

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

***In the matter of an Application  
under and in terms of Article 17  
and 126 of the Constitution of the  
Democratic Socialist Republic of  
Sri Lanka.***

***SC (F/R) Application No. 275/2013.***

Rubasin Gamage Indika Athula  
Priyantha,  
No.19/9, Wewelwala Road,  
Bataganvilla,  
Galle.

**Petitioner.**

**Vs.**

1. The Inspector General of Police.  
Police Headquarters,  
Colombo 1.
2. Mr. K.E.L. Perera,  
Deputy Inspector General,  
Personnel Division,  
Police Headquarters,  
Colombo 1.
3. W.K. Jayalath,  
Senior Superintendent of Police,  
Director Recruitment,

Sri Lanka Police,  
No.375, Sri Sambuddajyanthi  
Mawatha,  
Colombo 8.

4. Dr. Dayasiri Fernando,  
(Chairman),  
Public Service Commission.

4(A). Rtd Hon Justice Sathya Hettige.  
(Chairman),  
Public Service Commission.

4(B). Mr. S.C. Mannapperuma,  
Member,  
Public Service Commission.

4(C). Mr. Ananda Seneviratne,  
Member,  
Public Service Commission.

4(D). Mr. N.H. Pathirana,  
Member,  
Public Service Commission.

4(E). Mr. S. Thillianadarajah,  
Member,  
Public Service Commission.

4(F). Mr. A. Mohamed Nahiya,

Member,  
Public Service Commission.

4(G). Mrs. Kanthi Wijethunge,  
Member,  
Public Service Commission.

4(H). Mr. Sunil S. Sirisena,  
Member,  
Public Service Commission.

4(I). I.M. De Soysa Gunasekera.  
Member,  
Public Service Commission.

4(A)(A). Prof. Siri Hettige.  
Chairman,  
National Police Commission.

4(A)(B). Mr. P.H. Manathunga.  
Member,  
National Police Commission.

4(A)(C). Mrs. Savithree Wijesekara,  
Member,  
National Police Commission.

4(A)(D). Mr. Y.L.M. Zawahir,  
Member,  
National Police Commission.

4(A)(E). Mr. Anton Jeyanadan,  
Member,  
National Police Commission.

4(A)(F). Mr. Tilak Collure,  
Member,  
National Police Commission.

4(A)(G). Mr. Frande Silva,  
Member,  
National Police Commission.

4(A)(H). Mr. N. Ariyadasa,  
Secretary,  
National Police Commission.

All C/O The National Police  
Commission,  
Block No.3, B.M.I.C.H. Premises,  
Buddhaloka Mawatha,  
Colombo 7.

5. Mr. Palitha M. Kumarasinghe P.C.,  
Member,  
Public Service Commission.

6. Mrs. Sirimavo A. Wijeratne,  
Member,  
Public Service Commission.

7. Mr. S.C. Mannapperuma,  
Member,  
Public Service Commission.

8. Mr. Ananda Seneviratne,  
Member,  
Public Service Commission.

9. Mr. N.H. Pathirana,  
Member,  
Public Service Commission.

10. Mr. S. Thillanadarajah,  
Member,  
Public Service Commission.

11. Mr. M.D.W. Ariyawansa,  
Member,  
Public Service Commission.

12. Mr. A. Mohamed Nahiya,  
Member,  
Public Service Commission.

All C/O the Public Service  
Commission,  
No.177, Nawala Road,  
Narahenpita,  
Colombo 5.

13. The Secretary,  
The Public Service Commission,  
No.177, Nawala Road,  
Narahenpita,  
Colombo 5.

13A. Major General (Rtd)  
Nanda Mallawarachchi,  
Secretary to the Ministry of Law  
and Order,  
Ministry of Law and Order,  
Chatham Street,  
Colombo 1.

13B. Dr. Mahinda Balasuriya,  
The Secretary,  
Ministry of Law and Order,  
Floor 13, Sethsiripaya[Stage II],  
Battaramulla.

13C. Mr. Jagath Wijeweera.  
The Secretary,  
Ministry of Law and Order,  
Floor 13, Sethsiripaya[Stage II],  
Battaramulla.

14. The Secretary,  
Ministry of Defence and Urban  
Development,

No. 15/5, Baladaksha Mawatha,  
Colombo 02.

15. Hon. Attorney General,  
Attorney General's Department,  
Colombo 12.

**Respondents**

**BEFORE** : **L.T.B. DEHIDENIYA, J.,**  
**S. THURAIRAJA, PC, J. AND**  
**E.A.G.R. AMARASEKARA, J.**

**COUNSEL** : Rajeev Amarasuriya with Ms. Anne Devananda for Petitioner.  
Rajiv Goonetilleke, SSC for the Respondents.

**ARGUED ON** : 6<sup>th</sup> February 2019.

**WRITTEN SUBMISSIONS** : Petitioner- 14<sup>th</sup> January 2019.  
Respondents- 13<sup>th</sup> March 2019.

**DECIDED ON** : 7<sup>th</sup> June 2019.

**S. THURAIRAJA, PC, J.**

This is a Fundamental Rights application filed by the Petitioner above named, complaining that he has been discriminated for the appointment of Assistant Superintendent of Police (ASP) on the basis of his marriage under Article 12(1) of the Constitution.

As per the available material before this Court, the Appellant had applied for the post of ASP (Ordinary Police Office category). He was successful in the 1<sup>st</sup> written test and

the 2<sup>nd</sup> interview. Before the final interview and the appointment, he had contracted his marriage. The appointing authority had disqualified him on the basis of married persons are not eligible to be appointed as ASP (Ordinary Police Service Category).

The petitioner had submitted two principal matters to be determined by the Court.

- (a) Whether discriminating the Petitioner because he “married” at the age of 34 years and therefore denying him appointment to the rank of ASP (which he was duly selected for)(on this basis alone), is unconstitutional and in violation of inter-alia the equality and equal protection provision of the Constitution.
- (b) In any event, whether there was a prohibition at all, for married persons to be denied appointment.

The Petitioner advances his argument on the basis of International Covenant for Civil and Political Rights (ICCPR), Universal Declaration of Human Rights (UDHR), our Constitution and General Marriages Ordinance. Further the Petitioner is relying on judgments of other jurisdictions namely USA and Nigeria.

Cases cited by the Petitioner are not directly relevant to the issue before us. Further it is observed that, said judgments are in jurisdictions which are completely different from the social, economical, welfare and disciplinary services in Sri Lanka. Here, we basically followed the discipline in the military services from British with more specialization in domestic values. Hence, the order of discipline in uniformed services cannot be easily compared with other jurisdictions.

Respondents, represented by the Attorney General, submit that, the classification is based on rational and disciplinary matters of uniformed service. Further they submit that, the classification is warranted for the better training and service of the Police Officers.



Article 14 (1) (g) of the Constitution assures to all citizens, Freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise.

The Petitioner had applied for the post of ASP under the Ordinary Police Service category and he had for the 1<sup>st</sup> interview obtained required marks to call for the 2<sup>nd</sup> interview. He attended the 2<sup>nd</sup> interview and he was successful. He was listed in the final selection list. Before the appointment is given, the Petitioner had contracted his marriage. When he submitted his marriage certificate for authorities, had found him disqualified for selection.

Now the Petitioner complains that marriage is his fundamental right and disqualifying him is amount to be a discrimination which tantamount to violation of fundamental rights enshrined under Article 12(1) of the Constitution of Sri Lanka. The Respondents submits that, the Petitioner had applied on an advertisement published in Gazette No. 1664 dated 23/07/2010. According to the said gazette, the Open Competitive Examination for the Selections of Assistant Superintendent of Police was called under several categories.

2.1 describe the Ordinary Police Service. Among many, one of the requirements is be an unmarried person. In the meantime 2.2 ASP (Medical Officer) which says may be married or unmarried. Similarly 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10 which are for ASP (Information Technology), ASP (Civil Engineer), ASP (Architecture), ASP (Electrical Engineer), ASP (Mechanical Engineer), ASP (Electronic Engineer), ASP (Veterinary Medicine), ASP (Western Music) respectively. Except the Ordinary Police Service Category at 2.1 other positions are more technical and specialised in certain field of work. Further it is observed that, those are open to female candidates too.

State Counsel submits that, this classification is for a specific purpose which is permitted under the Constitution. As submitted by the State, Assistant Superintendent of Police who is selected under the 'Ordinary Police Service category' is in-charge of the law and order, which obviously needs strenuous physical and weapon training. That is the reason why the appointing authorities had specified that, these candidates should be unmarried with less or no family commitment for the purpose of training.

In **Perera vs Jayawickrema [1985 1 Sri LR 285]**, Sharvananda CJ, delivered the majority opinion of the Court. The Hon. Chief Justice stated that a person claiming to be discriminated against must show that there was at least one other person similarly situate or equally circumstanced; that he had been treated differently from others and that there was no reasonable basis for such differential treatment.

The Petitioner brings an argument that, the word "candidate" will not be applicable for the Petitioner, because he is already been selected, hence he can marry. The requirement of unmarried is for the purpose of training after the appointment. Therefore this requirement is applicable until the conclusion of selection, training and the probation period or until the period specified by the appointing authority.

The State refers to **AIR India v. Meerza [1981 Vol 1 pp 438-503]** also reported as **1981 AIR SC 1829** held that,

*"Based on reasonable classification that requiring air hostesses to be unmarried for period of four years after getting employment was not a violation of the equality provision, however that requiring them to leave employment after having children was against the equality provision."*

It is noteworthy that the Article 14 of the Indian Constitution which grants the right to equality is similar to Article 12(1) of the Sri Lankan Constitution. Article 14 of the

Indian Constitution reads; "*the State shall not deny to any person equality before the law or the equal protection of the law in the territory of India..*"

It is also to be noted that, based on this similarity between Article 14 of the Constitution, the Supreme Court of Sri Lanka had referred to Indian case law to elicit the meaning of equality as it did in **Perera vs. UGC [1978-80 1 SLR 103, Seneviratne vs. UGC [1978-80 1 SLR 182, Ramupillai vs. Festus Perera [1991 1 SLR 11]** and many other cases over the years.

Considering all, we find that the classification is reasonable in the given circumstances. Hence, we find that, there is no violation of the fundamental rights of the Petitioner.

Accordingly, we dismiss the Application.

***Application dismissed.***

**JUDGE OF THE SUPREME COURT**

**L.T.B. DEHIDENIYA, J.,**

I agree.

**JUDGE OF THE SUPREME COURT**

**E.A.G.R. AMARASEKARA, J.**

I agree.

**JUDGE OF THE SUPREME COURT**