

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

*In the matter of an application
under and in terms of Articles 17
and 126(2) of the Constitution of
the Democratic Socialist Republic
of Sri Lanka.*

SC/FR APPLICATION No: 427/2018

1. Jayasinghe Arachchilage
Samantha
Bandara Mangala Jayasinghe
(PC 33476)
Bomadawa Watta,
Yogamuwakanda,
Polgahawela.
2. Rajapaksha Mudiyansele
Chandana Kumara Rajapaksha
(PC 22158)
No. 37, Mellawa, Peiris Watta,
Lihiriyagama, Pannala.
3. Ekanayake Arachchige Indika
Thushara
(PC 907)
No. 84, Heartland Housing
Scheme,
Millennium City,
Kotugoda.
4. Lokupotha Gamayalage

Anton Wijayakumara

(PC 18022)

No. 3, 'Sadadana',

Panduwasnuwara,

Hettipola.

5. Samarakoon Herath

Mudiyanselage Nilu

Sudarma Samarakoon

(PC 36136)

Kaduruwella,

Wadakada.

6. Thennakoon Mudiyanselage

Gamini Vijitha Abeykoon

(PC 36039)

Hitinawatta, Kudagama,

Dombemada,

Rambukkana.

7. Gamaralalage Saman

Pushpakumara

(PC 36030)

'Desi Villa', Wathura, Kegalle.

8. Dissanayake Mudiyanselage

Jayasiri Dissanayake

(PC 28003)

Jaya Mawatha, Ihala Kagama,

Maradankadawala.

9. W.D.A.K. Weerasinghe

(PC 38724)

9/200, Welampela,
Arawatta, Mahiyanganaya.

10. S.D. Jayarathne Samarasinghe
(PC 34612)
No. 165, Behind Church, New
Town, Embilitpitiya.

11. Mahadewage Srilal Kumarasinghe
(PC 10083)
Aluketiya, Rathna Hangamuwa,
Rathnapura.

12. Thennakoon Mudiyansele
Anura Kumara Thennakoon
(PC 33655)
No. 167, Near the school,
Elapatha, Rathnapura

13. G.M. Nandana Leelarathna
(PC 38838)
No. 33/1, Malwatta, Godakawela.

14. Marasinghe Mudiyansele
Asanka Sudath Marasinghe
(PC 11115)
'Sisila', Makulugolla,
Meegahakiwula,
Badulla.

15. A.M. Viraj Lakmal
(PC 38854)

No. 13/D/1, Malawatta,
Godakawela,

16. W. Weerasinghe

(PC 36840)

Ulpatha Road, Alpitiya,
Godakawela.

17. Rajapaksha Mohottige Don

Pushpakumara

(PC 20527)

No. 33, Old Walpala Road,
Udawalawa.

18. Wijesundara Mudiyansele

Asanka Madawa Jayawardena

(PC 36126)

No. 133/E/1, Warapitiya, Near the
Temple, Kahawatta.

19. D.D.G. Weerakoon

(PC 38065)

Udakula Road, Bathgangoda,
Pelmadulla.

20. P.P. Dharmasiri

(PC 35975)

Galpaya, Pallebedda.

21. Kande Ranasinghe Lalith

Rathnasiri Ranasinghe

(PC 3150)

No. 502/19A, Colombo Road,

Rathnapura.

22. Ranasinghe Arachchilage Dinesh

Sumeda Ranasinghe

(PC 19125)

No. 51/B, Ulpatha Road,

Alpitiya, Godakawela.

23. Meepe Aththanage Chandana

Shirantha Perera

(PC 3478)

Samodaya Mawatha, Rilhena,

Pelmadulla.

24. Wanasuriya Koralalage Samantha

Wanasuriya

(PC 36923)

Halwinna,

Godakawela.

25. Ranasinghe Disanayakelage

Chaminda Priyankara

(PC 7424)

Nalanda Ellawala Mawatha,

Thiriwanaketiya,

Rathnapura.

26. Piyasenage Lionel Jayathilake

(PC 38025)

F15, Police Quarters, Maradana,

Colombo 10.

27. Herath Mudiyanseelage Nandana

Kumarasiri

(PC 15697)

No. 07/01, Wewelketiya, Bope,

Padukka.

PETITIONERS

-Vs-

1. Pujith Jayasundara,
Inspector General of Police,
Police Headquarters,
Colombo I.
- 1A. C.D. Wickramarathne
Inspector General of Police,
Police Headquarters,
Colombo 1.
2. Mr. P.H. Manatunga,
Chairman,
- 2A. Justice Jagath Balapatabendi,
Chairman,
3. Prof. S.T. Hettige,
Member,
- 3A. Indrani Sugathadasa
Member,
4. Savithri D Wijesekere,
Member,
- 4A. V. Shivagnanasothy,
Member,

5. B.A. Jeyanathan,
Member,

5A. T.R.C. Ruberu
Member,

6. Y. L.M. Zawahir,
Member,

6A. Ahamed Lebbe Mohamed Saleem
Member,

7. Tilak Collure,
Member,

7A. Leelasena Liyanagama,
Member,

8. Frank de Silva,
Member,

8A. Dian Gomes
Member,

8B. Dilith Jayaweera
Member,

8C. W.H. Piyadasa
Member,

**The 2A, 3A, 4A, 5A, 6A, 7A, 8A, 8B
and 8C RESPONDENTS all of:**

The Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.

9. Honourable Attorney General,
Attorney General's Department,
Colombo 12.

RESPONDENTS

BEFORE : **S. THURAIRAJA, PC, J,**
ACHALA WENGAPPULI, J. and
ARJUNA OBEYESEKERE, J.

COUNSEL : Shantha Jayawardhana with Chamara Nanayakkarawasam for the
Petitioners.
M. Gopallawa, SDSG for the Respondents.

WRITTEN SUBMISSIONS : Petitioner on 18th October 2021 and 21st January 2022.
Respondents on 31st March 2021 and 26th January 2022

ARGUED ON : 10th January 2022.

DECIDED ON : 5th May 2022

S. THURAIRAJA, PC, J.

At the time of institution of this action, all Petitioners were Police Constables. The 1st Respondent was the Inspector General of Police (IGP), the 2nd Respondent was the Chairman and the 3rd to 8th Respondents were members of the National Police Commission, all of whom have been substituted by the 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A, 8B, 8C Respondents in accordance with changes to the positions occurring subsequent to this application, as reflected by the amended caption filed by the Petitioners on 22nd

March 2021. The 9th Respondent is the Attorney General who has been made a party in compliance with the law.

The Petitioners instituted this action against the Respondents claiming a violation of the Petitioners' Fundamental Rights due to the promotion scheme adopted by the Respondents. The Court was inclined to grant Leave to Proceed in terms of Article 12(1) of the Constitution.

The Petitioners stated that they joined the Department of Police as Police Constables in the Regular Service and were serving in the same rank attached to police stations. The Petitioners' years of service as according to the Petition are such that as at 31.05.2018, the 1st Petitioner was in service for 22 years, the 2nd Petitioner for 19 years and 7 months, the 3rd, 16th, 22nd, 23rd Petitioners for 19 years, the 4th and 27th Petitioners for 17 years and 6 months, the 5th, 6th, 7th, 18th, 20th Petitioners for 21 years, 8th Petitioner for 28 years, 9th Petitioner for 16 years and 9 months, 10th and 17th Petitioners for 21 years and 6 months, 11th Petitioner for 17 years and 8 months, 12th Petitioner for 17 years and 5 months, 13th and 15th Petitioners for 16 years and 9 months, 14th Petitioner for 17 years and 10 months, 19th Respondent for 18 years and 11 months, 21st Petitioner for 19 years and 4 months, 24th Petitioner for 18 years and 9 months, 25th Petitioner for 18 years and the 26th Petitioner for 18 years and 11 months.

The Petitioners state that in terms of Article 155G of the Constitution, powers pertaining to appointment, promotion, transfer, disciplinary control and dismissal of Police Officers other than IGP is vested in the National Police Commission and that in regard to promotions of Police Constables, the 1st Respondent IGP is exercising the delegated powers of the National Police Commission.

The Petitioners stated that being Police constables, they were in the lowest rank of the Department and their next rank was the rank of Sergeant. During the subsistence of proceedings, it was brought to the attention of this Court that the 1st, 2nd, 3rd, 4th, 5th, 8th, 11th, 12th, 21st and 22nd Respondents were promoted to the rank of

Police Sergeant. The Learned Counsel for the Petitioners submitted that even though the abovementioned Petitioners were promoted they are contesting the effective date of the promotions. In these circumstances, objections and counter affidavits were filed before this Court.

The Petitioners state that as per their knowledge there has been no consistent criteria and policy with regard to making promotions to the rank of sergeant and mention mechanisms adopted in previous years based on an examination, interview, and subsequently for those with over 16 years of service (2006) and 20 years (2010) without interview or examination.

The Petitioners state that by RTM No. 772 dated 20.9.2016 (annexed as P3) , the 1st Respondent called for applications for promotion to the rank of Police Sergeant/ Women Police Sergeant based on period of service and merit. According to the criteria laid down in the said RTM, officers who had completed 15 years active period of service by 31.05.2016 and having unblemished service during the immediate 3 years were eligible to apply. As per the Petitioners, the said Promotion Scheme to promotions in 2016 (annexed as P4) allocated 70 marks for seniority and 30 marks for merit, the latter of which was given considering maximum of 5 marks each for the criteria of Special Educational Qualifications, Special Professional Qualifications, Service in Operational Areas prior to 01.06.2009, Special Skills, Medals, and the Interview. They state that in the maximum 5 marks of Special Professional Qualifications, 1 mark each was given for 1 year of service in 'Special Divisions', accordingly Special Divisions included 13 Divisions including the Presidential Security Division, Retired President's Security Division, Prime Minister Security Division, Ministerial Security Division, and Criminal Investigation Department.

The Petitioners state that this Promotion Scheme gave due weightage to seniority for period of service as the post of Constable is the lowest rank and that such preference for seniority is fair as otherwise officers with long periods of service would stagnate in the same lowest rank.

The Petitioners state that by RTM No. 442 dated 11.07.2018 (annexed as P5), the 1st Respondent called for applications from Police Constables/ Women Police Constables for promotion to the rank of Police Sergeant/Woman Police Sergeant. In terms of P5, the threshold qualifications for promotions included being confirmed in service, 10 years active period of service by 31.05.2018 and 3 years satisfactory service prior to 31.05.2018. This 10-year period is a reduction from the minimum period of 15 years in 2016 and 20 years in 2010.

The Petitioners state that this Promotion Scheme was also published on the Virtual Private Network (VPN) of the Police Department used by Police to distribute information within the Department through the internet.

As per the Petitioners, the Promotion Scheme adopted in 2018 (annexed as P6) allocated only 50 marks for seniority and 50 marks for merit. The former 50 marks were given by giving 4 marks for each 1 year of service, meaning that even an officer with 10 years service would be entitled to 40 of 50 marks for seniority and an officer with 12 and half years would obtain all 50 marks.

The Petitioners further state that in terms of Clause 2.2.12 of the said Scheme, maximum 10 marks were available for Special Professional Qualifications. Marks had been allocated considering 1 mark each for 1 year of service at 'Special Divisions', which consists of 19 such recognized divisions, 6 of which were not identified under the 2016 scheme.

The Petitioners state that on or about 01.12.2018 they became aware that by RTM No. 1003 dated 30.11.2018 (annexed as P7) issued by the 1st Respondent-IGP, it was informed that 1737 Police Constables have been promoted to the rank of Sergeant with effect from 31.05.2018. The said list of promotees had then been published on the VPN of the Police Department. The Petitioners state that in addition to the names of the said 1737 promoted officers, names of 46 officers who have been selected but listed in a waiting list pending the conclusion of court cases and disciplinary inquiries were also published. The Petitioners state that the Petitioners had not received

promotions to the rank of Sergeant. The Petitioners state that upon perusal of the said list of 1737 promotees, the Petitioners discovered that approximately 665 promotees are from the said 'Special Divisions' and are mainly from the Presidential Security Division, Retired President's Security Division and the Ministerial Security Division. The Petitioners state that they have become aware that most of the other promotees, though are presently serving in police stations or other divisions, have served in such Special Divisions for part of their period of service.

The Petitioners state that this scheme undermined seniority and has allowed junior officers to be promoted owing to service in Special Divisions. The Petitioners state that it is discriminatory to Police Officers serving at Police Stations and claims that the 1st- 8th Respondents have infringed the Petitioners' Fundamental Rights under Article 12(1). In terms of the date of promotions, the Petitioners sought direction of the Respondents to promote Petitioners to the rank of Sergeant with effect from 31.05.2018 and to declare the promotions granted to the rank of Police Sergeant as set out in P7 as null and void.

The Respondents agree in terms of the content of P5 and P6 but state that the Promotion marking scheme of 2016 was amended in 2018 to uplift the quality of the Police Service and introduced equal weightage to merit as well as seniority. It is stated that the Promotion Scheme was applied uniformly to ensure that officers who are not only experienced, but display knowledge and skill were promoted over those who possess only seniority, for best performance at the next rank. The Respondents state that this was a matter of Policy aimed at improving the efficiency of the Police Service.

The Respondents in their Written Submissions state that the Petitioners' claim is based solely on the promotion scheme of 2018 which the Petitioners admit to having been aware of on or about 11.07.2018. The Respondents state that as the Petitioners did not challenge the scheme until the application at Human Rights Commission on 17.12.2008, nearly 5 months from date of being aware of scheme, and as the

Petitioners did not raise objections at the stage of interviews, this application is time barred.

In this regard, The Petitioners state that the application is not time barred given that they were only aware of the preference to junior officers based on service at Special Divisions and alleged undermining of seniority upon examining the list of promotes, marked P7 on 1.12.2018. As such the Petitioners are of the view that the application has been made within the time limit given that the Petition was filed on 30.12.2018. Further, the Petitioners state that the marks allocated for the Petitioners were only disclosed upon filing this application by the document marked R annexed to the Affidavit of the 1A Respondent, which the Petitioners state was a decisive factor in the decision of Petitioners' promotions.

As this Court has previously enumerated numerous times, an application being time barred has dire consequences upon the same. As stated by the Judgement in **Demuni Sriyani De Soyza and Others v Dharmasena Dissanayake, Chairman, Public Service Commission and Others, S.C.F.R 206/2008 (S.C Minutes dated 9.12.2016)** by Hon. Justice Prasanna Jayawardena, PC:

"Article 126 (2) of the Constitution stipulates that, a person who alleges that any of his fundamental rights have been infringed or are about to be infringed by executive or within one month thereof apply to this Court by way administrative action may "... Within one month thereof..." apply to this Court by way of a Petition praying for relief or redress in respect of such infringement. The consequence of this stipulation in Article 126 (2) is that a Petition which is filed after the expiry of a period of one month from the time the alleged infringement occurred, will be time barred and unmaintainable. This rule is so well known that it hardly needs to be stated here."

In the instant case, It is to be noted that the basis of the Petitioner's application is the Promotion Scheme marked P5, which was communicated by RTM and P6 which

was published on the VPN Network of the Police Department specifically intended for use by police to distribute information within the Department. The Petitioners have only complained of unfairness of the promotion scheme following P7 wherein the Petitioners did not receive promotions. The promotion scheme has been applied uniformly to all applicants and promotions were given as according to the Scheme announced on 11.07.2018, over 4 and half months prior to the results as in P7 dated 30.11.2018. Thereafter, an additional month has elapsed in the Petitioner filing the Petition at this Court. As such, this application is time barred.

Additionally, I do not find any patent unfairness to the Promotion Scheme marked P6 as the objectives of this promotion scheme, as explained by the Respondents, are justified. Further, this Promotion Scheme has been applied uniformly to all applicants including the Petitioners.

As was stated by Hon. Sripavan CJ in **Wasantha Dissanayake and Others v Secretary, Ministry of Public Administration and others, SCFR 611/12 (SC Minutes 10.09.2015;**

“A scheme of recruitment once formulated is not good for ever; it is perfectly within the competence of the appropriate authority to change it, rechange it, adjust it and re-adjust it according to the compulsions of changing circumstances. The Court cannot give directions as to how the Public Service Commission should function except to state the obligation not to act arbitrarily and to treat employees who are similarly situated equally. “

As such, the Respondents are justified in introducing a promotion scheme different to that of the past as is suited to meet justifiable goals of the Police Force to the extent that all parties are treated fairly by such mechanisms.

In terms of matters to be considered in promotion schemes, the recent Judgement in the case of **Kaluwahandi Garwin Premalal Silva and Others v K. W. E. Karaliyadda and Others, bearing No. SC FR 383/2016, (Supreme Court minutes**

dated 16th December 2021) referred to the case of **A. H. Wickramatunga and three others Vs. H. R. de Silva and fourteen others SC (FR) 551/98 decided on 31-08-2001**, in which His Lordship Justice Fernando referred to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and stated:

"...[I]n a scheme of promotion based on 'Seniority' and 'Merit', sufficient weightage must always be given to 'Merit' based upon a proper assessment of actual past performance: efficiency, productivity, timeliness, accuracy, initiative, creativity, ability to work with others, co-operation etc. Article 7 of the International Covenant on Economic, Social and Cultural Rights recognizes the right to an "equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence."

As such, despite a change in the scheme, given that the requirements have stayed within the scope of seniority and merit, albeit with different weightage as required, there is no patent unfairness to this scheme.

The Petitioners received promotions soon after during the following year based upon a Scheme as suited to them on a time-based system favouring seniority as was preferred by the Petitioner. The Respondent has submitted that the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 10th, 11th, 12th, 14th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th Petitioners have subsequently been promoted to the rank of Police Sergeant with effect from 01.01.2019 under a time-based Promotion Scheme for officers in the post of Police Constable. The 16th and 17th Petitioners have been placed in the reserved list of promotees to the rank due to pending adverse reports against them. The Respondents particularly state that the promotions of the Petitioners cannot be antedated 31.05.2018 given that these promotions were granted under a Time-based Promotion Scheme as opposed to the 2018 Competitive promotion Scheme. I am inclined to agree with this view given that the Petitioners have received the promotion that they had originally claimed for by way of Petition.

To backdate the promotions and to alter promotions granted to the 1737 Police Officers who received promotions under the Scheme of 2018 would be to infringe upon the Fundamental Rights and Legitimate Expectations of those individuals, who have not even been made party to this case by the Petitioner. Additionally, The SDSG submitted before this Court that there is another Fundamental Rights Application before this Court which is severely affected if this application is granted, which has not been pleaded in the Petition.

As such, I find that the Fundamental Rights of the Petitioners as guaranteed by Article 12(1) of the Constitution have not been violated by the Respondents. I dismiss this application without costs.

Application dismissed.

JUDGE OF THE SUPREME COURT

ACHALA WENGAPPULI, J.

I agree

JUDGE OF THE SUPREME COURT

ARJUNA OBEYSEKERE, J.

I agree

JUDGE OF THE SUPREME COURT