

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

In a matter of an application in terms of
Article 17 and 126 of the Constitution of the
Democratic Socialist Republic of Sri Lanka.

- SC (FR) Application No. 73/2009**
1. **Chief Inspector W.A.J.H. Fonseka**
125/41, Pannipitiya Road,
Baththaramulla.
 2. **Chief Inspector W.K.J.R. Dias**
No. 126, Piyadasa Sirisena Mawatha,
Colombo 10.
 3. **Chief Inspector R.A.R.N. Rajapaksha**
No. 1/2, Police Flats, Colombo 10.
 4. **Chief Inspector Prasad Siriwardana**
[now deceased]
No. 230, Goonawella, Kelaniya.

PETITIONERS

-Vs-

1. **Neville Piyadigama**, Chairman,
National Police Commission, 3rd Floor,
Rotunda Building, No. 109, Galle Road,
Colombo 3.
- 1(a) Senaka Walgampaya, P.C. – Chairman,
NPC
- 1(a)(i) Prof. Siri Hettige – Chairman, NPC
- 1(a)(ii) Tilak Kollure – Chairman, NPC
- 1(a)(iii) P.H. Manatunga – Chairman, NPC
- 1(a)(iv) K.W.E. Karaliyadde – Chairman, NPC
- 1(A) **Vidyajothi Dr. Dayasiri Fernando** –
Chairman
- 1(A)(i) Jus. Sathya Hettige, P.C. – Chairman
- 1(A)(ii) Dharmasena Dissanayake – Chairman
- 1(B) **Palitha M. Kumarasinghe, P.C.** –
Member

- 1(B)(i) Kanthi Wijetunga – Member
- 1(B)(ii) A. Salam Abdul Waid – Member
- 1(B)(iii) Prof. Hussain Ismail – Member
- 1(B)(iv) Mrs. Sudharma Karunaratne – Member

- 1(C) **Sirimavo A. Wijeratne** – Member
- 1(C)(i) Sunil S. Sirisena – Member
- 1(C)(ii) Ms. D.S. Wijeythilake – Member
- 1(C)(iii) G.S.A. De Silva, P.C. – Member

- 1(D) **S.C. Mannampperuma** – Member
- 1(D)(i) Dr. Pradeep Ramanujam – Member

- 1(E) **Ananda Seneviratne** – Member
- 1(E)(i) Mr. V. Jegarasasingam – Member

- 1(F) **S. Thillandarajah** – Member
- 1(F)(i) Santi Nihal Seneviratne – Member

- 1(G) **M.D.W.Ariyawansa** – Member
- 1(G)(i) Dr. I.N. Zoysa – Member
- 1(G)(ii) S. Ranugge – Member

- 1(H) **A. Mohamed Nahiya** – Member
- 1(H)(i) Sarath Jayathilake – Member

- 1(I) **T.M.L.C. Senarathne** – Secretary
- 1(I)(i) H.M.G. Seneviratne – Secretary
- 1(I)(ii) M.A.B. Daya Senerath – Secretary

- 1(J) **H.S. Pathirana** – Member
- 1(J)(i) D.L. Mendis – Member

1(A) to 1(J)(i) Respondents are of;
The Public Service Commission,
No. 177, Nawala Road, Colombo 5

- 2. **Ven. Elle Gunawansa** – Member, NPC
- 2(a) P.H. Manatunga – Member
- 2(a)(i) Prof. Siri Hettige – Member
- 2(a)(ii) Gamini Nawaratne – Member

3. **Justice Chandradasa Nanayakkara** – Member, NPC
 - 3(a) Mr. D. Dissanayake – Member
 - 3(a)(i) Mrs. Savithri Wijesekera – Member

4. **S.P. Bandusena** – Member, NPC
 - 4(a) Nihal Jayamanna P.C. – Member
 - 4(a)(i) Mr. M.M.M. Mowjood – Member
 - 4(a)(ii) Mr. Thilak Collure – Member

5. **Dr. Kopala Sundaram** – Member, NPC
 - 5(a) Mr. R. Sivaraman – Member
 - 5(a)(i) Mr. Anton Jeyanadan – Member
 - 5(a)(ii) Asoka Wijethilaka – Member

6. **Chamani Munasinghe** – Member, NPC
 - 6(a) Mr. Frank De Silva – Member
 - 6(a)(i) Mr. G. Jeyakumar – Member

7. **Javard Joseph** – Member, NPC
 - 7(a) Newton Gooneratne – Member
 - 7(a)(i) Y.L.M. Zawahir – Member

8. **K.C. Logeshwaran** – Secretary, NPC
 - 8(a) Ariyadasa Cooray – Secretary
 - 8(a)(i) Saman Dissanayake

9. **H.A.J.S.K. Wickramaratne**
Inspector General of Police,
Department of Police,
Colombo 1.
 - 9(a) Mahinda Balasuriya – Inspector General of Police
 - 9(b) N.K. Illangakoon – Inspector General of Police
 - 9(c) Pujitha Jayasundara – Inspector General of Police
 - 9(d) C.D. Wickramaratne – Act. Inspector General of Police

10. **Sunil Sirisena**, Secretary
Ministry of Foreign Employment and Welfare
Denzil Kobbekaduwa Mawatha,

Baththaramulla.

11. **Mrs. Jayantha Rukmani Siriwardena**,
Additional Secretary, Ministry of Trade,
Marketing Development, Co-operative
and Consumer Services
12. **D.W. Prathapasinghe**
Senior Deputy Inspector General of
Police, Police Headquarters, Colombo 1
13. **L.A. Jayasinghe**
Deputy Inspector General of Police,
Police Headquarters, Colombo 1
14. **B.K.S. Raveendra**
Senior Assistant Secretary, Ministry of
Public Administration and Home Affairs
Colombo
15. **S.K.C.J.V. Fernando**
S.S.P. Office, Matara
16. **R.M. Gunaratna**
S.S.P. Office Polonnaruwa
17. **Mrs. D.S. Periyapperuma**
New Secretariat Building, Colombo 1
18. **Mrs. T.P.D.W. Jayawardena**
No. 10, Cambridge Place, Colombo 7
19. **M.D.K.P. Gunathilleke**
Communication Division, Mirihana.
20. **P. Balachandra**
Women and Children Bureau, Colombo 1
21. **H. Samudrajeewa**
S.P. Office, Kelaniya
22. **A.I. Hapugoda**
S.P. Office, Chillaw
23. **U.A.J. Premasiri**
Police Headquarters, Colombo 1
24. **S.P.U.N. Senanayaka**

S.P. Office, Tangalle

25. **Mayura Perera**
President Security Division, Colombo

26. **Hon. Attorney General**
The Attorney General's Department,
Colombo 12.

Respondents

Before : B.P. Aluwihare, PC, J
Priyantha Jayawardena, PC, J, and
L.T.B. Dehideniya, J

Counsel : Uditha Egalahewa, PC with Amaranath Fernando and Vishva Vimukthi
for the petitioners
Indika Demuni de Silva, PC, ASG for the 1st – 9th, 9b and 26th
respondents

Argued on : 26th June, 2018

Decided on : 8th September, 2020

Priyantha Jayawardena, PC, J

Facts of the case

The 1st to the 4th petitioners filed the instant application alleging that the denial to promote them to the rank of 'Assistant Superintendent of Police' [hereinafter referred to as "ASP"] is an infringement of their Fundamental Rights guaranteed under Article 12(1) of the Constitution.

At the time of filing the instant application, the 1st to 4th petitioners were serving as 'Chief Inspectors of Police' [hereinafter referred to as "CI"].

The Cabinet of Ministers had approved the 'Amended Scheme of Recruitment and Promotions of Senior Gazetted Officers of the Police Department' [hereinafter referred to as "Amended Scheme of Promotions"] on the 5th of August, 1998, and it had been communicated to the Inspector General of Police, the 9th respondent, by letter dated 20th of August, 1998. The said letter and the Amended Scheme of Promotions were produced along with the petition, marked as 'P1'.

In terms of the said Amended Scheme of Promotions: 25% of the vacancies were to be filled on the basis of results of an 'Open Competitive Examination', 25% of the vacancies were to be filled on the basis of the results of a 'Limited Competitive Examination' and the balance 50% of the vacancies were to be filled on the basis of 'Merit Promotions' from among the CIs who are confirmed in the rank.

The promotions made only on the basis of 'Merit Promotions' will be considered in this judgment as the scope of the instant application is in respect of promotions granted on merit basis.

In terms of the said Amended Scheme of Promotions, marked as 'P1', the selection procedure for merit promotions was a viva voce test before a Board of Interview appointed by the Public Service Commission. Further, it stipulated that to be eligible to apply under the category of 'Merit Promotions', the candidates should be CIs who are confirmed in the said rank and in possession of an unblemished record for the five-year period immediately preceding the closing date of applications.

Thereafter, the Inspector General of Police by Circular dated 24th of July 2007, marked as 'P2(a)', had called applications to fill vacancies in the rank of ASP from CIs who were promoted to the said rank on or before the 1st of January, 2003 and confirmed in the said rank. The said Circular had stipulated that in order to be eligible for the said promotion the applicants should possess an unblemished record of service during the five-year period immediately before 10th of August, 2007 which was the closing date of applications.

Further, the said Circular had stated that eligible candidates should collect both the application form and the marking scheme produced marked as 'P2(b)', [hereinafter referred to as 'the first marking scheme'], and that the candidates will be summoned before a Board of Interview as the method of assessment for promotions.

The petitioners stated that they submitted applications in response to the abovementioned Circular to be considered for promotion to the rank of ASP.

However, the Inspector General of Police, by Circular dated 20th of March 2008, marked as '**P3(a)**', had informed that fresh applications should be submitted on or before the 31st of March, 2008 by CIs whose names were included in an annexed list thereto to be considered for promotion to the rank of ASP on *Merit* basis.

Further, the said Circular calling for the fresh applications stated that a new marking scheme for the selection of ASPs on *Merit* basis had been approved by the National Police Commission. The said marking scheme was produced along with the Petition, marked as '**P3(b)**' [hereinafter referred to as the "*second marking scheme*"].

In view of the above, to be eligible for promotion to the rank of ASP, the candidates were required to be CIs who are promoted to the rank of CI on or before the 1st of January, 2003 and confirmed in the said rank. Further, the candidates were to possess an unblemished record of service during the past five-year period immediately before the 31st of March, 2008 which is the closing date of applications.

The petitioners stated that they submitted fresh applications for the second time as their names had been included in the said annexed list of the said Circular dated 20th of March, 2008. Both sets of said applications submitted by the petitioners had been produced along with the Petition, marked as '**P6**' to '**P9**'.

Subsequently, the Inspector General of Police had informed, by Circular dated 2nd of June 2008, that the National Police Commission once again had approved another amended marking scheme and communicated the said decision by its letter dated 30th of May, 2008 and that the said amended marking scheme was available to the CIs who had submitted applications for promotion to the rank of ASP on *Merit* basis.

Both the said Circular dated 2nd of June, 2008 and the amended marking scheme [hereinafter referred to as "*the third marking scheme*"] were produced with the Petition marked as '**P4(a)**' and **P4(b)**, respectively.

However, the Secretary of the National Police Commission had issued another marking scheme [hereinafter referred to as "*the fourth marking scheme*"] for the selection of CIs to the rank of ASP under merit basis on the 16th of October, 2008. The said fourth marking scheme was

produced along with the Petition, marked as 'P5'. The interview under reference had been held in accordance with the said marking scheme of 'P5'.

Subsequently, all candidates had been requested to be present before a Board of Interview by Circulars dated 24th and 26th of October 2008, produced marked as 'P10(a)' and 'P10(b)', respectively. The said list included both female and male candidates.

Subsequent to the conclusion of the said interviews, the list of officers promoted to the rank of ASP with effect from the 1st of January, 2008 had been released on the 1st of January, 2009 by the Inspector General of Police after the same was approved by the National Police Commission. The said list of promotees had been produced along with the Petition, marked as 'P11'.

The petitioners stated that even though the said list did not include their names, several officers, who did not meet the eligibility criteria stipulated in the Amended Scheme of Promotions and marking scheme, marked as 'P1' and 'P5', had been included as promotees to the rank of ASP.

The petitioners further stated that calling for fresh applications for the same vacancies and the changing of the marking schemes were to suit the requirements of some of the selected candidates to enable them to score higher marks than the other candidates.

Further, the petitioners stated that the 17th and 18th respondents, two female CIs, despite scoring lower marks than the petitioners at the said interview have been promoted to the rank of ASP on *Merit basis*.

In the circumstances, the petitioners stated that they were discriminated against and/or were not treated equally with other candidates who were promoted to the rank of ASP under *Merit basis*. Furthermore, the petitioners stated that they were entitled to be promoted to the rank of ASP on *Merit basis*.

In the aforesaid circumstances, the petitioners stated that the failure and/or the refusal to promote the petitioners from the rank of CI to ASP was arbitrary, capricious and therefore, in violation of their Fundamental Rights guaranteed under Article 12(1) of the Constitution.

Subsequent to the filing of the instant application, the learned Deputy Solicitor General brought to the notice of court that the 1st and 2nd petitioners had been promoted to the rank of ASP, on the basis of seniority, with effect from 9th May, 2010 and that the 3rd petitioner had been

promoted to the rank of ASP, on the basis of period of service and skill, with effect from 13th January, 2014.

However, the petitioners submitted that even though the petitioners were promoted at a later date, the selection process in issue was flawed and it has adversely affected their seniority. Particularly, candidates with lower marks and who were junior to the petitioners have been promoted over them. As such, the petitioners informed court that they would proceed with this instant application.

Further, this court had been informed that the 4th petitioner was promoted to the rank of ASP, effective from the 13th of January 2014, by letter *No. PSC/APP/8/2/56/2012* dated 14th of March, 2014 issued by the Public Service Commission. However, the 4th petitioner had passed away on the 15th of March, 2014 whilst attempting to disperse a group of protestors in the Nugegoda area. Thereafter, in terms of Circular Nos. 2197/2009 and 16/2009, by letter No. MinLO/POL/12/03/2014 dated 17th of March, 2014 the 4th petitioner was promoted posthumously to the rank of Superintendent of Police (Grade II) effective from the 16th of March, 2014. In the circumstances, the learned President's Counsel for the petitioners informed court that he will not be pursuing the application on behalf of the 4th petitioner.

Thus, this judgment will only consider the alleged infringement of Fundamental Rights guaranteed under Article 12(1) of Constitution of the 1st to 3rd petitioners.

Moreover, since the petitioners had agreed not to object to the promotions already granted to the 21st and 25th respondents, this court had made order discharging the said respondents from the instant application on the 18th of December, 2015. Hence, the promotions granted to them will not be considered in this judgment.

Further, the scope of this judgment will be restricted to the rights of the petitioners, applying the principle in *Liyanage & Another vs Ratnasiri - Divisional Secretary, Gampaha & Others, [2013] 1 SLR 6*, where it was held that “*the law assists those who are vigilant and not those who sleep over their rights*”.

Affidavit/Objections of 1(I) respondent

The 1(I) respondent, the Secretary to the Public Service Commission filed an Affidavit and stated that according to the Amended Scheme of Promotions, marked as ‘P1’, applications had been called for the promotion to the rank of ASP by Circular dated 24th of July 2007, marked

as ‘**P2(a)**’, from CIs who were confirmed in the said rank on or before 1st of January, 2003 and possessed an unblemished record of service during a period of five years prior to the closing date for applications.

Further, the 1(I) respondent stated that in response to the said calling for applications, reserved CIs who were absorbed to the Regular Force with effect from 1st of January, 2006 on a policy decision of the Government had also submitted their applications.

The 1(I) respondent further stated that the National Police Commission, in consideration of the numerous representations made to it, had directed the Inspector General of Police to prepare a consolidated seniority list of CIs and to circulate it among all stakeholders, and that until such time, it had decided to postpone the promotion process.

The 1(I) respondent stated that upon the finalisation and the circulation of the said seniority list, on the directions of the National Police Commission, the Inspector General of Police had called for fresh applications for promotion of CI to the rank of ASP by Circular dated 20th of March 2020, marked as ‘**P3(a)**’.

The 1(I) respondent further stated that all the candidates had been requested to submit applications on both occasions for the promotion to the rank of ASP in view of the aforementioned circumstances, and that the petitioners were not the only candidates who were requested to submit applications twice.

Subsequently, the National Police Commission had amended the marking scheme twice for the promotion to the rank of ASP on 2nd of June, 2008 and 16th of June, 2008. The said marking schemes had been produced with the petition, marked as ‘**P4b**’ and ‘**P5**’, respectively.

It was stated that the said amendments to the marking scheme was made by the National Police Commission based on the representations made by, *inter alia*, the Inspector General of Police and the Police Inspectors’ Association, and that on every such occasion, the amended marking schemes had been made available to all candidates, including the petitioners, through the Inspector General of Police. It was further submitted that none of the petitioners had objected to any of the revised marking schemes.

The 1(I) respondent stated that such amendments to the marking scheme had been necessitated in view of the aforesaid circumstances and not for the purpose of favouring any candidates as alleged by the petitioners.

The 1(I) respondent stated that according to the marks given at the interview the petitioners have obtained the following marks at the interview:

1 st petitioner	-	61 marks	
2 nd petitioner	-	65.5 marks	
3 rd petitioner	-	64 marks	
4 th petitioner	-	65 marks	(now deceased)

The final marks sheet was produced, marked as ‘**1IR2**’.

Moreover, it was stated that the cut-off mark for the said promotion had been 73 out of 100 marks and the petitioners had failed to obtain sufficient marks to secure promotions to the rank of ASP.

Further, in terms of the said marks sheet, the respondents had received the following marks at the said interview:

15 th respondent	-	73.5 marks	
16 th respondent	-	73.0 marks	
17 th respondent	-	61.5 marks	(female CI)
18 th respondent	-	55 marks	(female CI)
19 th respondent	-	73.5 marks	
20 th respondent	-	78.0 marks	
21 st respondent	-	80.5 marks	(discharged from proceedings)
22 nd respondent	-	73.5 marks	(discharged from proceedings)
23 rd respondent	-	73.5 marks	(discharged from proceedings)
24 th respondent	-	60.5 marks	(discharged from proceedings)
25 th respondent	-	unable to ascertain the marks from the pleadings (discharged from proceedings)	

The marks and other details with regard to the 21st to 25th respondents will not be considered in this judgment as they were discharged from the proceedings of the instant application.

In view of the above, the 1(I) respondent stated that the 15th, 16th, 19th and 20th respondents were duly promoted to the rank of ASP as they had obtained 73.5, 73.0, 73.5 and 78.0 marks respectively and were placed above the said cut-off mark of 73.

As stated above, the 17th and the 18th respondents had obtained 61.5 and 55 marks respectively. The 1(I) respondent stated that a cadre was specially created for female officers with the approval of the Department of Management Services and the said 17th and 18th respondents were promoted to the rank of ASP under the said special cadre.

The 1(I) respondent further stated that at present male and female officers serving in the rank of ASP are placed on a separate cadre and a separate seniority list.

However, the said separate cadre was neither produced nor were further details on the said cadre given by the 1(I) respondent.

In the circumstances, the 1(I) respondent stated that the petitioners have failed to establish any infringement of Fundamental Rights guaranteed under Article 12(1) of the Constitution.

Written Submissions of the petitioners

The petitioners submitted that a separate cadre for female officers as stated by the 1(I) respondent does not exist and that the respondents had failed to produce material to prove the existence of such a female cadre.

It was further submitted that even if approval of the Department of Management Services has been obtained to establish the said female ASP cadre as stated by the 1(I) respondent, the said Department has no authority to create cadres in the Police Service.

Further, it was submitted that consequent to a settlement reached in *SC/FR Application No. 600/2003*, the '*Seniority List*', produced marked as '**P12**', was used as the basis to promote 351 officers from the rank of Inspector of Police to the rank of CI effective from the 1st of January, 2003. The said '*Seniority List*' had placed all the 1363 male and female officers serving in the grade of Inspector of Police as at 25th of December, 2003 in the same cadre, regardless of any gender-based classification.

Further, after the said promotion from the rank of Inspector of Police to the rank of CI, all male and female CIs, regardless of their gender differences, continued to remain in service on the same cadre and the same order of seniority.

Hence, the petitioners submitted that those who have previously been in one category cannot be treated differently for the granting of promotions to the rank of ASP.

In support of their contention, the petitioners cited the case of *Ramupillai v. Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and others, (1991) 1 SLR 11*.

In the circumstances, the petitioners stated that their Fundamental Rights guaranteed under Article 12(1) have been infringed by the failure to promote them to the rank of ASP along with the other selected candidates who faced the interview along with them.

Further, the petitioners submitted that D. Gurusinghe and W.S.S.P.P. De Silva, who had been awarded 71 marks and 71.5 marks, respectively, by the said Board of Interview, had challenged the marks awarded at the interview by filing *SC/FR Application No. 121/2009* and *SC/FR Application No. 68/2009*. After hearing the parties, the court has ordered the said candidates to be promoted to the rank of ASP with effect from the 1st of January, 2008 along with the other selectees of the promotions under reference.

The three main issues to be considered in the instant application are: promoting the 17th and 18th respondents over the petitioners despite scoring lower marks than the petitioners at the interview, calling for fresh applications for the second time by Circular dated 20th of March, 2008 and the continuous alteration of the marking scheme after closing of applications.

Promoting the 17th and 18th respondents

The petitioners stated that the 17th and 18th female respondents were in the same cadre along with the other candidates whilst serving in the rank of CI prior to applying for the promotion to the rank of ASP. However, they had been promoted to the rank of ASP despite receiving lower marks than the petitioners at the interview.

The 1(I) respondent stated, in paragraph 29(b) of his Affidavit, that the said “*17th and 18th respondents were promoted to the rank of ASP under a separate cadre which was specially created for female officers with the approval of the Department of Management Services*” [Emphasis Added].

However, the petitioner denied the said position and submitted that the Department of Management Services does not have the legal authority to give the final approval for the creation of a cadre.

Thus, it is necessary to consider whether there is a valid special cadre for female ASPs in the Sri Lanka Police Force at the time the 17th and 18th respondents were promoted to the rank of ASP.

Prior to the enactment of the 17th Amendment to the Constitution, the powers pertaining to the appointment, promotion, transfer, disciplinary control and dismissal of police officers were vested with the Public Service Commission.

With the enactment of the 17th Amendment to the Constitution on the 3rd of October 2001, the said powers were vested with the National Police Commission. However, subsequent to the repeal of the 17th Amendment by the 18th Amendment to the Constitution on the 9th of September 2010, the said powers of the National Police Commission were reverted to the Public Service Commission.

Further, with the enactment of the 19th Amendment to the Constitution on the 15th of May 2015, the said powers were once again vested with the National Police Commission.

The Department of Management Service is a Department in the Ministry of Finance established “[t]o provide the necessary management service assistance to the public sector organizations to maintain an optimum cadre.” Particularly, to decide on the allocation of finances, and consider the financial implications of creating new cadres.

Thus, the said Department is only one of the approving agencies which has the power to grant approval to create cadre vacancies. It has no power or authority to grant the final approval for the creation of new cadre vacancies.

In the circumstances, it is evident that the Department of Management Services does not have the sole authority to approve the establishment of a separate cadre in the Sri Lanka Police Force as the said authority was vested with the National Police Commission or the Public Service Commission, as the case may be, during the period specified above.

The 1(I) respondent further stated, in paragraph 31 of his Affidavit, that “*at present there are separate cadres for female and male officers in the rank of ASP and the female officers are placed on a separate seniority list” [Emphasis Added]. However, the 1(I) respondent did not produce any material before this court to establish that such a cadre was created for female ASPs prior to the promotions under reference were made.*

In the instant application, applications for the promotion to the rank of ASP had been first called by Circular dated 24th of July, 2007 from CIs who were promoted to the said rank by the 1st of January, 2003 based on the said Amended Scheme of Promotions. The first marking scheme was issued therewith.

Subsequently, fresh applications were called for the second time by Circular dated 20th of March, 2008 and the second marking scheme had been issued therewith. The said second marking scheme had again been amended twice by the third marking scheme dated 2nd of June, 2008 and the fourth marking scheme dated 16th of October, 2008.

On both occasions, the applications were called from CIs who were promoted to the said rank on or before the 1st of January, 2003 and confirmed in the said rank, and no distinction was drawn between male and female candidates when calling for applications for the said promotions.

Thereafter, interviews have been called by Circulars dated 24th and 26th of October, 2008 whereby all candidates have been informed of the date on which they were required to come before the Board of Interview.

Upon perusal of the Circulars dated 24th and 26th of October, 2008, marked as ‘**P10(a)**’ and ‘**P10(b)**’, it is evident that all female and male candidates were requested to be present before the Board of Interview to be considered for the promotion to the rank of ASP. None of the said documents refer to any special cadre based on gender or otherwise for the promotion to the rank of ASP. Further, there is no material to show that a gender-based classification was made either at the time the applications were called or at the time the interviews were held.

Further, consequent to a settlement entered in *SC/FR Application No. 600/2003*, the seniority list of Regular Police officers serving in the rank of Inspector of Police as at 25th of December, 2003 had been prepared without any gender-based classification and the officers therewith had been promoted to the rank of CI with effect from the 1st of January, 2003.

Thereafter, all the male and female officers serving in the rank of CI had continued to be in the same cadre until the applications for promotion to the rank of ASP were called and the interviews for the promotion to the rank of ASP were held.

In the case of *Ramupillai v. Festus Perera, Minister of Public Administration, Provincial Councils and Home Affairs and others*, (1991) 1 SLR 11 at p.26, it was held:

“It is clear: that the state is free to decide upon the sources from which either admissions to educational institutions or recruitments to the Public Sector are to be made..... :that once such selections are made, those taken in from such sources are integrated into one common class: that thereafter such appointees are “clubbed” together into a common stream of service and cannot thereafter be treated differently for purposes of promotion by referring to the consideration that they were recruited from different sources: that their genetic blemishes disappear once they are integrated into a common class and cannot be revived so as to make equals unequal once again: that there should be no further classification amongst them, except upon certain acceptable criteria such as educational qualifications”. [Emphasis Added]

In such circumstances, there is a heavy burden on the respondents to establish that even though the said documents, pertaining to the eligibility of candidates, marking scheme and the calling of interviews, were commonly applicable to all male and female candidates, there was in fact a special cadre for the rank of the female ASPs at the time the promotions under reference were made enabling female candidates to be considered separately for promotion to the rank of ASP. However, in the instant application, the respondents have failed to discharge the said burden by producing material before this court to prove the same.

Further, the position taken up by the 1(I) respondent that a female cadre was created for the rank of female ASPs with the approval of the Department of Management Services is untenable in law for the reasons stated above.

Therefore, I am of the view that the 17th and 18th respondents who were promoted to the rank of ASP had not been promoted based on a different cadre applicable to women. As such, the cut-off mark applicable to the promotions should have been applicable to all the candidates including the 17th and 18th respondents as well.

Moreover, according to the material produced in the instant application, the Sri Lanka Police Force has had the same cadre for both male and female officers and all the candidates were serving as CIs in the same cadre. Thus, even if a special cadre was created for female officers for the rank of ASP, advance notice should have been given to the candidates about the new cadre as it is a deviation from the previous scheme of promotions that was in existence in the Sri Lanka Police Force.

This court has consistently held the significance of providing advance notice when a change in an established procedure is effected by an administrative authority. In ***Guneratne and others v Sri Lanka Telecom and others [1993] 1 Sri L.R. 109 at page 118***, it was held:

“If it is desired to give preferential treatment to [the graduate clerks] in the interest of the service and for utilizing their skills, the Corporation could do so on the basis of relevant qualifications, with reasonable notice to those affected and without prejudicing the legitimate expectations of clerks who are on the verge of promotion under the previous schemes”. [Emphasis Added]

At the interview, the 17th and 18th respondents had scored 61.5 and 55 marks, respectively. The 1st to 3rd petitioners had scored 61, 65.5 and 64 marks, respectively.

However, the 17th and 18th respondents have been promoted over the petitioners notwithstanding the fact that the 2nd and 3rd petitioners have obtained higher marks than both the 17th and 18th respondents and that the 1st petitioner has obtained higher marks than the 18th respondent.

In the circumstances, I am of the view that the promotion of the 17th respondent who scored lower marks than the 2nd and 3rd petitioners and the promotion of the 18th respondents who scored lower marks than the 1st to 3rd petitioners are an infringement of the Fundamental Rights of the petitioners guaranteed under Article 12(1) of the Constitution.

The effect of calling for fresh applications after the closing of applications

The Amended Scheme of Promotions dated 20th of August, 1998 and the said four marking schemes, stipulated that for a candidate to be eligible to be promoted to the rank of ASP on ‘Merit Promotions’:

“Candidates should be,

- (a) Chief Inspectors of Police,*
- (b) who are confirmed in the rank, and*
- (c) in possession of an unblemished record of service during the five-year period immediately before the closing date of applications.”* [Emphasis Added]

In view of the above, the requirement to have an unblemished record for a period of five years immediately before the closing date of applications had been a vital factor to be considered for the promotion to the rank of ASP under the merit scheme.

The closing date of applications as referred to in the Circular dated 24th of July, 2007 by which applications were first called was the 10th of August, 2007.

Thus, in terms of the said first marking scheme candidates who possessed unblemished records for the period from the 10th of August, 2002 to 10th of August, 2007 were entitled to apply for the said promotion.

However, applications had been called once again for the same promotions by circular dated 20th of March, 2008 and the closing date for the applications had been fixed as the 31st of March, 2008.

Therefore, in terms of the said second marking scheme, candidates who possessed blemished records from the 11th of August, 2002 to 31st of March, 2003 became entitled to apply for the said promotion.

However, it is pertinent to note that when applications were called for a second time, the requirement on eligibility pertaining to the date of promotion to the rank of CI was not changed and remained to be the 1st of January, 2003.

The petitioners submitted that calling for fresh applications for the second time allowed candidates who had been ineligible to apply for the promotion process due to blemished records in the first instance to become eligible to apply in the second instance as their blemished records have got cleared off due to the extension of the closing date of the applications for the same promotion process by nearly 8 months.

In the circumstances, calling for fresh applications for the second time and postponing the closing date of applications may have resulted in CIs who were ineligible to apply in the first instance due to blemished records becoming eligible to apply for the same promotion in the second instance.

However, even though the petitioners have referred to such matters, no material was produced to establish that any of the promotees who had blemished records at the time of closing of the applications on the 10th of August, 2007 benefitted from the postponement of the closing date of applications to the 31st of March, 2008.

In passing, I wish to note that the respondents failed to give any explanation as to why the requirement on eligibility pertaining to the date of promotion to the rank of CI remained to be the 1st of January, 2003 even though the requirement of possession of an unblemished record was advanced/extended from the 10th of August, 2007 to 31st of March, 2008.

The effect of the continuous changing of the marking scheme

The first marking scheme for the promotion process under reference was issued by Circular dated 24th of July, 2007. Subsequently, the said first marking scheme had been amended by the following:

- a. second marking scheme dated 20th of March 2008,
- b. third marking scheme dated 2nd of June 2008, and,
- c. fourth marking scheme dated 16th of October, 2008.

All four abovementioned marking schemes applicable for promotions based on merit have allocated 50 marks each for two categories: ‘*Seniority*’ and ‘*Merit*’ basis.

The first marking scheme dated 24th of July, 2007 consisted of two main criteria under the category of ‘*Seniority*’: i.e. ‘*Period of Service*’ and ‘*Service stipulation ranging from previous rank*’.

The said criterion of ‘*Period of Service*’, in the first marking scheme had allocated a maximum of 35 marks for the years of service in the rank of CI, and the criterion ‘*Service stipulation ranging from previous rank*’ had allocated a maximum of 15 marks for the years of service in the rank of ‘Inspector of Police’.

However, the said fourth marking scheme, marked as ‘**P5**’, had amalgamated the said two criteria under the heading ‘*Period of Service*’ for 50 marks. It had also:

- (a) increased the marks awarded for each year of completed service in the rank of Inspector of Police from 1 mark to 2 marks,
- (b) added a new heading awarding marks for the years of service in the rank of ‘Sub-Inspector’ with 1 mark allocated for each year of service, and
- (c) removed the maximum of 15 marks allocated under the first marking scheme for the years of service completed in the rank of ‘Inspector of Police’.

Further, marks were awarded to candidates at the interview by the Board of Interview based on the said fourth marking scheme dated 16th of October 2008, marked as 'P5'.

Hence, the said fourth marking scheme has facilitated candidates to score more marks for periods served in the ranks of 'Inspector of Police' and 'Sub-Inspector of Police' than under the first marking scheme.

In view of the above, the alteration of the marking scheme has resulted in depriving candidates who have served a longer period in the rank of CI of scoring more marks than some of the candidates under the category of 'Seniority' stipulated in the first marking scheme.

In the circumstances, it is evident that the alterations in the marking scheme after the closing date of the applications had placed some candidates in a more favourable position than the other candidates.

Thus, I am of the view that in order to protect the fairness and the transparency of the promotions process, the administrative authorities should not change the Scheme of Promotions and/or marking schemes after the closing of the applications unless there are compelling reasons to do so.

A similar view was expressed by Supreme Court of India in the case of ***Maharashtra State Road Transport Corporation v. Rajendra Bhimrao Mandve***, AIR 2002 Supreme Court 224 at page 226, which stated:

"It has been repeatedly held by this Court that the games of the rules meaning thereby, that the criteria for selection cannot be altered by the authorities concerned in the middle or after the process of selection has commenced".

Moreover, in the instant application, the Amended Scheme of Promotions, based on which the promotion process under reference was issued, had been given approval by the Cabinet of Ministers on the 5th of August, 1998. However, applications for the said promotion process were first called on the 24th of July, 2007 from CIs who were promoted to the said rank on or before the 1st of January, 2003 which was nearly 9 years after the said Amended Scheme of Promotions.

Thereafter, fresh applications had been called once again for the second time on the 20th of March, 2008 for the same promotions after closing the applications on the 10th of August, 2007.

The interviews for the said promotions were held from the 14th of November, 2008 to the 10th of December, 2008 and the list of promotees was released on the 1st of January, 2009. Thus, the promotion process under reference has taken more than a decade since the said Amended Scheme of Promotions was issued.

I am of the view that the administrative authorities who hold power in trust to perform the functions of the State shall not delay and/or neglect to fill the vacancies when and where such vacancies arise. Hence, promotions in the public sector should be filled in time without undue delays.

Referring to the need to act without delay to achieve efficiency, Leonardo da Vinci stated that: *“Iron rusts from disuse, stagnant water loses its purity, and in cold weather becomes frozen; even so does inaction sap the vigours of the mind”*.

It is important to keep in mind that when an individual joins the public service, he or she entirely bases his/her life-long expectation in the public service for the betterment of his/her life. Further, given the nature of the public service, it is common for an individual serving in the public sector to expect certain benefits such as security in tenure, advancement in their career and retirement benefits.

A similar view was expressed in *Perera and another v. Cyril Ranatunga, Secretary Defence and others*, [1993] 1 SLR 39 at page 60, where it was held:

“In effecting promotions, the State is entitled to take into consideration seniority and merit but without violating the right to equal protection of the law. The service of most public officers is life-time and the guarantee of fair treatment to them enshrined in Article 12 (1) of the Constitution would, if properly enforced, also help in maintaining a contented public service which is vital for its efficient functioning”.

Further, given the limited opportunities to obtain promotions in the public sector, the delay in giving promotions in due time will demoralize public servants in performing their duties.

Thus, the stipulated procedure must be complied with and unwanted delay must be avoided at all times to have an efficient public service. I am of the view that unreasonable and undue delay in promoting employees is a violation of Article 12(1) of the Constitution.

Other anomalies associated with the Promotions

In terms of the final marks sheet, produced marked as '1IR2', along with the Affidavit of the 1(I) respondent, three male officers, R.K.M.D. Jayasuandara Appuhamy, H. Karunasekara and W.D.S. Kottearachchi, and a female officer, one H.M.D.W.R. Galpotta, had been promoted to the rank of ASP after their retirement.

According to said document marked as '1IR2', the said officers had retired from service on 01.11.2007, 22.05.2007, 22.02.2007 and 31.12.2007, respectively.

Two among the said retired male officers, i.e. H. Karunasekara and W.D.S. Kottearachchi who had retired on the 22.05.2007 and 22.02.2007 respectively, had retired from service even before the applications for the said promotions were called for the first time on the 24th of July, 2007.

Further, a careful consideration of the abovementioned dates of retirement, i.e. 01.11.2007, 22.05.2007, 22.02.2007 and 31.12.2007, as stated in the document marked as '1IR2' shows that the said officers have retired from service by the 20th of March, 2008 when fresh applications for promotion to the rank of ASP were called for the second time.

Moreover, the interviews under reference had been held during the period from the 14th of November, 2008 to the 10th of December, 2008. All the said four officers have been retired from service before the interviews for the promotion to the rank of ASP were held. The said male officers had been awarded 77.5, 73.5 and 73 marks, and the female officer had been awarded 56.5 marks by the Board of Interview.

However, the respondents have not explained how the said Board of Interview interviewed and granted marks for the said retired police officers who were not in service at the time the interviews were held for the promotions under reference. Further, the respondents have not given any explanation for promoting the said officers to the rank of ASP.

Conclusion

In the foregoing circumstances, the 1(I) respondent has failed to prove that a separate cadre was in existence for female officers in the rank of ASP at the time the impugned promotions were made.

The material before this court shows that the calling for applications twice for the same rank, changing the marking scheme applicable to the promotions under reference and inordinate delay in filling the vacancies have adversely affected the petitioners.

Further, I am of the view that the promotion of the 17th and the 18th respondents over the 1st to 3rd petitioners despite obtaining lower marks than the petitioners as stated above, is an infringement of the petitioners' Fundamental Rights enshrined in Article 12(1) of the Constitution by the State as it has adversely affected the career advancement of the petitioners. In the circumstances, I declare that the Fundamental Rights of the 1st to 3rd petitioners enshrined in Article 12(1) of the Constitution have been violated by the state.

As stated above, it was informed to court that the 1st and 2nd petitioners were promoted to the rank of ASP effective from the 9th of May, 2010 and that the 3rd petitioner was promoted to the said rank effective from the 13th January, 2014.

Thus, I direct the Inspector General of Police and/or the Secretary of the National Police Commission to backdate the promotions forthwith to the 1st of January 2008 which is the effective date of the promotions given to the other selected candidates to the rank of ASP.

I further direct the petitioners to be placed at a suitable position on the seniority list, taking into consideration of the facts and circumstances stated above.

Further, in light of the aforementioned findings, I am of the view that the petitioners are entitled to have all the annual increments with effect from the 1st of January, 2008.

The Registrar of this Court is directed to forward a copy of this judgment to the Inspector General of Police and to the Secretary of the National Police Commission to give effect to the directions forthwith.

The aforesaid directions are particular to this application and should not be used as a precedent by the other candidates who had applied for the said promotion.

There will be no costs.

Judge of the Supreme Court

B. P Aluwihare, P.C, J

I agree

Judge of the Supreme Court

L.T.B. Dehideniya, J

I agree

Judge of the Supreme Court