

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 of
the Constitution of the Democratic
Socialist Republic of Sri Lanka

1. Janaka I. De A. Goonetilleke,
Assistant Superintendent of Police,
Sri Lanka Police College,
Elpitiya.
2. C.E. Wedisinghe,
Assistant Superintendent of Police,
No. 440, Union Place,
Ministerial Security Division,
Colombo 02.
3. S.P. Ranagalage,
Assistant Superintendent of Police,
D.I.G. Colombo Office,
Olcott Mawatha,
Colombo 11.
4. P. Chularatne de Silva,
Assistant Superintendent of
Police, No. 440, Union Place,
Ministerial Security Division,
Colombo 02. **and 18 Others**

Petitioners

Case No. S.C.(F.R) Application 308/2009 Vs.

1. Neville Piyadigama,
Chairman, National Police Commission
2. Ven. Elle Gunawansa Thero,
Member, National Police Commission
3. Justice Chandradasa Nanayakkara,
Member, National Police Commission

4. Nihal Jayamanne,
Member, National Police Commission
and 67 Others.

Respondents.

1. Quintus Raymond,
S.P. Vavuniya,
Senior DIG's Office, Police
Complex, Vavuniya
2. H.A. Prematilleke – S.P. (1)
S.P.'s Office,
Kalidasa Road,
Matara.
3. Neil D. Hettiarachchi,
S.P. - Crimes Division,
Police Headquarters,
Colombo 01.
4. Leslie Sarath Edirisuriya,
S.P. (1), S.P.'s Office, Gampaha.
5. P.A.L.K. Jayawardena,
S.P. Mannar, (Sectors 5,6,9,17),
Mannar Road,
'Murunkan.
6. Karavitage Ravindra,
S.P. - Colombo Crimes Division,
214, Kollonnawa Road, Dematagoda,
Colombo 02.
7. S.D.R.D. Chandrasinghe – S.P.
Teldeniya District, S.P.'s Office,
Teldeniya.
8. A.P. Sirikumara,
S.P. - Kelaniya (I)
S.P.'s Office, Peliyagoda.
9. M.D.U.S. Gunathillake – S.P.
Buildings Division, Police
Headquarters, Colombo 01.

10. S.C. Vidana Pathirana – S.P. (1),
S.P.'s Office, Galle.
11. J.A.P. Gaminie Perera - S.P. (1),
S.P.'s Office,
Mahara, Gampola.
12. H.M. Dharmasena – S.P. Horana,
S.P.'s Office,
Horana.
13. S. Anura Abeywickrema,
S.P. (III) Kelaniya,
S.P.'s Office,
Peliyagoda.
14. K.D.A. Weerasinghe – S.P. (II)
S.P.'s Office,
Kalutara.
15. D.W.M.R.N. Dassanaiake – S.P. (IV)
S.P.'s Office, Kegalle.
16. S.A.R.P. Jayatillake, - S.P.
Presidential Security Division,
President's House, Fort,
Colombo 01.
17. R.P. Harischandra Bandara,
S.P. Wennapuwa,
S.P.'s Office, Wennapuwa.
18. G.D. Stanislaus – S.P. -Director,
Police Academy in Service Training
Attidiya, Dehiwala.
19. H.M.A. Manage – S.P.,
Prime Minister's Security Division,
150, R.A. De Mel Mawatha,
Colombo 03.

Intervient -Petitioners
seeking intervention by
Petition dated 02.02.2010

AND

1. W.L.A.S. Priyantha,
Senior Superintendent of Police,
(Director-Supplies),
Police Headquarters,
Colombo 01.
2. W.K.N.D. Silva,
Senior Superintendent of Police,
No. 360/1, Hospital Road,
Kalubowila.
3. R. Kodituwakku,
Senior Superintendent of Police,
No. 26/1, Templers Road,
Mt-Lavinia.
4. P.P.S.M. Dharmarathna,
Senior Superintendent of Police,
Panadura Road, Rambukkana,
Bandaragama.
5. W.K. Jayalath,
Senior Superintendent of Police,
No. 03, Udawalpola,
Kurunegala.
6. M. Don Rajitha Sri Daminda,
Senior Superintendent of Police,
No. 84/08, Kongahahena, Gothatuwa
New Town, Gothatuwa.
7. G.S.Walgama,
Senior Superintendent of Police,
Director, Buildings,
Police Headquarters, Colombo 01.
8. T. Ganeshanatha,
Senior Superintendent of Police,
Director, Organized Crimes and Vice
Division, Police Headquarters,
Colombo 01.
9. D. Gajasinghe,
Superintendent of Police, No. 125/6,
Kandewatte Road, Nugegoda.

10. W.N.S.W. Wickramasinghe,
Superintendent of Police,, No. 16,
Dalada Watte Road, Wadduwa.
11. A.K. Samarasekera,
Superintendent of Police,
Director, Information Technology
Division, Personal Assistance to
Senior D.I.G. (Administration and
Elections), Police Headquarters,
Colombo 01.
12. V.P.C.A. Siriwardane,
Superintendent of Police,
No. 101/01, Senior Police Officers'
Quarters, Kew Road, Colombo 02.
13. D.R. Lalan Ranaweera,
Superintendent of Police,
No. 111/2, Molpe Road, Katubedda,
Moratuwa.
14. L.P.S.P. Sandungahawatta,
Superintendent of Police,
Superintendent Division,
Parliament.
15. K. Ajith Rohana,
Superintendent of Police,
Police Headquarters,
Colombo 01.
16. K.P.P. Fernando,
Superintendent of Police,
No. 132/A/3, Fantasy Garden,
Kahathota Road, Malabe.
17. W.M.M. Wickremasinghe,
Superintendent of Police,
Presidential Security Division,
Janadhipathi Mawatha, Colombo 01.
18. K.P. Mahinda Gunarathna,
Superintendent of Police,
Presidential Security Division,
Janadhipathi Mawatha, Colombo 01.

19. L.K.W.K. Silva,
Superintendent of Police,
No. 73/A, St. Maris Road,
Uswetakeyawa.
20. A.H.M.C.K. Alahakoon,
Superintendent of Police,
No. 24/4, Club Road,
Kegalla.
21. L.H.G. Cooray,
Superintendent of Police,
Sri Lanka Police College,
Kalutara.
22. P.S.R. Dayananda,
Superintendent of Police,
Central III, Colombo D.I.G. Office,
Colombo 01.

Intervient-Petitioners
Seeking Intervention by
Petition dated 08.06.12.

BEFORE : K. Sripavan, J.
S. Hettige, P.C., J.,
P. Dep, P.C.,J.

COUNSEL : Manohara de Silva, P.C. with Pubudini
Wickremaratne for the Petitioners
Upali de Almeida for the parties
seeking to intervene by Petition dated
02.02.10.
Roshan Hettiarachchi for the parties seeking
to intervene by Petition dated 08.06.12
Uditha Egalahewa, P.C. for the
9th Respondent.
Viveka Siriwardena, S.S.C. for the Attorney-
General

ARGUED ON : 27.11.2013

WRITTEN SUBMISSIONS

FILED : By the Petitioners on 13.01.2014
By the parties seeking to intervene on
10.12.2013 & 17.12.2013
By the 9th Respondent on 08.01.2014

DECIDED ON : 30.01.2014

K. SRIPAVAN, J.

On 27.11.2013 Mr. Upali de Almeida and Mr. Roshan Hettiarachchi supported two applications to intervene in this matter. Mr. Manohara de Silva, President's Counsel for the Petitioners, Mr. Uditha Egalahewa President's Counsel for the 9th Respondent and Ms. Viveka Siriwardene, Senior State Counsel for the Attorney-General objected to the intervention sought by the parties by their petitions dated 02.02.2010 and 08.06.2012.

Mr. Upali de Almeida submitted to Court that the 9th Respondent unknown to the parties seeking to intervene in this application was appointed to the rank of Superintendent of Police Grade I as apparent from T.M. 831 dated 20.03.2009 marked **P10** with effect from 22.05.2005. It is to be noted that having filed the intervention papers on 02.02.2010, no steps were taken to support the application for intervention until 16.03.2012. The delay of more than two years to

support the application for intervention cannot be condoned, even if this Court has a discretion to grant relief.

Learned President's Counsel for the Petitioners, learned President's Counsel for the 9th Respondent and the learned Senior State Counsel for the Attorney-General strongly objected to the intervention on the basis that papers seeking to intervene have not been filed within the period of one month set out in Article 126(2) of the Constitution.

The original petition was filed by the Petitioners on 20.04.2009 seeking a declaration, inter alia, that the backdating of the promotion of the 9th Respondent to the rank of Assistant Superintendent of Police with effect from 05.11.1993 was null and void. The petition was subsequently amended after obtaining permission from Court and without any objection from the Respondents. The amended petition filed on 19.07.2011, amongst others, contained the following two reliefs in paragraphs (h) and (m) of the prayer to the said petition:

- (h). make order backdating the promotion of the Petitioners to the rank of Assistant Superintendent of Police with effect from 05.11.93.
- (m). make order directing the 62nd to 70th Respondents to promote the Petitioners to the rank of Superintendent of Police – Grade I with effect from 22.05.05.

Mr. Upali de Almeida contended that intervention would not be sought

if the Petitioners did not pursue the relief of having themselves promoted as per prayer contained in (h) and (m) of the amended petition. In fact, in paragraph 19 of the written submissions filed by the parties seeking to intervene, it is stated as follows:-

“19. If Your Lordships' Court grants the Petitioners' promotions as claimed by them, then the Petitioners would be promoted over and above all the Intervenient Petitioners causing a further anomaly to the said Intervenient Petitioners. As these promotions are then caused consequent to the judgment in this Application, in the circumstances, the Intervenient Petitioners would be afforded no remedy in respect of the malady suffered by them. Once Your Lordships' Court makes an order on this Application promoting the Petitioners, then it would be too late in the day for the Intervenient Petitioners to seek any relief from Your Lordships' Court.”

After the final hearing and determination, in the event, the Court decides to grant the reliefs sought by the Petitioners in paragraphs (h) and (m) of the prayer to the petition, then it would become a judicial order made by Court in the exercise of its fundamental rights jurisdiction. It will never be an “executive or administrative act” which is said to constitute the infringement or the imminent infringement as the case may be of the fundamental rights of those who are now seeking to intervene. This Court cannot give relief under Article 126 of the Constitution in respect of a judicial act performed by it.

On the other hand, if the Court decides that the appointment sought by the Petitioners is in violation of the Establishments Code or any other applicable provisions of the law, it will not grant the relief sought by the Petitioners and will make order accordingly.

Learned Counsel relied on the case for *Abayadeera and 162 Others Vs. Dr. Stanley Wijesundera, Vice Chancellor, University of Colombo (1983) 2 S.L.R. 267* and argued that parties be permitted to intervene in this application. It must be noted that *Abayadeera's* case was a writ application where the Petitioners sought a writ of mandamus on the Respondents to compel them to hold the 2nd MBBS Examination. It may be appropriate to reproduce the observation made by Fernando J. in the case of *Gamaethige Vs. Siriwardena (1988) 1 S.L.R. 384 at 399*.

“It is useful to appreciate that the remedy under Article 126(2) cannot be equated to the prerogative writs. Whether an applicant for the latter remedy has a right or a duty to exhaust administrative remedies, or whether the Court has a discretion to withhold relief where an applicant has failed to seek a possibly more convenient or expeditious remedy, or whether the pursuit of an administrative remedy is an adequate excuse for delay, may all be questions relevant to the grant of the prerogative writs; but they have no bearing on Article 126. The conferment of exclusive jurisdiction on this Court and the imposition of a time-

limit is consistent with the need for the prompt invocation of the jurisdiction of this Court.”

Thus, it would be seen that one cannot equate a writ application to that of a fundamental right application and that the time limit of one month prescribed by Article 126(2) has always been treated as mandatory. The remedy under Article 126 must be availed of at the earliest possible opportunity, within the prescribed time and if not so availed of, the remedy ceases to be available. However, if a petitioner establishes that he became aware of an infringement not on the very day the act complained of was committed but only on a later date, then, in such an event, the said period of one month will be reckoned only from the date on which the Petitioner did in fact become aware of such infringement. [Vide *Edirisuriya Vs. Navaratnam and Others* 1985 1. S.L.R. 100]. Time begins to run when the infringement takes place and not from the date on which the Petitioners sought relief from this Court.

The second case relied on by the learned Counsel was the case of *Abayadeera Jayanetti Vs. The Land Reform Commission and Others* 1984 (2) S.L.R. 172. I must emphasize that Jayanetti's case did not involve the question of intervention sought by various parties. The Petitioner himself filed a list of persons whose evidence would be required by him and prayed for notice on them. After hearing submissions of Counsel, the Court directed that the persons named in the list be added as parties and time was given to these added parties to file whatever papers they wished. In the present application, however,

the petitioners did not seek permission of Court to add anyone as Respondents; instead they objected to the applications filed by all those who are seeking to intervene in this application. Both cases cited by the Learned Counsel are of no relevance.

Mr. Roshan Hettiarachchi too supported for intervention in respect of the petition filed on 08.06.2012. The parties referred in the said petition sought intervention on becoming aware of the relief prayed for by the Petitioners. (Vide paragraph 6 of the Written Submissions filed on 17.12.2013). Counsel submitted that the promotions of the 9th Respondent is in direct contravention of the scheme of promotion applicable to Police Officers and such an appointment affects both the rank and seniority of the Petitioners now seeking to intervene in this application. One does not know the date on which the parties seeking to intervene became aware of the reliefs prayed for by the Petitioners. In any event, fundamental rights are guaranteed against the State and have nothing to do with rights of individuals inter se. Thus, the relief prayed for by the Petitioners cannot form the basis or the source of discrimination.

The power of this Court to allow intervention and to make any such direction stems from the proof of infringement of a fundamental right. In order to sustain the plea of discrimination based upon Article 12(1) the parties seeking to intervene have to satisfy Court the violation of the fundamental right by executive and/ or administrative action and must come to Court within a period of one month from such

infringement. If the parties seeking to intervene fail to bring this case within Article 126(2), they could not be allowed to intervene. It may be relevant to reproduce the observation made by Fernando, J. in Gamaethige's case (supra) at page 397.

*In Hewakuruppu v. de Silva (3) the Tea Commissioner had refused the petitioners application for a subsidy on 18.10.83; he did not apply to this Court under Article 126(2) within one month, and on 13.7.84 appealed to the Tea Board. In that appeal reference was made to instances where other persons, similarly situated, had allegedly been granted subsidies; thus the petitioner had knowledge. before 13.7.84, of the acts by comparison to which he had been subjected to unequal treatment. The decision of the Tea Board refusing relief was received by the petitioner on 4.9.84, and application to this Court was made on 4.10.84. It was urged in that case that the petitioner was entitled to exhaust administrative remedies before invoking the jurisdiction of this Court, and that Article 126 should be liberally interpreted. **Although a strong case was established of unequal treatment, the Court nevertheless did not grant any relief as the petition was not filed in time.**"*
(emphasis added)

While the time limit is mandatory, in exceptional circumstances, this Court has a discretion to entertain an application, if there is no lapse, fault or delay on the part of the parties seeking to intervene. The

Constitution provides for a definite and expeditious remedy, in the highest Court of the land to be granted according to law and not subject to any uncertain discretion. One cannot sleep over one's rights and thereafter seek to intervene in this application in order to bypass the mandatory time limit imposed by the Constitution. In *Seneviratne Vs. Tissa Dias Bandaranayake and another* (1999) 2 S.L.R. 341 at 351, Amerasinghe, J. commented that -

*“If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, **nam leges vigilantibus, non dormientibus, subveniunt**, and for other reasons refuses to assist those who sleep over their rights and are not vigilant.”*

The parties seeking to intervene in this application by Petition dated 08.06.2012 have failed to establish to the satisfaction of Court that intervention papers were filed within time. The following dates are relevant to consider, the application for intervention:-

- (a) The 9th Respondent was promoted to the rank of Superintendent of Police, by notice dated 20.03.2009;
- (b) The Petitioners filed this application on 20.04.2009; and
- (c) The petition seeking to intervene was filed on 08.06.2012.

Considering the dates, I am not inclined to exercise any discretion in favour of the parties seeking to intervene especially when such

intervention is sought almost three years after the petitioners invoked the jurisdiction of this Court.

The intervention sought in terms of the petitions dated 02.02.2010 and 08.06.2012 is accordingly refused. There will be no costs.

JUDGE OF THE SUPREME COURT.

S. HETTIGE, P.C., J.,

I agree.

JUDGE OF THE SUPREME COURT.

P. DEP, P.C., J.,

I agree.

JUDGE OF THE SUPREME COURT.

