

RAGUNATHAN  
v.  
JAYAWARDENE, SECRETARY, MINISTRY OF TRANSPORT AND  
HIGHWAYS AND OTHERS

SUPREME COURT.  
BANDARANAYAKE, J.,  
AMERASINGHE, J.,  
RAMANATHAN, J.  
S.C. APPLICATION NO. 90/91  
OCTOBER 27, 1992.

*Fundamental Rights – Constitution, Article 12 – Equality – Promotion.*

The petitioner and 3rd respondent were not equally circumstanced. The 3rd respondent was qualified for promotion but the petitioner was not.

**Per Amerasinghe, J.**

“To treat the petitioner and 3rd respondent as equally entitled to promotion would be improper for it would result in treating unequals equally. This would be as unjust as treating equals unequally.”

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

*Colin Senerath – Nandadewa* for petitioner.

*Douglas Premaratne, P.C. Additional Solicitor-General* with *Mrs. Bimba Tilakaratne, S.C.* for 1st and 2nd respondents.

*Cur. adv. vult.*

October 27, 1992.

**AMERASINGHE, J.**

We have heard learned Counsel for the petitioner in support of this petition. This Court is, *inter alia*, requested to make order declaring that the petitioner is entitled to promotion to Class I of the Middle Level Technical Service from 11.6.1984 and to promotion as Drawing Office Assistant from 22.8.1989. The petitioner also requested this Court to declare as invalid the appointment of the third respondent to these posts.

The petitioner's case rests on the basis that there has been a violation of his right of equality under Article 12 of the Constitution. The essence of his complaint is that the 3rd respondent had been shown unwarranted preferential treatment by the first and second respondents. The question is whether the 3rd respondent and the petitioner were equally circumstanced. Were they in the same position? They were not, for the reason that whereas the petitioner failed to qualify at the prescribed examination and was therefore not eligible for promotion, the 3rd respondent had passed the prescribed examination and was therefore eligible for promotion. The third respondent was promoted because he was qualified for promotion. The petitioner was not promoted because he was not qualified. To treat the petitioner and 3rd respondent as equally entitled to promotion would be improper, for it would result in treating unequals equally. This would be as unjust as treating equals unequally.

Admittedly there was discrimination between a qualified person and an unqualified person. Those who were classified as eligible for promotion were those who had passed the examination. The public services exist to supply an efficient administration and Article 12 of

the Constitution does not preclude the imposition of qualifying examinations, selective tests and other criteria for selecting or promoting public officers to assure efficiency. The distinction between those qualified for promotion and those who were not was therefore founded upon an intelligible differentia. It was rational. The scheme of promotion was not arbitrary or artificial or evasive in its formulation or relation to its purpose or in its application. In the circumstances, I am unable to hold that there has been a violation of Article 12 of the Constitution in this matter by the appointment of the third respondent in preference to the petitioner. For the reasons explained the petitioner had no right in the circumstances of this case to be treated equally in relation to the third respondent. The petition is therefore dismissed.

An enormous volume of documentation has been filed in this matter evidencing long-standing and continuing dissatisfaction on the part of the petitioner with a variety of matters but wholly irrelevant to these proceedings. The time of this Court has been wasted by compelling us to consider them.

The petitioner is ordered to pay Rs. 1000 as costs.

**BANDARANAYAKE, J.** – I agree.

**RAMANATHAN, J.** – I agree.

*Petition dismissed.*