioned, I hold that the petitioners have not been successful in establishing that their fundamental rights guaranteed in terms of Article 12(1)had been violated by the respondents. The application is accordingly dismissed.

I make no order as to costs

BALAPATABENDI, J. - I agree.

SRIPAVAN, J. - I agree.

Application dismissed.