

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

*In the matter of an application
under and in terms of Article
12(1) and Article 14(1)(g) read
with Article 126 of the
Constitution of the Democratic
Socialist Republic of Sri Lanka.*

Thilakarathne Herathhamige
Senevirathne,
No.251,Mahakandarawa
South,Bank Unit 2,
Rambewa,
Anuradhapura.

SC FR Application No:391/2013

PETITIONER

Vs.

1. Colombo Municipal Council,
Town Hall,
Colombo 07
2. J.M.Bhadrani Jayawardena,
Municipal Commissioner,
Colombo Municipal Council
Town Hall,
Colombo 07
- 2A. V.K.A. Anura,
Municipal Commissioner,
Colombo Municipal Council,
Town Hall,
Colombo 07.

2B.L.R.L.Wickremaratne,
Municipal Commissioner,
Colombo Municipal Council,
Townhall,
Colombo 07

**2C.Roshanie Dissanayake,
Municipal Commissioner,
Colombo Municipal Council,
Townhall,
Colombo 07**

**(SUBSTITUTED 2C
RESPONDENT)**

3.Governor,
Secretariat of the Governor
Western Province,
No 98/4,
Havelock Road,
Colombo 05

4.Chandrani Samarakoon,
Commissioner of Local
Government,
Department of Local
Government(Western
Province),
Independence Square,
Colombo 07

**4A.Kasun Apa Senevirathne,
Commissioner of Local
Government,
Department of Local
Government(Western
Province),
Independence Square,
Colombo 07.**

**(SUBSTITUTED 4A
RESPONDENT)**

5. V.Rajapakshe,
Secretary,
Provincial Public Service
Commission(Western
Province),
Independence Square,
Colombo 07.

5A.M.G.A.Thilakerathne,
Secretary,
Provincial Public Service
Commission(Western
Province),
Independence Square,
Colombo 07

**5B.Thilak Senarath,
Secretary,
Provincial Public Service
Commission(Western
Province),
Independence Square ,
Colombo 07.**

**(SUBSTITUTED 5B
RESPONDENT)**

6. Hon. Attorney General,
Attorney General's
Department,
Colombo 12.

RESPONDENTS

BEFORE : HON.A.H.M.D.NAWAZ,J
HON. K.KUMUDINI WICKREMASINGHE, J.
HON.K.PRIYANTHA FERNANDO,J

COUNSEL : Chula Bandara for the Petitioner.
Senany Dayaratne with Nishadi Wickremasinghe &
Maheshika Bandara for 1st and 2nd Respondents
Yuresha De Silva DSG for the 3rd- 6th Respondents

WRITTEN SUBMISSIONS ON : Written Submissions filed
by the Petitioner on 26.07.2024
and 20.01.2021.

Written Submissions filed by the
1st Respondent on 24.07.2024

Written Submissions filed by the
3rd to 6th Respondent on 15.06.2023 and
08.07.2024

ARGUED ON : 03.07.2024

DECIDED ON : 27.02.2026

K.KUMUDINI WICKREMASINGHE J

This is a Fundamental Rights Application filed under Article 126 of the Constitution by the Petitioners seeking, inter alia, 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 as a result of the actions, omissions, and/or failure or neglect to perform duties by the 1st to 6th Respondents.

Factual Matrix from the view of the Petitioner

The Petitioner is a retired clerk of the Colombo Municipal Council. He states that in 1987 he faced an interview at the Ministry of Public Administration and subsequently another interview before the Provincial Public Service Commission, following which he was recruited as a Clerk Grade II of the Local Government Service on 10.05.1988. In terms of Document P1, the letter of appointment, he assumed duties at the Colombo Municipal Council with effect from 01.06.1988.

Paragraph 2 of the said letter of appointment (Document P1) stipulates that the post is permanent and pensionable, subject to confirmation. Until confirmation by letter, the appointee would remain on probation for three years or for any extended period thereafter. Upon satisfactory completion of probation and fulfillment of the requisite conditions, confirmation would ensue in terms of Section 11;5 of Chapter II of the Establishments Code.

The Petitioner asserts that he satisfactorily completed his probation by 31.05.1991. However, he was not confirmed in his post. He further states that his probation was neither extended nor terminated. In the absence of any response, he addressed letters dated 08.10.1993 to the Commissioner of the 1st Respondent Council and to the Provincial Commissioner of Local Government requesting confirmation in his post (Document P2).

Despite the absence of confirmation, the Petitioner continued in service in the same grade. He contends that he was denied salary increments. Nevertheless, in August 1991 he was granted a ten-month salary distress loan, a facility extended to permanent staff, which was subsequently recovered from his salary.

While in service, the Petitioner enrolled for a Special Degree in Labour Education at the Institute of Worker Education, University of Colombo, and successfully completed the programme, being awarded the degree with effect from 01.11.1998. The relevant certificate and transcripts were produced as Document P3. Thereafter, his application to join the Sri

Lanka Administrative Service was rejected on the basis that he was not a confirmed officer.

The Petitioner continued to make representations seeking confirmation. He was informed at one stage that his personal file, containing original documents, had been misplaced and was requested to assist in reconstructing the file. By letter dated 25.11.2002 (Document P4), he submitted copies of Document P1, P2, his Birth Certificate and Degree Certificate (Document P3), requesting confirmation.

By letter marked P5, the 3rd Respondent informed him that his personal file had been misplaced and required reconstruction. Subsequently, clerical staff of the Local Government Service were to be absorbed into the Provincial State Management Service. The Petitioner, perceiving no resolution regarding his confirmation, opted not to join the new service and elected to retire. By letter dated 10.05.2005 (Document P6), he was retired with effect from 16.05.2005 in terms of Commissioner's Circular 12/2005. He states that he had a legitimate expectation of receiving a pension. However, no pension was paid.

Upon inquiry, he was informed that pension had been suspended on the ground that he had failed to satisfy the initial educational qualification of a credit pass in G.C.E. Ordinary Level Mathematics. The Petitioner contends that it was unreasonable to deny pension after 16 years of service on such a basis, particularly when no inquiry had been made during his tenure. He further relies on Document P3(b), reflecting a credit pass in Mathematics at the Foundation Year Examination 1994/95.

His complaint to the Human Rights Commission was refused. Thereafter, by letter marked P7, he appealed to His Excellency the President. As a consequence, the 2nd Respondent by letter marked P8 recommended consideration of pension, noting that similarly placed officers had been granted such relief. By letter marked P9, the predecessor of the 4th Respondent concurred with this recommendation.

However, by letter dated 15.01.2013 (Document P10), the Deputy Secretary to the Governor informed the Petitioner that he had not acted in accordance with the equitable principle that "he who comes into equity

must come with clean hands,” and accordingly pension was refused. The Petitioner asserts that this decision violated Articles 12(1) and 14(1)(g) of the Constitution, particularly in view of differential treatment vis-à-vis similarly situated officers.

Factual Matrix from the view of the Respondents

The Respondents admit the Petitioner’s recruitment and service. They state that confirmation was subject to satisfactory performance and fulfillment of eligibility criteria. Although the Petitioner completed three years of service, he was not confirmed. No formal extension of probation was granted.

The impediment to confirmation, according to the Respondents, was the Petitioner’s failure to satisfy the primary educational requirement of obtaining a credit pass in G.C.E. Ordinary Level Mathematics. By letter dated 15.08.2006 (4R2), the Deputy Commissioner of Examinations confirmed that the results sheet relied upon by the Petitioner was a forgery. Consequently, he was not eligible for confirmation or pension.

The Petitioner’s complaint to the Human Rights Commission (No. 6927/07) was refused on 20.08.2008 (4R4). Subsequent appeals culminated in the decision dated 15.01.2013 reiterating refusal of pension. Leave to proceed was granted on 05.06.2014 in respect of Article 12(1).

Preliminary Objection – Time Bar

Article 126(2) of the Constitution reads as follows:

“Where any person alleges that such fundamental right or language right relating to such person has been infringed or is about to be infringed by executive and administrative action, he may himself or by an Attorney at Law on his behalf, within one month thereof, in accordance with such rules of the court as may be in force, apply to the Supreme Court...”

Article 126(2) of the Constitution mandates that an application alleging infringement of a fundamental right must be made within one month of

such infringement. The language of the provision has consistently been interpreted as imperative.

In ***Edirisuriya v Navaratnam (1985) 1 Sri L.R.100***, Ranasinghe J. emphasised that the one-month time limit prescribed by Article 126(2) is mandatory. Similarly, in ***Illangaratne v Kandy Municipal Council (1995) BALJ Vol VI Part 1 p.10***, Kulatunga J. held that the Court lacks jurisdiction to entertain an application filed out of time.

The Respondents further rely on ***Gamathimage v Siriwardane (1988) 01 SLR 384***, wherein Fernando J. reiterated that the fundamental rights jurisdiction of the Supreme Court under Article 126(1) is sole and exclusive, and that a person alleging infringement must invoke such jurisdiction within one month. In ***Hewakuruppu v Tea Commissioner SC/FR Application No.118/84 decided on 10.11.1984***, it was specifically held that delay in invoking fundamental rights jurisdiction cannot be condoned merely because administrative remedies were pursued.

In ***Gunaratne v Sri Lanka Telecom (1993) 1 SLR 109 at p.115***, it was observed that where a discriminatory scheme is adopted, the right to relief accrues immediately upon its adoption, and a prospective applicant may seek a declaration at that stage.

The Petitioner relies on ***Ranasinghe Arachchige Nadeesha Seuwandi Ranasinghe and Others v Ceylon Petroleum Storage Terminals Limited and Others SC/FR/244/2017 decided on 22.02.2019***, wherein Her Ladyship Justice Murdu N.B. Fernando PC. observed that *“In my view, what is material is for an aggrieved party to make a complaint within the mandatory period. The acknowledgement of the complaint by Human Rights Commission 11 would trigger in and set in motion the mechanics and workings of the Human Rights Commission, culminating in a communique pertaining to the findings of the complaint. An aggrieved party has no say or control over the proceedings before the Human Rights Commission and cannot be faulted for the delay or non-holding of an inquiry by the Human Rights Commission which may be for good and justifiable reasons. The manner and speed of the working of the Human Rights Commission is not within the purview of an aggrieved party and an*

aggrieved party cannot be penalized for the delay,if any at the Human Rights Commission”

Further reliance is placed on **De Zoysa v Dissanayake SC(FR) Application No. 206/2008 decided on 09.12.2016** wherein Prasanna Jayawardena J., while affirming the mandatory nature of Article 126(2), observed that the Court must interpret and apply the provision in light of the factual realities that may have denied a petitioner the opportunity to invoke jurisdiction earlier.

Furthermore Aluwihare J. in **Alawala and Others v IGP S.C.F.R 219/2015 decided on 15.02.2016** referring to the provisions of Article 126(2) states that,

“An exception to this rule,however, is found in the Human Rights Commission Act.This Act empowers the Human Rights Commission to entertain complaints in respect of violations of fundamental rights guaranteed by the Constitution.

In the light of Section 13(1) of the said Act,it is evident that the petitioners could avoid the time bar,if the application to the Human Rights Commission was made within one month of the alleged infringement. By virtue of the aforesaid provision time would not run during the pendency of proceedings before the Commission.This view was fortified in the case of Romesh Cooray v Jayalath(2008) 2SLR page 43.”

Section 13 (1) of the Human Rights Commission of Sri Lanka Act (No. 21 of 1996) stated as follows,

“Where a complaint is made by an aggrieved party in terms of Section 14 ,to the commission within one month of alleged infringement or imminent infringement of a fundamental right by executive or administrative action , the period within which the inquiry into such complaint is pending before the commission, shall not be taken into account in computing the period of one month within which an application may be made to the Supreme Court by such person in terms of Article 126(2) of the Constitution .”.

Section 13(1) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996 provides that where a complaint is made to the Commission within

one month of the alleged infringement, the period during which the inquiry is pending shall not be taken into account in computing the one-month period prescribed by Article 126(2).

It is clear from the material placed before this Court that the alleged infringement first arose in 2005, upon the Petitioner's retirement without the grant of pensionary benefits. Notwithstanding the constitutional imperative contained in Article 126(2), the Petitioner did not invoke the jurisdiction of this Court within one month thereof. Instead, he lodged a complaint before the Human Rights Commission only in 2007, nearly two years after the cause of action had arisen. That complaint was refused in 2008. Thereafter, representations were made to the President in 2010.

Even if this Court were to assume, in favour of the Petitioner, that the communication marked P10 dated 15.01.2013 constituted a fresh and independent infringement, the present Application was filed only on 12.11.2013, nearly ten months thereafter. Such delay is plainly inconsistent with the mandatory temporal requirement imposed by Article 126(2).

The Petitioner, in his written submissions, asserts that subsequent to P10 he appealed to the Human Rights Commission on 17.01.2013, again addressed the Director of the Human Rights Commission on 07.02.2013, and further reiterated his grievance on 28.08.2013. However, no documentary proof of these alleged communications was produced before this Court. In fundamental rights litigation, where jurisdiction is strictly circumscribed by constitutional limitation, the burden lies squarely upon the Petitioner to establish compliance with the mandatory timeframe or to demonstrate the applicability of a statutory interruption under Section 13(1) of the Human Rights Commission Act. Mere assertions in written submissions, unsupported by contemporaneous documentary material, are insufficient to discharge that burden.

Moreover, even assuming that such representations were in fact made, the time interval between the last alleged communication dated 28.08.2013 and the filing of the present Application on 12.11.2013 exceeds one month. In the absence of proof that a properly instituted complaint was pending before the Human Rights Commission within the

meaning of Section 13(1), the Petitioner cannot avail himself of the statutory suspension of time. The constitutional clock, once it recommences, cannot be disregarded at the discretion of a litigant.

Accordingly, the jurisprudence relied upon by the Petitioner, where the Court has recognised that time remains in abeyance during the lawful pendency of proceedings before the Human Rights Commission, is wholly inapplicable to the present facts. The precondition for such suspension, namely the lodging of a complaint within one month of the alleged infringement, has not been satisfied.

In these circumstances, the delay is neither trivial nor excusable. It is substantial, unexplained, and fatal to the invocation of this Court's jurisdiction. The mandatory character of Article 126(2) admits of no elasticity in the absence of strict compliance with statutory exception. The inevitable conclusion, therefore, is that this Application is irredeemably time barred.

Application Dismissed.

Judge of the Supreme Court

A.H.M.D. NAWAZ, J.

Judge of the Supreme Court

K.PRIYANTHA FERNANDO, J.

Judge of the Supreme Court