

**PATHIRAJA  
V  
MANNAPPERUMA, SECRETARY  
MINISTRY OF PUBLIC ADMINISTRATION, MANAGEMENT  
AND REFORMS AND OTHERS**

SUPREME COURT  
YAPA, J.  
UDALAGAMA, J, AND  
DISSANAYAKE, J  
SC (FR) NO. 665/2003  
31ST AUGUST, 2004

*Fundamental Rights – Training abroad without approval of the relevant Ministry-  
Chapter XII of the Establishments Code - Denial of promotion for absence  
from work without approval - Articles 12 (1) of the Constitution.*

The petitioner who was a member of the Sri Lanka Administrative Service (Combined Service) was a Senior Assistant Secretary of the Ministry of Constitutional Affairs at the relevant time. He applied through the Secretary of

his Ministry (3rd respondent) for a post graduate degree course in Scotland and was selected.

The petitioner had to pay an initial deposit for the course which the External Resources Department refused to fund. Hence he left the country and qualified for the degree utilizing his own funds.

On the petitioner's return to the country he was deprived of a promotion due to the fact that he had been absent from work without leave approved by the Secretary, Ministry of Public Administration (1st respondent). Such leave was required under section 14.3.1. of Chapter XII or section 1:3 of chapter XV of the Establishments Code, whether the leave sought was for no pay or full pay study leave abroad.

**Held:**

1. The petitioner went abroad without obtaining leave as required by the Establishments Code.
2. In the circumstances denial of a promotion to the Petitioner was not a violation of Article 12 (1) of the Constitution.
3. The fact that the air ticket for one way only was sponsored by a Swiss contact was approved by the External Resources Department was not sufficient compliance with the requirements of Chapters XII or XV of the Establishments Code.

**Case referred to :**

1. *The Public Service United Nurses Union v Montague Jayawickrema, Minister of Public Administration and Others (1988) (1) SRI LR 229*

**APPLICATION** for relief for infringement of fundamental rights.

*Prinath Fernando* for petitioner.

*Rajive Goonetilake*, State Counsel for 1<sup>st</sup> respondent and Attorney - General

October 5, 2004

**UDALAGAMA, J.**

The petitioner had been granted leave to proceed in respect of an alleged infringement of fundamental rights to equality guaranteed under Article 12 (1) of the Constitution.

The petitioner who joined the Sri Lanka Administrative Service in 1990 was at the time he made this application, a Senior Assistant Secretary of the Ministry of Constitutional Affairs.

The petitioner having come to know of the availability of a Post Graduate Degree course in the University of Glasgow, Scotland, leading to an International Masters Degree in Business Administration applied through the 3rd respondent, the Secretary, Ministry of Constitutional Affairs and appears to have been selected, vide the contents of document marked P6 filed of record. Paragraph 2 of the aforesaid P6 requests the petitioner to remit Post Graduate fees as specified therein and the petitioner further informed that latter's position is not guaranteed until payment is so made.

Although the petitioner had requested the External Resources Department to provide funds to enable him to follow the aforesaid course the request was turned down by P7 which refusal had been acknowledged by the petitioner as apparent from the contents of paragraph 12 of the petition.

It is also apparent that the petitioner did proceed to follow the Post Graduate course referred to above utilizing his own funds.

Having completed the said course which included a subsequent extension the petitioner admittedly reported back to his Ministry.

When the petitioner was due for promotion to the Sri Lanka Administrative Service Class II, Grade I, and duly made an application to be considered for the said post, the petitioner's aforesaid application was refused on the basis of his absence from work without duly approved leave. This refusal in turn, admittedly caused a loss of seniority thereby depriving the petitioner of his promotion.

That the petitioner was requested to obtain proper approval from the Secretary of the Ministry of Public Administration to follow the aforesaid course with full study leave as provided for by section 14:3:1 of Chapter XII of the Establishment Code which reads as follows: "the prior permission of the Secretary to the Ministry of Public Administration should be obtained in the case of an officer in the Combined Services" is manifest.

That the aforesaid provision applies to the petitioner is also beyond question as Chapter 1 of the Establishment Code defines the Sri Lanka Administrative service to be encompassed in the combined services.

That, the petitioner would in any event be entitled to, under the present circumstances, to full pay study leave only in accordance with the provisions of section 1:5:1 or 1:5:2 in Chapter XV of the Establishment Code and the grant of leave, determined by sections 14, 15 and 16 of Chapter XII of the Code, is also unambiguous. The fact that the petitioner failed to obtain full pay leave as provided for under the aforesaid provisions of the Code is uncontroverted.

As stated above section 14:3:3 mandates that the petitioner should have obtained the prior permission of the Secretary to the Ministry of Public Administration which admittedly the petitioner had failed to do for whatever reasons. At most the petitioner had travelled overseas with the approval of the Secretary of his own Ministry and without the prior permission of the Secretary to the Ministry of Public Administration which responsibility cast on the petitioner was also admittedly shirked by the petitioner as evident from the contents of paragraph 4 of P19, a letter made under the hand of the petitioner dated 14.08.2003 and filed of record.

The learned Counsel for the petitioner's submission that the petitioner's air ticket to travel abroad, which incidentally appears to be a ticket for one way only was sponsored by a Swiss contact and approved by the External Resources Department which position would satisfy section 14:1:4 of Chapter XII has to be rejected as the mere success of obtaining funding for an air ticket and approval thereto would not amount to a scholarship offered by a foreign Agency or a foreign Government as envisaged by terms of section 1:5:1 or 1:5:2 of chapter XV of the Establishment Code.

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It must also be emphasized that as held in *Public Services United Nurses Union vs. Ministry of Public Administration*,<sup>(1)</sup> provisions of the Establishment Code have statutory force.

Accordingly, the petitioner having failed to obtain a foreign funded scholarship or a Government sponsored course of study for training abroad and having in this instance significantly failed as provided by section 14:1 of Chapter XII of the Establishment Code to obtain the prior permission of the Secretary to the Ministry of Public Administration in accordance with the provision of section 14:3 and specifically section 14: 3: 1 to leave the Island for study or training abroad and also considering importantly the adverse administrative precedents that would be created in the event of the granting of relief as prayed for by the petitioner, I would hold that the petitioner has failed in establishing the violation of his fundamental rights guaranteed under Article 12 (1) of the Constitution.

This application is accordingly dismissed but in all the circumstances without costs.

YAPA, J.- I agree

DISSANAYAKA, J.- I agree

*Application dismissed.*

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