

**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.***

SC/FR/100/2022

Rannula Sugath Mohana Mendis,

Puwakwatta Road,

Kithulampititya,

Uluwitike,

Galle.

PETITIONER

vs.

1. D. K. A. Sanath Kumara,
Assistant Superintendent of
Police, Embilipitiya.
2. M. N. S. Mendis,
Senior Superintendent of Police,
Embilipitiya.
3. J. S. Wirasekara,

Deputy Inspector General of
Police,
Rathnapura.

4. Mahinda Gunarathna,
Senior Deputy Inspector General
of Police,
Sabaragamuwa Province.

5. C. D. Wickramaratne,
Inspector General of Police,
Sri Lanka Police,
Police Headquarters,
Colombo 01.

6. Justice Jagath Balapatabendi,
Chairman,

7. Indrani Sugathadasa, Member,

8. Dr. T. R. C. Ruberu, Member,

9. Ahamod Lebbe Mohamed
Saleem, Member,

10. Leelasena Liyanagama, Member,

11. Dian Gomes, Member,

12. Dilith Jayaweera, Member,

13. W. H. Piyadasa, Member,

14. Suntharam Arumainayaham,
Member,

15. M. A. B Daya Senarath, Secretary,

The 7th to 15th respondents: all of:
Public Service Commission,
1200/9, Rajamalwatha Road,
Battaramulla.

16. Major General (retd). Jagath Alwis,
Secretary to the Ministry of Public
Security, Ministry of Public
Security,
14th Floor "Suhurupaya",
Battaramulla.

17. Hon. Attorney General
Attorney General's Department,
Hulftsdorp, Colombo 12.

RESPONDENTS

BEFORE : PRIYANTHA JAYAWARDENA, PC, J
S. THURAIRAJA, PC, J AND
MAHINDA SAMAYAWARDHENA, J

COUNSEL : Viran Corea with Thilini Vidanagamage instructed by Lilanthi De Silva for the Petitioner
Suharshie Herath, DSG for all Respondents

WRITTEN

SUBMISSIONS : Petitioner on 14th September 2022

ARGUED ON : 12th December 2022

DECIDED ON : 06th October 2023

S. THURAIRAJA, PC, J.

The Petitioner, namely Rannulu Sugath Mohana Mendis, (hereinafter referred to as the “Petitioner”) filed an application in the Supreme Court of Sri Lanka on the 23rd of March, 2022 against the Respondents, for alleged violation of fundamental rights enshrined under Articles 12(1) and 14 (1)(g) of the Constitution, and prayed *inter alia* for his salary to be paid until the final determination of this Application.

When the matter was taken up on the 18th of May, 2022, upon hearing both Counsel, the Court granted Leave to Proceed against the 1st – 14th Respondents under Articles 12(1) and 14(1)(g) of the Constitution. The facts and circumstances of the instant case are set out in brief below.

The Petitioner is a Police Officer of the Sri Lankan Police and he had joined the Sri Lanka Police on the 01st of July, 1995 as a Police Constable. He was promoted to a Police Sergeant with effect from the 01st of May, 2007, and as a Sub-Inspector of Police with effect from the 31st of May, 2018.

The Petitioner had served for more than twenty-five (25) years in the service of the Police Force and at the time of filing the instant application, he was 52 years of age. The Petitioner also claimed that his wife and three younger children depend on him.

Further, on or about the 01st of August, 2020, while discharging his duties as a Sub Inspector of Police at the Embilipitiya Police Station, a 'Message Form' had been sent from the Colombo Crimes Division, which the Petitioner received on or about the 2nd of August, 2020. Whereby, the Petitioner was asked to give a statement pertaining to a suspect named Naligamage Dileepa Asanka Naligama who was arrested upon a statement made by I.P. Wilwala Arachchi dated 11th of March, 2014.

Thereafter, the Petitioner was arrested on the 03rd of August, 2020 and produced at the Gampaha Magistrate's Court with a B-report bearing No. 1536/20/CDD on purported allegations that the suspect had falsely introduced certain weapons that fell within the ambit of the Offensive Weapons Act No. 18 of 1966, Firearms Ordinance No. 33 of 1916 as amended by Act No. 22 of 1996 and the Explosives Act No. 21 of 1956 as amended by Act No. 33 of 1969. The B-report also alleged that the suspect had fabricated evidence to frame and arrest the former Deputy Inspector General Police, namely Vass Gunawardena. However, the investigations relating to the said B-Report were pending in Court as at the date of filing the instant application.

Subsequently, the 1st Respondent, namely the Assistant Superintendent of Police, Embilipitiya (hereinafter referred to as the "1st Respondent"), issued a purported letter of interdiction dated the 07th of August, 2020 (Ref: EM/ASP I/2416/2020), placing the Petitioner on interdiction without pay.

According to the said letter, the Petitioner was alleged to have caused one or more acts of misconduct set out in section 31:1 of Chapter XLVIII of the Establishment Code (Volume II).

Section 31:1 of Chapter XLVIII of the Establishment Code (Volume II) reads as follows:

"31. Interdiction and Compulsory Leave

31:1 Where it is disclosed, prima facie, that a public officer has committed either one or some or all of the following acts of misconduct, the relevant

Disciplinary Authority, or the relevant Secretary to the Ministry of Head of Department not holding disciplinary authority, may forthwith interdict the officer concerned subject to the covering approval of the Disciplinary Authority should be informed sending also a copy of such letter to the purpose of obtaining covering approval.

31:1:1 Non-allegiance to the Constitution of the Democratic Socialist Republic of Sri Lanka.

31:1:2 Act or cause to act in such a manner as to bring the Democratic Socialist Republic of Sri Lanka into disrepute.

31:1:3 Being prosecuted in a Court of Law on anti-government, terrorist or criminal charges.

31:1:4 Being prosecuted in a Court of Law on bribery or corruption charges.

31:1:5 Being drunk or smelling of liquor within duty hours or within Government premises.

31:1:6 Use or be in possession of narcotic drugs within duty hours or within Government premises.

31:1:7 Misappropriate or cause another to misappropriate government funds.

31:1:8 Misappropriate government resources or cause such misappropriation, or cause destruction or depreciation of government resources willfully or negligently.

31:1:9 Act or cause to act negligently or inadvertently or willfully in such manner as to harm government interests.

- 31:1:10 *Act in such a manner to as to bring the public service into disrepute.*
- 31:1:11 *Divulge information that may harm the State, the State Service or any other State Institution or make available or cause to make available State documents or copies thereof to outside parties without the permission of an appropriate authority.*
- 31:1:12 *Alter, distort, destroy or fudge State documents.*
- 31:1:13 *Conduct oneself or act in such manner as to obstruct a public officer in the discharge of his duties, or insult, or cause or threaten to cause bodily harm to a public officer.*
- 31:1:14 *Refuse or neglect to carry out lawful orders given by a Senior officer, or insubordination.*
- 31:1:15 *Where it is considered that allowing an officer to perform his duties is harmful or imprudent so far as the public service is concerned."*

The Petitioner stated that prior to receiving the purported letter of interdiction, he had an unblemished career in the Police Force. Further, the Attorney General in his letter dated 19th of October, 2011 **(P3(a))**, commended the Petitioner who was part of the investigating team, stating "high commendation in solving a gruesome crime," for his contribution in resolving the murder of two young suspects while in police custody (in the High Court Trial-at-Bar Case 5247/2010). Another letter issued by the Additional Solicitor General, Jayantha Jayasuriya, P.C. (as he was then) dated 08th of July 2014 **(P3(I))** commended the "meticulous and diligent conduct" of the investigation into the Royal Park Murder Case, of which the Petitioner was an investigator and that letter was forwarded to the Attorney General who sent another letter commending the

Petitioner's work by letter dated 09th of July, 2014 (**P3(m)**). Apart from those, many commendations, special increments and awards have been awarded to the Petitioner by the Police Department.

However, as per the submissions of the counsel for the Petitioner, he was not served with an indictment nor a charge sheet from the 2nd of August, 2020 until to date. Furthermore, no preliminary investigation was carried out prior to issuing the letter of interdiction.

Once the purported letter of interdiction was received, the Petitioner's wife filed a complaint on his behalf in the Human Rights Commission, dated the 2nd of September, 2020 (HRC/1906/20) which is currently pending before the said Commission.

Numerous applications made on behalf of the Petitioner to obtain bail were rejected by the learned High Court Judge of Gampaha. In or about February 2021, the Petitioner's wife filed an application for revision in the Court of Appeal to revise the order given by the learned High Court Judge. Consequently, the Petitioner was enlarged on bail by the Court of Appeal. The Court of Appeal in its judgement observed the following;

*"It is my view that on account of the unusual and extraordinary delay in lodging the first complaint despite every ability to do so demonstrates very strongly that the allegations against the suspect Rannulu Sugath Mendis are a result of falsification and embellishment and a creature of after-thought. **On account of the said unusual and extraordinary delay, the complaint has not only lost the benefit of the advantage of spontaneity, but also smacks of the introduction of a fabricated, false version and an exaggerated account or concocted story involving a set of collaborators or conspirators, to unduly cause prejudice and harm to the suspect Rannulu Sugath Mendis, for collateral purposes.** Not only that the said delay has not been*

satisfactorily or credibly explained. It is crystal clear that the statements given by the said witnesses in 2020 are contradictory to statements given by them in 2014.

*Upon the statements of apparent backers and supporters or collaborators of the convicted murders, purported facts have been reported in B/1536/20 to the Learned Magistrate's Court of Gampaha against the suspect, in a blatant attempt to frame allegations through fabrication of false evidence pertaining to purported commission of offences under the Penal Code and for the purported possession of a cache of firearms, explosives and ammunition in a manner that constitutes offence under the Offensive Weapons and the Explosives Act. **However, no credible evidence had been brought to the attention of the Court to substantiate this position or credibly establish a semblance of a prima facie case.***"

(Page 8-9 of the Judgement in Case CA (Rev.) Application No. CA/CPA/19/2021)

(Emphasis added)

The learned Judges of the Court of Appeal further observed that with regard to the purported possession of firearms under the Offensive Weapons Act No. 18 of 1966 and the Explosives Act No. 21 of 1956 as amended by Act No. 33 of 1969, it follows

"no credible evidence had been brought to the attention of the Court to substantiate this position or credibly establish a semblance of a prima facie case."

The Petitioner further stated that he remained without his salary until the Supreme Court made an interim order directing to pay his salary. The Petitioner stated that such treatment is a continuing infringement of his fundamental rights guaranteed under Articles 12(1) and 14 (1)(g) of the Constitution.

The Petitioner claims that the actions of the Respondents have violated his rights under Article 12(1) and Article 14(1)(g) of the Constitution.

Article 12(1) of the Constitution provides as follows;

"All persons are equal before the law and are entitled to the equal protection of the law."

Article 14(1)(g) of the Constitution provides as follows;

"Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise."

In light of the facts and circumstances of the instant case, there are two issues which are required to be answered. Firstly, whether the Respondents are empowered by law to take action against the Petitioner, and secondly, whether the actions of the Respondents violate the rights of the Petitioner guaranteed by Article 12(1) and 14(1)(g) of the Constitution.

In addressing the first question of law, it must be considered whether the Respondents have the authority to interdict the Petitioner in the manner stated above. As per Article 57(1) of the Constitution, the Public Service Commission (PSC) has delegated its powers to the Assistant Superintendent of Police (ASP) under the Extraordinary Gazette No. 2202/24 dated 20th of November, 2020. Thereby, the 1st Respondent being the ASP has the necessary powers with regard to interdiction within the purview of respective administrative area.

The Petitioner's contention is that there was no preliminary investigation conducted prior to interdicting him from the service or up to the time of the hearing of this appeal and no specific reasons were given for his interdiction.

Section 31:3 of the Establishments Code provides for the manner in which notice of interdiction should be conveyed to a Public Officer. Accordingly, the said section provides that,

*"an authority who decides to interdict a public officer in terms of subsection 31:1 above **should note clearly and specifically** in the relevant file **the reasons on which such a decision was based.**"*

(Emphasis added)

Section 31:4 of the Establishments Code states as follows:

*"Normally a public officer should be interdicted on matters relating disclosed in a **preliminary investigation held** into the charges against him."*

(Emphasis added)

However, the letter of interdiction dated 7th of August 2020 sent by the 1st Respondent and received by the Petitioner states as follows:

"ඒ අනුව ඔබ ශ්‍රී ලංකා ප්‍රජාතාන්ත්‍රික සමාජවාදී ජනරජයේ ආයතන සංග්‍රහයේ II වන කාණ්ඩයේ XLVIII වන පරිච්ඡේදයේ 31.1 අනුව විෂමාවාරයන් එකක් හෝ කිපයක් හෝ සියල්ලම හෝ සිදුකර ඇති බව බැලූ බැල්මට පෙනී යන බැවින්... මූලික විමර්ශනයකට යටත්ව වහාම ක්‍රියාත්මක වන පරිදි 2020.08.03 වන දින සිට ඔබගේ වැඩ තහනමට ලක්කරමි. වැටුප් හා දීමනා කිසිවක් හිමි නොවේ."

The unofficial translation of the above is provided below;

"Accordingly, as it appears prima facie that you have committed one or more or all of the violations in accordance with Chapter XLVIII, Volume II, Establishments Code of the Democratic Socialist Republic of Sri Lanka... subject to preliminary investigation, your work will be suspended with

immediate effect from 03.08.2020 and will not be entitled to any remuneration and other benefits."

It must be noted that the letter does not "clearly and specifically" state the reasons for the interdiction of the Petitioner, as required under section 31:3 as cited above.

In terms of section 31:4 of the Establishment Code, a public officer should be interdicted on matters disclosed during the Preliminary Investigation. It is pertinent to note that well over two years since the interdiction, no such preliminary investigation have been conducted. This is a blatant disregard of the disciplinary power vested on the 1st Respondent as well as a grave injustice done to the Petitioner.

However, as per section 31:5:3 of the Establishment Code, a relevant authority can interdict a public officer even without holding a preliminary investigation where *Court proceedings have been instituted against a public officer in terms of section 27 of the Establishment Code. In such a scenario, at the very least*, action should be taken to hold a preliminary investigation as required under section 31:7 of the said Code. For the purposes of the aforementioned provisions, the Respondent would constitute a "relevant authority".

Section 27 of the Establishment Code provides the procedure followed when a Court of Law or Statutory Authority proceeds with a case filed against a Public Officer such as the Petitioner, whereby section 27:1 of the Code provides that it must be reported to the necessary authority to take action against the said officer.

Under such circumstances, under section 27:9 of the Establishments Code the Petitioner should have been reinstated if the Disciplinary Authority determined that "his reinstatement will not adversely affect the interests of the public service", taking into consideration the observation made by the learned Judges of the Court of Appeal who granted the bail, and stated in his judgement that "no credible evidence has been brought to the attention of the Court to substantiate this position or credibly establish

a semblance of a prima facie case". However, no steps had been taken to reinstate the Petitioner in his post.

Section 27:10 of Chapter XLVIII of Volume II of the Establishments Code, as amended by the Public Administration Circular 06/2004 dated 15th of December, 2004 now reads as provided below:

*"the Disciplinary Authority/ Administrative Authority **should conduct a preliminary investigation against such Officer within a period not more than 02 months.** The respective preliminary investigation report should be submitted to the Public Service Commission by the Disciplinary Authority/ Administrative Authority and **if the Public Service Commission determines that the reinstatement of the Officer concerned is not detrimental to the interests of the Public Service according to facts revealed by such report, such an Officer may be reinstated in service.**"*

[Emphasis added]

However, under the above section, if it is decided that the reinstatement would be detrimental to the interests of the Public Service, then as per section 27:10:1, the Petitioner's interdiction will remain in force pending the final outcome of the case. However, this section also provides that if the delivery of the Judgement exceeds the timeframe of a year, then the Disciplinary Authority may authorise the payment of salary not exceeding half thereof to the officer concerned. In the instant case, even two years after the Petitioner was interdicted, no preliminary investigation was begun, nor was he given his salary due to him. The Respondents have committed a grave error in keeping the Petitioner on interdiction for a long period of time. There were numerous opportunities to rectify their wrongs before this case was taken up in the Supreme Court, but they have not done so.

The Petitioner has submitted letters to the Chairman of the National Police Commission dated 1st of July, 2022, the Chairman of the Human Rights Commission Sri Lanka, the Director of Police Ombudsman Division, and the Deputy Inspector General of Police through the relevant chain of command, and requested for his reinstatement. The Petitioner is yet to receive reasons as to why he was interdicted from service.

If this Court were to criticise the actions of the Police Force, it need not look further than the police motto itself; “ධම්මෝ භවේ රක්කති ධම්මවාසී” which states “those who live by the Dhamma are protected by the Dhamma”. One would expect that the Police force of Sri Lanka would follow this motto when carrying out their duties, without *mala fide*. However, we observe, they have failed to stick to the basics of their code of conduct and the principles of natural justice.

It is pertinent to note that when this matter came up in Court on the 18th of May, 2022, Court made an interim order and fixed this application for hearing on the 21st of September, 2022. Further, the Court made the following order:

“Objections, counter objections, written submissions in terms of the rules.”

On the 5th of August 2022, the Instructing Attorney for the Petitioner filed a motion informing the Court that the Respondents have not complied with directions given by the Court as well as not complied with the rules of the Supreme Court. He also informed the Court that the interim order was not complied with. On the 14th of September, 2022, the listing Judge-in Chambers made an order to support this motion on the 21st of September, 2022, in Open Court, i.e. the date fixed for the hearing of this application.

On the 21st of September, 2022, the said Attorney filed another motion stating that the Respondents have not complied with order made by the Court as well as the rules of the Supreme Court. Further, the Respondents have not sought or obtained any further time for filing of objections and written submissions. Moreover, the Petitioner

has filed written submissions and objected for any time being granted for Respondents to file objections.

When the matter was listed for hearing on the 21st of September, 2022, the learned Deputy Solicitor General had sought permission to file counter objections or further material **in relation to the motion dated 5th of August, 2022** and Court granted time until the 22nd of September, 2022. However, the Respondents did not file any objections or any material to counter the facts stated in the said motion.

In the meantime, on the 14th of September, 2022, the Attorney-at-Law for the Petitioner filed a motion and tendered the written submissions on behalf of the Petitioner. In the motion, she categorically stated that the Respondents have not filed any objections and therefore, they are objecting for filing of any objections and/or written submissions.

On the 22nd of September, 2022, the 4th Respondent filed an Affidavit through his Registered Attorney. Paragraph 6 and 7 of the Affidavit states as follows:

"I state that an administrative difficulty as to the payment in full of the salary to an officer serving an interdiction arose in making the payment in full of the salary to an officer under interdiction and necessitated the Head of the Department to be kept informed."

Vide Paragraph 6

"I state that, in the circumstances, I brought the matter to the attention of the Inspector General of Police (IGP)."

Vide Paragraph 7

This is a completely different stance taken by the DSG before this Court on the 21st of September, 2022. When the application came up in Court, on the 23rd of September, 2022, the Court observed that the DSG has not filed any counters or any other materials other than the Affidavit of the 4th Respondent dated 22nd of September, 2022.

The Petitioner supported the motion dated 14th of September, 2022 and moved Court to make an order. As the learned DSG neither filed objections, nor sought permission for further time to file the same, as per the Supreme Court Rules, Court allowed the motion filed by the Petitioner and refused to grant a date to file objections of the Respondents. Thereafter, the application was fixed for argument for the 16th of November 2022.

On the 10th of October 2022, the 5th Respondent, had filed an Affidavit dated 7th of October, 2022. In the said Affidavit, it was stated that the Petitioner had been reinstated in service on the 23rd of September, 2022, and is currently serving at the Hikkaduwa Police Station and arrears of his salary had been paid.

Further, it is stated that the reinstatement was:

- I. subject to Court orders and*
- II. subject to disciplinary action related to the incident (especially Establishments Code Volume II Section 27:10).*

This reinstatement is proof to show that the Respondents themselves have accepted that their previous decision to interdict the Petitioner was wrong. Looking at the hardships that the Petitioner has been subject to, in the words of Fernando, ACJ, in **Range Bandara v. Gen. Anuruddha Ratwatte and Another (1997) 3 Sri LR 360**, this treatment was

"not the result of a mistake or error of judgment, but of a misuse of those powers, of a kind which demoralises and demotivates the victim, and indirectly the entire service"

When any State authority or the Sri Lankan Police arrive at a decision, that decision should be supported by materials available to them. Further, the authority must be able to defend the decision, if it is questioned before a Court of Law or a Tribunal. Whether the Court decides to accept or disregard such evidence, they should be able

to submit such evidence before the Court. In this application, the Respondents did not file objections within the time given by Court. Hence, the averments in the Petition filed by the Petitioner are not challenged. Accordingly, the Court is required by law to act on the averments in the Petition and that did not happen, and were they unable to defend their decision to interdict the Petitioner.

In a government service, the government servants should be able to work independently without fear or favour. If the relevant authorities are unable to provide such an environment, it will lead to corruption, which ends up in weak or poor government service.

Decision

After careful consideration of the facts and circumstances outlined above, I hold that the Petitioner's rights, as guaranteed by Articles 12(1) and 14(1)(g) of the Constitution, have been violated by the Respondents.

Therefore, I direct the State to pay as compensation, Rupees One Million (Rs. 1,000,000) to the Petitioner within 3 months from the date of this judgment.

Furthermore, I direct the Respondents to retrospectively grant all salary increments, benefits, and promotions to the Petitioner, extending up to the date of his retirement from the Police Service if he has already retired from the service.

Application Allowed.

JUDGE OF THE SUPREME COURT

PRIYANTHA JAYAWARDENA, PC, J

I agree.

JUDGE OF THE SUPREME COURT

MAHINDA SAMAYAWARDHENA, J

I agree.

JUDGE OF THE SUPREME COURT