

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

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

S.C.F.R Application No: 87/2012

1. C.J. Wickramasinghe,
75/3, Miriswatta, Mudungoda.
2. W.A.P. Wijesinghe, 161,
Kanduboda , Delgoda,
3. K.M.R.M Anura Koswatta,
78/2, Udebunnapana
Polgolla
4. S.M.G. Rupasinghe, 42/25 B,
Luviswatta, Yakkala.
5. A.N. Nanayakkara, No: 05,
Indunil Place, Maragahaptiya
watta, Balagolla,
Kandy.
6. K.P. Suranjith,
205/06, Mullegama
Homagama
7. R.M. Lasantha

No. 64, Abanpitiya Watta,
Galigamuwa

8. T.A.S.K. Tibbotumunuwa
No. 42, Pahalagama,
Polgasowita
9. S.M.S.L. Bandara,
'Mangala'
Arawaththa, Pitamaruwa
(via Passara)
10. W.D. Buddhika,
Gomaduwa,
Yatinyanthota
11. R.M.T.K. Rathnayake,
Ihala Weerambuwa,
Kuliyapitiya.
12. M.M.A.D. Marasinghe
Udugampolagedara,
Moragane
13. P.A. Tissakumara,
No. 109/11,
Madulawa, Padukka
14. W.A.M.S. Senarath
Abeyasinghe,

114/1, Pahalawatta,
Pilikuththuwa,
Buthpitiya

15. S. Priyantha Kumara,
157, Aisgagula Road,
Ehaliyagoda.
16. L.J. Dawson,
2913, Wellipila Waththa
Horana
17. M.A.L. Ranjani
Mahasinghe,
PDR Quarters, Urapola,
Attanagalla.
18. M.N.R.. Rajasinghe,
A7, Marwela, Kanda,
Maswela.
19. H.N.M.D. Neranjala
Rathnayake
No. 17/B
Mahahena, Udatattiripitiya
20. L.A. Prabodha Nirmana
Aturugiri
No. 38, 'Samanala'
Wathurugama, Gampaha

21. R.S. Wijayasinghe,
Ginedammana,
Wilaththawa, Bingiriya.
22. A.J.M. Chandana,
2/1, Kovilagoda, Owitigama.,
Parakaduwa.
23. K.S.S. Perera
695/1,
Muttettugoda Road,
Thalangama North,
Battaramulla
24. D.M.Mahinda Kumara
Kularathna, Pahaladiyadora,
Kuliyapitiya.
25. A.G.R.S. Thushantha
No. 1, Sisira Road,
Gampaha
26. R.A.G.P. Kumarasinghe
Banda
N0.83,
Kotaleeya, Aluththurama,
Mahiyangana
27. K.P. Ajith Nihal
Jayamangala

No. 40, Government House,
Nagolle, Kegalle

28. A.G.S Anuradha,
1/48, Penithuduwa,
Nawalapitiya
29. L.T.N. Allis,
16/145,
Mahara, Gampola
30. Lasanthi Marasinghe,
140, Green Mount Estate,
Post 4, Pillessa
31. K.A. Hemalatha,
Widyala Mawatha,
Pathakada,
Palmadulla
32. Harendra Ranasinghe
144/10A,
Porambe,
Ambalangoda
33. Kamani Niranjala
Matharage
88B, Puhuwala,
Dambara,
Meewanapalana

34. M.M.P. Premasiri
Chandragiri, Komarikagoda
35. A.C.T. Nayantha,
Nuwara Gedara,
Uluwitke, Galle
36. K.M.S.P. Rajapaksha
78,
Mahaweli Sooriyagama,
Maha Elagamuwa, Kekirawa
37. S.M. Wasantha Bandara
303/20, Galwalagoda,
Dekatana
38. W.H. Sugathadasa
Megolla, Hindagolle,
Kurunegala
39. W.A.A.R. de Silva,
Konpola,
Doratiyawa,
Kurunegala
40. M.W.N. Priyakantha,
Galpottawala, Nindana.

41. S.A. Thilakawathi
Ikothhena,
Morapitiya
42. A.H.M. Gunapala,
Niwasa 05, Galkandegama,
Kendewa, Anuradhapura.
43. I.G. Dissanayaka,
2/37,
Ihalagasyaya, Mdawala,
Mathale.
44. K.W.T. Priyankara,
526/2B, Walgama,
Malwana
45. K.K.S. Shantha,
33D, 2nd lane, Kandewatta,
Galle.
46. M.J. Perera
No. 77
Horana Road, Padukka
47. L.D. Rupasinghe,
Moris Road, Milidduwa,
Galle.
48. J.G. Sooriyarachchi
78E, Gampaha Road,

Matammana, Minuwangoda

49. K.M.Sumathipala,
Padaviwaththa, Pthanegama,
Galwala Road, Anuradhapura.
50. K.D.R.S. Gunawardena,
No:123/12, Thelangapatha
Road, Wattala.
51. J.S. Anura Rohana,
“Jayanevasa”, Uda
Aparakka, Matara.
52. H.K.T. Ananda,
Kitulahena, Yatadola watta,
Mathugama.
53. E.H.J.W. Kumara
Jinadasa,
83/1, Wasantha Madura
Marawanagoda, Werellagama
54. R.M.C. Ratnayake
Egodapolyagama,
Awlegama
55. I. B. Rathnayake
Igurugamuwa,
Awlegama

56. A.D.N.N. Amarakoon.
No:263/20, Nagarasabha gama,
Ahoya, Rathnapura.
57. B.M.P.K. Banneheka,
Wahumuwa, Kirindawa,
Kuliyapitiya.
58. D.M.A.Premalal,
384/239 A,
Wakwalla Rd., Galle.
59. J.A. Nishshanka
Premajayantha, Bamunugama,
Welpalla.

PETITIONERS

Vs.

1. B.K.S. Ravindra
Acting Commissioner of
Community Based Corrections,
Department of Community
Based Corrections,
No. 35A, 1st Floor,
N.M. Perera Mawatha,
Borella, Colombo 08.
- 1A Nimal Kotawalagedara
Acting Commissioner of
Community Based Corrections,
Department of Community
Based Corrections,
No. 35A, 1st Floor,

N.M. Perera Mawatha,
Borella, Colombo 08.

1B D.L. Sannasooriya
Commissioner of Community
Based Corrections,
Department of Community
Based Corrections,
No. 35A, 1st Floor,
N.M. Perera Mawatha,
Borella, Colombo 08.

1C Mr. V. Premachandran
Commissioner of Community
Based Corrections,
Department of Community
Based Corrections,
No. 35A, 1st Floor,
N.M. Perera Mawatha,
Borella, Colombo 08.

1D Mrs. R.P.S. Saman Kumari,
Commissioner of Community
Based Corrections,
Department of Community
Based Corrections,
No. 35A, 1st Floor,
N.M. Perera Mawatha,
Borella, Colombo 08.

1E Mr. Dilan Gunarthna,
Commissioner of Community
Based Corrections,
Department of Community
Based Corrections,
15th Floor,
'Mehewara Piyesa',
Narahenpita, Colombo 05.

ADDED '1E' RESPONDENT

2. M.N. Junaid,
Co-Chairman,
National Salaries and Cadres
Commission,
Room 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
3. Saliya Mathew,
Co-Chairman,
National Salaries and Cadres
Commission,
Room 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
4. Ariyadasa Silva, Member
5. S.H. Siripala, Member
6. Sunil Chandra Mannapperuma,
Member
7. D.W. Subasinghe, Member
8. Gunapala Wickramaratne,
Member
9. M. Mackey Hashim, Member
10. Prof. Carlo Fonseka, Member
11. H.M. S. Kotakadeniya, Member
12. S. S. B. Don Gnanaratne
Jayawardena, Member
13. Dr. Lloyd Fernando, Member
14. Leslie Devendra, Member

(All being former members of
the National Salaries and Cadres
Commission, Room 2-G 10,
BMICH, Bauddhaloka
Mawatha, Colombo 07).

- 14A. Don Herbert Neville
Piyadigama,
Co-Chairman.
- 14B. Jayalath Ranasinghe
Wimalasena Dissanayake,
Co-Chairman.
- 14C. Gunasekara Liyanage
Wimaladasa Samarasinghe,
Member.
- 14D. Madam Vijeyalakshmy
Jegarasingam, Member.
- 14E. Ginigaddarage Piyasena,
Member.
- 14F. Madam Ranatunga
Appuhamilage Dona Rupa
Malini Peiris, Member.
- 14G. Dayananda Widanagamachchi,
Member.
- 14H. Sembakuttige Swarnajothi,
Member.
- 14I. Benedict Karunajeewa
Ulluwishewa, Member.
- 14J. Sujeeva Rajapakse, Member.
- 14K. Harsha Warnakula Fernando,
Member.

- 14L. Prof. Sampath Amaratunga,
Member.
- 14M. Dr. Ravi Liyanage, Member.
- 14N. Wegapitiya Kattadiyalage
Hemachandra Wegapitiya,
Member.
- 14O. Keethi Kotagama, Member.
- 14P. Reyaz Mihular, Member.
- 14Q. Priyantha Fernando, Member.
- 14R. Leslie Shelton Devendra,
Member.
- 14S. Wijesingha Wellappili Don
Sumith Wijesinghe, Member.

(All being former Members of
the National Pay Commission,
Room No 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.)

- 14T. Bandulasiri Wijayaratne,
Secretary,
National Pay Commission,
Room No. 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
- 14U. Mr. K.L.L. Wijeratne, Chairman.
- 14V. Mr. Nimal Bandara, Member.
- 14W. Mr. Dayananda
Vidanagamachchi, Member.
- 14X. Mr. Charitha Rathwaththe,

Member.

- 14Y. Prof. Kithsiri Madapatha
Liyanage, Member.
- 14Z. Mr. Leslie Shelton Devendra,
Member.
- 14AA. Mr. Suresh Shah, Member.
- 14BB. Mr. Sanath Jayantha Ediriweera,
Member
- 14CC. Mr. V. Regunathan, Member
- 14DD. Mr. Kamal Mustapha, Member.
- 14EE. Prof. Gunapala Nanayakkara,
Member.
- 14FF. Mr. Nandapala Wickramasuriya,
Member.
- 14GG. Ms. Sujatha Cooray, Member.
- 14HH. Mr. Gerry Jayawardena,
Member.
- 14II. Mr. S. Thillainarajah, Member.
- 14JJ. Dr. Anura Ekanayake, Member
- 14KK. Mr. Sembakuttige Swarnajothi,
Member.
- 14LL. Mr. P.K.U. Nilantha Piyaratne,
Member.
- 14MM. Mr. N.H. Pathirana, Member.
- 14NN. Mr. H.T. Dayananda, Member.
- 14OO. Mr. T.B. Maduwegedera,
Member.
- 14PP. Dr. Wimal Karanagoda,
Member.
- 14QQ. Mr. A. Kadiravelupillai,
Member.

(All being Members of the
former National Salaries and
Cadre Commission,

Room No 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.)

14RR. Mr. Asoka Jayasekera,
Secretary,
National Salaries and Cadre
Commission.
Room No 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.

14-3A. Mr. Upali Wijayaweera,
Chairman,

14-3B. Mrs. Chandrani Senaratne,
Member,

14-3C. Mr. Gotabhaya Jayaratne,
Member,

14-3D. Mrs. Sujatha Cooray,
Member,

14-3E. Dr. Madura Wehalla,
Member,

14-3F. Mr. M.S.D. Ranasiri,
Member,

14-3G. Dr. Ananda Hapugoda,
Member,

14-3H. Mr. Sanjeewa Somaratne,
Member,

14-3I. Mr. Ajith Nayanakantha,
Member,

14-3J. Dr. Ravi Liyanage, Member,

- 14-3K. Mr. Sanath Ediriweera,
Member,
- 14-3L. Prof. Ranjith Senarathna,
Member,
- 14-3M. Eng. R.M. Amarasekara,
Member,
- 14-3N. Maj. Gen. (Rtd) Siri
Ranaweera,
Member,
- 14-3O. Mr. W.H. Piyadasa,
Member,
- (All being Members of the
presently incumbent National
Pay Commission,
National Pay Commission
Room No – 2-116, B.M.I.C.H,
Colombo 07.)

- 14-3P. Chandrani Senarathna,
Secretary,
- National Pay Commission,
Room No – 2-116, B.M.I.C.H,
Colombo 07.

ADDED '14-A4' TO '14-P4'
RESPONDENTS

15. B. Wijeratne,
Secretary,
- National Salaries and Cadres
Commission, Room 2-G 10,

BMICH, Bauddhaloka
Mawatha, Colombo.

16. Mr. M.A. Dharmadasa,
Director General of
Establishments.
Ministry of Public
Administration and Home
Affairs,
Independence Square,
Colombo 07.
- 16A W.D. Somadasa,
Director General of
Establishments,
Ministry of Public
Administration and Home
Affairs,
Independence Square,
Colombo 07.
- 16B. Chandana Kumarasinghe,
Acting Director General of
Establishments,
Ministry of Public
Administration and Home
Affairs,
Independence Square,
Colombo 07.
- ADDED '16B' RESPONDENT
17. D. Dissanayake,
Secretary,
Ministry of Public
Administration & Home Affairs,

Independence Square,
Colombo 7.

- 17A Mr. J. Dadallage,
Secretary,
Ministry of Public
Administration and
Management.
Independence Square,
Colombo 7.
- 17B Mr. J.J.Rathnasiri,
Secretary,
Ministry of public
Administration and
Management.
Independence Square,
Colombo 07.
- 17C Mr. M. M. P. K Mayadunne, as
Secretary, Ministry of Public
Administration, Home Affairs,
Provincial Councils and Local
Government,
- 17D. Mr. Neel Bandara Hapuhinne,
Secretary,
Ministry of Public
Administration, Home Affairs,
Provincial Councils and Local
Government,

ADDED '17D'
RESPONDENT.

18. Dr. Dayasiri Fernando,
Chairman,
Public Service Commission,
No. 177,
Nawala Road,
Narahenpita.
19. Mr. Palitha M. Kumarasinghe
P.C., Member.
20. Mrs. Sirimavo A. Wijeratne,
Member.
21. Mr. S. C. Mannapperuma,
Member.
22. Mr. Ananda Seneviratne,
Member.
23. Mr. N.H. Pathirana, Member .
24. Mr. S. Thillanadarajah, Member.
25. Mr. M.D.W. Ariyawansa,
Member.
26. Mr. A. Mohamed Nahiya,
Member.

(All being former members of
the Public Service Commission
No. 177,
Nawala Road,
Narahenpita, Colombo 05.)

- 26A. Retired Hon. Justice Sathyaa
Hettige P.C.,

Chairman.

26B. S.C. Mannapperuma, Member.

26C. Ananda Seneviratne, Member.

26D. N.H. Pathirana, Member.

26E. S. Thillanadarajah, Member.

26F. A. Mohamed Nahiya, Member.

26G. Kanthi Wijetunge, Member.

26H. Sunil. S. Sirisena, Member.

26I. Dr. I.M. Soysa Gunasekera,

Member.

(All being former members of
the Public Service Commission
No. 177,
Nawala Road,
Narahenpita, Colombo 05.)

26J. Mr. Dharmasena Dissanayake,

Chairman,

Public Service Commission,
No. 177, Nawala Road,
Narahenpita,
Colombo 5.

26K. Justice A. Salam Abdul Waid,

Member.

26L. Ms. D. Shirantha Wijayathilake,

Member.

26M. Dr. Prathap Ramanujam,

Member.

26N. Mrs. V. Jegarasasingham,
Member.

26O. Mr. Shanti Nihal Seneviratne,
Member.

26P. Mr. S. Ranugge, Member.

26Q. Mr. D.L. Mendis, Member.

26R. Mr. Sarath Jayathilake, Member.

26S. Prof. Hussain Ismail, Member.

(All being former members of
the Public Service Commission

No. 177,
Nawala Road,
Narahenpita, Colombo 05.)

26-3A. Rtd. Hon. Justice Jagath
Balapatabendi,
Chairman,
Public Service Commission.

26-3B. Mrs. Indrani Sugathadasa,
Member,

26-3C. Mr. V. Shivagnanasothy,
Member,

26-3D. Dr. T.R.C. Ruberu,
Member,

26-3E. Mr. Ahamod Lebbe
Mohamed Saleem,
Member,

26-3F. Mr. Leelasena Liyanagama,

Member,

26-3G. Mr. Dian Gomes,

Member,

26-3H. Mr. Dilith Jayaweera,

Member,

26-3I. Mr. W.H.Piyadasa,

Member,

26-3J. Mr. S. Arumainayaham,

Member

(All being members of the
presently incumbent Public
Service Commission,

No. 1200/9,
Rajamalwatta Raod,
Battaramulla.)

27. Mrs. T.M.L.C. Senaratne,

Secretary,

Public Service Commission
No 177,
Nawala Road,
Narahenpita,

27A Mr. H.M.G. Senevirathne,

Secretary,

Public Service Commission
No 177,
Nawala Road,
Narahenpita,

27B. Mr. M.A.B. Daya Senarath,

Secretary,

Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.

28. Minister of Rehabilitation and
Prison Reforms,

No.150, Baseline Road,
Colombo 09.

28A Hon. Minister of Justice,

Ministry of Justice,
Superior Courts Complex,
Colombo 12.

28B Hon. Minister of Prison Reform,
Rehabilitation, Resettlement
and Hindu Religious Affairs,
No. 146, Galle Road,
Colombo 03.

28C. Hon. Thalatha Atukorale,
Minister of Justice and Prison
Reforms,

Ministry of Justice and Prison
Reforms,
Superior Courts Complex,
Colombo 12.

28D-1. Hon. Ali Sabry, P.C.,
Minister of Justice.

Superior Courts Complex,
Colombo 12.

ADDED '28D-1'
RESPONDENT

28D-2. Hon. Dr. Sudharshin
Fernandopulle,

State Minister of Prison
Reforms, and Prisoners
Rehabilitation,
No. 40, Buthgamuwa Road,
Rajagiriya.

28D-2A Hon. Lohan Ratwatte,
State Minister of Prison
Management and Prisoners
Rehabilitation ,
4th Floor,
Standard Chartered Building,
Janadhipathi Mawatha,
Colombo 01.

28D-2B Hon. Anuradha Jayaratne,
State Minister of Justice
and
Prison Affairs.
No. 19, Sri Sangaraja
Mawatha,
Colombo 10.

ADDED 28D-2B
RESPONDENT

28E. Hon. Wijedasa Rajapakshe,
Minister of Justice, Prison Affairs
and Constitutional Reforms.

29. Mr. A. Dissanayake,
Secretary,
Ministry of Rehabilitation and
Prison Reforms,
No.150, Baseline Road,
Colombo 09.

29A Mr. G.S. Withane,
Secretary ,
Ministry of Rehabilitation and
Prison Reforms,
No.150, Baseline Road,
Colombo 09.

29B. Mr. V. Sivagnanasothy,
Secretary,
Ministry of Prison Reform,
Rehabilitation, Resettlement
and Hindu Religious Affairs,
No. 146, Galle Road,
Colombo 03.

29C. Eng. P. Suresh,
Secretary,
Ministry of Prison Reform,
Rehabilitation, Resettlement
and Hindu Religious Affairs,
No. 146, Galle Road,
Colombo 03.

29D. Mrs. S.C. Karunarathna,
Secretary,
State Ministry of Prison
Reforms,
and Prisoners Rehabilitation.
No. 40, Buthgamuwa Road,
Rajagiriya.

ADDED '29D' RESPONDENT

30. The Secretary to the
Treasury and Secretary
to the Ministry of Finance
and Planning,
The Secretariat,
Colombo 1.

31. W.K.P. De Silva
Secretary,
Ministry of Justice,
Superior Courts Complex,
Colombo 12.
- 31A. Mr. Padmasiri Jayamanna,
Secretary,
Ministry of Justice,
Superior Courts Complex,
Colombo 12.
- 31B. Mrs. W.M.M.R. Adikari,
Secretary,
Ministry of Justice and Prison
Reforms,
Superior Courts Complex,
Colombo 12,
Sri Lanka.
- 31C. Mr. R.M.D.B. Meegasmulla,
Secretary,
Ministry of Justice and Prison
Reforms,
Superior Courts Complex,
Colombo 12.
- 31D. Mrs. J.M.C. Jayanthi Wijetunge,
Secretary,
Ministry of Justice and Prison
Reforms,
Superior Courts Complex,
Colombo 12.
- 31E. Mr. M.M.P.K. Mayadunne,
Secretary,
Ministry of Justice,
Superior Courts Complex,
Colombo 12.

ADDED '31E' RESPONDENT

- 31F. Mrs. Wasantha Perera,
Secretary, Ministry of
Justice, Prison Affairs and

Constitutional Reforms.

32. Hon. Attorney General,

Department of the Attorney
General,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

S.C.F.R. Application No. 255/2013

1. Mr. P.G.R. Kumudulal
207/1, Akkara 18, Hunuwala,
Opanayake.

The President, All Island
Community
Correction Work Inspectors
Association
2. Mr. N.Y.T.L. Niyangama
Pallegama, Udawela, Opanayake.

The Secretary, All Island
Community
Correction Work Inspectors
Association
3. Mr. H.F.A.C. Fonseka
G/51/A, Pathakada
Road, Yakdehiwatta, Nivithigala.
4. Mr. K.H.D.T. Jayarathna,
3/B, Lelwalakade, Ketethanna,
Kahawatta.
5. Mr. D.N. Weerathunga
Madaganoya, Waligepola,
Balangoda.
6. Mr. B.C. Rubasinghe
180/2, Kappitiyawa, Weerakatiya.
7. Mr. S.H.L. Suranga,
458, Temple road, Abayapura,
Trincomalee.
8. Mr. H.M.N. Jayantha
1/88, Wawinna, Paragahakele,
Ampara.
9. Mr. M.M.T. Dayarathna,
Thennahena, Buluthota,

Rakwanaharaha.

10. Mr. N.D. Nimal Chanaka Ranwala
Yaya, Ranwala, Godakawela.
11. Mr. P.D. Dayarathna Sapalawatta,
Dunukaragoda, Opanayake.
12. Mr. U.G.D. Udagedara,
Udagedara, Meekalawa, Gampola.
13. Mr. V.G. Sanath Palitha,
Pitawela, Ranwala, Godakawela.
14. Mr. K.W.S.K.U.L. Premarathna,
Akarella, Opanayake.
15. Mr. U.R.R. Sanjeewa
Ulugalathanna,
Ihalagama, Belihuloya.
16. Mr. R.T. Sooriyaarachchi,
183/01, 5th Siriliya Niwasa,
Siyabalagoda, Polgasmandiya.
17. Mr. K.V.T.H. Priyankara,
Viphingedara, Temple road,
Kahawatta.
18. Mr. N.A.A.S.S. Nallaperuma,
Kukulegama South, Kalawana,
Rathnapura.
19. Mr. K.S. Samantha Kumara,
“Gunasiriniwasa”, Pallegama,
Godakawela.
20. Mr. D.P.W.I. Kulathilaka,
No.46, Udumaththa,
Ehaliyagoda.

21. Mr. W.A.S.K. Wikramarachchi,
Opatha, Ranwala, Godakawela.
22. Mr.G.N. Lalith Kumara,
Pallegama,
Udawela, Opanayake.
23. Mr.G.M.R. Sisira Kumara,
Jambugasgulana, Mahapannila,
Rakwana.
24. Mr.M.L.H. Premakumara,
Moradeniya, Eththala,
Gatahaththa.
25. Mr.K.D.B.P. Sirisena,
655/B,
Bopaththa, Gatahaththa.
26. Mr.M.A.P.D Sanjeewa,
243/5,Pallegama, Akaralla,
Opanayake.
27. Mr.N.P.G.C. Nanayakkara,
HunuwalaNorth, Opanayake.
28. Mr. H. D.C.P. Premawansha,
Kandawa, Bulathkohupitiya.
29. Mr. K.H.M. Sanjeeva,
167/8, Kandaliyaddapaluwa,
Ganemulla.
30. Mr.M.P.K.D. Somarathna,

Hunuwala, Opanayake.

31. Mr.T.A. Sarath kumara,
Kakulugoda, Yakdehiwatta,
Nivithigala.
32. Mrs. H.M.M.P. Bandara,
Pattiyawatta, Kithulgahawaka,
Rathkarawwa.
33. The All Island Community
Correction Work Inspectors
Association,
Community Correction Office,
Magistrate's Court,
Maligakanda,
Colombo 10.

PETITIONERS

Vs.

1. D.L. Sannasuriya,
Commissioner of Community
Based Corrections,
Department of Community
Based Corrections,
No. 35A, 1st Floor,
N.M. Perera Mawatha,
Borella, Colombo 08.
- 1A Mr. V. Premachandran
Commissioner of Community
Based Corrections,

Department of Community
Based Corrections,
No. 35A, 1st Floor,
N.M. Perera Mawatha,
Borella, Colombo 08.

- 1B Mrs. R.P.S. Saman Kumari,

Commissioner of Community
Based Corrections,

Department of Community
Based Corrections,
No. 35A, 1st Floor,
N.M. Perera Mawatha,
Borella, Colombo 08.
2. M.N. Junaid,
Co-Chairman,

National Salaries and Cadres
Commission,

Room 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.
3. Saliya Mathew,
Co-Chairman,

National Salaries and Cadres
Commission,

Room 2-G 10, BMICH,
BuddhalokaMawatha,
Colombo 07.
4. Ariyadasa Silva, Member.
5. S.H. Siripala,
Member.
6. Sunil Chandra Mannapperuma,

Member.

7. D.W. Subasinghe, Member.
8. Gunapala Wickramaratne,
Member.
9. M. Mackey Hashim, Member.
10. Prof. Carlo Fonseka, Member.
11. H.M. S. Kotakadeniya, Member.
12. S. S. B. Don Gnanaratne
Jayawardena,
Member.
13. Dr. Lloyd Fernando, Member.
14. Leslie Devendra, Member.

(All being former members of
the National Salaries and Cadres
Commission, Room 2-G 10,
BMICH, Bauddhaloka
Mawatha, Colombo 07).

- 14A. Don Herbert Neville
Piyadigama,

Co-Chairman.
- 14B. Jayalath Ranasinghe
Wimalasena Dissanayake,

Co-Chairman.
- 14C. Gunasekara Liyanage

- Wimaladasa Samarasinghe,
Member.
- 14D. Madam Vijeyalakshmy
Jegarasasingam, Member.
- 14E. Ginigaddarage Piyasena,
Member.
- 14F. Madam Ranatunga
Appuhamilage Dona Rupa
Malini Peiris, Member.
- 14G. Dayananda Widanagamachchi,
Member.
- 14H. Sembakuttige Swarnajothi,
Member.
- 14I. Benedict Karunajeewa
Ulluwishewa, Member.
- 14J. Sujeeva Rajapakse, Member.
- 14K. Harsha Warnakula Fernando,
Member.
- 14L. Prof. Sampath Amaratunga,
Member.
- 14M. Dr. Ravi Liyanage, Member.
- 14N. Wegapitiya Kattadiyalage
Hemachandra Wegapitiya,
Member.
- 14O. Keethi Kotagama, Member.
- 14P. Reyaz Mihular, Member.
- 14Q. Priyantha Fernando, Member.
- 14R. Leslie Shelton Devendra,

Member.

- 14S. Wijesingha Wellappili Don
Sumith Wijesinghe, Member.

(All being former Members of
the National Pay Commission,
Room No. 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.)

- 14T. Bandulasiri Wijayaratne,
Secretary,

National Pay Commission,
Room No. 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.

- 14U. Mr. K.L.L. Wijeratne,

Chairman.

- 14V. Mr. Nimal Bandara, Member.

- 14W. Mr. Dayananda

Vidanagamachchi, Member.

- 14X. Mr. Charitha Rathwaththe,

Member.

- 14Y. Prof. Kithsiri Madapatha

Liyanage, Member.

- 14Z. Mr. Leslie Shelton Devendra,
Member.

- 14AA. Mr. Suresh Shah, Member.
- 14BB. Mr. Sanath Jayantha Ediriweera,
Member
- 14CC. Mr. V. Regunathan, Member
- 14DD. Mr. Kamal Mustapha, Member.
- 14EE. Prof. Gunapala Nanayakkara,
Member.
- 14FF. Mr. Nandapala Wickramasuriya,
Member.
- 14GG. Ms. Sujatha Cooray, Member.
- 14HH. Mr. Gerry Jayawardena,
Member.
- 14II. Mr. S. Thillainarajah, Member.
- 14JJ. Dr. Anura Ekanayake, Member
- 14KK. Mr. Sembakuttige Swarnajothi,
Member.
- 14LL. Mr. P.K.U. Nilantha Piyaratne,
Member.
- 14MM. Mr. N.H. Pathirana, Member.
- 14NN. Mr. H.T. Dayananda, Member.
- 14OO. Mr. T.B. Maduwegedera,
Member.
- 14PP. Dr. Wimal Karanagoda,
Member.
- 14QQ. Mr. A. Kadiravelupillai,
Member.

(All being Members of the
National Salaries and Cadre
Commission,
Room No 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.)

14RR. Mr. Asoka Jayasekera,
Secretary,
National Salaries and cadre
Commission.
Room No 2-G 10, BMICH,
Buddhaloka Mawatha,
Colombo 07.

14-3A. Mr. Upali Wijayaweera,
Chairman,

14-3B. Mrs. Chandrani Senaratne,
Member,

14-3C. Mr. Gotabhaya Jayaratne,
Member,

14-3D. Mrs. Sujatha Cooray,
Member,

14-3E. Dr. Madura Wehalla,
Member,

14-3F. Mr. M.S.D. Ranasiri,
Member,

14-3G. Dr. Ananda Hapugoda,
Member,

14-3H. Mr. Sanjeewa Somaratne,
Member,

14-3I. Mr. Ajith Nayanakantha,
Member,

14-3J. Dr. Ravi Liyanage, Member,

- 14-3K. Mr. Sanath Ediriweera,
Member,
- 14-3L. Prof. Ranjith Senarathna,
Member,
- 14-3M. Eng. R.M. Amarasekara,
Member,
- 14-3N. Maj. Gen. (Rtd) Siri
Ranaweera,
Member,
- 14-3O. Mr. W.H. Piyadasa,
Member,

(All being Members of the
presently incumbent National
Pay Commission,
National Pay Commission
Room No – 2-116, B.M.I.C.H,
Colombo 07.)

- 14-3P. Chandrani Senarathna,
Secretary,

National Pay Commission,
Room No – 2-116, B.M.I.C.H,
Colombo 07.

ADDED '14-A4' TO '14-P4'
RESPONDENTS

- 15 B. Wijeratne,
Secretary,

National Salaries and Cadres
Commission, Room 2-G 10,

BMICH, Bauddhaloka
Mawatha, Colombo .

16. Mr. W.D. Somadasa,
Director General of
Establishments,

Ministry of Public
Administration and Home
Affairs,
Independence Square,
Colombo 07.

16A. Mr. Chandana Kumarasinghe,

Acting Director General of
Establishments,
Ministry of Public
Administration and Home
Affairs,
Independence Square,
Colombo 07.

ADDED '16A' RESPONDENT

17. P.B. Abeykoon,
Secretary,

Ministry of Public
Administration & Home Affairs,

Independence Square,
Colombo 07.

17A J. Dadallage,
Secretary,

Ministry of Public
Administration and
Management.
Independence Square,
Colombo 7.

- 17B Mr. J.J. Rathnasiri,
Secretary,
Ministry of public
Administration and
Management.
Independence Square,
Colombo 07.
18. Dr. Dayasiri Fernando,
Chairman,
Public Service Commission,
No. 177,
Nawala Road,
Narahenpita.
19. Mr. Palitha M. Kumarasinghe
P.C., Member.
20. Mrs. Sirimavo A. Wijeratne,
Member.
21. Mr. S. C. Mannapperuma,
Member.
22. Mr. Ananda Seneviratne,
Member.
23. Mr. N.H. Pathirana,
Member.
24. Mr. S. Thillanadarajah,
Member.
25. Mr. M.D.W. Ariyawansa,
Member.
26. Mr. A. Mohamed Nahiya,
Member.

(All being former members of
the Public Service Commission

No 177,
Nawala Road,
Narahenpita.

- 26A. Justice Sathya Hettige P.C.,
Chairman.
- 26B. S.C. Mannapperuma, Member.
- 26C. Ananda Seneviratne, Member.
- 26D. N.H. Pathirana, Member.
- 26E. S. Thillanadarajah, Member.
- 26F. A. Mohamed Nahiya, Member.
- 26G. Kanthi Wijetunge, Member.
- 26H. Sunil. S. Sirisena, Member.
- 26I. Dr. I.M. Soysa Gunasekera,
Member.

(All being former members of
the Public Service Commission,

No. 177,
Nawala Road,
Narahenpita, Colombo 05.)

- 26J. Mr. Dharmasena Dissanayake,
Chairman,
Public Service Commission,
No.177, Nawala Road,
Narahenpita,
Colombo 5.

- 26K. Justice A. Salam Abdul Waid,

Member.

26L. Ms. D. Shirantha Wijayathilake,

Member.

26M. Dr.Prathap Ramanujam,

Member.

26N. Mrs. V. Jegarasasingham,

Member.

26O. Mr. Shanti Nihal Seneviratne,

Member.

26P. Mr. S. Ranugge,

Member.

26Q. Mr. D.L. Mendis,

Member.

26R. Mr. Sarath Jayathilake,

Member.

26S. Prof. Hussain Ismail,

Member.

(All being members of the
previous Public Service
Commission,

No. 177,
Nawala Road,
Narahenpita, Colombo 05.)

26-T. Rtd. Hon. Justice Jagath
Balapatabendi,
Chairman,
Public Service Commission.

26-U. Mrs. Indrani Sugathadasa,
Member,

26-V. Mr. V. Shivagnanasothy,
Member,

26-W. Dr. T.R.C. Ruberu,
Member,

26-X. Mr. Ahamod Lebbe
Mohamed Saleem,
Member,

26-Y. Mr. Leelasena Liyanagama,
Member,

26-Z. Mr. Dian Gomes,
Member,

26-AA. Mr. Dilith Jayaweera,
Member,

26-BB. Mr. W.H.Piyadasa,
Member,

(All being members of the
presently incumbent Public
Service Commission,

No. 1200/9,
Rajamalwatta Road,
Battaramulla.)

ADDED 26-T to 26-BB ADDED

RESPONDENTS

27. Mrs. T.M.L.C. Senaratne,
Secretary,

Public Service Commission,

No 177,
Nawala Road,
Narahenpita.
Colombo 05.
- 27A Mr. H.M.G. Senevirathne,

Secretary,
Public Service Commission
No 177,
Nawala Road,
Narahenpita.
- 27B. Mr. M.A.B. Daya Senarath,

Secretary,

Public Service Commission,
No. 1200/9,
Rajamalwatta Road,
Battaramulla.
28. Secretary,
Ministry of Rehabilitation and
Prison Reforms,

No.150, Baseline Road,
Colombo 09.

28B. Mr. V. Sivagnanasothy,
Secretary,
Ministry of Prison Reform,
Rehabilitation, Resettlement
and Hindu Religious Affairs,
No. 146, Galle Road,
Colombo 03.

28C. Eng. P. Suresh,
Secretary,
Ministry of Prison Reform,
Rehabilitation, Resettlement
and Hindu Religious Affairs,
No. 146, Galle Road,
Colombo 03.

28D. Mrs. S.C. Karunarathna,
Secretary,
State Ministry of Prison
Reforms, and Prisoners'
Rehabilitation.
No. 40, Buthgamuwa Road,
Rajagiriya.

ADDED '28D' RESPONDENT

29. The Secretary to the
Treasury and Secretary to the
State Ministry of Finance and
Planning,

The Secretariat,
Colombo 01.

30. Secretary,
Ministry of Justice,

Superior Courts Complex,
Colombo 12,
Sri Lanka.

30A. Mrs. W.M.M.R. Adikari,
Secretary,
Ministry of Justice and Prison
Reforms
Superior Courts Complex,
Colombo 12.

30B. Mr. R.M.D.B. Meegasmulla,
Secretary,
Ministry of Justice and Prison
Reforms,
Superior Courts Complex,
Colombo 12.

30C. Mrs. J.M.C. Jayanthi
Wijethunge,
Secretary,
Ministry of Justice and Prison
Reforms,
Superior Courts Complex,
Colombo 12.

30D. Mr. M.M.P.K. Mayadunne,
Secretary,
Ministry of Justice,
Superior Courts Complex,
Colombo 12.

ADDED '30D' RESPONDENT

31. The Hon. Attorney General,
Department of the Attorney
General,
Hulftsdorp Street,
Colombo 12.

RESPONDENTS

BEFORE : **E.A.G.R. AMARASEKARA J.**
K.KUMUDINI WICKREMASINGHE, J.
A.L. SHIRAN GOONERATNE, J

COUNSEL : Mr. Sanjeewa Jayawardena PC for the Petitioner

Ms. Viveka Siriwardhena PC, ASG with I. Randeny SC for the Respondents

ARGUED ON : 03.02.2023

WRITTEN SUBMISSIONS : Petitioners on 05.05.2014 and 11.08.2023
Respondents on 15.03.2021 and 11.04.2023

DECIDED ON : 05.06.2024

K. KUMUDINI WICKREMASINGHE, J.

This is a Fundamental Rights Application filed under Article 126 (1) of the Constitution by the Petitioners seeking, inter alia, for a declaration that their fundamental rights to equality before the law and equal protection of the law guaranteed under Article 12 (1) of the Constitution of Sri Lanka have been violated and/or are in imminent danger of being infringed and/or are being continuously violated due to the actions, omission, and/or failure to act/or neglect to perform the duty of/by the 1st to 31st Respondents.

On 11.12.2014 the Learned President's Counsel for the Petitioners in SC F/R No. 87/2012 dated 1st March 2012 made an application and moved to have this matter listed along with the connected case SC F/R No. 255/2013 dated 11th July 2013. The Court listed both matters for hearing on 15.05.2015 and only SC F/R 87/2012 was taken up for argument. The Learned President's Counsel appearing for all the Petitioners in case SC F/R No. 87/2012 and SC F/R 255/2013 filed a consolidated written submissions for both cases SC F/R 87/2012 and SC F/R 255/2023 dated 11th August 2023 and agreed to abide by the judgement of this case. The Learned ASG appearing for the Respondents filed one written submission dated 11th April 2023 for both SC F/R 87/2012 and SC F/R 255/2023 and stated that since the matters agitated in both cases are similar in terms of principal and legal issues involved that one consolidated written submission would apply in both cases. Accordingly, the same Public Administrative Circular No. 6/2006 also applies to both cases only one judgment would suffice.

The 1st to 59th Petitioners in SC F/R 87/2012 are Community Correction Officers, employed by the Department of Community Based Corrections, a department which is under the purview of the Ministry of Rehabilitation and Prison Reforms and are public servants. The 1st Petitioner is also the Chairman of the Community Correction Officers Association, in which Association the majority of the petitioners are members.

The Petitioners in the connected application SC F/R 255/2013 are work supervisors employed by the Department of Community Based Corrections. The Petitioners in this case were appointed as follows; the 2nd, 4th-12th, 19th-24th, 26th, 27th, 31st Petitioners were employed on a casual and temporary basis. The 1st, 3rd, 13th-18th, 25th, 28th-30th Petitioners also received similar letters of appointments. The 32nd Petitioner was employed on a contract basis. The Petitioners were initially placed on scale TB 3 – 2 per day and thereafter absorbed to the scale of MN1- Step 7 of the Public Administrative Circular No. 6/2006.

The Petitioners state that they were appointed to the post of Community Correction Officers on 1st January 2007, and were placed on a salary scale MN 5 step 12 by the 18th to 26th Respondents, the Public Service Commission.

On the 3rd February 2012, 5 years after such appointment, the 1st Respondent Commissioner of Community Based Corrections, acting on the instructions of the 2nd to 14th and 18th to 26th Respondents (the National Salaries and Cadres Commission and the Public Service Commission), purported to place the Petitioners on the substantially lower salary scale of MN 5 step 1, effective from 1.1.2007, and to recover any excess payments arising from such retrospective placement. Aggrieved by this decision of the Public Service Commission the Petitioners are before this court.

On 09th August 2012, having heard the Counsel for the Petitioner in support of this Application and the Learned DSG who appeared for the Respondents, this court granted leave to proceed under Article 12(1) of the Constitution for the alleged violation of the said fundamental right by the Respondents.

The Petitioners state that the entry qualifications of external applicants for the post of Community Corrections Officers are required to have a minimum qualification of;

- I. A special degree in Criminology and Criminal Justice; OR
- II. A Bachelor of Laws degree; OR
- III. Be an Attorney at Law

Whereas internal applicants must have;

- I. 10 year's experience as Work Inspector in the Department of Community Based Corrections;
OR
- II. A degree from an accepted university with a minimum of five year's experience as a Work in the Department of Community Based Corrections; OR
- III. A degree from an accepted university with a minimum of five years' experience as a Prison Officer in the Department of Prisons;

AND
- IV. Having passed the Efficiency Bar Examination prescribed for the current post, and five years of satisfactory service in the past five years, including five increments in the current service, with an unblemished record.

The 31st Respondent, Secretary to the Ministry of Justice and Law Reforms, by advertisement dated 09th June 2005 marked P1 called for applications to the post "Praja Vishodana Niladhari" or Community Correction Officers. The Petitioners state that, the said advertisement further stated that the salary scale, upon which Community Corrections Officers will be recruited, is that TB11-6 as per Circular No. 09/2004 read with Scheme of Recruitment of the relevant service. This salary scale as of 9th June 2005 entailed a salary of Rs 154,020 per annum.

The Petitioners state that the majority of the Petitioners were already public servants at the time working in several government departments, including the Department of Prisons, Department of Community Based Corrections, the Police Department, the National Child Protection Authority and the other government departments. However, despite already being public servants, having seen the aforesaid advertisement, and based upon it, the Petitioners applied to the post advertised therein. The Petitioners state that the advertisement which contained the salary scale is the reason many of them left behind lucrative positions and applied for this post.

The Petitioners state that on 21st December 2006 the Acting Additional Secretary (Administration, Ministry of Justice and Judicial Reforms) informed the Petitioners that they had been appointed to the post of Community Correction Officers with effect from 1st January 2007.

The Petitioners state that thereafter, the Public Service Commission by its letter dated 29th December 2006, appointed the Petitioners to the post of Community Correction Officers, inter alia, subject to the following terms and conditions:

- I. Petitioners are placed on the initial salary step of MN-5, Step 12, earning 19,010/- per month, as per Public Administrative Circular No. 6/2006 dated 25.04.2006 and National Salaries and Cadres Commission Letter No NSCC/4/5 dated 19th June 2006.
- II. That the payment of such salaries will be based on the terms and conditions set out in such circular; and
- III. That the Petitioner would be required to sit for and pass the Efficiency Bar Examination within three years of their appointment.

The Petitioners state that their decision in accepting their appointment was very much based on the holding out of the said salary step MN,5-12.

In the meantime, by Public Administration Circular No. 6/2006 dated 25th April 2006, there was a revision of the salaries of the public service, converting the then existing salary scales set out in the P.A. Circular 9/2004 marked P3 to new categories and salary scales.

The Petitioners state the Ministry of Justice and Law Reforms in response to a letter by the Commissioner of Community Based Corrections had responded to the said Commissioner stating that the Director Establishments had approved those recruited to the post of Community Correction Officers and should be placed on the initially on salary step MN- 5, Step 12 as per circular No. 6/2006.

The petitioners state that in all circumstances they were thus led to understand that they have been correctly placed on the salary step of MN5 step 12. The Petitioners state that thereafter the Ministry of Public Affairs and Administration and Home Affairs increased the basic salary set out in P.A. Circular 6/2006. In the said circular the basic salary of the Community Corrections Officers increased from Rs.19,010 to a basic salary of Rs. 20,285 as per the amended salary scale which was effective from 1st of June 2007.

The Petitioners state that thereafter, applying the said Circular, the Commissioner of Community Based Corrections, by his letter bearing No. B1/1/58 dated 24th December 2007 increased the applicable starting salary step of the Petitioners to Rs. 20,285/- from 19,010/-. Further legitimising that the applicable salary step is MN5 step 12.

The Petitioners state that as per the requirement in order to confirm their appointments to permanent employees the Petitioners sat for the prescribed Efficiency Bar Examination. 49 of the Petitioners received sufficient marks to pass the said examination and were entitled to be made permanent. Based on the terms specified in their Letter of Appointment 3 of the 16 internally recruited Petitioners were made permanent in or about 04th May 2009 effective from 1st January 2007. The Petitioners state that as of 2011, 5 of the externally recruited Petitioners were made permanent.

The Petitioners further state that the 1st Respondent provided two salary increments to the Petitioner in or about March 2008 and March 2009, thereby placing all 59 Petitioners on salary step 14 of the scale MN 5. Thereafter, in November of 2009 the Department of Community based Corrections called for applications for another batch of Community Correction Officers to be recruited on the salary scale MN 5 step 12, placing them on the same salary scale as the Petitioners.

The Petitioners state that on 14th October 2010, the applicants for the next batch of Community Correction Officers were issued letters of appointment by the 29th Respondent (Secretary to the Ministry of Rehabilitation and Prison Reforms). The Letters of Appointment of the said applicants placed them specifically on the salary scale MN5- 2006A which is a basic salary of Rs.16,720 as opposed to the Petitioners salary of Rs. 20,285. Despite the new batch being placed on the MN 5- 2006 A, no steps were taken regarding the salary steps of the Petitioners.

The Petitioners state that as of 2011 although 49 of the 59 Petitioners were eligible to be made permanent, all of them having passed the required Efficiency Bar Examination, only 8 of the Petitioners had been made permanent. The Petitioners further state that the increments that they were due in 2010 and in 2011 had not been paid to the Petitioners. The Petitioners had made representations to the Assistant Secretary (Labour Relations), Ministry of Rehabilitation and Prison Reforms whose representations brought no tangible solutions that the Petitioners made a complaint to the Human Rights Commission of Sri Lanka (Hereinafter referred to as HRC).

The Petitioners state that they were informed that the National Salaries and Cadres Commission intimated the alleged implications of P.A. Circular No.6/2006 (II) read with Annexure III of P.A. Circular No. 6/2006 which read as follows;

“නව වැටුප් පරිමාණයට සමීපව පිරිස අන්තර්ගතයන්ගේදී හුදකලා එම ක්‍රියාවලිය සඳහා සීමා වන පරිදි, දැනට සමීපව සිටින නිලධාරීන්ට අදාළ ශරණයේ ආරම්භක වැටුප් පියවර වඩා ඉහළ වැටුප් පියවරක් ලබාදී තිබුණද 2006.01.01 දින සිට රාජ්‍ය සමීපව නව බඳවා ගැනීම සිදු කිරීමේදී අදාළ නිලධාරීන් පත් කරනු ලබන තනතුරට නියමිත වැටුප් පරිමාණයේ ආරම්භක පියවරේ පිහිටුවිය යුතුය.”

Thereafter the acting Commissioner of Community Based Corrections by his letter dated 10th May 2011 informed the 59th Petitioner that the permanent appointments of the Petitioners in their posts have been temporarily suspended, upon the instructions of the National Salaries and Cadres Commission, until the alleged problems regarding the salaries of the Community Corrections Officers are resolved.

The Commissioner of Community Based Corrections, by his letter dated 20th June 2011 to the HRC purported to state that in 2007 when the Petitioners were recruited the advice of the Ministry of Justice and Law Reform and National and Cadres Commission, regarding the initial

salary step, had been given a different interpretation. In a vague, diffused and ambiguous manner, the Commissioner alleged that due to the different interpretation that had been adopted, the petitioners had been placed on a different step to that which was approved by the National Salaries and Cadres Commission.

Issuing its report on the Inquiry held by HRC held inter alia that it appears that the initial salary step for the Community Correction Officers recruited in 2007 will have to be corrected, based on the advice that would be given by the National Salaries and Cadres Commission and to implement the promotion scheme subject to the approval of the National Salaries and Cadres Commission and to establish the transfer board.

The Petitioners state that further to the proceedings before the HRC the increments due to the Petitioners including the arrears thereof were paid to the Petitioners in or about October 2011 with effect from 01.01.2011. These additional two increments now placed the petitioners on salary step 16 of Scale MN 5.

Following which, the Petitioners state that by letter dated 03rd February 2012 the Commissioner of Community Based Corrections informed the Petitioners that based on a directive received by the Public Service Commission, the Petitioners are to be placed on salary step 1 of the scale MN 5 and that all alleged excess payments paid over the past 5 years will now be recovered from the Petitioners. The Commissioner further purports to notify that the Petitioners would be paid a basic salary based on an amended salary step in the future and that steps would be taken to recover the alleged excess salary payments in instalments.

The Petitioners state that no scheme for such deductions was set out for the calculation or increments and statutory deductions nor was any hearing or warning given to the Petitioners which violated all norms of justice.

Thereafter the Petitioners became aware the Public Service Commission informed the Ministry of Rehabilitation and Prison Reforms of an order of the PSC regarding the initial salary step of the Petitioners and had ordered the purported correction of the initial salary step of the Community Correction Officers recruited on 01.01.2007 to step 1 of MN 5. The Public Service Commission further ordered that the excess payments are to be recovered from the Petitioners within a reasonable period of time.

The Petitioners state that some of the Petitioners by way of the Community Correction Officers Association appealed to the Commissioner, Department of Community based corrections. By letter dated 8th February 2012 they requested to have a meeting with the 29th Respondent (Secretary of the Ministry Rehabilitation and Prison Reforms) in order to place on record their opposition to the impugned order. On 13th February 2012 after the meeting with the 29th

Respondent, requested the Petitioners to submit a written appeal which the petitioners state they delivered on the same date.

The Petitioners state that in the event the purported order was to be implemented this would gravely affect the entire basis upon which their subsistence, livelihood and life expectations were built upon for the past 5 years with reduction of approximately 18% of their initial salary step as per the circular marked P29. The Petitioners state that they have loans and young dependents and such deductions would cause severe financial hardships on the Petitioners.

On 09th August 2012, this court granted leave to proceed under Article 12(1) of the Constitution for the alleged violation of the said fundamental right by the Respondents.

As per the written submissions of the Respondents, it is submitted that the National Salaries and Cadre Commission never defined the salary step for persons recruited after 01.01.2006. The Respondents state that where a public servant is recruited to a particular post after 01.01.2006, it is axiomatic that he/she will be placed on the initial salary step of the applicable salary code. This scheme has been very clear from the outset, and the instrument which encompasses this scheme was never impugned nor have the Petitioners denied its applicability to them. The Respondents that it was the contention of the Petitioners that the communication of the National Salaries and Cadre Commission dated 19.06.2006 by which the said Commission had instructed to place the Community Correction Officers in step 12 of the Salary Code No MN5 should be taken as final and conclusive.

The Respondents state that the Petitioners place a heavy reliance on the above-mentioned letter issued by the National Salaries and Cadre Commission. However, the Respondents submit that the aforementioned letter cannot be read in a vacuum. The letter had been written in response to a letter sent by the Secretary to the Ministry of Justice and Law Reforms dated 28.05.2006. The said letter in turn was issued pursuant to the request made by the Commissioner of the Community Correction dated 08.05.2006.

The Respondents contend that the National Salaries and Cadre Commission's clarification dated 19.06.2006 marked 27R5 was in relation to the officers who were already in permanent cadre of Community Correction Officers as at 01.01.2006. and further states that this is clarified by the title of the letter “2006 අයවැය අනුව රාජ්‍ය සේවයේ වැටුප් සංශෝධනය කිරීම”. It was a letter pertaining to ‘amendment’ of salaries, and not one ‘assigning’. It was not one that was made in relation to new recruits.

The Respondents state that the Public Service Commission has misconstrued the National Salaries and Cadre Commission recommendation and had issued letters of appointments to the petitioners placing them on step 12 of the salary scale MN 5, notwithstanding the fact that they were appointed with effect from 01.01.2007. This was a bona fide mistake caused by the

misinterpretation given to the National Salaries and Cadre Commission letter dated 19.06.2006. The Public Service Commission has misconstrued that the Community Correction Officers those who had been in the service as well as those who had been recruited after 01.01.2006 should be placed in step No. 12 of salary code MN5 2006.

The Respondents contend that the P.A. Circular NO. 6/2006 which came into effect and revised and restructured the public sector salary scales with effect from 01.01.2006 and that there could be no variance of opinion or ambiguity that all new recruits after P.A. Circular No.6/2006 would be placed in the initial salary step of the respective salary scale. This is further borne out by P.A. Circular No. 06/2006 (ii) dated 10.11.2006. Thus, it is the stance of the Respondents that the lawful salary scale that can be appropriately given to the employees who are appointed to their respective posts after 01.01.2006, has to be the initial step of the respective salary scale. This was the common standard set for the entire public service.

The Petitioners in their written submissions contend that this is grossly destructive of the Petitioners legitimate expectation with regard to procedure, their security in the salary scale which is their monthly income based on which they have adjusted their lives including having taken loans for housing, purchasing vehicles, etc. The Petitioners state that the recovery aspect makes it worse as the Petitioners are not only suddenly faced with a grave reduction in their salaries but is also now required to pay back monies they have already expended based on their legitimate expectations. Having to repay at this juncture in their lives as well as the present state of the economy is nothing less than disastrous for the Petitioners. The Petitioners state that having expended their prime working years serving in this department, and then having to restart all over again, is most unfair and would be nearly impossible as regards the public service, in as much as they have in any event, exceeded the maximum recruitment ages for public sector posts.

The Petitioners submit that the P.A. Circular 6/2006 as amended marked P12 and P29 is not law and is after all, only a circular issued by a public officer, and such executive and administrative action by a public officer/body is subject to the dictates of justice and equity and the principles of fairness, reasonableness, proportionality and legitimate expectations.

As the Petitioners have submitted the advertisement for the post which they applied for containing the salary step MN5 step 12 marked P1 which led to the Petitioners legitimate expectation of belonging to that salary scale, this reflected on their appointment letter too which stipulated that they belonged to the step 12 of salary scale MN5 marked P7.

As per Article 12(1) of the Constitution of Sri Lanka “All persons are equal before the law and are entitled to the equal protection of the law”. Equal protection does not mean that all means that all persons are to be treated alike in all circumstances. The State is however permitted to make laws that are unequal administrative action when dealing with persons who are placed in different circumstances and situations. That being said, the state cannot make a classification

that is irrational and arbitrary. It must be reasonable and based on some real and substantial distinction.

The Petitioners case relies heavily on the doctrine of legitimate expectation. In the case of **Dayaratne v Minister of Health and Indigenous Medicine [1999] 1 SLR 393** Amarasinghe J. held that *“destroying of a legitimate expectation is a ground for judicial review which amounts to a violation of equal protection guaranteed by Article 12 of the Constitution.”*

Legitimate Expectation is defined by **David Foulkes (Administrative Law, 7 th Edition, Butterworths, 1990, pg. 272)** who expressed the view that a promise or an undertaking could give rise to a legitimate expectation. Explaining his view, Foulkes had stated thus: *“The right to a hearing, or to be consulted, or generally to put one’s case, may also arise out of the action of the authority itself. This action may take one of two, or both forms; a promise (or a statement or undertaking) or a regular procedure. Both the promise and the procedure are capable of giving rise to what is called a legitimate expectation, that is, an expectation of the kind which the Courts will enforce” (emphasis added).*

Justice Shirani A. Bandaranayake in the case of **Harshani S. Siriwardana v Malsiri J. Seneviratne and Others SC FR 589/2009 decided on 10th March 2011** held that *“A careful consideration of the doctrine of legitimate expectation, clearly shows that, whether an expectation is legitimate or not is a question of fact. This has to be decided not only on the basis of the application made by the aggrieved party before Court, but also taking into consideration whether there had been any arbitrary exercise of power by the administrative authority in question.”*

The concept of equal protection referred to in Article 12(1) of the Constitution embodies a guarantee against arbitrariness and unreasonableness. The doctrine of legitimate expectation had developed in the context of reasonableness and in the light of the decision in **Attorney General of Hong Kong v Ng Tuen Shiu [1983] 2 All E.R. 346** where the decision held that when an individual had a legitimate expectation that was based on a promise given by the Government, thus the concept of legitimate expectation would embrace the principle that in the interest of good administration it is necessary for the relevant authority to act fairly.

Justice Priyantha Jayawardena PC in the case of **Ginigathgala Mohandiramlage Nimalsiri v Colonel P.P.J. Fernando and Others SC F/R 256/2010 decided on 17th September 2015** held that *“An expectation is considered to be legitimate where it is founded upon a promise or practice by the authority that is said to be bound to fulfil the expectation. Therefore, an expectation reasonably entertained by a person may not be considered as legitimate because of some countervailing consideration of policy or law. Further, clear statutory words override any expectation howsoever founded. Where an expectation is founded on a policy and later a relevant change of policy is notified, the expectation founded on the previous policy cannot be considered*

as legitimate. An expectation the fulfilment of which results in the decision maker making an unlawful decision cannot be treated as a legitimate expectation. Therefore, the expectation must be within the powers of the decision-maker for it to be treated as a legitimate expectation case. If a person did not expect anything, then there is nothing that the doctrine can protect. In order to seek redress under the doctrine of legitimate expectation a person should prove he had a legitimate expectation which was based on a promise or an established practice. Thus, the applicability of the said doctrine is based on the facts and circumstances of each case.”

The Petitioners stated that their legitimate expectation arises from not one but a number of documents starting from the advertisement for the position of Community Correction Officers to their appointment letters, communication with the Public Service Commission, Ministry of Justice and the National Salaries and Cadres Commission with regard to the applicable salary scale to the Petitioner. Based on all the number of follow up documents that the Petitioners have submitted to this court, any reasonable person in the situation would have the expectation of being paid on the salary step which was on the advertisement and on their appointment letters. The petitioners state their reliance on being on salary step 12 of salary point MN5 was not based on one approval but on so many different occasions which consistently placed them on the abovementioned salary step.

In the case of **Vasana v Incorporated Council of Legal Education and Others [2004] 1 SLR 154** it was held that “*in order to succeed in an application made on the grounds of legitimate expectation, the expectation must be legitimate. Mistakes, decisions based on erroneous factual data or illegality cannot be the basis for a legitimate expectation.*”

Above is the stance established by case law regarding legitimate expectation arising out of a mistake. The Respondents contend that the Petitioners were placed on this salary step owing to a misconstruction by the Public Service Commission of a recommendation made by the National Salaries and Cadre Commission. However, based on the circumstances of this case, the reliance petitioners had that they belonged to step 12 of MN5 stemmed from a number of documents from various Government Institutions confirming that the Petitioners belong to the salary step 12. Therefore, such reliance cannot be reduced to a simple misconstruction. As the repercussions of this decision would affect the Petitioner harshly. The duty of this court is to ensure that justice prevails and a great injustice would be caused to the Petitioners of this case if they were to revert to salary step 1 of Scale MN5.

The Petitioners contend that the Respondents by their decision of implementing P.A. Circular 6/2006 marked P12 and P29 which puts the petitioners at the initial salary step of the applicable salary scale and the repayment of overpayments owing to such change in the salary step is a violation of their rights guaranteed under Article 12(1) of the Constitution.

In general, a government has a right to change its policies and implement new policies. This was observed by Lord Diplock in the case of **Hughes v Department of Health and Social Security [1985] AC 776 at 788** *“Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our form of constitutional Governments. When a change in administrative policy takes place and is communicated in a departmental circular... any reasonable expectations that may have been aroused by any previous circular are destroyed.”* This passage can be interpreted to suggest that no expectation can survive a change in policy.

In the case of **R v Secretary of State of the Home Department, ex p, Khan [1985] 1 AER 40, 46** it was held that *“policies must be allowed to develop the ‘no fettering’ theme must be kept within bounds”*.

In this case, an opportunity was not given to the petitioners to argue why the change of policy should not affect them. When a change of policy is likely to frustrate the legitimate expectation of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably.

As discussed above, procedural rights have an important bearing on the protection of Article 12 of the Constitution against unequal treatment arbitrarily, invidiously, irrationally or otherwise unreasonably dealt out by the executive.

The importance of unfettered decisions was highlighted by Justice Vijith Malalgoda in the recent case of **M.D.S.A. Perera v Dharmasena Dissanayake and Others SC/FR 62 2020 decided on 14th December 2023** held that *“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 v 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.”*

The change of policy, in the circumstances, may nevertheless affect the future, having regard to the fact that the legislature and executive are free to formulate and reformulate policy; however, this court has a duty to safeguard the rights, privileges, as well as interests that should be protected such as those based on legitimate expectations of individuals.

Considering all the aforementioned facts and circumstances, it is clear that the decision of the respondents can be categorised as arbitrary which had violated the petitioner's fundamental rights guaranteed in terms of Article 12(1) of the Constitution.

For the reasons aforesaid, I hold that the petitioners have been successful in establishing that their fundamental rights guaranteed in terms of Article 12(1) of the Constitution had been infringed by the respondents.

This application is accordingly allowed.

As agreed by the Petitioners in the connected case No. SC/ F/R/ 255/2013 will abide by this judgement.

Any consequent steps arising out of illegal decisions/letters/orders taken by 1st to 31st Respondents in SC F/R 87/2012 and the 1st to 30th Respondents in SC F/R 255/2013 are hereby made null and void and invalidated.

The Respondents are directed to grant the Petitioners their salaries and increments placing them on the scale of MN5 step 12 for petitioners in SC FR 87/2012 and scale MN1 step 7 for petitioners in SC FR 255/2013.

Judge of the Supreme Court

E.A.G.R. Amarasekara J.

I had the benefit of reading the draft Judgment written by her Ladyship Justice Kumudini Wickremasinghe. I agree with the conclusion reached by her Ladyship that the fundamental rights of the Petitioners in SC/FR/87/2012 and SC/FR/255/13, as guaranteed to them by Article 12(1) of the Constitution, have been infringed by the 1st to 31st Respondents in SC/FR/87/2012 and 1st to 30th Respondents in SC /FR/ 255/13 respectively. In addition, I observe that by advertising P1 (in SC/FR/87/2012) the relevant authority has invited application for the relevant posts termed as ‘Community Correction Officers’. Anyway, by issuing letters of appointment in both matters, relevant posts, namely “Community Correction Officers” and “Work Supervisors”, had been offered to the Petitioners --vide P7 in SC/FR/87/2012 and P17A in SC/FR/255/13. It is common ground that the Petitioners accepted the said appointments. With the acceptance of the said appointments, the Respondents who offered the appointments had entered into contracts of employment with the Petitioners. Even though, the Petitioners in SC/FR/255/13 were employed prior to the new appointment on temporary daily paid basis, it appears to be the position of the Respondents that these new appointments have to be considered as new recruitments to the permanent workforce.

As far as the Petitioners are concerned, the relevant circulars relating to salary scales and salary steps apply to them only after entering into the relevant contract of employment. In terms of the relevant contracts of employment, as evinced by the respective letters of appointment;

A) The Petitioners in SC/FR/87/2012 were to be placed on salary scale MN 5 at step-12.

B) The Petitioners in SC/FR/255/13 were to be placed on the starting salary of Rs.13990/- which belongs to the salary scale of 13120- 10 x 145 – 11 x 170- 10 x 240 – 10 x 320 – 22040 (This appears to be the salary scale MN 1 step 7 – vide P42).

In fact, Petitioners were placed on the above salary steps with the appointments made to the relevant posts. However, after many years of employment, the relevant authorities changing their stance with regard to the application of relevant circulars, had taken up the position that the Petitioners should have been placed at the initial salary step of the relevant salary scale instead of what they were placed at the beginning of their recruitment, and the payments already done in excess have to be recovered.

The basis of the legal relationship between the relevant authority which employed the Petitioners and each Petitioner is the said contract of employment. As said before, the circulars apply to the Petitioners, only after they entered in to the relevant contract of employment. Each Petitioner accepted the offer and entered into the contract of employment as an independent person who was not subject to the circulars involved in these matters. It is only in consequence of entering in to the contracts of employment they became subject to the said circulars. Now, it appears that the Respondents are trying to change one of the main terms of the contract of employment using the conditions in the relevant circulars that they should have been placed in the initial salary step of the relevant salary scale. Terms of a contract cannot be changed unilaterally by one party. Respondents are not merely trying to correct a calculation error of an increment or a wrong placement of a salary step that occurs after entering into the contract of employment but a main term in the contract of employment which was entered just prior to the moment the Petitioners became the subject of such circulars.

The legitimate expectations that the Petitioners rely on and are being infringed are not based on mere promises by the relevant authority that offered them employments, but based on promises contained in letters of appointment which were solidified by contracts of employment the Petitioners entered into. Hence, the legitimate expectations are based on a legally accepted relationships created by each contract of employment between each Petitioner and the relevant authority which placed them in employment. Therefore, I cannot identify that the legitimate expectations are illegal as indicated by the Respondents.

As per the submissions made on behalf of the Respondents, this purported wrong placement in salary steps happened due to a misconstruction of the letter dated 19.06.2006 of NSCC by the Public Service Commission- vide para 28 and 29 of the written submissions. It appears that the position of the Respondents seems to be;

- a) that a mistake took place on their side before offering the appointments to the Petitioners.
- b) that the Petitioners have to suffer the consequence of the mistake of the Respondents, and
- c) that the Respondents are even entitled to change the terms of contract of employment unilaterally.

In my view, no reasonable court can accept the above stance taken by the Respondents.

If the starting point of the salary contained in the letters of appointment were lesser than what had been offered in them, the Petitioners could have refused to accept the appointments. Some could have engaged in the same occupation they engaged before accepting this appointment, or could have found other employments to fulfill their dreams and expectations.

It is true that mistake may be a ground even to annul an agreement. When the parties to the contract are not willing to change the terms of contract based on an alleged mistake, the party that wants to annul the contract must seek that relief from the relevant Court. The Respondents have not sought such relief. On the other hand, if they had initiated such litigations, Respondents might have made cross claims and damages, which may differ from one petitioner to the other. Such matters have to be decided by the relevant Court on evidence presented by parties. The Supreme Court, hearing fundamental rights, is not the forum to decide such matters. Thus, as far as each Petitioner is concerned, there is a valid contract of employment. The term to place a Petitioner either on MN 5 step 12 (in SC/FR/ 872012) or MN 1 step 7(in SC/FR/ 255/2013) as the case may be, is part of that valid contract of employment. The legitimate expectations that are being threatened or infringed and affected by the executive and administrative action of the Respondents are based on a legally valid contract of employment and its terms, and they are lawful legitimate expectations.

Thus, in my view too, the decisions of the Respondents to place the Petitioners in the initial salary steps are arbitrary. Therefore, Petitioners are entitled to obtain relief from this Court for the violation of Fundamental Rights guaranteed by Article 12(1) of the Constitution. Hence, those decisions to place them on the initial salary steps of the relevant salary scale are hereby annulled and any consequent step or direction in implementation of such decisions are also hereby invalidated.

Judge of the Supreme Court

A.L. Shiran Gooneratne J.

I had the benefit of reading in draft the Judgments of her Ladyship Justice Kumudini Wickremasinghe and that of his Lordship Justice E.A.G.R Amarasekara. I agree with the conclusion reached by her Ladyship and his Lordship that the fundamental rights of the Petitioners in both cases, SC/FR/87/2012 and SC/FR/255/13, as guaranteed by Article 12(1) of the Constitution, has been infringed by the respective Respondents.

Judge of the Supreme Court