

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

SC /FR/ Application No 188/2010

1. P.D.W.K Chandrarathne,
G/16, Field Force,
Head Quarters,
Colombo 05.
2. N.A. Amarasena,
Welfare Division,
Colombo 01.
3. U.J. Dangalle,
11/A, Bogodawaththe,
Palugama, Dompe.
4. K.W.M. Chandrasiri,
18.1, Uruwala,
Nedungamuwa.
5. A.M. Ranita Fernando,
521/28, Hibe Garden,
Artigala Road, Meegoda.
6. N.G.G. Nikathanne,
Crime Division,
Police Headquarters, Colombo 01.
7. K.R.M. Menike,
Children and Women Bureau,
Colombo 01.
8. D.M. Gunarathne,
5/32, Sarammudali Mawatha,
Weliweriya, Matara.

9. K.H.R. Kariyawasam,
“Senasuma”Edandawila Watta,
Wanala, Kananke.
10. L.K. Dharmasena,
B221, 2nd Cross Street,
Walpola Matara.
11. A.A.L. De. Alwis,
2B, Police Headquarters,
Colombo 05.
12. M.W. Upali Ranjith,
B10, Police Headquarters,
Colombo 05.
13. N.P. Jayarathne,
E10, Police Headquarters,
Colombo 05.
14. M.E.M. Keerthirathne,
G3, Police Headquarters,
Colombo 05.
15. H.D.C.S. Satharasinghe,
232, Pallegama,
Pepiliwala.
16. M.A.Laxman,
Batuwita Watte, Batuwita,
Thihagoda, Matara.
17. P.L.A.J. Gunawardena,
P18, Police Quarters,
Ampara.
18. N.D. Darmasiri,
N1/10, Anderson Flats,
Narahenpita.

19. S. Anura Lalith,
237/39, Moratwahena Road,
Athurugiriya.
20. M. Ranathunga,
71, Sri Gnanarathana Mawatha,
Peliyagoda
21. M. Karunathilake,
67, Lak Sewana, Kirigam Pamunuwa,
Polgasovita.
22. W.G.Rupasinghe,
49/5B, Amunugoda,
Imbulgoda.
23. K. A. Karunathilaka,
162, Raddalgoda,
Kelaniya.
24. S.A.J.Suraweera,
120/1, Simbiragemulla,
Nadungamuwa.
25. D.A.K. Jagathsiri,
309/1, Gammanawaththa,
Raigama, Bandaragama.
26. G.J. Gunawadena,
Thimbiriya, Kalapugama,
Moronthuduwa.
27. W.P.L. Senevirathne,
No. 1, Police Quarters,
SLPC, Kaluthara.
28. B.G.R. Perera,
25, Welithuduwa,
Waththala, Gamagoda Road,
Kaluthara South.

29. R. Ariyathne,
G 4, Police Quarters,
Maradana.
30. S.P. Thilakarathna,
No. 13, Police Quarters,
SLPC, Kaluthara.
31. P.K.C.R. Bodinagoda,
Bodinagoda Awththa,
Yalegama, Induruwa.
32. D.M.P.S. Bandaranayake,
555/3/2, Police Quarters,
Negombo Road, Wattala
33. K.G.A. Gunawardena,
SLPC, Kaluthara.
34. L.G. Sarath,
H8, Police Quarters,
Colombo 5.
35. H.P.S. Nanayakkara,
Police Quarters,
Kegalla.
36. A. Upali Jayathissa,
G 15A, Galkotuwa Waththa,
Amunugama, Kiriwadunna.
37. R.M. Dayapala,
513, Anwarama,
Mawanella.
38. H.M.N. Herath,
Ambasewana, Alkegama,
Makemelwala, Mawanella.

39. K.P. Lal Thilakasiri,
E 24, Kondagala,
Nelundeniya.
40. J.C. Weerathunga,
120/2/A, Pinnawala Road,
Madapatha, Piliyandala.
41. Piyaseeli Yahangoda,
267, Godagama Road,
Athurugiriya.
42. K.W.Wijewardena,
Ihalagama,
Kannanthota.
43. D.G. Badugamahewa,
“Sampatha” Berilwaththa,
Halpathota, Baddegama.
44. E.M.S. Kumarasena,
16/2, Pahalaweediya waththa,
Yakkala.
45. M.G. Thilaknanda,
2/1, Wekanda Road,
Homagama.
46. A. Jayawardena,
N 2/6 Anderson Flats,
Narahenpita.
47. B.M.N. Hemachandra,
13, Police Quarters,
Mihindu Mawatha, Colombo 12.
48. C.R.K.Deheragoda,
202D, Aluthgama,
Bogamuwa, Yakkala.

49. S.M. Punchibanda,
510/C, Makola North,
Makola.
50. U.L.S.N. Perera,
15/40, Weediawatta,
Udugampola.
51. L.U. Lakshmi,
56-1/4, Police Quarters,
Modara, Colombo 15.
52. K.A.C. Damayanthi,
Rerukana Road, Weedagama,
Bandaragama.
53. R.K. Sisira,
RP-966, Rajapaksa Pura,
Seeduwa.
54. Y.R.J.C. Kumarasena,
16/3, Wijayaba Mawatha,
Nawala Road, Nugegoda.
55. P.P. Yasawathi,
2/5, 2/1 Police Quarters,
Cinnamon Gardens.
56. M.G. Pemasiri, C/O,
A/OIC, Wijewardena Hall,
University of Peradeniya.
57. R.P. Jayalath,
“Amara” Maramba,
Akuressa.
58. S.K.S. Wijewardena,
B 34/8, Henepola, Pathampitiya,
Rambukkana.

59. D.L. Lal Ranjith,
"Chandra Niwasa"
Radawana.
60. K.U. Dharmadasa,
"Pushpa" Dambaliyadda,
Bamunakotuwa.
61. J. Randenigala,
In front of Temple, Kurundugasmanana,
Kamburawela, Badureliya.
62. K.M. Premasundara,
11/6, Puranavihara Road,
Colombo 06.
63. S.M. Justin,
Criminal Record Division,
Colombo 07.
64. W.A.W.P.I. Wickramasinghe,
Criminal Record Division,
Colombo 07.
65. S.M.D. Padmini,
Criminal Record Division,
Colombo 07.
66. S. Wannigama,
Criminal Record Division,
Colombo 07.
67. A.H.N. Nazeera,
Criminal Record Division,
Colombo 07.
68. C.M.W. Chandrasekara,
Criminal Record Division,
Colombo 07.

69. H.A. Ramani Lalani Dias,
Criminal Record Division,
Colombo 07.
70. M.H.Sunil,
Criminal Record Division,
Colombo 07.
71. J.D. Samarawickrama,
Criminal Record Division,
Colombo 07.
72. H.K. Menike,
Criminal Record Division,
Colombo 07.
73. D.M.L. Senanayaka,
Criminal Record Division,
Colombo 07.
74. A.E.A.P Sunil Jayarathne,
13, Police Quarters,
Mathara.
75. M. Jayasinghe,
43A, Gemunupura,
Ampara.
76. R.A.K.M.S. Ruwanwella,
170/25, Dharmasena Mawatha,
Lewlla, Kandy.
77. S.P. Piyasena,
40K, Galoluwa,
Nedungamuwa.
78. P.K. Sumanasena,
2, Police Quarters,
Beach Road, Matara.

79. V.L. Gunapala,
"Thilina" Dikdenipotha,
Makandura, Mawarala.
80. K.W. Perera,
112/A/12, Samaranayaka Mawatha,
Alubomulla.
81. R.A. Jayantha Malani,
104/188A, Hikgahalanda,
Kalagedihena.
82. M.C. Sunanda Wijerathna,
571,3, Gangarama Road,
Werahera, Boralesgamuwa.
83. M.M.K. Bandara,
"Chandrawasa" Kudamaduwa Junction,
Kottawa Road, Siddhamulla.
84. K.P.W. Renuka De. Silva,
386F, Koshinna,
Ganemulla.
85. A.P.D. Kalyani,
H 11/11, Police Quarters,
Borella.
86. I.S. Karunanayaka,
681/3, Kongahagedara,
Kuliyapitiya.
87. M.G. Kirihamine,
C4, Police Quarters,
Slave Island.
88. M.C.A. Saleem,
22/B, Nagoor Lane,
Saibu Road, Kalmunai.

89. C. Thasim,
56-2/1, Police Quarters,
Modara.
90. B.W.A.R. Ramyasiri,
Morena, Yakkala.
91. S.D.N.A.M. Weerasinghe,
“Madusewana” Pepiliyawala Watta,
Kuda Galgamuwa.
92. T.M.N. Bandara,
151/4, Galle Road,
Colombo 03.
93. Upali Hapuarachchi,
65/4, Mulgampola,
Kandy.
94. N.P. Upali De. Silva,
34, Samagi Pedesa,
Bandiwewa, Polonnaruwa.
95. S. Serasinghe,
1/13, Dematagolla,
Katugasthota.
96. T.R. Cunchir,
50/1, De Zoyza Road,
Idama, Moratuwa.
97. W.M.R.L.S. Halangoda,
132/A, Sri Sumangala Mawatha,
Aluviharaya, Matale.
98. A.G. Wekadapola,
Seed Store Road,
Katugasthota.

99. Y. Somasiri,
2/2, Police Quarters,
Baron Jayathilaka Mawatha, Maligawatta.
100. W.M. Abeyrathne,
106, 20th Lane, 2nd Step, Dikhenapura,
Horana.
101. U.A. Wanaguru,
40, Akkarapaha, Samagi Mawatha,
Wethara, Polgasovita.
102. V. Raveendran,
57/1-3/4, Mawila Lane,
Colombo 09.
103. W.A.N. Wikramasinhe,
23/24, Makulugahawatta,
Ambalangoda, Polgasovita.
104. P.C. Pathirana,
259/A, Kanatta Road,
Pore, Athurugiriya.
105. M.A. Ranjith,
Gepallawa Road,
Amunugama, Pothuhera.
106. C.J. Alahakoon,
103/13, Kuda Aduwa,
Honnanthara South, Piliyandala.
107. M.H.S. Mohomad,
555/3/2, Negombo Road,
Wattala.
108. K.D.P. Peiris,
53-E, Midellamulahena,
Munagama, Horana.

109. M.A. Somarathna,
Munella Watta, Hiththetiya West,
Matara.

Petitioners

Vs,

1. Mahinda Balasuriya,
Inspector General of Police,
Police Head Quarters,
Colombo 01.
- 1A. N.K. Illangakoon,
Inspector General of Police,
Police Head Quarters,
Colombo 01.
- 1B. Pujith Jayasundara,
Inspector General of Police,
Police Head Quarters,
Colombo 01.
2. Gotabaya Rajapakse,
Secretary, Minister of Defence,
Public Security, Law and Order,
No.15/5, Baladaksha Mawatha,
Colombo 03.
3. Hon. the Attorney General,
Attorney General's Department,
Colombo 12.
4. J.A.S.K. Jayakody,
Crimes Division,
Police Head Quarters,
Colombo 01.
5. D.S.K. Hettiarachchi,
Crimes Division,
Police Head Quarters,
Colombo 01.

6. Osman Perera,
Welfare Division,
Police Head Quarters,
Colombo 01.
7. K.A.P. Chandrathilake,
Welfare Division,
Police Head Quarters,
Colombo 01.
8. P.M.P. Kumara,
Welfare Division,
Police Head Quarters,
Colombo 01.
9. M.D. Karunasena,
Welfare Division,
Police Head Quarters,
Colombo 01.
10. K.G.P. Mallika,
Welfare Division,
Police Head Quarters,
Colombo 01.
11. S.A.S. Senadheera,
Legal Division,
Police Head Quarters,
Colombo 01.
12. M.P.M. Dias,
Welfare Division,
Police Head Quarters,
Colombo 01.
13. Gangani Wijsekera,
Welfare Division,
Police Head Quarters,
Colombo 01.

14. G.H.S. De. Silva,
Police Station,
Kantale.
15. S.H. Dharmasiri,
Police Station,
Kantale.
16. U.M. Gunaratne,
Police Station,
Kantale.
17. N.P. Galagedara,
Police Station,
Kantale.
18. Dayasiri Fernando,
Chairman,
19. Palitha M. Kumarasinghe,
Member,
20. Sirimavo A. Wijeratne,
Member,
21. S.C. Mannapperuma,
Member,
22. Ananda Seneviratne,
Member,
23. N.H. Pathirana,
Member,
24. S. Thillanadarajah,
Member,
25. M.D.W. Ariyawansa
Member,

26. A. Mohomed Nahiya,
Member,

18th to 26th Respondents all at:

No.177, Nawala Road,
Narahenpita.

27. Siri Hettige,
Chairman,
National Police Commission,
Block No.09, BMICH Premises,
Buddhaloka Mawatha,
Colombo 07.

28. P.H, Manatunga,
Member

29. Savithree Wijesekara,
Member

30. Y.L.M. Zawahir,
Member

31. Anton Jeyanadan,
Member

32. Tilak Clooure,
Member

33. Frande Silva
Member

28th 33rd Respondents:

National Police Commission,
Block No.09, BMICH Premises,
Buddhaloka Mawatha,
Colombo 07.

Respondents

Before: **Justice Vijith K. Malalgoda PC**
 Justice Murdu N.B. Fernando PC
 Justice S. Thurairaja PC

Counsel: Manohara de. Silva, PC with Hirosha Munasinghe for the
 Petitioners
 Rajiv Goonetillake, SSC for the Attorney General

Argued on: 04.06.2019

Judgment on: 04.09.2019.

Vijith K. Malalgoda PC J

Petitioners to the present application were Sub-Inspectors of Police at the time the application was filed before the Supreme Court. When filing the application before the Supreme Court, the Petitioners alleged that their Fundamental Rights guaranteed under Article 12 (1) of the Constitution had been violated by the 1st and the 2nd Respondents, by appointing the 4th to the 17th Respondents as Inspectors of Police who do not have the 08 years of service in the rank of Sub-Inspector as required by circular RTM 252 dated 08.02.2010.

As submitted by the Petitioners, all 109 Petitioners had joined the regular force of the Police Department as Police Constables at various points and were promoted in their ranks and finally promoted to the rank of Sub-Inspector of Police between 23.02.2002 and 28.02.2006.

Out of the 109 Petitioners before the court, except for 8th, 14th, 20th, 23rd and 29th Petitioners, all the other Petitioners had received their promotions to the rank of Sub-Inspector by way of a "Time promotion scheme" dated 23.02.2006.

By circular dated 24.02.2006 a scheme was introduced for the absorption of Reserve Police Officers into the regular cadre with effect from 24.02.2006.

With regard to the calculation of seniority of the reservists who had been absorbed into the Regular Service, the Petitioners, relied on two documents which were produced marked D and F to the petition, and submitted that,

according to paragraph 5 of document D (IG's circular 24.02.2006)

“The Reservists who are absorbed will be placed in their seniority just below their counterparts of the Regular Cadre in the respective years in which they have been enlisted and also as per the date on which they have been promoted to the respective ranks”

and also according to sub paragraph (i) of National Police Commission letter dated 2nd August 2007 addressed to IGP produced marked F,

“Seniority of officers in their respective ranks shall be determined from the date of absorption; and they will be placed junior to all officers of the Regular Police Service on that date”

Whilst relying on the above provisions in the absorption circular and the NPC decision, the Petitioners argued before this court that the Reserve Sub-Inspectors who were absorbed into the Regular Service based on the above circular will be placed junior to all officers in the Regular Force as at 24.02.2006. The Petitioners further relied on a telephone message sent on 02.08.2007 from the Inspector General of Police (TP-100), where both these appointments namely the time promotions given to the Petitioners and absorption of the 4th -17th Respondents had been back dated as follows;

- a) Absorption of reserve officers to the permanent cadre on 24.02.2006 to be backdated with effect from 01.02.2006 and
- b) Time promotions given with effect from 23.02.2006 to be back dated from 01.01.2006

and further submitted that the reason behind the said message was to keep the seniority of those who received time promotions, above those who were absorbed from the reserve cadre.

During the argument before this court the Petitioners brought to our notice of the Supreme Court decision in ***SC FR 650/2003 Manneththiyalage Pradeep Priyadarshana and 20 others Vs. Ranjith Abeyhuriya Chairman National Police Commission and 8 others*** SC minute dated 05.07.2006 and heavily relied on the following passage of her Ladyship Shirani Bandarayake's judgment in the said case,

“On a careful comparison of the characters of the Reserve Police Force and the Regular Police Force, on the basis of the aforementioned analysis, it is evident that they belong to two different categories without any rational nexus to link the two groups for the purpose of putting them together.

In such circumstances, it is abundantly clear that the officers of the Regular Force and the Reserve Force belong to two different categories and therefore the decision of the Respondents to include clause 2.I.III in the undated circular P-1 cannot be regarded as unequal, unfair, arbitrary or violative of the Petitioners fundamental rights guaranteed in terms of Article 12 (1) of the Constitution”

As observed by this court, the crux of the argument raised on behalf of the Petitioners were that, there was a difference between the officers of the Regular Force and Reserve Force of the

Police Department which is acknowledged by the department itself and the fact that telephone message 100 was sent from the Inspector General’s Office was a clear indication of this difference.

Whilst challenging the above position taken by the Petitioners, the 1st and 2nd Respondents explained the difference between the Reserve Service referred to in the Supreme Court decision in ***Manneththiyalage Pradeep Priyadarshana and 20 others Vs. Ranjith Abeysuriya Chairman National Police Commission and 8 others*** and the reserve officers referred to in circular RTM 252 dated 08.02.2006.

The attention of this court was drawn to a Cabinet Memorandum submitted by the then President, as the Minister of Defence and Law and Order where it was recommended to the Cabinet that,

“වර්තමානයෙහි පොලිස් දෙපාර්තමේන්තුවට බඳවා ගනු ලබන සියළු උප සේවා නිලධාරීන් පොලිස් නිලධාරීන් නිත්‍ය සේවයට බඳවා ගැනීමේ සුදුසුකම් වලට සමාන අධ්‍යාපනික හා කායික සුදුසුකම් අනුව බඳවා ගනු ලැබේ.

තවද නිත්‍ය සේවා නිලධාරීන්ගේ තනතුරට නියමිත වැටුප හා සමානව වැටුපක් උප සේවා නිලධාරීන්ටද හිමිවේ.

ඉහත කරුණු සලකා බැලීමේදී, පොලිස් සේවයේ නිත්‍ය සේවය හා උප සේවය වශයෙන් කාණ්ඩ දෙකකින් නිලධාරීන් බඳවා ගැනීම වෙනුවට, සුදුසුකම් ලත් සියළුම උප සේවා පොලිස් නිලධාරීන් නිත්‍ය සේවයට අන්තර්ග්‍රහණය කිරීම සුදුසු බවට නිරීක්ෂණය වී ඇත. තවද මෙම නිලධාරීන්ට වැටුප් ගෙවීමේදී හා අනෙකුත් වියදම් දැරීමේදී අමතර වැය බරක් පොලිස් දෙපාර්තමේන්තුවට දැරීමට සිදු නොවනු ඇත. මේ සමගම ඉදිරියෙහිදී උප සේවය අහෝසි කිරීමට කටයුතු කෙරෙනු ඇත.

ඒ අනුව:

පොලිස් නිත්‍ය සේවයට බඳවා ගැනීමේ දී සැපිරිය යුතු සියළු සුදුසුකම් සපුරා ඇති සියළුම නිලයන්හි උප සේවා පොලිස් නිලධාරීන්, නිත්‍ය සේවයට අන්තර්ග්‍රහණය කිරීම සඳහා අමාත්‍ය මණ්ඩලයේ අනුමැතිය අපේක්ෂා කරමි.”

The Petitioners have submitted the corresponding Cabinet decision marked F before this court.

Whilst submitting the above Cabinet Memorandum the 1st and 2nd Respondents have taken up the position that, those who will be absorbed to the permanent cadre under the said Cabinet decision have to satisfy that they possess all the requirements necessary to join the Regular cadre, if they are to be absorbed to the Regular cadre on their qualifications. Those who does not possess the basic academic qualifications need to serve 8 years in the Reserve cadre to become eligible to be absorbed into the Regular cadre (R-2, and D)

In the circumstances it is clear from the documents produced before this court marked R-2 and R-3 by the Respondents that, the absorption of the Reserve officers to the Regular cadre were based on two criterias' namely,

- a) Those with required educational qualifications
- b) Those with 8 years' service

And therefore it is not correct to say that the rational identified by her Ladyship Justice Shirani Bandaranayake in the case of ***Manneththiyalage Pradeep Priyadarshana and twenty others Vs. Ranjith Abeysuriya Chairman National Police Commission and 8 others*** had been violated by the 1st and the 2nd Respondents in the present case. As observed by this court, those who did not possess the required educational qualifications were clearly identified as a different category without putting them together with those who had the required educational qualifications to be absorbed into the permanent cadre.

As further revealed before this court, the 4th to the 17th Respondents had joined the Reserve cadre of the Police Department as Sub-Inspectors with the required qualifications to become a Sub-Inspector of Police in the regular cadre and had fulfilled the required qualifications to be

promoted to the rank of Inspector based on RTM 252 but the 109 Petitioners before this court had joined the Regular cadre of the Police Department as Police Constables and were promoted to the rank of Sub-Inspector in the Regular cadre between 23.02.2002 and 01.02.2006, and had not completed the 8 years' of service as required by RTM 252.

In the case of ***C.W. Mackie Vs. Hugh Molagoda Commissioner General Inland Revenue and others 1986 1 Sri LR 300*** Sharvananda CJ concluding that "Illegality and equity are not on speaking terms" had observed,

"Article 12 (1) of the Constitution provides "all persons are equal before the law and are entitled to the equal protection of the law." The essence of the right of equality guaranteed by Article 12 (1) and the evil which the article seeks to guard against is the avoidance of designed and intentional hostile treatment or discrimination on the part of those entrusted with administering the law. In order to sustain the plea of discrimination based upon Article 12 (1) a party will have to satisfy the court about two things, namely (1) that he has been treated differently from others, and (2) that he has been differently treated from persons similarly circumstanced without any reasonable basis.

But the equal treatment guaranteed by Article 12 is equal treatment in the performance of a lawful act. Via Article 12, one cannot seek the execution of any illegal or invalid act. Fundamental to this postulate of equal treatment is that it should be referable to the exercise of a valid right, founded in law in contradistinction to an illegal right which is invalid in law."

The 109 Petitioners who had not completed 8 years in the rank of Sub-Inspector as required by RTM 252 are not entitled to be promoted to the rank of Inspector of Police and thereby they have failed to establish violation under Article 12 (1) of the Constitution.

The Petitioners' application fails and is dismissed.

I make no order with regard to costs.

Judge of the Supreme Court

Justice Murdu N.B. Fernando PC

I agree,

Judge of the Supreme Court

Justice S. Thirairaja PC

I agree,

Judge of the Supreme Court