

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

Kadigamuwage Dumindu Kalyan  
P/108, Torrington Housing Complex,  
Torrington Avenue,  
Colombo 05.

**S.C. (FR) No. 131/ 2022**

**Petitioner**

**Vs.**

1. Director, Cultural Affairs,  
Department of Cultural Affairs,  
8<sup>th</sup> Floor, Sethsiripaaya,  
Battaramulla.
2. Hon. Minister of  
Buddhasasana, Religious and  
Cultural Affairs,  
Ministry of Buddhasasana,  
Religious and Cultural Affairs  
135, Srimath Anagarika  
Dharmapala Mawatha,  
Colombo 07.
3. Secretary to the Ministry of  
Cultural Affairs, Ministry of  
Buddhasasana, Religious and  
Cultural Affairs,  
135, Srimath Anagarika  
Dharmapala Mawatha,  
Colombo 07.
4. M.L. Sunil Fernando,  
Retired Additional Secretary  
of Sri Lanka Administrative  
Service,

No. 937/27, Pothuwarawa road, Malabe.

5. Gardihewa Anusha Gokula,  
No. 24/25 B, Dankanattha Road, Mabola, Wattala.
6. Secretary to the Public Service Commission,  
No. 1200/9, Rajamalwattha Road, Battaramulla.
7. Hon. Attorney General,  
Attorney General's Department,  
Hulftsdorp street, Colombo 12.

**Respondents**

Before : Arjuna Obeyesekere, J.  
Menaka Wijesundera, J.  
K. M. G. H. Kulatunga, J.

Counsel : Harith de Mel with Minul Muhandirange instructed by Piumi Kumar, Legal Aid for the Petitioner.

Sabrina Ahmed, SSC instructed by Numalika Wickremasinghe, SA for the 1<sup>st</sup> to the 3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> respondents.

Shantha Jayawardene with Hirannya Damunupola instructed by Shalika Waduthanthri for the 5<sup>th</sup> Respondent.

Written

Submissions : Latest written submissions on behalf of the 5<sup>th</sup> Respondent on the 10<sup>th</sup> March 2026.

Written submissions on behalf of the 1<sup>st</sup> to 3<sup>rd</sup>, 6<sup>th</sup> and 7<sup>th</sup> Respondents on the 27<sup>th</sup> of February 2026.

Written submissions on behalf of the Petitioner on the 27<sup>th</sup> of June 2025.

Argued on : 30.01.2026

Decided on : 26.03.2026

**MENAKA WIJESUNDERA J.**

The petitioner in the instant matter had sought a declaration from this Court under articles 12(1), 12(2), and 14(1)(g) of the Constitution against the 1<sup>st</sup> to the 5<sup>th</sup> respondents, and to quash the disciplinary report dated 28<sup>th</sup> October 2019 marked as P17 and 27<sup>th</sup> November 2019 marked as P18 respectively.

When this matter was supported for leave on 24<sup>th</sup> December 2014, leave was granted under Article 12(1) of the Constitution.

The petitioner had commenced his career on a contractual basis as a performing artist on 05<sup>th</sup> August 2013 mentioned as P1(a), and had been promoted to Grade III performing artist subject to a probationary period of three years by letter dated 14<sup>th</sup> November 2014 marked as P1(b), during which period, as clause 12 of his contract states, if his services are unsatisfactory, his services can be terminated.

He has further stated that he had brought to the notice of the 5<sup>th</sup> respondent, of some misdeeds which were taking place in the Department of Cultural Affairs, but they had not been investigated in to by the 5<sup>th</sup> respondent.

He further states that he was physically assaulted by a group of persons at the Department of Cultural Affairs on 07<sup>th</sup> February 2017 and that he complained to the 5<sup>th</sup> respondent. On the same day, he had complained to the police under police complaint CIB I43/53, and on one occasion, he says that the 5<sup>th</sup> respondent had told him to withdraw the complaint.

He further says that due to the assault, he had sustained some injuries and as a result, he had not been able to report to work for three days.

But soon afterwards, he had been transferred out from the Department of Cultural Affairs to the Folk music conservation department of the same department. He states that the said transfer was arbitrary and malicious and

that it was in violation of the Establishment code by the 5<sup>th</sup> respondent. Therefore, he had taken steps to complain to the Human Rights Commission (HRC) and to the Parliamentary Commission on Administration (Ombudsman).

He further says that he provided, as evidence, to the HRC a copy of an attendance sheet on 11<sup>th</sup> October 2017, and the 5<sup>th</sup> respondent had taken steps to initiate disciplinary action against the petitioner for submitting that particular document. He had been asked to show cause, and he had done so, but the 5<sup>th</sup> respondent had proceeded to interdict the petitioner on 05<sup>th</sup> January 2018, which the petitioner claims was in violation of the Establishment Code.

After the interdiction, a disciplinary inquiry was held, from which he had been found guilty, and he had been charge sheeted as well. The inquiry was held by the 4<sup>th</sup> respondent, and on 27<sup>th</sup> November 2019 he was found guilty on the charge sheet. He had complained to the HRC against the said finding, and he says that his fundamental rights under articles 12(1)(2) and 14(1)g had been blatantly violated by the 5<sup>th</sup> and the 4<sup>th</sup> respondents.

The petitioner has further pleaded that his application is not time-barred because the violation he claims has been from 2017, and he had made complaints to the HRC in 2018, 2019 and 2017, and that on the 22<sup>nd</sup> of February 2022, the HRC held in favour of him.

The respondents had filed their objections and have denied of having violated the fundamental rights of the petitioner and according to the 3<sup>rd</sup> respondent who has been the Secretary to the Ministry of Buddha Sasana and Cultural Affairs had said that the petitioner had been employed temporarily in the Department of Cultural Affairs and he had been in his probationary period under which he can be terminated at any time.

But nevertheless, the respondent had said that he had been interdicted as per the regulations in the Establishment Code and on 10<sup>th</sup> March 2020 he had complained to the Public Services Commission and they had reinstated him with back wages commencing from 6<sup>th</sup> September 2022, which the petitioner concedes.

The 5<sup>th</sup> respondent, against whom the petitioner had levelled the major allegations, had filed a very comprehensive objection. The 5<sup>th</sup> respondent (5R), who had served as the Director of the Cultural Affairs department from 2015 to 2019, had said that the petitioner had been recruited on a probationary basis and not after a proper interview, but for some political consideration, which is not supported by documentary evidence.

According to the said affidavit, there had been many complaints against the petitioner from his supervisors, but in 2017, the petitioner had complained of an assault and she had immediately transferred the petitioner to another branch for his own safety and had ordered an inquiry, and upon the recommendations of the inquiring panel she had taken steps against the person against whom the finding had been. (5R6)

However, the petitioner had complained to the Human Rights Commission (P10, 844/7), and the petitioner had annexed a copy of an attendance sheet of the Art Gallery without permission, which she claims was obtained by the petitioner illegally. Therefore, steps had been taken to send a letter to the petitioner to show cause, which he had done, stating that the said attendance sheet had been dropped at his mail box anonymously, which the respondent had not accepted, as a result of which the petitioner had been interdicted as per 5R8 dated 5<sup>th</sup> January 2018.

Thereafter, an investigation had been ordered by a senior administrative officer, and the findings of the said investigation had been that the petitioner was guilty of offences under the Establishment code under chapter XLVIII (5R10). Thereafter, the petitioner had been charged sheeted on 12<sup>th</sup> November 2018, and a formal inquiry was held, and the outcome was that the inquiring panel had found him guilty of the charges set out in the charge sheet (5R13), and having considered the outcome, the 5<sup>th</sup> respondent had terminated his services (5R14).

But the petitioner had appealed to the Public Services Commission and had got himself reinstated, which the petitioner concedes.

As such, the 5<sup>th</sup> respondent had pleaded that the termination of the petitioner had been carried out as per the provisions of the Establishment code, and, nevertheless, she had also stated that the petitioner had been on a probationary appointment. Hence, she had reiterated that the rights of the petitioner had not been violated.

The 4<sup>th</sup> respondent had associated himself with the objections of the 5<sup>th</sup> respondent.

In view of the material stated above, the respondents had taken up the preliminary objection that it is time-barred because the application had been filed on 07<sup>th</sup> April 2022, and his first complaint of his rights been violated had taken place on 07<sup>th</sup> February 2017. On this initial complaint the director of the Cultural Affairs Department, where the petitioner was employed as a probationary employee, had taken steps to inquire into the matter and punish

the assailant. The petitioner had lodged his first complaint in the Human Rights Commission, under reference number 844/7. For this complaint only, he had forwarded a copy of the attendance sheet of the National Art Gallery, which the 5<sup>th</sup> respondent alleges had been obtained illegally. The petitioner had said in answer to this so-called letter dated 15<sup>th</sup> December 2017 that it had been dropped off at his mailbox anonymously, which the 5<sup>th</sup> respondent had rejected and, in my opinion, is devoid of any merit. Thereafter, he was arrested in 2018 and finally charge sheeted in 2019. Apart from the above-mentioned complaint, he had complained under 1710/2019, 231/2018, and 39421/2019 to the HRC; thereafter, the inquiries had been completed, and it had been held in favor of him.

Therefore, I am of the opinion that there has been some action taken on the part of the petitioner with regard to his allegation of the infringement of his fundamental rights, although the instant application has been filed in 2022.

But of course, the respondents had stated that when the instant application had been filed, the petitioner had not filed any document to substantiate his position that the matter was before the HRC. However, a further affidavit had been filed on 16<sup>th</sup> October 2023, which had annexed a document marked Z1 to substantiate that he had taken action under Section 13 of the HRC Act. The respondent has placed before this court in their written submissions several decided cases to state that the mere lodging of a complaint is not sufficient to suspend the running of time prescribed by article 126(2) of the Constitution.

But, to the petition dated 31<sup>st</sup> March 2022 under the sub-heading *Applications to the Human Rights Commission*, para 62 has referred to the complaints made to the human rights commission under HRC 844/17, 1710/19, 231/18, 39421/19 and has marked and produced from P20(a) to P20(k) as part and parcel of the petition, therefore I overrule the preliminary objections taken up by the respondents.

When this application had been supported in this court, leave has been granted only under Article 12(1) of the Constitution, which says that all citizens are equal before the law. The guiding principle is that all persons and things similarly circumstanced shall be treated alike, meaning that, among equals the law should be equal, and should be equally administered and the like should be treated alike. What it forbids is discrimination between persons who are in substantially similar circumstances or conditions; therefore, the rule is that like should be treated alike and not that unlike should be treated alike.

Hence, in the instant matter, the main grievance of the petitioner is that when a group allegedly assaulted him in 2017, the 5<sup>th</sup> respondent failed to take any action. However, it is evident from the material set out above that the 5<sup>th</sup> respondent had in fact taken meaningful action in accordance with the established procedure, as demonstrated by the documentation marked and produced by the 5<sup>th</sup> respondent. Therefore, it is incorrect to assert that there was any inaction on the part of the 5<sup>th</sup> respondent.

It is the petitioner who had referred the matter to the HRC under reference 844/2017 and had submitted the attendance sheet of the Art Gallery without prior permission been obtained from the officials. A person working in a government office, or even to that matter in a private institution, cannot take documents belonging to the office without proper procedure being followed. It is this action of the petitioner which has paved the way for his interdiction in 2018, but this had been after providing him an opportunity to explain himself and facing an inquiry, and based on that inquiry, only the 5<sup>th</sup> respondent had taken action. This is also enumerated above in the documents submitted by the 5<sup>th</sup> respondent and even by the documents submitted by the respondent.

Therefore, I see no unequal treatment been given to the petitioner among his peers by the 5<sup>th</sup> respondent and I also observe from the conduct of the petitioner that, he thrives to see whether he is been differently treated by the superiors, and thereafter takes pleasure in complaining to the authorities, which I see as being absolutely juvenile.

Therefore, I see no merit in the instant application, hence, the instant application is dismissed without costs.

**JUDGE OF THE SUPREME COURT**

**Arjuna Obeyesekere, J.**

I agree.

**JUDGE OF THE SUPREME COURT**

**K. M. G. H. Kulatunga, J.**

I agree.

**JUDGE OF THE SUPREME COURT**