

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

M.D.S.A. Perera,
No. 59, Pahala Kosgama,
Kosgama.

Petitioner

SC /FR/ Application No. 62/2020

Vs,

1. Dharmasena Dissanayake,
Chairman,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
- 1A. Jagath Balapatabendi
Chairman,
2. Prof. Hussain Ismail,
Member,
- 2A. Indrani Sugathadasa,
Member,
3. Dr. Prathap Ramanujam,
Member,
- 3A. V. Shivagnanasothy,
Member,
4. V. Jegarasasingam,
Member,
- 4A. Dr. T.R.C. Ruberu,
Member,

5. S. Ranugge,
Member,
- 5A. Ahamod Lebbe Mohamed Saleem,
Member,
6. D. Laksiri Mendis,
Member,
- 6A. Leelasena Liyanagama,
Member,
7. Sarath Jayathilaka,
Member,
- 7A. Dian Gomes,
Member,
8. Sudarma Karunarathna,
Member,
- 8A. Dilith Jayaweera,
Member,
9. G.S.A. De Silva P.C.,
Member,
- 9A. W.H. Piyadasa,
Member,

The 2nd to 9th Respondents all of;

Public Service Commission,
No. 122/9, Rajamalwatta Road,
Battaramulla.

10. M.A.B. Daya Senarath,
Secretary,
Public Service Commission,
No. 122/9, Rajamalwatta Road,
Battaramulla.

11. S. Hettiarachchi,
Secretary to the Ministry of Public
Administration, Home of Affairs,
Provincial Councils and Local Government,
Independence Square, Colombo 07.

- 11A. J.J. Rathnasiri,
Secretary to the Ministry of Public
Administration, Home of Affairs,
Provincial Councils and Local Government,
Independence Square, Colombo 07.

- 11B. M.P.K. Mayadunne,
Secretary to the Ministry of Public
Administration, Home of Affairs,
Provincial Councils and Local Government,
Independence Square, Colombo 07.

12. Jagath D. Dias,
Director General,
Department of Pensions,
Maligawatta, Colombo 10.

13. W.D. Jayasinghe,
Secretary General,
National Procurement Commission,
No. 145, Main Street, Battaramulla.

14. Mayuri Perera,
Director Administration,
National Procurement Commission,
No. 145, Main Street, Battaramulla.

15. C.P.U. Hettiarachchi,
Senior Assistant Secretary,
(Internal Administration)
Ministry of Public Administration, Home
of Affairs, Provincial Councils and Local
Government,
Independent Square, Colombo 07.

16. T. Murugeson,
Additional Secretary,
Public Service Commission,
No. 1200/9, Rajamalwatta Road,
Battaramulla.
17. Hon Attorney General,
Attorney General's Department,
Colombo 12.

Respondents

Before: Justice Vijith K. Malalgoda PC,
Justice K. Kumudini Wickremasinghe,
Justice Mahinda Samayawardhena,

Counsel: Shantha Jayawardena with Hiranya Damunupola for the Petitioner
Sureka Almeda, SC, for the Respondents

Argued on: 12. 07.2023

Judgment on: 14.12.2023

Vijith K. Malalgoda PC J

The Petitioner M.D.S.A Perera of No. 59 Pahala Kosgama, Kosgama who was serving as a Grade I Accountant in the Sri Lanka Accountants Service, had complained of an illegally initiated disciplinary inquiry commenced a few days prior to his retirement upon completion of 60 years, which made him to retire under Section 12 of the Minutes on Pension violating his Fundamental Right to equality guaranteed under Article 12 (1) of the Constitution.

This Court granted leave to proceed on the alleged violation of Article 12 (1) on 24th November 2021. As revealed before us, the Petitioner was served with a charge sheet by the Public Service Commission at the time of his retirement and another charge sheet was also issued to him subsequently.

1st Charge sheet against the Petitioner

The Petitioner was a resident of Kosgama, close to the Salawa Army Camp where the armory of the said camp exploded causing damage to the residents of the area. The Petitioner's house and personal vehicle were damaged due to the said explosion but the Petitioner was not happy with the compensation awarded to him. Whilst making inquiries, he got to know that the compensation paid to certain individuals is disproportionate to the damage caused and made a complaint to the Divisional Secretary informing his dissatisfaction. In the meantime, a Right to Information (hereinafter referred to as RTI) application was made to the office of the Cabinet of Ministers requesting copies of Cabinet Memorandums and Decisions in respect of the assessment and granting relief to Salawa victims. Once he received three Cabinet decisions as per the above request, he made several requests under the Right to Information Act to several authorities including;

1. The request made to information officer of the Ministry of Disaster Management dated 14.07.2017
2. The request made to Divisional Secretariat Seethawaka dated 28.08.2017
3. The request made to the Department of Valuation dated 30.08.2017
4. Appeal dated 21.09.2017 made to RTI Commission.

At the time the Petitioner made the above RTI applications, he was working as the Chief Accountant at the Ministry of Rural Economic Development, and in some of the Applications made, he placed his official stamp on the request application.

Whilst the above process was in progress, the Petitioner was informed of a complaint made by one Sudath Pushpakumara to the Secretary to the Ministry of Public Administration by letter dated 14.03.2018 against the Petitioner, and a preliminary investigation was held and a statement was recorded from the Petitioner.

The Petitioner has annexed marked P-15 a copy of the preliminary investigation report and brought to our attention to the following two passages one from the observations and the other from the recommendations of the inquiry officer.

“එම්. ඩී. එම්. ඒ. පෙරේරා මහතා ආපදා කළමනාකරණ අමාත්‍යාංශයේ හා සීතාවක ප්‍රාදේශීය ලේකම් කාර්යාලයේ තොරතුරු නිලධාරී වෙතින් තොරතුරු ඉල්ලා යොමු කරන ලද ලිපි සඳහා සිය නිලනාමය හා මුද්‍රාව භාවිතා කර ඇති බව තහවුරු වුවද රාජ්‍ය සේවයේ නියුතු මාණ්ඩලික නිලධාරියකු වෙත නිකුත් කෙරෙන නිල මුද්‍රාව භාවිතා කල යුතු ආකාරය හෝ භාවිතයට අදාල සීමාවන් පිළිබඳව ආයතන සංග්‍රහයේ විධිවිධාන යටතේ හෝ රාජ්‍ය පරිපාලන චක්‍රලේඛ විධිවිධාන යටතේ සඳහන් නොවන හෙයින් ඔහු වරදක් සිදුකර නොමැති බව තහවුරු වන බව.”

“එම්. ඩී. එම්. ඒ. පෙරේරා මහතාට තොරතුරු පනත යටතේ සිය පෞද්ගලික අවශ්‍යතා සඳහා තොරතුරු ලබා ගැනීම හෝ යම් පාර්ශවයක් සම්බන්ධව පෞද්ගලික පැමිණිලි කිරීම සඳහා යන කාරණය සඳහා සිය රාජකාරි තනතුර හා නිල මුද්‍රාව භාවිත කිරීමෙන් වැලකී සිටින ලෙස අවවාද කිරීමට කටයුතු කිරීම.”

Even though the said “preliminary investigation report” had only recommended, that the Petitioner be warned not to use his official seal for any personal purpose, no such warning was issued to the Petitioner by the disciplinary authority but, he received a letter dated 04.11.2019 from the 15th Respondent calling for explanation to the charge sheet dated 21.10.2019 issued

by the 10th Respondent. The said charge sheet which is produced marked P-17 contained two charges and the count one refers to the charge of misusing his official stamp.

As submitted by the Petitioner, by letter dated 13.12.2019 his explanation was forwarded to the Ministry of Public Administration.

2nd Charge sheet against the Petitioner

The Petitioner had been appointed to the National Procurement Commission on an acting basis to the Post of Director (Procurement Investigation) by letter dated 07.11.2018 and while he was functioning in the above capacity it was revealed by the Audit Report dated 30.05.2019 published by National Audit Office, that there were financial irregularities pertaining to the official vehicle used by the 13th Respondent in violation of Public Administration Circulars 05 of 2016 and 14 of 2008.

The Petitioner brought this matter to the notice of the Chairman and the Members of the Commission and also forwarded letters dated 15.07.2019 to the Commission to Investigate Allegations of Bribery or Corruption and Secretary to the Public Service Commission complaining about the said irregularity.

By letter dated 03.09.2019, the Petitioner was transferred from the post of Director (Procurement Investigation) to the Ministry of Public Administration, Disaster Management and Livestock Development. The said decision to transfer the Petitioner was challenged by the Petitioner by way of a Fundamental Rights Application before the Supreme Court bearing No. 379/2019 but the Proceeding in the said matter was terminated since the Petitioner was granted a substantive position as the Chief Internal Auditor in the Ministry of Plantation Industries and Export Agriculture.

In the meantime, the Petitioner was served with a notice requesting him to be present at the National Procurement Commission on 31.10.2019 to record a statement with regard to an investigation conducted against him. The Petitioner made a statement to the investigating officer as requested and the Petitioner was served with a charge sheet dated 06.02.2020 by the 10th Respondent. The said charge sheet contained charges with regard to his conduct in making a complaint against the 13th and the 14th Respondents to the Commission to Investigate Allegations of Bribery or Corruption.

However prior to the second charge sheet dated 06.02.2020 being served on the Petitioner, by letter dated 23.01.2020 the Public Service Commission had informed the 11th Respondent that the explanation given by the Petitioner to the charge sheet dated 21.10.2019 is not acceptable to the Public Service Commission and therefore the Commission had decided to hold a formal disciplinary inquiry against the Petitioner and pending the said inquiry the Commission had decided to send the Petitioner on retirement from 07.02.2020 when he completed 60 years under the provisions of Section 12 of the Pension Minute.

It is the said decision of the Public Service Commission that is challenged before this Court under paragraphs 'e' and 'h' to the prayer of the petition along with several other reliefs to declare null and void the decisions by the Public Service Commission to hold formal inquiries against the Petitioner.

It was also submitted on behalf of the Petitioner before this Court that, when the Public Service Commission had called for his explanation with regard to the charge sheet dated 21.10.2019, the charges were referred to the Secretary of Public Administration, for his observation and the Secretary of Public Administration having referred the charges to the Secretary to the Ministry of Mahaweli, Agriculture, Irrigation and Rural Development, the Ministry under which the

Petitioner was serving at that time, had forwarded the observations of the Secretary to the Ministry of Mahaweli, Agriculture, Irrigation, and Rural Development where Petitioner had been recommended to be discharged. However, the said recommendation was rejected by the Public Service Commission. (P-38 or P-39)

Whilst submitting the above, the Petitioner who was a Senior Accountant in the Government Accountants Service had made an allegation which is personal in nature, against the 1st Respondent, namely Dharmasena Dissanayake, Chairman of Public Service Commission, of his involvement in deciding to hold a preliminary inquiry as well as a formal inquiry when the relevant authorities had recommended otherwise. It was alleged that the 1st Respondent in his capacity as the Chairman of Public Service Commission and previously as the Secretary to the Ministry of Public Administration had developed an animosity towards the Petitioner who was the Secretary to the Government Accountants Association who had made him the Respondent in several litigations before the Supreme Court. (P-4 or P-5)

Whilst resisting any relief being granted to the Petitioner, the incumbent Chairman of the Public Service Commission had submitted the following before this Court,

- a) At the time the Petitioner reached his age of retirement, i.e., 60 years, the disciplinary action against him was pending on a complaint said to have been made against him by one W.V.D. Sudath Pushpakumara of No. 64/2B, Balika Vidyalaya Mawatha, Pahala Kosgama, Kosgama of misusing official powers and state property.
- b) In the said circumstances, the Petitioner was sent on retirement under Section 12 of the Minutes on Pension
- c) The Petition referred to above was received against the Petitioner in March 2018 and on a directive made by the Public Service Commission, the Secretary to the

Ministry of Public Administration appointed a two-member panel to conduct a preliminary investigation into the complaint

During the investigation, it was revealed that on 04.08.2016 when the officers of the Assistant Government Agents office Seethawaka were making preparations to pay compensation to the victims who suffered losses to their houses, the office had received a complaint from one M.D.S.A. Perera who had introduced himself as the Chief Accountant to the Ministry of Rural Development and also Deputy Director at Anti-Corruption Secretariat, complaining that, the relevant authorities have recommended Rs. 853,000 for the damages caused to the house of one W.D. Sudath Pushpakumara in excess of the real damage caused to him but the compensation recommended to the others, whose houses were damaged more than the house of Pushpakumara, were less than the amount recommended to Pushpakumara. The Petitioner had further requested to stop any payment until the matter is fully investigated.

The officials at the Assistant Government Agents office had taken note of the said complaint and the payment was re-considered through the Government valuer.

In addition to the above complaint the Petitioner made, he had submitted several RTI requests to various government institutions. The Petitioner identifying himself as the Chief Accountant Rural Development Ministry had submitted an RTI application on 14.07.2017 to the Ministry of Disaster Management requesting the details of;

- a) As per Cabinet paper 23/2016, lists of 1794 beneficiaries who received compensation of less than one million each, 112 beneficiaries who received compensation over one million each, and the list of recipients who were recommended to receive compensation for damaged house hold items

- b) As per Cabinet paper 18/2016, list of 2031 beneficiaries who received compensation ranging between 100,000/- and 1,000,000/-
- c) As per Cabinet paper 14/2016, list of beneficiaries who were recommended to receive up to Rs. 10,000/- for the loss caused to them as self-employed people of the area including three-wheeler owners, shop owners, etc.

As some of the information he requested was considered confidential, several letters were exchanged between several government institutions including a letter written by the Secretary to the Ministry of Disaster Management to the Secretary of the Ministry of Rural Development Ministry inquiring whether the information called by its Accountant is required for an official purpose. This letter was replied to by the Additional Secretary to the Ministry of Rural Development informing that the requested information was not required for any official purpose. In the meantime, the Petitioner too had written another letter to the Ministry of Disaster Management requesting the registered number of his request, and in the said letter he had placed his official seal below his signature.

By letter dated 24.07.2017, the Petitioner had submitted a similar RTI request from the Seethawaka Pradeshiya Saba requesting information almost similar to his request made to the Ministry of Disaster Management with specific reference to the amounts they paid to each party with a full list under each category. In the request he made, he had placed the official rubber stamp below his signature. This request too was considered confidential and several letters were exchanged between several government agencies.

Making another RTI request from the Government Valuation Department by letter dated 30.08.2017 requesting the details of the valuations the Department made with regard to

damage caused to houses, household equipment, and vehicles during the explosion that took place on 25.06.2006 at the Army Camp Salawa-Kosgama.

However, the Petitioner was not successful in obtaining the said request either. The Petitioner was informed by the Valuation Department that there are matters pending before the Human Rights Commission and the Supreme Court on the matter referred to in the request and therefore refused to issue the information requested by him.

As against the orders made by the authorities refusing to issue the RTI requests made by the Petitioner, he submitted an appeal to the Right to Information Commission. It was further observed in the investigation report that the information requested by the Petitioner did not appear to be personal in nature but was general in nature and that was the main reason for the authorities to refuse the requests made by the Petitioner. It was further revealed that the Petitioner in addition to identifying his designation in the applications he made, had also placed his official stamp in those requests. The fact that the Petitioner was using his official status and the official stamp was quarried from him by the Additional Secretary to the Ministry of Rural Development, the Ministry Under which the Petitioner was working at that time by letter dated 30.01.2018. By letter dated 04.04.2018, the same officer had informed the Petitioner that there was material to establish him using his official status and official stamp for private matters. By letter dated 06.12.2018, the same officer had warned the Petitioner to refrain from using his official designation and the official stamp when obtaining information for private matters.

Whilst referring to the above information with regard to the report the inquiring officers submitted to the Public Service Commission, the incumbent Chairman of the Public Service Commission has taken up the position that, the purpose for requesting the Secretary to the

Ministry of Public Administration to hold an inquiry was to ascertain whether the Petitioner had committed any misconduct, by misusing the official powers and government property.

With regard to the recommendation submitted by the inquiry officer, it was submitted that the Public Service Commission is not bound to act on those recommendations, but the Commission after considering the conduct of the Petitioner which was revealed from the inquiry report had decided to commence a formal inquiry against the Petitioner and therefore directed the Secretary to the Ministry of Public Administration to submit draft charges. On receipt of the draft charges the Public Service Commission by charge sheet dated 21.10.2019 (R-5) called for an explanation from the Petitioner and also requested the Secretary to the Ministry of Public Administration, Disaster Management and Livestock Development to submit their observations and recommendations to the above charge sheet.

The Public Service Commission has once again considered the explanation provided by the Petitioner and the observations of the Secretary to the Ministry of Public Administration, Disaster Management and Livestock Development, and was of the view that the Petitioner should face a formal Disciplinary Inquiry in terms of Section 15.9 of Chapter XLVIII of the Establishment Code. The above decision was reached by the Commission by order dated 23.01.2020 with a consequential decision to retire the Petitioner under Section 12 of the Minutes of Pension with effect from 02.07.2020.

The Formal Disciplinary Inquiry had proceeded against the Petitioner and the findings of the said inquiry to exonerate the Petitioner were submitted to the Public Service Commission but the Commission has considered the recommendations, the circumstances, and the nature of the allegations leveled against the Petitioner in the charge sheet, had found the Petitioner guilty of both charges and recommended to the Secretary to Ministry of Public Administration

Provincial Council and Local Government to deduct 2% from his commuted pension as a punishment in terms of section 36.7.of Chapter XLVIII of the Establishment Code.

The Petitioner who was aggrieved by the said disciplinary order; had appealed to the Administrative Appeals Tribunal and the Petitioner was exonerated from all charges by the said tribunal by order dated 10.11.2022 and the said order had been given effect to by the Public Service Commission.

As already observed by me, there were recommendations by the investigating officer who conducted the preliminary investigation, the Secretary to the Ministry of Mahaweli, Agriculture, Irrigation and Rural Development, and the Inquiry officer who conducted the Formal Inquiry to discharge the Petitioner but the Public Service Commission had overruled the said recommendation and proceeded with the inquiry and found the Petitioner guilty of the two charges framed against him; until he was exonerated by the Administrative Appeals Tribunal.

Since a Complaint had been received against the Petitioner by the Public Service Commission, the Commission had directed the Secretary of Public Administration, Disaster Management to hold the preliminary investigation under the delegated powers identified in paragraphs 6:1 and 6:2 of the Establishment Code. (Chapter XLVIII)

Provisions in paragraphs 6:3, 13:1, and 13:12 of the Establishment Code refer to the provisions that need to be followed after a preliminary investigation carried out under paragraphs 6.1 and 6.2 of the Establishment Code as follows;

6:3 If a *prima-facie* case is disclosed against the officer by the preliminary investigation held in terms of sub-section 6:2 above, the relevant Disciplinary Authority should prepare a charge sheet and duly issue it to the officer. However, in the case of an officer in the Combined Services, the Head of the

Department in which the officer works should forward, without delay, the draft charge sheet and other documents to the Director of Combined Services.

- 13:1 A preliminary investigation is that which is conducted by a Disciplinary Authority or Head of Institution or other Appropriate Authority or by an officer or a Committee of Officers duly authorized by the above authorities to find facts as are necessary to ascertain the truth of suspicion or information that an act of misconduct has been committed by an officer or several officers and to find out and report whether there are, *prima-facie*, sufficient material and evidence to prefer charges and take disciplinary action against the officer or officers under suspicion. The primary task of an officer or a Committee of Officers conducting a preliminary investigation is the recording of statements of relevant persons, examination of documents and records, obtaining of originals or certified copies thereof, physical verification of state-owned assets in the charge of the officer or officers subject to the investigation, examination of relevant premises, taking over of all articles and documents which are considered necessary and making their observations and recommendations on matters found out by them regarding the act of misconduct committed.
- 13:12 After the completion of the preliminary investigation, the officer conducting the investigation should forward the report of the preliminary investigation together with the statements obtained from relevant parties, documents, etc. taken into his custody and his observations and recommendations to the appropriate authority. The officer conducting the preliminary investigation should also prepare a draft charge sheet as per Appendix 5 of this Code and forward it to the

relevant authority in the event that sufficient material is disclosed that calls for disciplinary action against the suspect officer or officers.

As per the provisions referred above, a responsibility is cast upon the investigating officer or the panel to submit observations and recommendations with the report to the disciplinary authority and to submit a draft charge sheet in the event sufficient material is disclosed against the suspect officer. However, the Establishment Code is silent in a situation where the disciplinary authority cannot agree with the recommendation of the inquiry officer.

In the case of **Prof. Desmond Mallikarachchi Vs. University of Peradeniya and Others** SC Appeal 120/2010 SC minutes dated 25.04.2019 the purpose of a preliminary inquiry was identified as follows;

“The purpose of a preliminary inquiry under the Government Establishments Code as set out in paragraph 13.1, Chapter XLVIII is “to find facts as are necessary to ascertain the truth of a suspicion or information that an act of misconduct has been committed by an officer or several officers, and to find out and report whether there are, prima-facie, sufficient material and evidence to prefer charges and take disciplinary action against the officer or officers under suspicion.”

In the case of **T.G.J.L. Amarasinghe Vs. Dr. N.C.D. Ariyaratne and others** SC FR 15/2017 SC minutes dated 02.09.2019 Prasanne Jayawardena J observes the instance where the disciplinary authority could issue a charge sheet as follows;

“In view of this fact, the scheme of the Establishments Code is that when a Disciplinary Authority is considering whether disciplinary action should be taken against a public officer, he should first ensure a ‘preliminary investigation’ is held to ascertain whether

there is a prima-facie case which justifies taking disciplinary action against that public officer.

Thereafter, a Charge Sheet is to be issued only if that preliminary investigation discloses a prima facie case against the public officer. Needless to say, this is a safeguard put in place to ensure that disciplinary action against a public officer is commenced only where it is justified.”

As submitted by the 1st Respondent, in the absence of a draft charge sheet, the commission had directed the Secretary to the Ministry of Public Administration, Disaster Management and Livestock Development to submit the draft charge sheet to the commission in order to call for an explanation from the Petitioner. However, the relevant provisions of the Establishment Code do not provide the Secretary to the line ministry to draft a charge sheet but it is the duty of the investigating officer to submit the draft charge sheet along with his recommendation if the preliminary investigation discloses an offence committed by the public servant who was under investigation.

As revealed before us, the Public Service Commission had thereafter issued the charge sheet to the Petitioner calling for his explanation and acted on the advance copy of the explanation the commission received directly from the Petitioner without waiting for the proper documentation to come from the relevant ministry and acting under the provisions of paragraph 15:9 of Chapter XLVIII of the Establishment Code, decided to hold a formal disciplinary inquiry against the Petitioner. However, it is revealed from the material placed before this Court, that the formal documents received by the Public Service Commission contained a recommendation from the Secretary to the Ministry of Mahaweli, Agriculture, Irrigation and Rural Development recommending the discharge of the Petitioner. The decision to hold the Formal Disciplinary

Inquiry was communicated by letter dated 23.01.2020 by the Public Service Commission and it was further decided to retire the Petitioner under Section 12 of the Minutes on Pension with effect from 07.02.2020. The above conduct of the Public Service Commission, especially with regard to its decision to act on the advance copy of the explanation given by the Petitioner and to communicate its decision to hold the formal disciplinary inquiry reveals the interest the Public Service Commission had shown to commence a formal inquiry against the Petitioner before he reaches the retiring age on 07th February 2020.

The principle that there is no unfettered power in taking executive and/or administrative decisions, is recognized in the case of **Marie Indira Fernandopulle and Another Vs. E.L. Senanayake, Minister of Land and Agriculture** 79 NLR 115 at page 120 as follows;

“Are the courts obliged to turn a deaf ear merely because some statutory officer is able to proclaim “I alone decide,” “When I open my mouth let no dog bark?” If that be the position when rights of the subject are involved, then the court would have abdicated its powers necessary to safeguard the rights of the individual.”

With regard to the allegation leveled against the 1st Respondent, Chairman Public Service Commission that he was biased against the Petitioner, and had taken a personal interest in penalizing him ignoring the recommendations to exonerate the Petitioner, I am not inclined to accept the said position taken up by the Petitioner for the following reason,

- i. The Petitioner had failed to submit any concrete material to establish his complaint except for him being one of the Petitioners in two cases filed against several public officials, including the 1st Respondent.
- ii. When the decision to overrule the recommendation by the Formal Inquiry and convict him on the two charges against him the Chairman of the Public Service

Commission had been charged and the said decision had been taken by the incumbent chairman of the Public Service Commission.

It is also observed by this Court that, when the Petitioner was charge-sheeted by charge sheet dated 06.02.2020 for the second time with regard to his conduct at the National Procurement Commission, the Public Service Commission has considered the explanation submitted by the Petitioner, appointed an inquiry officer to conduct a Formal Disciplinary Inquiry but, decided to reject the conclusion of the inquiry officer when the inquiry officer had found him guilty of the charge sheet and decided that the charges have not been proven against the Petitioner and exonerated the Petitioner from the two charges leveled against him through the disciplinary order dated 30.08.2022.

It is also observed from the material placed before this Court that the second charge sheet based on the complainant made by the National Procurement Commission was also issued to the Petitioner on 06.02.2020, a day prior to his date of retirement, but the formal inquiry based on the said charge sheet was commenced on 24.07.2020 several months after his retirement and therefore the above decision had not influenced the decision to retire the Petitioner under Section 12 of the Minutes on Pension.

The Complaint before this Court was made by the Petitioner at a time he was sent on retirement under Section 12 of the Minutes on Pension and the Petitioner had prayed several reliefs with regard to the two disciplinary inquiries pending against him. As already referred to in this Judgment, the Petitioner had been exonerated from the 1st charge sheet by the order of the Administrative Appeal Tribunal and was exonerated from the 2nd charge sheet by the order dated 30.08.2022 of the Public Service Commission. When considering the material already discussed in this Judgment, especially with regard to the conduct of the Public Service

Commission in sending the Petitioner on retirement under Section 12 of the Minutes on Pension, I am of the view that the Petitioner was successful in establishing the violation of his Fundamental Rights for the equal protection of law guaranteed under Article 12 (1) of the Constitution.

In the said circumstances, this Court holds that the 1st to 10th Respondents have acted in violation of the Fundamental Rights of the Petitioner guaranteed under Article 12 (1) of the Constitution.

We direct the state to pay as costs for litigation, a sum of Rupees 50,000/-

Application allowed with costs for litigation.

Judge of the Supreme Court

Justice K. Kumudini Wickremasinghe,

I agree,

Judge of the Supreme Court

Justice Mahinda Samayawardhena,

I agree,

Judge of the Supreme Court