

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

In the matter of an application under Article
126 of the Constitution of the Democratic
Socialist Republic of Sri Lanka.

U.W. Seneriratne, no. 48/7,
2nd Lane, Sunshine Gardens,
Karapitiya

PETITIONER

Vs.

S.C.F.R. No. 396/2010

1. Mahinda Balasooriya,
Inspector General of Police,
Police Headquarters,
Colombo 01.
- 1A. Pujith Jayasundera,
Inspector General of Police,
Police Headquarters,
Colombo 01.
2. Gotabhaya Rajapaksha,
Secretary, Ministry of Defense,
No. 15/5, BaladakshaMawatha,
Colombo 03.
- 2A. Karunasena Hettiarachchi,
Secretary, Ministry of Defense,
No. 15/5, BaladakshaMawatha,
Colombo 03.
3. K.C.Logeswaran,
Secretary, National Police
Commission, Rotunda Tower,
Level 3, No. 109, Galle Road,
Colombo 03

- 4.N. D. Daluwatta,
Deputy Inspector General of Police
Southern Province, (South),Tangalle
DIG's Office, Tangalle.
- 5.Daya Samaraweera,
Deputy Inspector General of Police
Southern Province – Galle,
DIG's Office, Galle.
6. A.D.J. Chandrakumara,
Superintendent of Police,
SP Office, Tangalle Division,
Tangalle.
7. Hon. Attorney General,
Attorney General's Office,
Colombo 12.

RESPONDENTS

8. Vidyajothi Dr. Dayasiri Fernando,
Chairman
8A Justice SathyaHettige PC,
Chairman
- 9.S.C.Mannapperuma, Member
10. AnandaSeneviratne, Member
- 11.N.H.Pathirana
- 12.Palitha M Kumarasinghe,Member
- 12A. KanthiWijetunge, Member
- 13.SirimavoA.Wijetatne,Member
- 13A Sunil S.Sirisena, Member
14. S.Thillanadarajah, Member
- 15.A.MohamedNahiya,Member
- 16.M.D.W.Ariyawansa, Member
- 16A I.M.ZoysaGunasekera,Member

8th to 16A All of Public Service
Commission, No. 177, Nawala Road,
Narahenpita, Colombo 05.

17. T.M.L.C.Senaratne, Secretary,
Public Service Commission,
No.177, Nawala Road,
Narahenpita, Colombo 05.

18. N.K.Illangakoon, Inspector
General of Police, Police
Headquarters, Colombo 01.

19. Prof. SiriHettige, Chairman

20. P.H.Manatunga, Member

21. SavithreeWijesekera, Member

22. Y.L.M.Zawahir, Member

23. Anton Jeyanadan, Member

24. TilakCollure, Member

25. F. de Silva, Member

National Police Commission,
Block No. 3, BMICH Premises,
BauddhalokaMawatha,
Colombo 07.

26. N.AriyadasaCooray,
Secretary, National Police
Commission, Block No. 3,
BMICH Premises, Bauddhaloka
Mawatha, Colombo 07.

ADDED RESPONDENTS

**BEFORE: S. EVA WANASUNDERA PC.J.
UPALY ABEYRATHNE J. &
H.N.J. PERERA J.**

COUNSEL: J. C. Weliamuna with Pasindu Silva for the Petitioner
Rajiv Goonetilleke, SSC for the 1st to 7th Respondents

ARGUED ON: 05.07.2016.

DECIDED ON: 30. 11. 2016.

S. EVA WANASUNDERA PC. J.

Petition was filed before this Court on the 9th of July, 2010. The Petitioner states in his Petition that he had joined the Sri Lanka Police on 05.05.1986 as a Sub Inspector. He was promoted to the post of Inspector of Police on 07.04.1995. By the date , 7th July,2000, he had been in the Katuwana Police Station as Officer in Charge of the Police Station. He had commenced as OIC in that Police Station in 1999.

On 07.09.2000 a person named Berti Mahesh Wickremaratne had lodged a complaint at the Katuwana Police Station that his motor bike had been stolen by two persons. The Police was unable to apprehend any suspects until 17.09.2000 but on that day, consequent to information received from a private informant two suspects were apprehended. Their names were Widanagamage Nalin Suranga and Jayawardena Dodampe Anura. The motor bicycle and some weapons were found with the suspects. The case regarding this theft was still pending in the High Court of Hambantota at the time of this Application.

On 18.09.2000, **the Petitioner was taken into custody** by the Officers of the Commission to Investigate Allegations of Bribery or Corruption on the purported allegation of accepting a bribe amounting to Rs. 50000/- from one Premawathie who claimed to be the mother of one of the aforementioned suspects, namely WidanagamageNalinSuranga. He was detained at the Cinnamon Gardens Police Station and on 19.09.2000 he was produced before the Magistrate of Colombo.He was **interdicted from service on 21.09.2000** on the charge of soliciting and accepting a bribe of Rs. 40,000/-. He was later indicted in the High Court of Colombo. On 09.10.2007 , at the end of the trial, **the Petitioner was acquitted** from all the charges by the learned High Court Judge.

He was **reinstated in service on 18.01.2008**. On the same day, **the 5th Respondent** had sent a message from Galle to Baddegama Police Station, informing that the Petitioner is posted to Thissamaharama Police Station but until the conclusion of a disciplinary inquiry, **his back wages should not be paid**.

The Petitioner states in his Petition that, by way of a letter addressed to the President of the National Police Commission dated **01.03.2008**, he **requested the National Police Commission** to afford him with back wages with regard to the period of his interdiction and to promote him to the rank of Chief Inspector of Police, as by that time, His Excellency the President of Sri Lanka had ordered to promote all Inspectors of Police to the rank of Chief Inspector if they had completed four years of service in the Inspector of Police rank. The National Police Commission **had not considered his request**.

It is only on **17.12.2008**, that he was served with a charge sheet, mainly, relating to an alleged failure to maintain proper IB extracts in respect of the suspects who were taken into custody with regard to the theft of a motor bicycle as aforementioned. This was the subject matter for the allegation of a bribe in which regard the Petitioner was interdicted and then thereafter indicted in the High Court and **by that time i.e. by the 17th of December, 2008 was acquitted and reinstated**. I observe that the charges have been leveled against the Petitioner **after 8 years and 3 months** from the date that the Petitioner was arrested and interdicted. It is also to be noted that the charge sheet for the disciplinary inquiry had been served on him **one year after the reinstatement**.

The Petitioner had denied the charges on 21.01.2009. The inquiry had proceeded from 29.06.2009 to 25.08.2009. The inquiry officer was the 6th Respondent. After hearing 7 witnesses and the Petitioner giving evidence, **the Inquiry Officer had exonerated the Petitioner of all the charges**. The report exonerating the Petitioner had been duly sent to the 4th Respondent dated 03.03.2010. **The Petitioner had moved this Court to direct the Respondents to submit this report to Court** since the Petitioner had not been able to get a copy of the same. I now find that this **Court had not directed the Senior State Counsel** who appeared on behalf of the Respondents to submit to Court, **the said Report**.

I am of the opinion that when the objections were filed by the State, the said Report should have been filed by the State but the Inspector General who filed his affidavit of objections **has not brought up that Report with the Objections** of the Respondents. The reasons for the same has not been submitted to Court either. Paragraph 15 of the Affidavit of Objections simply submits that **the 5th Respondent had not agreed with the findings of the inquiring officer, the 6th Respondent**. I am of the opinion that the Respondents have suppressed the relevant material from this Court. It has been submitted by the State that because the 5th Respondent had not agreed with the 6th Respondent, he had imposed the punishments which he is entitled in law to do, which are minor in nature. The State pleaded in the submissions that this matter attracts 'de minimis' maxim.

The Charges against the Petitioner are also **related to the incident** which was the subject matter of the allegation against the Petitioner that he had taken a bribe from one of the suspects. They are as follows:

- (i) Not entering the 'out' entry.
- (ii) Not entering the rest time.
- (iii) Not entering the suspect's hand productions in the information book.

These charges had been gone into by the inquiry officer. Many officers who had been in the Police Station had given evidence. The evidence was to the effect that as usual he had done so through the 'reserve police officer' at the station. The allegations **had not been proved at all**. The proceedings at the inquiry is not part of this brief but I have gone through the portions of answers given by the witnesses as quoted by the Petitioner in his submissions. The State has failed to make the proceedings available to this Court, even at the time of filing objections.

The document which has imposed punishments for the aforementioned alleged charges against the Petitioner is marked as P 11. At the bottom of the 1st page of P 11, the author of the document who is **the 5th Respondent specifically states that the inquiry officer, the 6th Respondent has exonerated the Petitioner of all the charges**. In the second page, the **5th Respondent states** that " Having gone through

the evidence before the inquiring officer, the written submissions filed by both parties etc. I observe that the charges have been proven beyond reasonable doubt against the suspect “. Thereafter the 5th Respondent has specifically mentioned the charges and specifically mentioned that the Petitioner is found guilty of all the charges and then set down the punishments for each and every charge . **The reasons for not having gone by the recommendations of the inquiring officer, to exonerate the Petitioner as he was not found guilty of any of the charges , have not been mentioned in P 11 by the 5th Respondent.** In fact , how the 5th Respondent has acted in that manner towards the Petitioner is quite shocking. The 5th Respondent could have filed an Affidavit before this Court if he wanted **to explain why he did not give reasons as per P 11.** He could have filed the original order he made with the objections filed on behalf of the Respondents rather than commenting or accepting the document filed by the Petitioner as P11. **The 5th Respondent has not explained his action according to the provisions in the Establishments Code.**

I find that the punishments are namely “ severe reprimand “ , “ staying the increment for one whole year “, and on top of these punishments, it was added that “ **due to this disciplinary inquiry, it is decided that the back wages and other benefits should not be granted to the accused “.** The decision of the 5th Respondent **not to pay back wages of 9 years during which period the Petitioner was interdicted is not at all a small punishment.** It is definitely a severe punishment. The argument of the Senior State Counsel that the punishments given attract the legal maxim of ‘de minimis’ totally fails.

Such action of the 5th Respondent, is **against the provisions of the Establishments Code** regarding disciplinary proceedings.

Section 22.6 of the Establishments Code reads as follows:

“ The Disciplinary Authority may accept or reject or revise any or some or all of the findings of the Tribunal in arriving at a decision in terms of 22:5:1 and 22:5:2.

Section 22.7 of the Establishments Code reads as follows:

“ Where any or some or all of the findings of the **Tribunal are rejected** or revised in terms of sub section 22.6 above, the Disciplinary Authority should note clearly and specifically in the relevant disciplinary file **all the reasons on which such decision was based.**”

I hold that such action of the 5th Respondent is a violation of the fundamental rights contained in Article 12(1) of the Constitution. The Superior State Officers have failed to correct the wrong action taken by the 5th Respondent and by having acted in that manner has condoned such action. The State has rather affirmed the order given by the 5th Respondent by not having given the promotions due to the Petitioner.

At this stage, I want to recognize the news paper ‘ Lankadeepa ‘, marked and produced with the Petition marked as P1, reporting “that the Public of the Katuwanaarea had voiced their displeasure in the State having taken the Petitioner into custody on allegations of bribery because by public protests, the Petitioner as OIC of the Police Station of Katuwana had been taking action against the criminals of the area. The public had voiced that this complaint of bribery had been made by a person claiming to be the mother of one of the suspects who had been the suspect of about 25 other thefts and robberies of the area.” The suspects by having made false allegations have kept the Petitioner from serving the Police for over 9 years. The Petitioner had got acquitted of all the charges in the Criminal High Court as well as all the charges leveled against him at a highly unnecessary disciplinary inquiry which obviously was based on prior determination by the 5th Respondent to punish the Petitioner.

I hold that the 5th Respondent and the State Officials who have condoned the actions of the 5th Respondent, have violated the Petitioner’s fundamental rights contained in Article 12(1) of the Constitution. I order the Respondents and the relevant authorities to release forthwith, to the Petitioner , his back wages , salary increments etc. and other legitimate entitlements such as legally entitled promotions due up to date.

I order the 5th Respondent to pay compensation of Rs. 300,000/- for the violation of the said fundamental rights of the Petitioner and the State to grant a further 200,000/- to the Petitioner together with legal costs incurred by him at all times prior to getting this order from this Court as well as costs of this Court.

Judge of the Supreme Court

Upaly Abeyrathne J.

I agree.

Judge of the Supreme Court

H.N.J. Perera J.

I agree.

Judge of the Supreme Court