

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

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

**Case No. S.C. (F/R) Application No.  
123/2013**

Priyancy Don Liyanaarachchi,  
SC3, Supreme City,  
Narthanagala Road, Munagama,  
Horana.

**PETITIONER**

Vs.

1. Senaka Walgampaya,  
Former Chairman,
- 1A. Prof. S.T. Herrige,  
Former Chairman,
- 1B. S.C.S. Fernando,  
Former Chairman,
- 1C. E.W.M. Lalith Ekanayake,  
Chairman,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,

- Buddhaloka Mawatha,  
Colombo 07.Ven. Elle Gunawansa Thero,  
Former Member,
2. Ven. Elle Gunawansa Thero,  
Former Member,
- 2A. B. A. Jeyanathan,  
Former Member,
- 2C. K. Karunaharm  
Member,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,  
Buddhaloka Mawatha,  
Colombo 07.
3. D. Dissanayake,  
Former Member,
- 3A. P. H. Manatunga,  
Former Member,
- 3B. A.S.P.S.P. Sanjeewa,  
Former Member,
- 3C. P.G. Sarath,  
Member,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,

Buddhaloka Mawatha,  
Colombo 07.

4. Charmanie Madurasinghee,  
Former Member,

4A. Savithri D. Wijesekere,  
Former Member,

4B. N.S.M. Samsudeen,  
Former Member,

4C. Gamini De Silva,  
Member,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,  
Buddhaloka Mawatha,  
Colombo 07.

5. R. Sivaeaman,  
Former Member,

5A. Y.L.M. Zawahir,  
Former Member,

5B. M.P. Premasiri Perera,  
Former Member,

5C. D.K. Renuka Ekanayake,  
Member,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,

Buddhaloka Mawatha,  
Colombo 07.

6. M.M.M. Mowjood,  
Former Member,

6A. Frank De Silva,  
Former Member,

6B. Gunapala Wickramage,  
Former Member,

6C. Deshan Kapila Jayasuriya,  
Member,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,  
Buddhaloka Mawatha,  
Colombo 07.

7. Newton Gunaratne,  
Former Member,

7A. Thilak Kollure,  
Former Member,

7B. T. P. Parameswaran,  
Former Member,

7C. A. A. M. Illiyas,  
Member,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,

Buddhaloka Mawatha,  
Colombo 07.

8. T.M.K.B. Tennakoon,  
Former Member,

8A. Ariyadasa Cooray,  
Former Secretary,

8B. Thamara D. Perera,  
Secretary,  
National Police Commission,  
Block 09, B.M.I.C.H. Premises,  
Buddhaloka Mawatha,  
Colombo 07.

9. Attorney General,  
Attorney General's Department,  
Colombo 12.

**RESPONDENTS**

**BEFORE:**           **MURDU N. B. FERNANDO, PC, J.**  
                              **S. THURAIRAJA, PC, J. AND**  
                              **PRIYANTHA FERNANDO, J.**

**COUNSEL:**       Manohara De Silva, PC with Hirosha Munasinghe and Ms. Sasiri  
                              Chandrasiri for the Petitioner.

Ms. Yuresha De Silva, DSG for the Respondents.

**WRITTEN** Petitioner on 20<sup>th</sup> September 2022 and 11<sup>th</sup> March 2024.

**SUBMISSIONS:** Respondents on 12<sup>th</sup> February 2024.

**ARGUED ON:** 12<sup>th</sup> February 2024.

**DECIDED ON:** 05<sup>th</sup> August 2024

**THURAIRAJA, PC, J.**

1. The Petitioner, namely Priyancy Don Liyanaarachchi, (hereinafter referred to as the "Petitioner") filed this application in the Supreme Court of Sri Lanka by Petition dated 11<sup>th</sup> April 2013 seeking, inter alia, a declaration that his fundamental right guaranteed under Article 12(1) of the Constitution has been violated due to the actions, omission, and/or failure to act/or neglect to perform the duty of/by one or more of Respondents. When the matter was taken up on 29<sup>th</sup> July 2013, the Court granted leave to proceed under Article 12(1).
2. Before delving into my analysis of the present case, it is imperative to undertake the somewhat arduous yet essential task of tracing the excessively prolonged journey of the Petitioner's grievances and appeals as they have navigated, although more oft than not unnecessarily and sometimes unfittingly, through the corridors of various public institutions and the officials employed therein.
3. The Petitioner is employed as the Media Officer of the National Police Commission. As per the Petitioner, the sequence of events preceding the Petitioner's employment is as follows; the Petitioner was previously engaged as a Grade 1 Officer of the Translator's Service to the Department of Muslim Religious and Cultural Affairs. Thereafter, the Petitioner applied for the post of Public Relations and Information Officer of the National Police Commission, followed by an interview and the subsequent selection of the Petitioner to the said post by letter dated 23<sup>rd</sup> November 2004 from the Secretary

of the National Police Commission.<sup>1</sup> Accordingly, the Petitioner received approval for release on secondment from his pre-existing employment from the Ministry of Public Administration and the Public Service Commission as evinced by letter dated 18<sup>th</sup> April 2005.<sup>2</sup> A perusal of **P7** confirms the Petitioner's contention that he was offered an additional 33½% increase of his existing salary upon the commencement of his post as the Public Relations and Information Officer.

4. Subsequently, however, the Petitioner was called for a second interview by the National Police Commission and offered the post of Media Officer to the National Police Commission, which, according to the Petitioner, he accepted upon the condition that he be placed on a salary scale equivalent to or higher than the salary drawn by him as a Grade 1 Officer of the Translator's Service. According to the Petitioner, such condition was communicated to the Secretary of the National Police Commission, who informed the Petitioner that the salary associated with the post of Media Officer was being revised and would be informed of in due course. Therefore, a Scheme of Recruitment did not exist when the Petitioner was appointed to the post of Media Officer by appointment letter dated 01<sup>st</sup> December 2004.<sup>3</sup>
5. By letter dated 10<sup>th</sup> March 2006,<sup>4</sup> the then Assistant Secretary of the National Police Commission informed the Petitioner that the Petitioner's existing salary scale, TA-5-1 under Public Administration Circular No. 15/2003, was revised to TB-5-1 as per Public Administration Circular No. 09/2004. The Petitioner contends that such revised salary scale was below the salary of his previous employment as a Grade 1 Translator of the Translator's Service. **P13** enunciates that such revision was to be applicable from the commencement date, namely 1<sup>st</sup> January 2005, of the Petitioner's employment as Media Officer to the National Police Commission.

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<sup>1</sup> Marked "P7".

<sup>2</sup> Marked "P8".

<sup>3</sup> Marked "P9".

<sup>4</sup> Marked "P13".

6. Thereafter, under the Public Administration Circular No. 06/2006,<sup>5</sup> by letter dated 14<sup>th</sup> September 2006, the Director General specified that the Petitioner is to be placed on the salary scale of MN-4-2006.<sup>6</sup> Simultaneously, a Scheme of Recruitment (SOR) for the post of Media Officer to the National Police Commission dated 24<sup>th</sup> May 2007<sup>7</sup> was formulated and approved in terms of Public Administration Circular No. 06/2006<sup>8</sup> which also confirmed the placement of the Petitioner on the MN-4-2006 salary scale.
7. The Petitioner asserts that, in fact, he should be placed on the SL-1-2006 salary scale instead on the basis that the post of a Media Officer falls under 'Staff Grade' posts, drawing a comparison between the post of Assistant Commissioner of Co-operative Development, also a staff grade post which was previously placed under salary scale TB-5-1 under Circular No. 09/2004 and revised to SL-1-2006 under Circular No. 06/2006.
8. The Petitioner contends that the decision is unreasonable, illegal, and contrary to Public Administration Circular No. 06/2006 as, according to this Circular, a Grade 1 Translator should be paid according to the MN-6 salary scale. The Petitioner insists that his position should reflect this pay scale on the basis that he joined the National Police Commission with the understanding that he would receive a salary equivalent to or higher than that of a Grade 1 Translator.
9. For completion of facts, it must be noted that the Petitioner's salary scale was subsequently revised to salary scale MN-4-2006A in terms of Public Administration Circular No. 06/2006(iv) and the Petitioner was informed of such revision by the Deputy Secretary (Administration and Finance) of the National Police Commission by letter dated 17<sup>th</sup> October 2007.<sup>9</sup>

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<sup>5</sup> Marked "P13A".

<sup>6</sup> Marked "1R1".

<sup>7</sup> Marked "P14".

<sup>8</sup> Marked "P13A".

<sup>9</sup> Marked "P18".



10. The Petitioner submitted an appeal dated 28<sup>th</sup> June 2007,<sup>10</sup> to which the National Salaries and Cadre Commission responded by letter dated 90<sup>th</sup> August 2007 and informed the Petitioner that the Commission could not recommend an alternative salary scale.<sup>11</sup> The reason provided by the National Salaries and Cadre Commission is reproduced below:

*"2004.10.03 දානමින් "ඉරුදින ඔබ්සර්වර්" පුවත්පතේ පළකර ඇති දැක්වීමට අනුව මහජන සම්බන්ධතා හා තොරතුරු නිලධාරී තනතුර සඳහා ඉල්ලුම් පත් කැඳවා ඇත්තේ වසරින් වසර අලුත් කිරීමේ කොන්දේසිය පරිදි කාර්යක්ෂමතා ඇගයීමට ලක් කිරීමේ ඉඩකඩ සහිතව කොන්ත්‍රාත් පදනම මත වර්ෂයක කාලයකට පත් කිරීම සඳහාය. එහෙත් ඒ මහතා වෙත නිකුත් කර ඇති 2004.12.01 දිනැති පත්වීම් ලිපියට අනුව ස්ථිර විශ්‍රාම වැටුප් සහිත තනතුරක් සේ සඳහන් කොට ඇත. එකී පත්වීම ලිපියේ 16 වැනි වගන්තිය අනුව ලියන ආරච්චි මහතා විසින් එහි සඳහන් කොන්දේසිවලට යටත්ව පත්වීම සිය කැමැත්තෙන් භාර ගෙන තිබේ. එබැවින් පෙර දැරූ තනතුරේ වැටුප් හෝ ප්‍රතිලාභ මෙම තනතුර ලැබීමෙන් පසුව අහෝසි වන අතර, නව තනතුරේ වැටුප් සහ අනිකුත් කොන්දේසිවලට යටත් වේ. තවද, ඔබ ආයතනයේ සේවකයින්ට ගෙවනු ලබන වැටුපට අමතර දීමනාව ද මේ මහතාට ගෙවන බව ඔබගේ 2004.11.23 දිනැති ලිපියෙන් තහවුරු වේ."*

An translation of the above is provided herein:

*"According to the newspaper notification published on 03.10.2004 in the 'Sunday Observer', applications were called for the position of Public Relations and Information Officer on the condition of annual renewal and subject to the Efficiency Bar Examination on a contract basis for a year. However, it was mentioned in the appointment letter issued on 01.12.2004 to the said officer that the post is permanent and pensionable. According to Section 16 of the appointment letter, Mr.*

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<sup>10</sup> Marked "IR5".

<sup>11</sup> Marked "P17".

*Liyanaarachchi has agreed to assume the duties under the specified conditions. Hence, the salary or benefits of the previous post are invalidated after receiving this post and are subject to the salary and other conditions of the new post. Further, it is confirmed by your letter dated 23.11.2004 that the additional allowance paid to the officers of your institute, in addition to the salary, has also been paid to this officer."*

11. The Petitioner then submitted further appeals to the National Police Commission.<sup>12</sup> By letter dated 18<sup>th</sup> October 2007,<sup>13</sup> the National Police Commission brought the grievances to the notice of the Director General of Establishment. In response, the Director General, by letter dated 31<sup>st</sup> October 2007,<sup>14</sup> has only recommended that if the National Police Commission is of the opinion that the current salary scale allocated to the Petitioner should be revised, it would be advisable to get the recommendation of the National Salaries and Cadre Commission. The Director himself opines in the said letter that the Commission is recommended to consider the Petitioner's previous salary step in coming to a decision regarding the nearest higher step of the salary scale for the post of Media Officer.
12. Further, as a result of the Petitioner's appeal, the Presidential Secretariat, by letter dated 17<sup>th</sup> November 2009,<sup>15</sup> forwarded the Petitioner's appeal to the Secretary of the National Police Commission and provided direction to correct any injustices suffered by the Petitioner. Subsequently, the Secretary to the National Police Commission, by letter dated 23<sup>rd</sup> November 2009,<sup>16</sup> responded by informing the Presidential Secretariat of steps taken to appoint a Sub-Committee to examine the Petitioner's

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<sup>12</sup> Marked "P19B", "P19C", "P19D" and "P19E".

<sup>13</sup> Marked "P20".

<sup>14</sup> Marked "P21".

<sup>15</sup> Marked "P22A".

<sup>16</sup> Marked "P22C".

grievances, the findings of which Below is an extract of the observations within the report of the said Sub-Committee:<sup>17</sup>

*"It is proposed to obtain the approval of the relevant authorities:*

*a) Place Mr. Liyanarachchi on the salary scale as per the re-categorization and re-grouping of the post as indicated in the NPC letter dated 03.06.2007.*

*b) To make it personal to Mr. Liyanarachchi to rectify the anomaly."*

13. The NPC letter dated 06<sup>th</sup> March 2007 referred to in the Sub-Committee's proposal<sup>18</sup> was issued by the National Police Commission to seek approval from the Director General of Establishments to add salary increments to the Petitioner's salary in the MN-4-2006 scale.
14. On the basis of the above report, the Secretary to the National Police Commission sought approval from the Director General of Establishments by letter dated 17<sup>th</sup> February 2010<sup>19</sup> and from the National Salaries and Cadre Commission by letter dated 30<sup>th</sup> November 2010 to place the Petitioner on the MN-6-2006 salary scale.<sup>20</sup> The Petitioner has submitted that, as no relief was provided to him, he made further appeals.<sup>21</sup>
15. In 2009, upon the new members of the National Police Commission commencing their term of office, the Commission decided to implement the recommendations of the Director General of Establishments contained within **P21** by letter dated 12<sup>th</sup> July 2012.<sup>22</sup>

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<sup>17</sup> Marked "P22B".

<sup>18</sup> Marked "1R3".

<sup>19</sup> Marked "P23".

<sup>20</sup> Marked "P24".

<sup>21</sup> Marked "P25A" and "P25B".

<sup>22</sup> Marked "P26".

16. Thereafter, the 8<sup>th</sup> Respondent presented Commission Paper bearing No. 03/17/2012 to the National Police Commission seeking approval to change the Petitioner designation to "Assistant Director (Public Relations and Media)" and to place him at a higher salary step in salary grade MN-4 in terms of Circular No. 6/2006.<sup>23</sup> In the 1<sup>st</sup> Respondent's affidavit dated 28<sup>th</sup> October 2013, it has been submitted that such approval was not granted consideration of the fact that an elevation of the post of Media Officer to be parallel with that of an Assistant Director and payment of a salary higher than that prescribed would be contrary to the organisational structure and approved cadre of the Commission and further that such a course of action would create a serious anomaly and an unhealthy precedent in the entire public sector. Thereafter, a second Commission Paper bearing No. 11/38/2012 was presented by the 8<sup>th</sup> Respondent laying out proposals for, inter alia, the placement of the Petitioner on a higher salary step on the MN-4 salary scale as well as grant increments to the Petitioner.<sup>24</sup> Following approval for the same, such decision and the approved salary revisions<sup>25</sup> were communicated to the Petitioner via letter issued by the 8<sup>th</sup> Respondent and dated 7<sup>th</sup> December 2012.<sup>26</sup>
17. However, when such decision was forwarded to the Accounts Division of the National Police Commission, the Division informed the 8<sup>th</sup> Respondent by letter dated 19<sup>th</sup> December 2012<sup>27</sup> that the aforementioned decision taken at the 38<sup>th</sup> Meeting of the National Police Commission and the contents of **P31** were not consistent nor complementary, and further, by letter dated 30<sup>th</sup> January 2013 and addressed to the 8<sup>th</sup> Respondent,<sup>28</sup> highlighted the differences between the **P30** and **P31**.

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<sup>23</sup> Marked "P28".

<sup>24</sup> Marked "P29".

<sup>25</sup> Meeting minutes marked "P30".

<sup>26</sup> Marked "P31".

<sup>27</sup> Marked "P32".

<sup>28</sup> Marked "P33".

18. Thereafter, a fresh Commission Paper bearing No. 16/48/2013<sup>29</sup> was presented by the 8<sup>th</sup> Respondent seeking amendment of the original decision. At the 48<sup>th</sup> Meeting of the National Police Commission, the 1<sup>st</sup> to the 7<sup>th</sup> Respondents decided to place the Petitioner on the corresponding salary step of salary scale MN-4 in terms of Public Administration Circular No. 06/2006 as proposed by **P29**.
19. Subsequently, however, the Petitioner received a letter dated 11<sup>th</sup> March 2013 issued by the 8<sup>th</sup> Respondent informing him that the afore-stated decision has been cancelled.<sup>30</sup> The Petitioner has submitted that upon further inquiry, he learned that another Commission Paper bearing No. 19/53/2013 had been presented by the 8<sup>th</sup> Respondent at the 53<sup>rd</sup> meeting of the National Police Commission, during which the previous approvals within **P29** and **P34** were withdrawn.<sup>31</sup> The Petitioner was informed by a letter dated 27<sup>th</sup> March 2013 and issued by the 8<sup>th</sup> Respondent that the National Police Commission, at its 53<sup>rd</sup> meeting, concluded that no injustice had been caused to the Petitioner.<sup>32</sup>
20. The Petitioner complains, *inter alia*, that he has suffered a financial loss as a consequence of such erroneous application of the present salary scale and that the decisions taken by the National Police Commission to revise the Petitioner's salary at the 38<sup>th</sup> and 48<sup>th</sup> Meetings have been arbitrarily withdrawn without the provision of reasons for the same. Predominantly, the Petitioner states that he had the legitimate expectation of being placed on an appropriate salary scale commensurate with his qualifications, experience and the responsibilities attached to the post.
21. To assess the merits of the Petitioner's legitimate expectation, it is paramount first to appreciate the breadth and applicability of this doctrine.

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<sup>29</sup> Marked "P34" and Minutes marked "P35".

<sup>30</sup> Marked "P36".

<sup>31</sup> Marked "P37" and Minutes marked "P38".

<sup>32</sup> Marked "P39".

22. Justice Dehideniya captures the purpose of the doctrine in **Zamrath v Sri Lanka Medical Council**<sup>33</sup> and showcases its essential function in safeguarding individuals from the misuse of discretionary power by administrative authorities, discussing that when authorities, through their conduct, create legitimate expectations, these expectations must be honoured to maintain legal certainty and the rule of law. It follows, therefore, that disregard of such expectations undermines public trust and the perception of legal reliability, which are fundamental to justice and good governance.
23. In **Nimalsiri v. Fernando**,<sup>34</sup> Justice Jayawardena P.C. expounded the principle of legitimate expectation as follows:

*“The doctrine of legitimate expectation applies to situations to protect legitimate expectation. It arises from establishing an expectation believing an undertaking or promise given by a public official or establishing an expectation taking into consideration of established practices of an authority. However, the said criteria should not be considered as an exhaustive list as the doctrine of legitimate expectation has a potential to develop further. Legitimate expectation can be either based on procedural propriety or on substantive protection.”*

24. Justice Jayawardena P.C. went on to explain the parameters and contours of the doctrine’s applicability as follows:

***“An expectation is considered to be legitimate where it is founded upon a promise or practice by the authority that is said to be bound to fulfil the expectation. Therefore, an expectation reasonably entertained by a person may not be considered as legitimate because of some countervailing consideration of policy or law. Further, clear***

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<sup>33</sup> S.C. (FR) 119/2019, SC Minutes of 23<sup>rd</sup> July 2019.

<sup>34</sup> S.C. (F/R) 256/2010, SC Minutes of 17<sup>th</sup> September 2015.

*statutory words override any expectation howsoever founded. Where an expectation is founded on a policy and later a relevant change of policy is notified, the expectation founded on the previous policy cannot be considered as legitimate.*

***An expectation the fulfilment of which results in the decision maker making an unlawful decision cannot be treated as a legitimate expectation. Therefore, the expectation must be within the powers of the decision-maker for it to be treated as a legitimate expectation case. If a person did not expect anything, then there is nothing that the doctrine can protect."***

25. As I will endeavour to explain in the next few paragraphs of my judgment, the Petitioner's case is deficient on two grounds ; the first being that the Petitioner has failed to establish the foundation of a promise or practice by a public authority that would bind such public authority to the Petitioner's expectation and, the second, that on the circumstances of the Petitioner's change in employment, the expectation propounded by the Petitioner cannot be lawfully sought to be fulfilled.
26. I observe a surprisingly notable failure to appreciate that the Petitioner's purported expectation is based on a misunderstanding of the circumstances of his recruitment to the National Police Commission. As narrated above, the Petitioner attended two interviews for the two distinct positions –Public Relations and Information Officer and Media Officer to the National Police Commission. The process undertaken by the Petitioner to change his employment would also be equally distinct. More precisely, should the Petitioner have been recruited as a Public Relations and Information Officer following the first interview by letter of appointment **P7**, the Petitioner would rightly be entitled to an additional 33½% increase in his salary, having obtained release on secondment from the Ministry of Public Administration. In actuality, the Petitioner was called for a second interview and offered the role of Media Officer to the National

Police Commission, which necessitated a permanent release from his previous position and appointment of his new post on a permanent basis, as opposed to a secondment.

27. In fact, this is the explanation provided by the Director General of Establishments in **1R4** in refusing approval sought by the National Police Commission to add salary increments to the Petitioner's salary scale. The Director General states:

*"මෙම නිලධාරියා මාධ්‍ය නිලධාරී තනතුරට නියමිත වැටුපට වැඩි වැටුප් පරිමාණයක් හිමි තනතුරක සේවය කර ඇති බැවින්, කලින් දැරූ තනතුරක් සම්පූර්ණයෙන්ම මුදවාගෙන ස්ථිර පදනම මත මාධ්‍ය නිලධාරී තනතුරට පත්කළ පසු ආයතන සංග්‍රහයේ VII වැනි පරිච්ඡේදයේ 9:8:3 උපවගන්තිය යටතේ වැටුප් ගෙවිය යුතු බව දන්වනු කැමැත්තෙමි."*

A translation of the above reads as follows,

*"Please be informed that since this officer has served in a position with a higher salary scale than that prescribed for the Media Officer, he shall be paid under Section 9:8:3 of Chapter VII of the Establishments Code after he is fully released from his previous post and appointed to the post of Media Officer on a permanent basis."*

28. The relevant section of the Establishment Code referred to is reproduced below:

*9:8:3 නිලධාරියෙකු කලින් දැරූ තනතුරට වඩා පහළ තත්වයේ තනතුරකට පත්වූ විට, ඉදින් (9:3 හා 9:4 උප වගන්ති යටතේ පිළිගත හැකි) ඔහුගේ මුළු සේවා කාලයම එම පහළ තනතුරෙහිම වී නම් ඔහුට ලැබිය යුතුව තිබුණ වැටුපට වඩා වැඩි වැටුපක් කිසිම නිලධාරියෙකුට නොලැබිය යුතු ය.*

A translation of the above reads as follows:

*9:8:3 No officer, appointed to a post inferior to that which he held previously, should be paid more than what he would have been paid had*



*all his service (admissible under sub sections 9:3 and 9:4) been in the inferior post.*

29. This is also reiterated in the preliminary response to the Petitioner's appeal by the National Salaries and Cadre Commission, **P17**, where the Secretary to the Commission reasons, which is once again reproduced below:

*"එකී පත්වීම් ලිපියේ 16 වැනි වගන්තිය අනුව ලියන ආරව්වි මහතා විසින් එහි සඳහන් කොන්දේසි වලට යටත්ව පත්වීම සිය කැමැත්තෙන් භාර ගෙන තිබේ. තිබේ. එබැවින් පෙර දැරූ තනතුරේ වැටුප් හෝ ප්‍රතිලාභ මෙම තනතුර ලැබීමෙන් පසුව අහෝසි වන අතර, නව තනතුරේ වැටුප් සහ අනිකුත් කොන්දේසිවලට යටත් වේ. තවද, ඔබ ආයතනයේ සේවකයින්ට ගෙවනු ලබන වැටුපට අමතර දීමනාව ද මේ මහතාට ගෙවන බව ඔබගේ 2004.11.23 දිනැති ලිපියෙන් තහවුරු වේ."*

A translation of the above reads as follows,

*"According to Section 16 of the appointment letter, Mr. Liyanaarachchi has agreed to assume the duties under the specified conditions. Hence, the salary or benefits of the previous post are invalidated after receiving this post and are subject to the salary and other conditions of the new post. Further, it is confirmed by your letter dated 23.11.2004 that the additional allowance paid to the officers of your institute, in addition to the salary, has also been paid to this officer."*

30. Letter of appointment **P7** explicitly makes reference to the salary drawn by the Petitioner in his previous employment as a Grade 1 Officer of the Translator's Service and guarantees a percentage increase relative to such salary. As opposed to **P7**, letter of appointment **P9** states:

*"11. The post carries a salary of Rs. 101,700/- per annum rising to Rs. 142,200 per annum by fifteen increments of Rs. 2700/- per annum. (This*

*salary is to be revised and will be notified to you in due course). In addition to this salary, approved allowances will be paid."*

31. As demonstrated in **P13**, the salary was appropriately revised in accordance with the Public Administration Circular No. 09/2004, placing the Petitioner on the salary scale TB 5-1 in concurrence with the Petitioner's commencement date as Media Officer.
32. I cannot, therefore, infer any legitimacy to the Petitioner's purported expectation that the salary scale attached to his post as a Media Officer should match or surpass that of his previous post as a Grade 1 Translator.
33. In fact, it is crucial to draw a clear line between a legitimate expectation worthy of protection by law in contrast to a mere hope or aspiration. In **Desmond Perera and Others v. Karunaratne, Commissioner of National Housing and Others**,<sup>35</sup> the Court of Appeal established that,

*"[A] hope does not fall into the category of a legitimate expectation which has been defined as a right or interest which is looked forward to by a person. The principle entrenched in administrative law regarding legitimate expectation is the "right to be heard". A hope does not create a legitimate expectation in law."*

34. In **Vavuniya Solar Power v. Ceylon Electricity Board**,<sup>36</sup> Justice Kodagoda, in agreement with the above view in **Desmond Perera and Others v Karunaratne** (supra), states,

*"In order to successfully claim relief on the basis of a legitimate expectation that has been frustrated, the claimant must establish that*

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<sup>35</sup> (1994) 3 Sri L.R. 316.

<sup>36</sup> S.C. (F/R) 172/2017

*the representation made by the public authority or its past conduct generated an 'expectation' which is justiciable in the eyes of the law.*

35. In the same case, Kodagoda J. also states that, with regard to the legitimacy of an expectation arising from a public authority's representation or past practice, the law considers only the expectation a person is entitled to develop, not the subjective expectation actually held; the key question is what expectation the person was legally entitled to develop based on the public authority's representation or conduct.
36. The Petitioner relies quite strongly on the argument that he was only agreeable to accept the post of Media Officer on the condition that his remuneration would be equivalent to or higher than that of a Grade 1 Translator. Thus, in his view, it is contrary to his legitimate expectation to be placed on the salary scale MN-4 inasmuch as a Grade I Translator would be paid according to the higher salary scale MN-6. However, the Petitioner is attempting to "ride two horses with one saddle"; this approach disregards the established legal framework and the objective standards for legitimate expectation, attempting to blend subjective hope with legal entitlement inappropriately. The precedent clearly differentiates between legitimate expectations rooted in law and mere aspirations, thereby invalidating the Petitioner's claim.
37. On a somewhat similar line of argument, the Petitioner has attempted to persuade this Court that he was entitled to be placed in Salary Scale SL-1-2006 in terms of the revisions brought about by Public Administration Circular No. 06/2006 which would place him on equal footing with an Assistant Commissioner of Cooperative Development by reason that the post of Media Officer belongs to the 'Staff Officer' category of the Circular. However, the Affidavit of the 1<sup>st</sup> Respondent dated 28<sup>th</sup> October 2013 rightly identifies that the Salary Scale SL-1-2006 is applicable to the post of the above-mentioned Assistant Commissioner by virtue of explicit instructions in Annexure III of the said Circular. I find no legal basis to extend the afore-mentioned salary scale to the post of the Petitioner nor equate the Petitioner's post to that of the

Assistant Commissioner as the Circular is devoid of any explicit reference to the post of Media Officer.

38. The Petitioner, being aware of the fact that a Scheme of Recruitment did not exist for the post of Media Officer, accepted such employment with this knowledge. In my estimation, the Petitioner has chosen his path and must now tread it faithfully. One cannot gallivant into a new job and expect the old perks to follow—it simply defies practicality and the logical order of things.
39. In the Petitioner's written submissions, the below extract is quoted from Wade and Forsyth's Administrative Law<sup>37</sup> textbook:

*"When a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty."*

40. This statement is, indeed, fundamentally sound; it underscores the principle that the doctrine of legitimate expectation cannot override a public authority's statutory duty. It is, in fact, a caveat to the doctrine of legitimate expectation that where such expectation would interfere with a public authority's statutory duty, it is no longer, and never was, legitimate. In the event the Petitioner was granted a higher pay scale contrary to the salary scale administered by the circulars and the Scheme of Recruitment, the National Salaries and Cadre Commission would be in breach of its statutory duty.
41. The foundation of the Petitioner's claim rests on a promise that was never explicitly made, nor legally binding. It is a common misconception that the mere act of communicating a condition equates to its acceptance by the employer, especially

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<sup>37</sup> 12<sup>th</sup> edition.

when the final terms and conditions of employment, as reflected in the appointment letter, do not corroborate such a condition. It is pertinent to note that the principle of legitimate expectation serves as a safeguard against arbitrary and capricious administrative actions. It ensures that individuals who have been led to believe, through the words or actions of a public authority, that certain procedures or benefits will be granted are not disappointed without good reason. However, in this instance, the Petitioner's expectation is built on a precarious foundation of personal assumption rather than a substantive promise or practice by the National Police Commission. While a powerful tool for ensuring administrative fairness, the doctrine of legitimate expectation cannot be stretched to encompass subjective hopes that are not anchored in an explicit promise or established practice.

42. It cannot be ignored that the Petitioner has received inconsistent directions in response to his various appeals from a diverse range of public officials and bodies. Ultimately, however, at the apex of the decision-making process sits the Public Service Commission, which primarily bears responsibility and wields authority over all facets of the affairs of public officers, including salary scales. In appropriate circumstances, this responsibility is administered via subordinate bodies such as the National Salaries and Cadre Commission and codified in instruments such as circulars and schemes of recruitment. Compliance with such standards and directions is imperative; any deviations would jeopardise the carefully constructed, albeit at times admittedly tenuous, administrative framework.
43. The correspondence between the Petitioner and various public officials, although reflecting a certain level of administrative ambiguity, does not suffice to establish a binding promise or an actionable breach of duty. It is a well-settled principle that administrative efficiency and procedural propriety do not automatically translate into a legal entitlement, especially when the statutory framework dictates otherwise.

44. On the above facts, circumstances and analysis, I find that the Petitioner has failed to establish a violation of his fundamental rights under Article 12(1) of the Constitution by one or more of the Respondents.

***Application Dismissed.***

**JUDGE OF THE SUPREME COURT**

**MURDU N. B. FERNANDO, PC, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**PRIYANTHA FERNANDO, J.**

I agree.

**JUDGE OF THE SUPREME COURT**