

**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.***

**SC FRA 47/2014**

1. Egoda Weerasekarage Thilak  
Pushpakumara  
Medahena Road,  
Welegoda,  
Matara.
2. Lokukamdi Hanndige Prashan de Silva,  
No. 18, Wimalasara Mawatha,  
Galkanwa Road,  
Gokona Road,  
Panadura North.
3. Hewapaththinige Nishantha Priyadarshana,  
No.23, Sarath Mawatha,  
Malaweewawaththa,  
Palathota,  
Kaluthara South.

**PETITIONERS**

Vs.

1. Nanda Mallawarachchi,  
Former Secretary,

Ministry of Law and Order,  
Janadhipathi Mawatha,  
Colombo.

1A. Jagath Wijeweera,  
Former Secretary,  
Ministry of Law and Order,  
Southern Development,  
No. 25,  
Whiteways Building Sir Baron,  
Jayathilake Mawatha,  
Colombo 01.

1B. Pathmasiri Jayamanna,  
Former Secretary,  
Ministry of Law and Order,  
Janadhipathi Mawatha.

1C. Kamal Gunaratne,  
Secretary,  
Ministry of Law and Order,  
Southern Development,  
No. 25, Whiteways Building Sir Baron,  
Jayathilake Mawatha,  
Colombo 01.

1D. Viyali Gunathilake,  
Secretary of Public Security,  
Ministry of Public Security,

15<sup>th</sup> Floor,  
Suhurupaya,  
Battaramulla.

2. N.K. Illangakoon,  
Former Inspector General of Police,  
Police Headquarters,  
Colombo 01.

- 2A. Pujith Jayasundara  
Former Inspector General of Police,  
Police Headquarters,  
Colombo 01.

- 2B. C.D. Wickramaratne  
Former Inspector General of Police,  
Police Headquarters,  
Colombo 01.

- 2C. Deshabandu Thennakoon  
Inspector General of Police,  
Police Headquarters,  
Colombo 01.

3. Director (Legal Range)  
Police Headquarters,  
Colombo 01.

4. Prof Dayasiri Fernando,  
Former Chairman

4A. Jagath Balapatabendi

Former Chairman

5. Srimala Wijeratne,

Former Member

5A. C.R.C. Ruberu

Former Chairman

6. Palitha Kumarasinghe

Former Member

6A. Leelasena Liyanagama

Former Member

6B. S.C. Mannaperuma

Former Member

7A. Dilan Gomes

Former Member

8. Ananda Seneviratne,

Former Member

8A. Dilith Jayaweera,

Former Member

9. N.H. Pathirana,

Former Member

9A. N.H. Piyadasa,

Former Member

10. S. Thillainadarajah

Former Member

10A. Suntharam Arumallnayaham,

Former Member

11. M.D.W. Ariyawansa

Former Member

11A. M.D.W. Ariyawansa,

Former Member

12. A. Mohamed Nahiya,

Former Member,

All of the Public Service Commission,

No. 117,

Nawala Road,

Narahenpita,

Colombo 05.

13. Hon. Attorney-General

Attorney-General's Department,

Colombo 12.

14. Sathya Hettige,

Former Chairman,

Former Public Service Commission,

No. 117,

Nawala

15. Kanthi Wijetunga,  
Former Member

16. Sunil A. Sirisena,  
Former Member

17. I.N. Soyza,  
Former Member

All of the Public Service Commission,  
No. 117,  
Nawala Road.

18. Prof. S.T. Hettige,  
Former Chairman

18A. Siri Hettige,  
Former Member

18B. Mr. K.W.E. Karalliyadda,  
Former Chairman

18C. E.W.M. Lalith Ekanayake,  
Former Member

19. B.A. Jeyanathan,  
Former Member

20. P.H. Manathuga  
Former Chairman

20A. Mr. Ashoka Wjethilake,  
Former Member

20B. Kanapathipille Karunahan,  
Member

21. Savithri D. Wijesekere,  
Former Member

21A. Kapila Jaysooriya,  
Member

22. Y.L.M. ZawaKif,  
Former Member

22A. A.A.M. Illiyas,  
Member

23. Frank de Silva,  
Former Member

23A. Mr. G. Jeyakumar,  
Former Member

24. Thilak Kollure,  
Former Member,

All C/O National Police Commission,  
National Police Commission,  
Block 09,  
BMICH Premises,

Buddhaloka Mawatha,  
Colombo 07.

**RESPONDENTS**

*Caption reproduced as reflected in the most recent Amended  
Caption filed by the Petitioners on 19<sup>th</sup> June 2024*

**BEFORE:**            **S. THURAIRAJA, PC, J.**  
**A.L. SHIRAN GOONERATNE, J. AND**  
**K. PRIYANTHA FERNANDO, J.**

**COUNSEL:**        Manohara De Silva, PC with Hirosha Munasinghe for the Petitioners  
  
Dr. Avanti Perera, DSG for 3<sup>rd</sup> and 13<sup>th</sup> Respondents

**WRITTEN**            Petitioners on 25<sup>th</sup> October 2022 and 11<sup>th</sup> July 2024

**SUBMISSIONS:**   Respondent on 18<sup>th</sup> May 2021 and 22<sup>nd</sup> July 2024

**ARGUED ON:**      18<sup>th</sup> June 2024

**DECIDED ON:**     28<sup>th</sup> March 2025

**S. THURAIRAJA, PC, J.**

1. The three Petitioners, namely Egoda Weerasekarage Thilak Pushpakumara, Lokukamadi Hannadige Prashan de Silva and Hewapaththinige Nishantha Priyadarshana, invoked Fundamental Rights jurisdiction of this court, seeking, inter alia, a declaration that his fundamental rights guaranteed under Article 12(1) of the Constitution has been violated due to the manner in which the Petitioners' service in the Sri Lanka Police Department has been considered for promotion to the rank of Chief Inspector of Police.



2. On or about 8<sup>th</sup> December 1998, the Inspector General of Police introduced a special absorption scheme allowing eligible officers in the Reserve Force to transition into the Regular Force. However, the scheme did not provide for direct absorption into the same rank that the officers had held in the Reserve Force. Instead, officers were required to accept a placement at a lower rank upon joining the Regular Force.
3. In response to the call for applications, the Petitioners, who were Inspectors of Police in the Reserve Force at the time, voluntarily applied to be absorbed into the Regular Force. In accordance with the terms of the scheme, they were appointed as Sub-Inspectors in the Regular Force with effect from 13<sup>th</sup> June 1999, which was one rank lower than their previous position. At the time of their absorption, the Petitioners did not challenge their placement and continued their service in the Regular Force.
4. On 30<sup>th</sup> January 2006, the Secretary to the Ministry overseeing the Police Department issued a directive instructing the Inspector General of Police to proceed with promotions to the rank of Inspector of Police. The eligibility criteria for this Promotion required officers to have completed eight years of satisfactory service in the rank of Sub-Inspector of Police. Since the Petitioners had been absorbed into the Regular Force only in 1999, they had less than eight years of service in that rank by 2006 and were, therefore, not eligible for promotion under this scheme.
5. On the same date, i.e. 30<sup>th</sup> January 2006, the Cabinet of Ministers approved a new policy decision regarding the absorption of officers from the Reserve Force into the Regular Force. Unlike the 1998 scheme, this new policy permitted Reserve Force officers to be absorbed at the same rank they held at the time of absorption, provided they met the requisite qualifications. Consequently, those Reserve Force officers who had remained in the Reserve Force and had not opted for absorption under the 1998 scheme were now able to transition into the Regular Force in 2006 while retaining their existing rank.

6. This resulted in a situation where officers who had remained in the Reserve Force until 2006 were absorbed into the Regular Force at a higher rank than those who had opted for absorption under the 1998 scheme, including the Petitioners. As of 2006, the Petitioners were still serving as Sub-Inspectors of Police in the Regular Force and had not yet completed the required eight years of service in that rank to qualify for promotion to Inspector of Police under the regular promotion criteria.
7. In response to this development, several Sub-Inspectors of the Regular Force, including the 1<sup>st</sup> and 2<sup>nd</sup> Petitioners, filed Fundamental Rights Applications bearing Nos. 120/2006 and 123/2006. They argued that officers who had been absorbed into the Regular Force in 2006 at the rank of Inspector of Police were gaining an unfair advantage over them despite having remained in the Reserve Force, whereas the Petitioners had already transitioned into the Regular Force under the 1998 scheme. The Petitioners sought relief, requesting that their prior service in the Reserve Force be considered when determining their eligibility for promotion.
8. Following these applications, the matter was referred to the National Police Commission for possible administrative relief. The Commission subsequently decided to promote 164 Sub-Inspectors of Police, including the Petitioners, to the rank of Inspector of Police with effect from 1<sup>st</sup> February 2006, taking into account their service in the Regular Force. However, the 3<sup>rd</sup> Petitioner was not included in this promotion due to an unfavourable service report, and his promotion was waitlisted.
9. As per paragraph 5 of RTM 1002, which governed the 2006 absorption scheme, officers absorbed into the Regular Force from the Reserve Force were placed in the seniority list below their Regular Force counterparts from the respective years in which they had been enlisted. Accordingly, those absorbed under the 2006 scheme as Inspectors of Police were placed below the Petitioners, who had by then been promoted to that rank. However,

these newly absorbed officers were permitted to count their past service as Inspectors of Police in the Reserve Force when determining eligibility for future promotions within the Regular Force.

10. Subsequently, on 18<sup>th</sup> December 2012, in ***Mohotti Mudiyanseelage Sanath Lakshman Bandara v. Inspector General of Police***,<sup>1</sup> the State provided an undertaking to the Supreme Court that the recruitment scheme requiring eight years of service in the rank of Inspector of Police for promotion to Chief Inspector of Police would be adhered to. In line with this undertaking, applications were called for promotions under RTM No. 141, dated 4<sup>th</sup> September 2013.
11. By 25<sup>th</sup> September 2013, the Petitioners had completed only seven years and seven months of service in the rank of Inspector of Police, falling short of the required eight-year period necessary for promotion to the rank of Chief Inspector of Police. However, the Petitioners contend that their one-year service as Inspectors of Police in the Reserve Force before their absorption into the Regular Force in 1999 should also be taken into account when calculating their eligibility period. They argue that the failure to recognise this period has placed them at a disadvantage compared to officers who were absorbed into the Regular Force under the 2006 scheme, whose past service in the Reserve Force was counted toward their eligibility for promotion.
12. As a result, the Petitioners claim that the Respondents' failure to consider their prior service in the Reserve Force violates their fundamental rights guaranteed under Article 12(1) of the Constitution. They have sought a direction from this Court requiring the Respondents to accept their applications for promotion to the rank of Chief Inspector of Police and to promote them following an interview before a duly constituted Board.

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<sup>1</sup> SCFR Application No. 643/12, SC Minutes of 18<sup>th</sup> December 2012

13. The primary issue before the Court is whether the Petitioners' service in the Reserve Force should be considered when calculating their eligibility for promotion to Chief Inspector of Police and whether the differential treatment between them and officers absorbed in 2006 constitutes an infringement of their constitutional rights.
14. This Court finds that the Petitioners' period of service in the Reserve Force in the rank of Inspector of Police cannot be added when considering their promotion to the rank of Chief Inspector of Police in the Regular Force in 2013. The Petitioners, who were absorbed into the Regular Force in 1999, cannot be equated with the Inspectors of Police of the Reserve Force, who were absorbed into the Regular Force on the 24<sup>th</sup> February 2006 and whose past service in the Reserve Force was given due recognition. The Petitioners had already benefited from a similar concession when they were promoted to the rank of Inspector of Police with effect from 1<sup>st</sup> February 2006 following the filing of SCFR Applications Nos. 120/2006 and 123/2006, wherein their service as Sub-Inspectors of Police in the Reserve Force was considered in granting them promotions in the Regular Force.
15. Although the National Police Commission had approved a recommendation by the Inspector General of Police to add past periods of service in the Reserve Force to the service of all police officers absorbed into the Regular Force prior to 24<sup>th</sup> February 2006 (P10A, P10B, and P10C), the Petitioners' past service had already been considered at the time they were promoted to the rank of Inspector of Police with effect from 01<sup>st</sup> February 2006. The Petitioners and others who were absorbed into the Regular Force in 1999 as Sub-Inspectors of Police under 2R1 were not entitled to have their past service in the Reserve Force recognised again because that period had already been accounted for in their earlier promotion. Permitting the same period of past service to be repeatedly relied upon for subsequent promotions would allow an infinite cycle of recognition, which is impermissible.

16. In ***R.A.S.R. Kulathunga and others v. Pujith Jayasundera, Inspector General of Police and others***,<sup>2</sup> the Supreme Court upheld the decision to permit Inspectors of Police of the Reserve Force who were absorbed into the Regular Force in 2006 to rely on their past service in the Reserve Force when seeking promotion to Chief Inspector of Police in the Regular Force. The Petitioners in the present case did not object to this decision at that time, nor did they object to the promotional criteria applied in 2006.

17. His Lordship Jayasuriya CJ held,

*"It is pertinent to observe that the said circular only specifies that a minimum of 8 years in active service in the rank of Inspector of Police and it does not make a distinction between active service in the regular force and the active service in the reserve force. It is my view, acceptance of the submission of the Petitioners would amount to introducing an additional criteria which was not stipulated in the circular."*<sup>3</sup>

18. His Lordship, in the aforementioned case, found that the promotee-respondents in that case who joined the Reserve Force between 1988 and 1995 as Sub- Inspectors, were promoted to Inspector of Police in the Reserve Force between 1998 and 2002, and had served between 10 to 14 years in that rank by the date specified in the circular (25<sup>th</sup> September 2013).

19. At the time of the Petitioners' promotions to Inspector of Police in the Regular Force in 2006, their past service in the Reserve Force was counted as service in the rank of Sub-Inspector of Police, not Inspector of Police. Although they had been Inspectors of Police in the Reserve Force in 1999, they were absorbed into the Regular Force voluntarily at a

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<sup>2</sup> SCFR Application No. 132/2014, SC minutes of 18<sup>th</sup> March 2021

<sup>3</sup> *ibid* at p. 24

lower rank. The Petitioners did not object to this at the time, nor did they claim that their service should be considered at the rank they last held in the Reserve Force. The relief sought in SCFR Applications Nos. 120/2006 and 123/2006 clearly demonstrate that the Petitioners requested their service in the Reserve Force to be added to their service in the Regular Force as Sub-Inspectors, rather than at the higher rank they previously held. Therefore, their past service as Inspectors of Police in the Reserve Force is irrelevant to subsequent promotions in the Regular Force, as it was already accounted for when they were promoted to Inspector of Police in the Regular Force in 2006.

20. The Petitioners' application must also fail as they have not named as Respondents the police officers who were promoted to the rank of Chief Inspector of Police in 2013. The substantive relief sought in prayer (e) of the Petitioners' application is to direct the Respondents to consider their service in the Reserve Force and grant them promotions to the rank of Chief Inspector of Police. However, while state functionaries such as the Inspector General of Police and other relevant officials have been named as Respondents, the police officers who were successfully promoted in 2013, including those who were absorbed into the Regular Force in 2006 and subsequently promoted, have not been made parties to the proceedings.
21. The failure of the Petitioners to name these officers as Respondents is a significant procedural flaw, as any relief granted in favour of the Petitioners would necessarily affect the rights, status, and seniority of those already promoted. Granting such relief would not only disrupt the existing hierarchy within the police force but would also call into question the legitimacy of prior promotions, potentially leading to administrative uncertainty and further litigation. This is particularly relevant given that the seniority of these promoted officers has already been established and reflected in the document marked as 2R7.

22. In ***P.S.R. Premalal and others v. Wasala Mudiyansele Nimal Jayantha Pushpakumara, Commissioner of Examinations***,<sup>4</sup> His Lordship Dehideniya J. underscored the necessity for petitioners to name all necessary parties in an application when the rights and interests of such parties are at stake.
23. This principle was further reinforced in ***Don Shelton Hettiarachchi v. Sri Lanka Ports Authority and others***,<sup>5</sup> where the Court categorically stated that a failure to include parties whose rights might be adversely affected is a fatal defect that can render an application unsustainable in law. The reasoning behind this requirement is to ensure that no party is subjected to an adverse judicial determination without having been afforded an opportunity to be heard. By failing to include the officers who were promoted in 2013, the Petitioners have failed to adhere to this fundamental procedural requirement, thereby rendering their application untenable.
24. The Petitioners, who were absorbed into the Regular Force in 1999, belong to a separate and distinct category from those who were absorbed in 2006. The absorption of the Petitioners into the Regular Force was governed by the special absorption scheme introduced by the Inspector General of Police on the 08<sup>th</sup> December 1998 (2R1), which laid out specific conditions for their transition from the Reserve Force. Under this scheme, the Petitioners were integrated into the Regular Force at a lower rank and were required to progress in their careers in accordance with the promotion criteria applicable to Regular Force officers. In contrast, those absorbed in 2006 were subject to a different set of conditions, which, among other things, recognised their prior service in the Reserve Force for promotional purposes.

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<sup>4</sup> SCFR Application No. 502/2010, SC Minutes of 05<sup>th</sup> March 2019

<sup>5</sup> [2007] 2 Sri L.R. 307

25. This fundamental distinction between the two groups underscores why the Petitioners cannot claim the same treatment as those absorbed in 2006. Once the Petitioners entered the Regular Force in 1999, they ceased to be Reservists and were placed on a trajectory identical to other officers in the Regular Force. They could no longer rely on their past service in the Reserve Force to claim an advantage in the promotion process, as their career progression was now subject to the same rules applicable to all Regular Force officers.
26. Her Ladyship Dr. Shirani Bandaranayake J., in ***Tuan Ishan Raban and others v. Members of the Police Commission and others***,<sup>6</sup> affirmed that the Regular Force and the Reserve Force are inherently distinct categories, and there exists no rational or legal basis for linking them for promotional purposes. The judgment in this case reinforces the principle that once an officer is absorbed into the Regular Force, their prior service in the Reserve Force cannot be revisited or utilised to gain preferential treatment in promotions.
27. his principle was similarly articulated in ***Ramupillai v. Festus Perera, Minister of Public Administration, Provincial Councils & Home Affairs***,<sup>7</sup> where Ranasinghe CJ held that once individuals are recruited into a common class or service, any pre-existing distinctions based on prior service or past classification disappear. Thereafter, all individuals within that class must be treated uniformly for the purpose of promotions, transfers, and other service-related benefits. This reasoning was echoed by His Lordship Sripavan J. (as he then was) in ***Dharmakeerthi Ranathungage and others v. Commissioner General of Labour and others***,<sup>8</sup> where the Court held that once individuals are integrated into a service, their previous classifications become irrelevant for promotional considerations. These judicial

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<sup>6</sup> [2007] 2 Sri L.R. 351

<sup>7</sup> [1991] 1 Sri L.R. 11 at p. 26

<sup>8</sup> SCFR Application No. 620/2010, SC Minutes of 07<sup>th</sup> March 2013



pronouncements firmly establish that the Petitioners, having been absorbed into the Regular Force in 1999, cannot now resurrect their prior status as Reservists to claim an entitlement to promotions under different conditions.

28. Having considered the totality of the aforementioned circumstances and legal authorities, I find that the Petitioners have failed to establish a violation of their fundamental rights under Article 12(1) of the Constitution by one or more of the Respondents. Therefore, this application is dismissed.

***Application Dismissed.***

**JUDGE OF THE SUPREME COURT**

**A.L. SHIRAN GOONERATNE, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**K. PRIYANTHA FERNANDO, J.**

I agree.

**JUDGE OF THE SUPREME COURT**