

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.

1. R. A. P. de C. Ranaweera
101/22-1/2, B Block
Police Quarters, Kew Road, Colombo 02.
2. B. P. B. Ayupala,
No. 35, Sri Medananda Mawatha, Panadura.
3. L.A.S. Lekamge
32/1, Gangadara Mawatha, Off Templars Road,
Mt. Lavinia.

SC/FR No. 520/2009

Petitioners

1. Jayantha Wickramaratne
Inspector General of Police, Police Headquarters,
Colombo 01.
- 1(b). Pujitha Jayasundara
Inspector General of Police, Police Headquarters,
Colombo 01.
2. Gotabhaya Rajapaksha
Secretary, Ministry of Defence, Public Security,
Law and Order,
Ministry of Defence,
No.15/5, Baladaksha Mawatha, Colombo 03.
- 2(a). Karunasena Hettiarachchi
Secretary, Ministry of Defence, Public Security,
Law and Order,
Ministry of Defence,
No.15/5, Baladaksha Mawatha, Colombo 03.
3. Gamini Senarath
Additional Secretary to the President,
President House, Colombo 01.
4. Hasitha Kumari Balasuriya
Additional Secretary, Ministry of Defence (Police),
No. 15/5, Baladaksha Mawatha, Colombo 03.

5. K. C. Logeshwaran
Secretary, National Police Commission,
Rotunda Tower, Level 3, 109, Galle Road, Colombo
03.
- 5(a). N. A. Cooray,
Secretary,
National Police Commission,
Rotunda Tower, Level 3, 109,
Galle Road, Colombo 03.
(Members of the interview board)
6. Fabiel Mitchel
Deputy Inspector General of Police
(Personnel), Personnel Division,
Police Headquarters, Colombo 01.
7. H. S. Dayananda
Deputy Inspector General of Police,
DIG (Police) Office, Puttlam.
8. T. M. A. Senanayake
Deputy Inspector General of Crimes,
Police Headquarters, Colombo 01.
9. N. M. Munasinghe
Deputy Inspector General of Police,
Criminal Investigation Department,
New Secretariat Division, 4th Floor,
Colombo 01.
10. Y. R. W. Wijegunawardena
Deputy Inspector General of Police,
DIG (Police) Office, Vavuniya.
11. D. S. S. Lugoda
Deputy Inspector General of Police,
Senior Gazetted Officer's Quarters,
101/20/3/2, Kew Road,
Colombo 02.
12. D. J. Gammanpila
Deputy Inspector General of Police,
Police Office, Nuwara Eliya.
13. S. A. D. T. N. Wijegunerwardena
Deputy Inspector General of Police,
Criminal Records Division, 526, Torrington Square,
Colombo 07.

14. W.F.U. Fernando,
Deputy Inspector General of Police,
IT Division, Police Headquarters, Colombo 01.
15. L.M. Dayananda Bandara,
Deputy Inspector General of Police, DIG (Police
Office), Jaffna.
16. U.N.A.S. Rodrigo
Deputy Inspector General of Police,
86A, Welikadamulla, Mabola, Wattala.
17. H.K.S. Pinidiya
Deputy Inspector General of Police, Recruitment
Division, Police Headquarters, Colombo 01.
18. P.S.K. Dayananda
Deputy Inspector General of Police,
DIG (Police) Office, Anuradhapura.
19. L.L.C. Perera
Deputy Inspector General of Police,
DIG (Police) Office, Mannar.
20. S.W.M.T.S. Samarakoon
Deputy Inspector General of Police,
DIG (Police) Office, Vavuniya.
21. M.P. Samaradivakara
Deputy Inspector General of Police,
Logistics Division, Police Headquarters,
Colombo 01.
22. D.L.S.G.L. Pieris
Deputy Inspector General of Police,
DIG Traffic Headquarters Colombo.
23. Jayantha Kulathilaka
Deputy Inspector General of Police,
DIG (Police) Office, Fort, Galle.
24. Hon. Attorney General
Attorney General's Department, Colombo 12.
25. Prof. Siri Hettige- Chairman
26. P.H. Manatunga
27. Mrs. Savithree Wijsekera

28. Y.L.M. Zawahir
29. Anton Jeyanandan
30. Thilak Collure
31. Frank De Silva

25th -31st Respondents; all of
National Police Commission,
Block 9, BMICH Premises,
Bauddhaloka Mawatha, Colombo 07.

Respondents

Before:

Buwaneka Aluwihare, PC. J.
Murdu N.B. Fernando, PC. J.
S. Thurairaja, PC. J

Counsel:

J.C. Weliamuna PC with Pasindu Silva
and Haushi Samarathunga for the
Petitioners.

Nerin Pulle, Deputy Solicitor General
for the Respondents.

Argued on:

06. 05. 2019 and
14. 10. 2019

Decided on:

09. 06. 2020

JUDGEMENT

Aluwihare PC. J.,

1. Of the three Petitioners to the present application, the 1st Petitioner was serving as a Senior Superintendent of Police (SSP) of the Sri Lanka Police while the 2nd and the 3rd Petitioners had held similar positions in the Police, but had retired from service sometime before the filing of this application.
2. The grievance of the Petitioners is that, they have not been granted the promotion to the next senior rank of Deputy Inspector General of police (DIG).
3. Leave to proceed in this matter had been granted on the alleged infringement of Article 12(1) of the Constitution.
4. When this matter was taken up for argument, the learned counsel on behalf of both the Petitioners as well as the Respondents submitted that the only issue where the parties were at variance, was the 'allocation of marks' to the three petitioners who were prospective applicants for the promotion to the rank of DIG.
5. Although the Petitioners took up the position that the National Police Commission (NPC) should have been the appointing authority, in this instance, however, the appointments were made by the Cabinet of Ministers, the reason being that the NPC was defunct at the time relevant to the granting of the promotions. The Petitioners, however, have not challenged the *vires* of the appointments in these proceedings.
6. When this matter was supported for leave to proceed (on 03-09-2009) the learned counsel for the Petitioners stated that the Petitioners are not interested in

challenging the appointments of the successful candidates as DIGs. Subsumed in this contention is that the Petitioners are not challenging the allocation of marks awarded to the successful candidates. As such, if the Petitioners are to succeed in this application, it has to be established that they have been deprived of marks for which they were entitled to, and that their aggregate marks were 71 or above. In this context, the only issue that the court would be focusing on in the instant case is, as to whether the Petitioners have been denied any marks they were entitled to and consequently whether the aggregate marks would add up to the cut off mark.

Case of the Petitioners

7. The common position taken up by the Petitioners was that, at the time material to the issue in the case, they were serving as Senior Superintendents of Police with an excellent service record. All three Petitioners had been promoted as Chief Inspectors of Police on 01-01-1980 and then to the rank of Senior Superintendent of Police on 01-06-1999.
8. It was the assertion of the Petitioners that they responded to the calling of applications to fill 13 vacancies in the cadre of DIGs and they faced an interview in that regard in May 2009.
9. The Petitioners have subsequently come to know that 15 applicants had been appointed as DIGs to fill the aforesaid vacancies, but not the Petitioners. It is alleged that among the promotees were two officers who had already retired from the police service by then. It was further alleged that, at no point were the marks obtained by the candidates at the interview released.
10. The Petitioners allege that the document containing the marks obtained by each applicant cannot be acted upon, as it is not clear as to who was responsible for the preparation of that document (marked and produced as “Y”) in the absence

of any authentication of the same. The Petitioners also complain that the said document does not show a breakdown of the marks obtained by the respective candidates who faced the interview, in particular the applicants who were promoted as DIGs.

11. The gravamen of the Petitioner's contention was that they were prejudiced due to erroneous allocation of marks to the candidates and that it affected the promotional prospects of the Petitioners adversely. In the circumstances aforesaid, it was argued on behalf of the Petitioners that, for want of accuracy and the numerous mistakes made in the allocation of marks, the document "Y" cannot be acted upon for the selection of candidates for the impugned promotions.

12. It was the position of the Petitioners that this situation was brought about by misapplication of the marking scheme ("P9") and the failure on the part of the interview panel to adhere to the said marking scheme.

13. I shall now advert to the alleged mistakes on the part of the interview panel as asserted on behalf of the Petitioners:

It is alleged that the maximum marks that can be allocated for the 'period of service' is 40, however candidate W.F.U. Fernando had been allocated 40.5 marks. Similarly, maximum marks that can be allocated for 'outstanding performance' is 15, whereas four of the candidates had been allocated 17 marks. In emphasising the haphazard manner in which the marks had been allocated by the panel of interviewers, it was pointed out on behalf of the Petitioners that, although the 1st Petitioner did not possess a degree, he had been allocated 2 marks for a degree, for which he was not entitled to.

14. The Petitioners have also adverted to certain instances where mistakes had been made in the calculation of the aggregate marks due to errors in the addition of marks allotted to some candidates. It was the position of the Petitioners that the

numerous flaws in the allocation of marks and the erroneous computation of marks, are demonstrative of the haphazard manner in which the entire interview process was carried out, thus, raising a serious doubt as to the credibility of the manner in which marks were awarded to the candidates at the interview. These matters, however, are of little relevance to decide the issue before us, because of the position taken up by the Petitioners; that they would not be challenging the selection of the successful candidates. Thus, all what is left to be done is to scrutinise as to whether the Petitioners have been awarded marks in accordance with the marking scheme (“R2”) and in the event an anomaly has taken place in that regard, whether the correct marks would carry them over the cut off mark. I shall now consider the case of each Petitioner: -

The case of the 1st Petitioner

15. It is common ground that the cut off mark for the promotion to the rank of DIG was 71. The 1st Petitioner had been awarded 70 marks, but claims that he ought to have been allocated 73.5 marks.
16. The 1st Petitioner had been awarded the full marks claimed by him for, period of service (38), communication skills (3), outstanding performance (5), and language proficiency (4). Although the 1st Petitioner had not claimed any marks, he had been given 4 marks for personality, 2 marks for Degree by the interview board. Thus, the Interview board had awarded to the 1st Petitioner a total of 6 marks which the 1st Petitioner, according to his own estimation, had not claimed.
17. The 1st Petitioner had been awarded 14 marks for ‘capacity assessment’ where as the 1st Petitioner claims he ought to have been given 17 marks.

18. Similarly, for 'leadership' he had been awarded 4 marks, whereas according to the 1st Petitioner, he claims that he should have been awarded 6 marks. Under 'special achievements', he had been allocated 3 marks, whereas the Petitioner claims he was entitled to 4 marks.
19. From the foregoing, it appears that, at the interview, the Interview board had made an objective assessment of the 1st Petitioner's qualifications and the relevant characteristics and awarded marks. This is apparent from the fact that the Board of interview has thought it fit to grant the 1st Petitioner more marks under certain categories than even what the Petitioner himself thought he should be entitled to. Thus, it cannot be said that the Interview board had acted with the objective of denying the 1st Petitioner marks. Even with regard to the instances where the 1st Petitioner claims that he should have got more marks than what was allotted to him, in my view the court would not interfere with the decision of the Board of interview in that regard unless it can be clearly demonstrated that the 1st Petitioner had been arbitrarily denied marks.
20. In this respect, the 1st Petitioner asserts that under "Special Qualifications," he had been given only 1.5 marks for the Diploma. He claims that he has obtained 4 diplomas and had undergone other training and the marks that should have been allocated was 9.5. ("P11-a"). On this basis, it was the contention on his behalf that the 1st Petitioner was entitled to more marks than what was allocated and had the correct marks been allocated, he would have obtained more marks than the cut off which was 71 marks.
21. The "marking scheme" has been pleaded in these proceedings as part of the 5th Respondent's affidavit ("R2") and the Respondent's position appears to be that under the category "Specialised Qualifications" a candidate was entitled to a maximum of 10 marks. It was pointed out that the category of "Specialised Qualifications" had 7 sub-categories ("R2").

1. Master's Degree - 4 marks
2. Post Graduate Diploma - 3 marks
3. Degree - 2 marks
4. Attorney-at-Law - 2 marks
5. Diploma - 1.5 marks
6. Overseas Training Courses - **1 mark for each**
7. Certificate Courses - Local - **0.5 marks for each**

22. The position of the Respondents was that, other than the last two sub categories referred to above, (overseas training and local certificate courses), irrespective of the number of qualifications possessed by each candidate, they were allotted marks only for one qualification. For example, even if a candidate had two Master's Degrees, they were allotted only 4 marks. This position was distinguished in relation to the last two sub-categories where it is specifically stated “... *marks for each*”. We find such instructions under certain other sub-categories in “R2”. For example, “His Excellency's Commendations 2 marks each” and “special increments 3 marks each”. The words “...marks each” does not appear in relation to a number of other sub-categories and it appears that the Interview board has applied that distinction in awarding marks to the candidates. If all candidates had been evaluated applying the said criteria, then awarding 1.5 marks for each of the Diplomas the 1st Petitioner had, cannot be justified. On the other hand, the Petitioners have failed to demonstrate that a different criterion in awarding marks had been applied when evaluating other candidates. In the circumstances, I hold that awarding 1.5 marks for the Diplomas the 1st Petitioner possessed is not erroneous and cannot be construed as a violation of the 1st Petitioner's fundamental right.

23. According to the document “P11-a”, The 1st Petitioner claims that he has undergone 5 training courses (page 3 of “P11-a”). The training listed as (a) in the said document, appears to be overseas training for which the 1st Petitioner had been awarded 1 mark which again is in accordance with “R2” and 2.5 marks

for the certificate courses which is also in accordance with the marking scheme “R2”. Under ‘Specialised Qualifications’ the 1st Petitioner has been awarded 7 marks, in fact 2 marks more than what he was entitled to.

24. Considering the foregoing, I am of the view that the 1st Petitioner has failed to establish that his fundamental right under Article 12(1) of the Constitution has been violated by the Respondents.

The case of the 2nd Petitioner

25. The 2nd Petitioner has placed before the court an extensive description of the services rendered by the 2nd Petitioner as a police officer along with his numerous achievements. I do not wish to advert to them here, as what is crucial is the reasons attributed by the Respondents for not granting the promotion to the 2nd Petitioner, the rank of DIG.

26. In response to the assertions (of the 2nd Petitioner) the 5th Respondent in his objections has stated that the rank of DIG is a senior gazetted officer in the police Department and they perform core command functions in the Department. The said Respondent had stated further, that given the pivotal and important nature of the functions of the office of DIG, the promotions to the said rank are only by way of a *viva voce* and only Superintendents of Police of Grade 1, with an unblemished record during the period of five years immediately preceding, are eligible to apply. It was contended on behalf of the Respondents that the 2nd Petitioner has suppressed and misrepresented facts in that the 2nd Petitioner has not disclosed the fact that disciplinary proceedings were pending against him and that he was retired under Section 12 of the minutes of pension.

27. According to the Scheme of Recruitment and Promotions of Senior Gazetted officers (“R1”), one criteria of eligibility (paragraph 4) is that the candidate must be a Superintendent of Police Grade 1 with an unblemished record during the five years immediately before the date of promotion.
28. It was the submission of the learned Deputy Solicitor General that even at the time the 2nd Petitioner submitted his application for the promotion, two preliminary inquiries were being conducted against the 2nd Petitioner by Special Investigation Unit. It was pointed out that these disciplinary proceedings relate to the performance of duty on the part of the 2nd Petitioner in connection with a suicide bomb attack by the LTTE. It was the contention of the learned DSG that the 2nd Petitioner was not eligible to be considered for promotion as he had failed to satisfy clause 4.1 of the Scheme of Recruitment.
29. The 2nd Petitioner alleges that he ought to have been given 70 marks by the Interview Board but he has been given only 67. It appears that the said Petitioner’s claim that he should have been allocated 70 marks is based on his own estimation as to marks that ought to have been allocated.
30. Thus, it is significant to consider in the context of the alleged violation of the fundamental rights as to whether the allocation of marks had been done in an arbitrary or irrational manner with the objective of denying the promotion to the 2nd Respondent.
31. As stated earlier, the cut off mark for the promotion to the rank of DIG was 71 and even if one goes by the marks the 2nd Petitioner says he should have been given (which was 70), still the 2nd Petitioner falls short of the cut off mark and thus would not be eligible to be promoted.

32. It is interesting to note that the difference between the marks allocated by the interview board to the 2nd Petitioner and his own estimation is only 2.5 marks.
33. The Interview board has granted the 2nd Petitioner 3 marks out of 6 for personality whereas the Petitioner had claimed none and similarly the 2nd Petitioner had been given 4 out of maximum 6 for commendations by the Inspector General of Police whereas the Petitioner has claimed only 2. The Board had given the Petitioner 1.5 marks for “Diploma” but the 2nd Petitioner has claimed no marks. For communication skills the 2nd Petitioner had been awarded full marks (3 out of 3) whereas the 2nd Petitioner feels that he deserves only 2.
34. From the foregoing, it is clear that the Board of Interview had allocated marks applying an objective criterion and that there is no material to come to a conclusion that the 2nd Petitioner has been deprived any marks arbitrarily.
35. Considering the above, I conclude that the 2nd petitioner has failed to establish that his fundamental right enshrined in Article 12(1) of the Constitution has been infringed, and as such his application should necessarily fail.

The case of the 3rd Petitioner

36. The 3rd Petitioner has been awarded 58.5 marks by the Interview board. The 3rd Petitioner, however, claims that he should have been allotted 69.5 marks. As in the case of the 2nd Petitioner, assuming for the sake of argument that the 3rd Petitioner was awarded the 69.5 marks that he claims, he still falls short of the cut off mark of 71 and would not have been eligible for the promotion to the rank of DIG.

37. For the reasons set out above, I hold that none of the Petitioners have been able to satisfy the court that their fundamental right under Article 12(1) of the Constitution had been violated by the Respondents and accordingly this application is dismissed.

In the circumstances of this case I do not order costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

JUSTICE MURDU FERNANDO PC

I agree

JUDGE OF THE SUPREME COURT

JUSTICE S. THURAIRAJA PC

I agree

JUDGE OF THE SUPREME COURT