

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

S.C. F.R Application No. 273/2014

D.M. Anura Mangala  
Unit 4A/66 Badulu Oya,  
Kandekatiya.

**PETITIONER**

Vs.

1. The Inspector General of Police  
N.K. Illangakoon  
Police Headquarters,  
Colombo 1.
2. Deputy Inspector General of Police  
Uva Province  
Roshan Fernando  
Deputy Inspector General 's Office  
Badulla.
3. M. Kumara Balasuriya  
Inquiring Officer  
Assistant Superintendent of Police  
Police Office  
Badulla.

4. Hon. Attorney General  
Department of Attorney General  
Colombo 12.

**RESPONDENTS**

**BEFORE:** Chandra Ekanayake J.  
Priyantha Jayawardena P.C., J. &  
Anil Gooneratne J.

**COUNSEL:** Amila Palliyage for the Petitioner  
Ms. Viveka Siriwardane D.S.G. for the Attorney General

**WRITTEN SUBMISSIONS FILED ON:**

06.04.2015 (Respondents)

**ARGUED ON** 24.02.2015

**DECIDED ON:** 04.06.2015

**GOONERATNE J.**

When this Fundamental Rights Application was supported before this court on 24.2.2015, the learned Deputy Solicitor General who appeared for the

Respondents raised a preliminary objection, to the effect that the Petitioner's application to this court has been filed out of time. Learned counsel for the Petitioner, however does not concede this position.

It is pleaded that the Petitioner joined the police force as a Sub-Constable on or about 04.10.1988. He had served in that capacity as stated in the stations mentioned in para 2 of his petition. His post in the police service has been confirmed on or about 2006 and appointed a Police Constable. It is also pleaded that he was arrested on 27.03.2007 based on charges of Bribery and Corruption, and had been interdicted pending investigations. Perusal of the body of the petition it is stated that two charges were framed against the applicant petitioner and a disciplinary inquiry was held. At the conclusion of the inquiry, he was found guilty by order of 21.08.2008, (P5) and services terminated. The disciplinary order communicated by P6 of 25.9.2009. Petitioner also appealed against the said order and inter alia it is pleaded that his appeal was turned down, and he was accordingly informed by Inspector General of Police (P10 of 24.05.2010). It is also stated that proceedings were instituted in the High Court by Commission to Investigate Allegations of Bribery and Corruption. However on

02.07.2010, prosecuting counsel informed the High Court that the prosecution does not wish to proceed with the case. Accordingly the learned High Court Judge discharged and acquitted the Accused on the said date (02.07.2013) (P12).

I have perused the written submissions of learned Deputy Solicitor General. Petitioner by sub paras 'g' and 'h' of the prayer to the petition moves to set aside orders marked P5 and P6 dated 21.8.2008 and 25.9.2009 respectively and inter alia seeks to declare violations guaranteed under Article 12(1), 13(3) and 13(5) of the Constitution. Learned Deputy Solicitor General contends that whilst the prosecution against the petitioner was pending under the provisions of the Bribery Act, the Police Department initiated disciplinary proceedings and charges preferred for violating Police Department orders and for corrupt conduct of accepting gratification unlawfully and thereby bringing the Police Department into disrepute. The disciplinary authority found the Petitioner guilty of charges and terminated Petitioner's services. Petitioner appealed to the National Police Commission, but the Commission rejected the appeal and its outcome communicated (P10). Learned Deputy Solicitor General contends that the High Court acquitted (P12) the Petitioner, and it was so because the learned trial Judge was informed that the prosecution does not wish to proceed with the case as the

main witness for the prosecution went back on his evidence. Thereafter the Petitioner appealed to the Human Rights Commission (P14) on 01.8.2013 and to the Public Service Commission on 26.6.2014.

The learned Deputy Solicitor General with emphasis argues that the outcome of the High Court case filed against the Petitioner has no bearing on the disciplinary order made against the Petitioner by the Police Department after a due inquiry. It is also said that a criminal prosecution and disciplinary proceedings are independent of one another. As contained in chapter XLVII and Section 28.6 and 28.7 of the Establishment Code an acquittal or discharge by a court of Law will not be a ground to set aside a disciplinary Order made in a disciplinary inquiry. The burden of proof defer in the above two proceedings. The said Sections 28.6 and 28.7 reads thus:

28:6 The fact that an officer has been acquitted or discharged or found not guilty by a Court of Law or Statutory Authority is no reason at all why he should not be dealt with under this Code, if there is sufficient material on which disciplinary proceedings can be taken against him.

28:7 An officer who has been punished under this Code for any offence, other than a punishment in terms of sub-section 28:3 above, may not claim

remission of such punishment on the ground that he has subsequently been acquitted or discharged by a court of Law in respect of that same offence, or that the order of a Court has been set aside in appeal.

I observe that thereafter the applicant had made several attempts to get himself reinstated in the service of the Police Department, but there seems to have been no response (vide P15 to P20).

The fundamental rights application has been filed by Petition dated 16.09.2014. The prayer to the Petition by its sub paras (d) to (k) seeks substantive relief and sub paras (g) and (h) contemplates to set aside order dated 21.08.2008 (P5) and the letter of termination of the Petitioner's services dated 25.09.2009 (P6). Petitioner has also by sub para (i) of the prayer to the petition moved court to have himself reinstated in the service of the Police Department, with all increments and promotions. As such it is apparent that taking the above sub paras (g), (h) and (i) together, which prayer would be the most beneficial to the Petitioner, had filed this application after a fairly long lapse of time (delay of 5 years). This is definitely outside the time period contemplated by law.

I am inclined to agree with the views expressed by learned Deputy Solicitor General that the High Court case filed against the Petitioner would have no bearing on the disciplinary orders made against the petitioner by the Police Department which was canvassed by the Petitioner but subsequently turned down by the 1<sup>st</sup> Respondent. The above stated provisions of the Establishment Code are very clear. I have also perused Section 28:3 of the Establishment Code. It relates to a report sent by court or statutory authority where the public servant is found guilty under the Criminal Procedure Code. It has no relevance to the case in hand. Nor has Article 13(3) and 13(5) of the Constitution any relevance. Article 13(3) contemplates a fair trial and 13(5) relates to presumption of innocence. I have already stated above that Criminal Proceedings cannot have any bearing on a disciplinary proceedings held by the Police Department. Nor can there be any conflict between the above stated articles of the Constitution and the disciplinary orders made against the Petitioner as per the Establishment Code.

Petitioner should have filed this application within one month of receiving orders marked P5 or P6. We are satisfied that this application is out of time, and hence jurisdiction of this court cannot be exercised after the period of

one month from the date of the Executive or Administrative acts complained of by the Petitioner. Preliminary objection upheld. This application is dismissed without costs.

Application dismissed without costs.

JUDGE OF THE SUPREME COURT

Chandra Ekanayake J.

I agree.

JUDGE OF THE SUPREME COURT

Priyantha Jayawardena P.C. J.

I agree.

JUDGE OF THE SUPREME COURT