

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

In the matter of an Application in terms of Article
126 and 17 of the Constitution read with Article 12
(1) and Article 14 (1) (g) of the Constitution.

**S.C. FR Application No.
0045/2022**

1. Elayadura Prasad Senadara De Silva,
Chief Inspector of Police,
No. 12, Gajaba Road,
Colombo 08.
2. Rathnamalala Mudiyanseelage Janaka
Sanjeewa Rathnamalala,
Chief Inspector of Police,
No. 03, Kukuloya Raod,
Narampanawa,
Kandy.
3. Uduwewela Gedara Chaminda Gunarathna,
Chief Inspector of Police,
B130/5, Meepitiya,
Kegalle.
4. Hetti Arachchillage Daya Nalin
Hettiarachchi,
Chief Inspector of Police,
No. 44, Arabadeniya,
Godakawela.
5. Rajapaksha Pathirannahalage Indika Sanjeewa,
Chief Inspector of Police,
26/4, Pahalagama,
Weweldeniya.
6. Dissanayaka Mudiyanseelage Chandana Pradeep
Dissanayaka,

Chief Inspector of Police,
Gallindagara Janapadaya,
Delmaga.
Narangoda.

7. Goda Kumarage Chandana Wasantha Kumara
Nadeniya,
Chief Inspector of Police,
157/2, Pothgul Vihara Mawatha,
Muwagama,
Ratnapura.
8. Rajapaksha Pathirennhelage Upul Rajapaksha,
Chief Inspector of Police,
539/3, Kattambuwwa,
Koonwewa, MAHO.
9. Punchibandage Anura Ranaweera,
Chief Inspector of Police,
Upali Kolaniya, Rambewa,
Anuradhapura.
10. Dass Mudiyanseelage Chamara Nirosh Kumara
Herath,
Chief Inspector of Police,
287/D3, 2,
Green City, 1st lane,
Muththettugala,
Kurunegala.
11. Panditha Vidhana Madhawa Gunawardhana,
Chief Inspector of Police,
No. 1, Mederihena,
Kaduruduwa,
Wanchawala,
Galle.
12. Muthuthanthrige Sharada Niwantha
Fernando,
Chief Inspector of Police,
No. 4/8B,
Shramadana Mawatha,
Rawatawatta,

Moratuwa.

13. Basnayaka Mudiyanseelage Sudarshana Sampath
Kumara Basnayaka,
Chief Inspector of Police,
No. 337, 8th Lane,
Agalum Mawatha,
Nochchiyagama.

14. Hetti Arachchige Swarna Kumara Jayarathna,
Chief Inspector of Police,
No. 160/01/01,
Karunasena Jayalath Mawatha,
Pokunuwita.

15. Gunasekarage Jayantha Gunathilaka,
No. 326/02,
Chief Inspector of Police,
Pinthaliya Waththa Wijayapu,
Anuradhapura.

16. Rathnayaka Mudiyanseelage Samantha
Kumarasena,
Chief Inspector of Police,
82/2, School Road,
New Town,
Polonnaruwa.

17. Dissanayaka Thalangama Appuhamilage Dunitth
Samarasinghe Senevirathne,
Chief Inspector of Police,
No. 250/01/01,
Humbutiyawa,
Nittambuwa.

18. Jayasingha Gedara Nishantha Thilak Kumara,
Chief Inspector of Police,
No. 26/C, Matale Junction,
Samagipura,
Anuradhapura.

19. Susantha Ekanayaka Illangasingha,
Chief Inspector of Police,

32A, Pillawala,
Gunnepana,
Kandy.

20. Athugala Mudiyanseelage Chandana Anurapaksha,
Chief Inspector of Police,
Police Station,
Warakapola.

21. Senanayaka Senavirathna Herath Mudiyanseelage
Hiran Lakmal Senevirathna,
Chief Inspector of Police,
15/A, Kandy Road,
Hataraliyaddha.

22. Diyagu Arachchilage Prasad Terans De Silva,
Chief Inspector of Police,
No. 131,
Ranaviru Nuwan Dhanushka Pieris Mawatha,
Galthude,
Panadura.

PETITIONERS

v.

1. Hon. Gamini Lokuge,
Chairman.
2. Mahinda Senavirathna,
Committee Member,
3. Ariyaratna Arumapperuma,
Committee Member.
4. Chathurika Wijesingha
Committee Member.

Committee to grant relief to employees subjected
to Political Victimization in the Government and
Semi-Government sector, room no.2-123.

Premises no. 02,

Bandaranayake Memorial International
Conference Hall,
Colombo07.

5. Hon. Mahinda Rajapaksa, M.P.
Minister of Economic Policies and Plan
Implementation.
Minister of Urban Development & Housing
Minister of Buddhasasana, Religious & Cultural
Affairs.
- 5A. Hon. Ranil Wickramasinghe
Minister of Finance, Economic Stabilisation and
National Policies.
- 5B. Minister of Finance
6. Hon. Nimal Siripala De Silva, M.P.
Minister of Labour.
- 6A. Hon. Manusha Nanayakkara
Minister of Labour and Foreign Employment.
- 6B. Minister of Labour
7. Hon. G.L. Peiris, M.P.
Foreign Minister.
- 7A. Hon. Ali Sabry PC
Minister of Foreign Affairs
- 7B. Minister of Foreign Affairs, Foreign
Employment and Tourism.
8. Hon. Pavithara Devi Vanniarachchi, M.P.
Minister of Transport.
- 8A. Hon. (Dr.) Bandula Gunawardena
Minister of Transport and Highways
- 8B. Minister of Transport, Highways,
Ports and Civil Aviation.

9. Hon. Dinesh Gunawardena, M.P.
Minister of Education.
- 9A. Hon. Susil Premajayantha
Minister of Education
- 9B. Minister of Education, Higher Education and
Vocational Education
10. Hon. Douglas Devananda, M.P.
Minister of Fisheries.
- 10A. Minister of Fisheries, Aquatic and Oceanic
Resources
11. Hon. Gamini Lokuge, M.P.
Minister of Power.
- 11A. Hon. Kanchana Wijesekara
Minister of Power and Energy
- 11B. Minister of Energy
12. Hon. Bandula Gunawardena, M.P.
Minister of Trade.
- 12A. Hon. Nalin Fernando
Minister of Trade, Commerce and Food
Security.
- 12B. Minister of Trade, Commerce, Food Security
and Co-operative Development
13. Hon. R.M.C.B. Rathnayake, M.P.
Minister of Wildlife & Forest Conservation.
- 13A. Hon. Pavithra Devi Wanniarachchi
Minister of Wildlife and Forest Resources
Conservation
- 13B. Minister of Environment
14. Hon. Janaka Bandara Thennakoon, M.P.

Minister of Public Services, Provincial
Councils & Local Government.

14A. Hon. Dinesh Gunawardena
Minister of Public Administration Home
Affairs, Provincial Councils and Local
Government.

14B. Minister of Public Administration,
Provincial Councils and Local Government

15. Hon. Keheliya Rambukwella, M.P.
Minister of Health.

15A. Minister of Health

15B. Minister of Health and Media.

16. Hon. Chamal Rajapaksha, M.P.
Minister of Irrigation.

16A. Hon. Roshan Ranasinghe
Minister of Irrigation

16B. Minister of Agriculture, Lands, Livestock and
Irrigation.

17. Hon. Dullas Alahapperuma, M.P.
Minister of Mass Media.

17A. Hon. Bandula Gunawardena, M.P.
Minister of Mass Media

17B. Minister of Health and Media

18. Hon. Johnston Fernando, M.P.
Minister of Highways

18A. Hon. (Dr.) Bandula Gunawardena
Minister of Transport and Highways

18B. Minister of Transport, Highways, Ports and
Civil Aviation.

19. Hon. Wimal Weerawansa, M.P.
Minister of Industries.
- 19A. Hon. Ramesh Pathirana
Minister of Industries
- 19B. Minister of Industries
- 19C. Minister of Industries and Entrepreneurship
Development
20. Hon. Basil Rajapaksa, M.P.
Minister of Finance.
- 20A. Hon. Ranil Wickramasinghe
Minister of Finance, Economic Stabilisation
and National Policies
- 20B. Minister of Finance, Planning and Economic
Development
21. Hon. Mahinda Amaraweera, M.P.
Minister of Environment
- 21A. Hon. Nasser Ahmed
Minister of Environment
- 21B. Minister of Environment
22. Hon. S.M. Chandrasena, M.P.
Minister of Lands.
- 22A. Hon. Harin Fernando
Minister of Tourism and Lands
- 22B. Minister of Agriculture, Lands, Livestock
and Irrigation.
23. Hon. Mahindananda Aluthgamage, M.P.
Minister of Agriculture.
- 23A. Hon. Mahinda Amaraweera

Minister of Agriculture

23B. Minister of Agriculture, Lands, Livestock
and Irrigation

24. Hon. Vasudeva Nanayakkara, M.P.
Minister of Water Supply.

24A. Hon. Roshan Ranasinghe
Minister of Irrigation

24B. Minister of Agriculture, Lands,
Livestock and Irrigation

25. Hon. Udaya Prabhath Gammanpila, M.P.
Minister of Energy.

25A. Hon. Kanchana Wijesekara
Minister of Power and Energy

25B. Minister of Energy

26. Hon. Ramesh Pathirana, M.P.
Minister of Plantation.

26A. Hon. (Dr.) Ramesh Pathirana
Minister of Plantation

26B. Minister of Plantation Industries

26C. Minister of Plantation and Community
Infrastructure

27. Hon. Prasanna Ranathunga, M.P.
Minister of Tourism.

27A. Hon. Harin Fernando
Minister of Tourism and Lands

27B. Minister of Foreign Affairs, Foreign
Employment and Tourism

28. Hon. Rohitha Abegunawarhana, M.P.

Minister of Ports & Shipping.

28A.Hon. Nimal Siripala da Silva
Minster of Ports, Shipping and Aviation

28B. Minister of Transport, Highways, Ports and
Civil Aviation

29. Hon. Namal Rajapaksha, M.P.
Minister of Youth & Sports,
Minister of Development Co-ordination and
Monitoring.

29A. Hon. Roshan Ranasinghe, M.P.
Minister of Youth and Sports

29B. Minister of Youth Affairs and Sports

30. Hon. Ali Sabry, M.P.
Minister Justice.

30A. Hon. (Dr.) Wijedasa Rajapakse
Minister of Justice, Prison Affairs and
Constitutional Reforms

30B. Minister of Justice and National Integration

31. Hon. Sarath Weerasekara, M.P.
Minister of Public Security.

31A. Hon. Tiran Alles
Minister of Public Security

31B. Minister of Public Security and
Parliamentary Affairs

32. W.M.D.J. Fernando
Secretary to the Cabinet.

All of Cabinet of Ministers,
Office of the Cabinet of Ministers
Public Building,
Sir Baron Jayathilaka Mawatha,

Colombo 01.

33. Public Service Commission

34. Mr. Jagath Balapatabandi
Chairman.

34A. Chairman

35. Mrs. Indrani Sugathadasa,
Member.

35A. Member

36. Mr. Leelasena Liyanagama,
Member.

36A. Member

37. Mr. TRC Ruberu
Member.

37A. Member

38. Mr. Dian Gomez
Member.

38A. Member

39. Mr. W.H. Piyadasa,
Member.

39A. Member

40. Mr. Dilith Jayaweera,
Member.

40A. Member

41. Mr. Suntharam Arumainayaham,
Member.

41A. Member

42. Mr Ahamed Lebbe Mohammed Saleem,
Member.

42A. Member

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

43. Mr. M.A.B. Daya Senarath
Secretary – Public Service Commission
No. 1200/9, Rajamalwatta Road,
Battaramulla.

43A. Secretary – Public Service Commission
No. 1200/9, Rajamalwatta Road,
Battaramulla.

44. Ms. M.S.P. Sooriyapperuma
Additional Secretary of the Ministry of Public
Security, 14th Floor, Suhurupaya,
Battaramulla.

44A. Additional Secretary of the Ministry of Public
Security, 14th Floor, Suhurupaya,
Battaramulla.

45. Mr. Jagath Alwis,
Secretary of the Ministry of Public Security
Minister of Public Security, 14th Floor,
Suhurupaya,
Battaramulla.

45A. Viyani Gunathilake
Secretary of the Ministry of Public Security.
Minister of Public Security
14th Floor, Suhurupaya,
Battaramulla.

45B. Secretary of the Ministry of Public Security
Minister of Public Security
14th Floor, Suhurupaya,

Battaramulla.

46. C.D. Wickramarathna
Inspector-General of Police
Police Headquarters,
Colombo 01.

46A. Inspector- General of Public
Police Headquarters,
Colombo 01.

47. Hon. Attorney General,
Attorney-General's Department,
Hulftsdrop Street,
Colombo 12.

48. R.M.T.P.Rathnayaka,
Chief Inspector of Police,
Inspector's Headquarters,
Police Station.
Embilipitiya.

Presently at:
No. 816/15
The Legend
Mudilindu Mawatha
Nittambuwa

49. S.C.S. Fernando
Chairman

49A. Chairman

50. S. Liyanagama
Member

50A. Member

51. A.S.P.S.P. Sanjeewa
Member

51A. Member

52. N.S.M. Samsudeen
Member

52A. Member

53. M.P.P. Perera
Member

53A. Member

54. G. Wickramage
Member

54A. Member

55. T.P. Parameswaran
Member

55A. Member (Vacant)

56. T.D. Perera
Secretary

All At:
National Police Commission
Block 9
BMICH Premises
Buddhaloka Mawatha
Colombo 7

ADDED RESPONDENTS

BEFORE

: P. Padman Surasena, J.
Achala Wengappuli, J.
M. Sampath K. B. Wijeratne J.

COUNSEL

: Senany Dayaratne with Nishadi,
Wickremasinghe, Janani Abeywickrema and
Adithya Karalliadde for the Petitioner.

Ganga Wakishta Arachchi, DSG for 5th – 32nd,
34th - 47th, 49th - 56th Respondents.

ARGUED ON : 03.02.2025

DECIDED ON : 29.05.2025

M. Sampath K. B. Wijeratne J.

Introduction

The 1st to 22nd Petitioners were serving as Chief Inspectors of Police at the time of filing this petition.

The 1st to 4th Respondents are the Chairman and Committee members of the ‘*Providing Relief to Government and Semi-Government Employees Subjected to Political Victimization Committee.*’ The 5th to 31st Respondents are Cabinet Ministers, while the 32nd Respondent is the Secretary to the Cabinet. The 33rd Respondent is the Public Service Commission, and the 34th to 42nd Respondents are its chairman and members. The 43rd Respondent is the Secretary to the Public Service Commission. The 44th and 45th Respondents hold the positions of Additional Secretary and Secretary to the Ministry of Public Security, respectively. The 46th Respondent is the Inspector-General of Police, and the 47th Respondent is the Attorney General. The 48th Respondent is the police officer whose promotion to the rank of Chief Inspector of Police was backdated and is being challenged in this application.

In this petition, the Petitioners seek, *inter alia*, a declaration that the directive issued by the Inspector-General of Police, backdating the promotion of the 48th Respondent (‘X13’) and filling vacancies for the rank of Assistant Superintendent of Police through interviews based on seniority and skills (‘X16’), are null and void, on the ground that these decisions infringe upon their fundamental rights guaranteed under Article 12(1) and/or Article 14(1)(g) of the Constitution. The Petitioners assert that backdating of the 48th Respondent’s promotion on the ground of political

victimization unfairly discriminates against them and infringes upon their fundamental rights, despite being in similar circumstances.

In this context, the Petitioners in this petition have sought, *inter alia* to:

“

- (e) *Declare that the fundamental rights guaranteed to the Petitioners under Article 12 (1) of the Constitution has been infringed and/or is being continuously infringed by the 1st to 46th Respondents and/or any one or more of them,*
- (f) *Declare that the fundamental rights guaranteed to the Petitioners under Article 14(1)(g) of the Constitution has been infringed and/or is being continuously infringed by the 1st to 46th Respondents and/or any one or more of them,*
- (g) *Declare null and void RT-761 CRTM-389 issued by the 46th Respondent marked 'X13', RTM-199 (CRTM-114) dated 07.04.2021 issued by the 46th Respondent marked 'X16' and RTM 128 (CRTM 53) dated 04.09.2021 marked 'X17' annexed hereto,*
- (h) *Declare that the purported recommendations and/or decisions by one or more of the Respondents and/or anyone or more of them and/or their servants and agents to backdate the appointment of the 48th Respondent to the rank of 'Chief Inspector of Police' effective from 01.01.2014 is illegal and of no force or effect in the law;*
- (i) *Declare that the 48th Respondent is ineligible to be appointed to the rank of 'Assistant Superintendent of Police' in the immediate appointments to be made for the said rank in the Sri Lanka Police Service;”*

This Court, having heard the submissions of the learned Counsel for the Petitioners and the learned Senior Deputy Solicitor General for the 5th to 32nd, 34th to 47th, and 49th to 56th Respondents, by its order dated July 4, 2024, granted leave to proceed

under Article 12(1) and Article 14(1)(g) of the Constitution. In addition, the Court also granted interim relief in line with prayer (m) of the petition, restraining the Respondents from promoting the 48th Respondent to the rank of Assistant Superintendent of Police until the final determination of this application. The Court also directed the re-issuance of notices to the Respondents who were absent and unrepresented and fixed deadlines for filing objections and counter-affidavits. The hearing was scheduled for February 3, 2025.

Notably, despite multiple notices issued by this Court, the 48th Respondent has failed to appear before Court. Furthermore, none of the Respondents, including those represented by the Attorney General have filed objections to the Petitioner's application.

At the hearing, the Court heard the submissions made by the learned Counsel for the Petitioner and the learned Deputy Solicitor General appearing for the 5th to 32nd, 34th to 37th, and 49th to 56th Respondents.

Factual background

The Petitioners are police officers currently serving in the rank of Chief Inspectors of Police (C.I.) at various police stations and divisions. According to the Petitioners, they all joined the police service as Sub Inspectors of Police (S. I.). The 1st to 12th, 14th to 18th, and 20th to 22nd Petitioners joined the service on November 26, 2000, while the 13th and 19th Petitioners joined on December 15, 2000. Except for the 10th and 12th Petitioners, all other officers were absorbed into the regular police force from the reserve police force on the specified dates. The Petitioners state that their service in the police force has been uninterrupted since their initial joining. They have set out a table detailing the dates of their subsequent promotions to the ranks of Inspector of Police and Chief Inspector of Police, in paragraph 8 of the Petition.

The 48th Respondent was also in the same batch as the 1st to 12th, 14th to 18th, and 20th to 22nd Petitioners, having joined the police service as a Sub Inspector of Police on November 26, 2000. The 48th Respondent was promoted to the rank of Inspector of

Police on February 8, 2010, and to the rank of Chief Inspector of Police on February 8, 2020, along with the 1st to 22nd Petitioners.

On January 8, 2020, the Cabinet of Ministers at the time, after considering Cabinet Memorandum No. 20/0076/202/002-1 submitted by the contemporary Prime Minister, decided to appoint a Committee to submit a report with recommendations for providing relief to government and semi-government employees who had been subjected to political victimization. The three-member Committee was initially chaired by Minister Mahinda Yapa Abeywardena and was later by Minister Gamini Lokuge.

The 1st to 4th Respondents, being the Chairman and Committee members of the *‘Providing Relief to Government and Semi-Government Employees who were subjected to Political Victimization Committee’*, by way of a committee report dated January 15, 2021 (“X 8”) submitted recommendations pertaining to 83 police officers who were allegedly subjected to political victimization.

The Committee observed that the 48th Respondent’s promotions were denied on two occasions: first, due to an alleged incident that occurred during his absence from the island, and second, because of a pending charge sheet, which rendered him ineligible to apply for the post of Chief Inspector (“X 8”). Although the Committee observed as above, no material was placed before Court by the Petitioner to substantiate this position. Moreover, these incidents should apparently have occurred before his last promotion to Chief Inspector of Police, along with the Petitioners.

The Petitioners submit that, to the best of their knowledge, the 48th Respondent has never been served with a charge sheet, nor has he undergone a disciplinary inquiry. He has neither been interdicted nor issued a vacation of post and has never been subjected to any form of political victimization. Despite this, he has been allowed to submit a claim alleging political victimization.

Nevertheless, the Committee had recommended that the promotion of the 48th Respondent to the rank of Chief Inspector of Police be backdated to January 1, 2014, with corresponding promotions granted accordingly.

Thereafter, Cabinet Memorandum No. 12/2021, dated April 1, 2021, (“X9”) was presented to the Cabinet, of which the 5th to 31st Respondents were members. As can be easily perceived from the Cabinet memorandum, the implementation of the proposals made by the Committee was forwarded to the Cabinet with the recommendation to accept them, as they were made by a Committee headed by a Senior Minister and comprising senior officials, subject to the following conditions.

- i. To delegate the powers to the Secretary to the Public Service Commission, Secretary to the Ministry of Public Security and Inspector-General of Police for the purpose of implementing the recommendations of the Committee.
- ii. If there are no sufficient number of vacancies within the approved cadre in the post, to appoint the officers individually, on supernumerary basis and to absorb them to the approved cadre when a vacancy arises (it is not required to obtain approval of Management Service Department for this purpose. In the event where an officer recruited on supernumerary basis is retired/deceased or in the event retiring in future, the post created on the supernumerary basis cease to exist).

Thus, the implementation of the Cabinet decision must necessarily be subject to the aforesaid conditions. Consequently, if the promotions exceed the cadre vacancies, they must be made on a supernumerary basis and absorbed into the permanent cadre as vacancies arise, ensuring their place in the permanent cadre. Another condition that was set out by the Cabinet was that the approval of the Department of Management Services is not necessary for these promotions, thereby overlooked the objective of the requirement of obtaining the approval of Management Service Department.

At the Cabinet meeting held on June 28, 2021, the aforementioned Cabinet Memorandum (“X9”) was considered. On the same date, Cabinet of Ministers, including the 5th to 31st Respondents, decided to implement the recommendations of the Committee at the earliest.

Accordingly, the 33rd Respondent, the Public Service Commission, comprising the 34th to 42nd Respondents as its Chairman and members, unequivocally instructed the 44th Respondent, the Additional Secretary to the Ministry of Public Security (*vide* ‘X11’), to implement the decisions taken by the Cabinet of Ministers at its meeting on June 28, 2021, concerning the Cabinet Memorandum dated April 1, 2021.

Consequent to the aforementioned direction issued by the 33rd Respondent, the Public Service Commission, the 44th Respondent, directed the 46th Respondent, the Inspector-General of Police, by letter dated August 20, 2021 (“X12”), to act in accordance with the orders of the Public Service Commission.

Accordingly, the 46th Respondent, by letter dated August 26, 2021, ordered the backdating of the 48th Respondent's promotion to the rank of Chief Inspector of Police to January 1, 2014, from the existing date of promotion, February 8, 2020 (“X13”). The Petitioners state that the purported decision, recommendation, and/or order by the 1st to 46th Respondents, or any one of them, constitutes a clear breach of Gazette (Extraordinary) No. 1589/30, dated February 20, 2009, which provides regulations for the appointment, promotion, and transfer of public servants and categorically prohibits antedating appointments under Rule 31 (“X14”). However, this is not an absolute rule and is subject to the exception contained in Rule 188 of the same Gazette notification.

The 46th Respondent, through RTM-199 (CRTM-114) dated July 4, 2021, (“X16”) issued a call for the filling of vacancies for the rank of Assistant Superintendent of Police based on seniority and skills. This, the Petitioners claim, further exacerbated the violation of their fundamental rights by inviting only officers who met the criteria of seniority and skill. Consequently, the 46th Respondent by RTM-128 (CRTM-53)

dated September 4, 2021 (“X17”) has summoned the 48th Respondent and three others to the interview board.

Relevant Constitutional modifications

Before addressing the merits of this application, it is essential to first examine the constitutional changes that have occurred within our Constitution concerning the powers and functions related to the *appointment, promotion, transfer, disciplinary control, and dismissal* of police officers.

On this point, there is a significant judicial precedent that I must consider first and foremost. In the case of *Saman Ratnayake and four others v National Police Commission and eighteen others*¹ Justice Padman Surasena analysed in detail the evolution of the powers and functions relating to *appointment, promotion, transfer, disciplinary control, and dismissal* of public officers within the constitutional framework in Sri Lanka. For the purpose of completeness, I will also concisely analyse the same.

The Public Service Commission was first established in Sri Lanka by Article 58 of the Ceylon (Constitution) Order in Council, 1946. Article 60 of the Constitution conferred upon it the authority over the *appointment, transfer, dismissal, and disciplinary control* of public officers. Aforementioned Article 60 provides as follows:

“Article 60 (1)

The appointment, transfer, dismissal and disciplinary control of public officers is hereby vested in the Public Service Commission:

Provided that ... ”

¹ SC(FR) 350/2016

However, the first Republican Constitution of 1972 abolished the Public Service Commission and, under Section 106, transferred these powers to the Cabinet of Ministers. And the said Section is as follows:

Section 106 (1) -The Cabinet of Ministers shall be responsible for the appointment, transfer, dismissal and disciplinary control of state officers and shall be answerable therefore to the National State Assembly

(2) - Subject to the provisions of the Constitution the Cabinet of Ministers shall have the power of appointment, transfer, dismissal and disciplinary control of all state officers.

Even under the Second Republican Constitution of 1978, the powers of *appointment, transfer, dismissal and disciplinary control* of public officers, including the Heads of Department remained with the Cabinet of Ministers. However, provisions were made for the delegation of these powers to the Public Service Commission from time to time, excluding the Heads of Departments. Other than the powers regarding the *appointment, transfer, disciplinary control and dismissal* of public officers, the powers in respect of ***'promotions'*** was also included into the Article 55.

For clarity, I will reproduce Article 55 of the 1978 Constitution in its original form, which reads as follows:

“55(1) Subject to the provisions of the Constitution, the appointment, transfer, dismissal and disciplinary control of public officers is hereby vested in the Cabinet of Ministers, and all public officers shall hold office at pleasure.

(2) The Cabinet of Ministers shall not delegate its powers of appointment, transfer, dismissal and disciplinary control in respect of Heads of Departments.

(3) The Cabinet of Ministers may from time-to-time delegate its powers of appointment, transfer, dismissal and disciplinary control of other public officers to the Public Service Commission.

Provided that (...)

*(4) Subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters relating to public officers including the formulation of schemes of recruitment and codes of conduct for public officers, the principles to be followed **in making promotions** and transfers, and the procedure for the exercise and the delegation of the powers of appointment, transfer dismissal and disciplinary control of public officers.”*

(Emphasis added)

Prior to the introduction of term ‘policy’, the aforementioned constitutional provisions were judicially interpreted in following judgments. In the case of *Abeywickrema v. Pathirana*² Chief Justice Sharvananda interpreting Article 55 (4) of the 1978 Constitution as it stood before the 17th Amendment to the Constitution made the following observations in the majority judgment;

*‘Article 55 (4) empowers the Cabinet of Ministers to make rules for all matters relating to public officers, without impinging upon the overriding powers of pleasure recognized under Article 55(1). Matters relating to "public officer" comprehends all matters relating to employment, which are incidental to employment and form part of the terms and conditions of such employment, such as, provisions as to salary, increments, leave, gratuity, pension, and of super annuity, promotion and every termination of employment and removal from service. **The power conferred on the Cabinet of Ministers is a power to make rules which are general in their operation, though they may be applied to a particular class of public officers.** This power is a legislative power and this rule making function is for the purpose identified in Article 55(4) of the Constitution as legislative, not executive or judicial in character.’*

(Emphasis added)

Furthermore, in the subsequent case of *The Public Service United Nurses Union v. Montague Jayawickrama, Minister of Public Administration and others*³ Justice

² [1996]1 Sri L.R. 120, at p.138.

³ [1988]1 Sri L.R. p. 229, at p. 237.

Wanasundara made the following observations regarding the authority vested in the Cabinet over the public officers.

*‘When Article 55 of the Constitution vests authority over public affairs in the Cabinet and make it mandatory for the Cabinet to formulate schemes of recruitment, and codes of conduct for public officers, the principles to be followed in making **promotions and transfers etc., the Constitution contemplated fair, and uniform provisions in the nature of general rules and regulations and not action that is arbitrary or ad-hoc or savouring of bias or discrimination.**’* (Emphasis added)

With the introduction of the 17th Amendment, following the aforementioned judgments of this Court in *Abeywickrema v. Pathirana* (supra) and *The Public Service United Nurses Union v. Montague Jayawickrama, Minister of Public Administration and others* (supra), the Legislature repealed the existing Article 55(1) and replaced it with a revised provision incorporating the term ‘all matters **of policy** relating to public officers’ in place of the phrase ‘all matters relating to public officers.’ Consequently, the Cabinet of Ministers’ authority to make rules was confined solely to matters concerning policy.

Article 55 remained unchanged until the introduction of the 17th Amendment to the Constitution,⁴ which brought significant changes by replacing it with a new text. The amended Articles 55(1), (3), and (4) read as follows:

*“55(1) The appointment, **promotion**, transfer, disciplinary control and dismissal of public officers shall be vested in the Commission.*

55(3) Notwithstanding the provisions of paragraph (1) of this Article, the appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Departments shall vest in the Cabinet of Ministers, who shall exercise such powers after ascertaining the views of the Commission.

55(4) Subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers.

⁴ Certified on 03th October, 2001

55(5) (.....)

(Emphasis added)

Accordingly, the Cabinet of Ministers was vested with the power to provide for and determine matters of *policy* related to public officers, subject to the provisions of the Constitution, while the Public Service Commission conducted its affairs in accordance with such policies.

Another change introduced by the 17th amendment was the removal of the phrase "*all public officers shall hold the office at pleasure*," which had been present in our Constitution since its inception during British reign. The concept of holding office at pleasure implied that dismissal could be at the discretion of the authority, meaning public officers could be terminated for any reason, whether good or bad, or sometimes without any reason at all. However, since Article 55(1) of the 1978 Constitution contained the term "*subject to the provisions of the Constitution*," any action taken under this article is, *inter alia*, subject to the provisions of Article 126.

Apart from that, the 17th Amendment to the Constitution also introduced a procedure allowing a party aggrieved by a decision of the Public Service Commission to appeal to the Administrative Appeals Tribunal.

Additionally, the introduction of Article 61A through the 17th Amendment ensured that the Supreme Court still retained its jurisdiction over fundamental rights concerning decisions made by the Public Service Commission, whether exercised directly or through its delegated authority.

Most importantly, the 17th Amendment to the Constitution brought in a distinctive change by introducing the new chapter XVIII A establishing the National Police Commission under Article 155A and vesting it with the powers in relation to the *appointment, **promotion**, transfer, disciplinary control and dismissal* of police officers other than the Inspector-General of Police. The Commission exercised such powers in consultation with the Inspector -General of Police.

However, the 18th Amendment to the Constitution repealed Article 155G and also repealed the existing Article 55, replacing it with a revised provision. Consequently, the powers over all matters of *policy* related to public officers, including those concerning *appointments, promotions, transfers, disciplinary control, and dismissal*, were reverted to the Cabinet of Ministers.⁵ Additionally, the *appointments, promotions, transfers, disciplinary control, and dismissal* of all Heads of Departments were also entrusted to the Cabinet of Ministers.⁶ Furthermore, subject to the provisions of the Constitution, the powers related to the *appointments, promotions, transfers, disciplinary control, and dismissal* of public officers were granted to the Public Service Commission.⁷ As a result, police officers were also classified under the category of public officers.

In the 18th Amendment, the Legislature removed the words "*subject to the provisions of the Constitution*" that were there in Article 55(4) introduced by the 17th Amendment. However, it retained the power of the Cabinet of Ministers to determine "all matters of *policy* relating to public officers, including *policy* relating to *appointments, promotions, transfers, disciplinary control, and dismissal*" in the corresponding amended Article 55(1).

The resulting position is that the Cabinet of Ministers were vested with the power to provide for and recommend all the matters of *policy* relating to public officers without the limitation of being "*subject to the provisions of the Constitution*". However, it is easily perceived that in a constitutional structure, no functionary of the state or public authority has an absolute or unfettered discretion. The very idea of unfettered discretion is totally incompatible with the doctrine of equality enshrined in the Constitution and it is also against the rule of law. It is presumed that even the discretionary powers conferred on executive in absolute and unfettered terms will necessarily and obviously be exercised reasonably and for the betterment of the public.

5 Article 55 (1) of the 18th Amendment to the Constitution.

6 Article 55 (2) of the 18th Amendment to the Constitution.

7 Article 55 (3) of the 18th Amendment to the Constitution

As per Article 126 (1) ‘*The Supreme Court shall have sole and exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right*’. Therefore, it is evident that the Supreme Court's fundamental rights jurisdiction over decisions made under Article 55(1) remains unaffected.

The 19th Amendment to the constitution⁸ re-transferred the powers in relation to the appointments, ***promotions***, *transfers, disciplinary control and dismissal* of the police officers except the Inspector-General of Police, to the National Police Commission by re-introduction of Article 155G. Consequently, the powers in relation to police officers’ *appointments, promotions, transfers, disciplinary control and dismissal* were taken away from the Public Service Commission and reassigned to the National Police Commission.

With the introduction of the 20th Amendment to the Constitution⁹, the legislature, for the second time, took away the powers of the National Police Commission and re-transferred to the Public Service Commission. As per the 20th Amendment to the constitution Article 55 of the constitution reads as follows:

*Article 55 (1) – The Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers, including policy relating to appointments, **promotions**, transfers, disciplinary control, and dismissal.*

*(2) The appointment, **promotion**, transfer, disciplinary control, and dismissal of Heads of Department shall, vest in the Cabinet of Ministers.*

*(3) Subject to the, provisions of the Constitution, the appointment, **promotion**, transfer, disciplinary control, and dismissal of public officers shall be vested in the Public Service Commission.*

(4) (...)

(5) (...)

(Emphasis added)

⁸ Certified on 15th May, 2015

⁹ Certified on 29th of October, 2020

Accordingly, at the time relevant to the instant application, the powers and functions related to the *appointment, **promotion**, transfer, disciplinary control, and dismissal* of police officers were vested with the Public Service Commission except for the Heads of Departments.

However, with the enactment of the 21st Amendment to the Constitution¹⁰ up to date, the powers in relation to *appointment, **promotion**, transfer, disciplinary control, and dismissal* of police officers other than the Inspector-General of Police are re-vested with the National Police Commission. For clarity, I will reproduce the relevant provisions of Article 155G which were re-introduced by the 21st Amendment.

*Article 155G (1)(a) -The appointment, **promotion**, transfer, disciplinary control, and dismissal of police officers other than the Inspector-General of Police shall be vested within the Commission. The Commission shall exercise its power of **promotion**, transfer disciplinary control, and dismissal in consultation with the Inspector-General of Police.*

(b)(.....)

(2) The Commission shall establish procedure to entertain and investigate public complaints and complaints of any aggrieved person made against a police officer or the police service, and provide redress as provided by law. In the event of the Commission providing redress, the Commission shall forthwith inform the Inspector-General of Police

(3) The Commission shall, in consultation with the Inspector-General of Police, provide for and determine all matters regarding police officers, including-

*(a) the formation of schemes of recruitment, **promotion** and, transfer, subject to any policy determined by the Cabinet of Ministers pertaining to the same:*

(b) (...)

(c) (...)

(d) (...)

¹⁰ Certified on 31st of October, 2022

(Emphasis added)

Accordingly, following the 21st Amendment, the formulation of recruitment, promotion, and transfer schemes should be carried out by the National Police Commission, in consultation with the Inspector General of Police, subject to the policies determined by the Cabinet of Ministers.

However, the Cabinet decision in question was made on June 28, 2021, prior to the introduction of the 21st Amendment, at the time when the 20th Amendment was in force. As I have already stated in this judgment, during this period, the powers of the National Police Commission regarding the *appointment, **promotion**, transfer, disciplinary control, and dismissal* of police officers, excluding Heads of Departments, were exercised by the Public Service Commission. Apart from that, in terms of *Policy* decisions, the Cabinet of Ministers were assigned with the power to determine all matters of *policy* relating to public officers, including *policy* relating to *appointments, promotions, transfers, disciplinary control and dismissal* as per Article 55 (1) which was the same provision that was there in the Constitution since the 18th Amendment.

“Policy” in the context of promotions

I will now proceed to examine the scope of authority granted to the Cabinet of Ministers concerning matters related to public officers under the Constitution. Under Article 55(1) of the Constitution, the Cabinet of Ministers holds the authority to provide for and determine all matters of *policy* related to public officers, including those concerning *appointments, promotions, transfers, disciplinary control, and dismissal*. Article 55(2) further stipulates that the *appointment, promotion, transfer, disciplinary control, and dismissal* of all Heads of Departments shall be vested in the Cabinet of Ministers.

It is a well-established principle that Courts should generally refrain from intervening in policy matters that fall within the government's domain, except where such policies are contrary to the law or inconsistent with the Constitution.

In this context, it is essential to assess the scope of authority that the Cabinet of Ministers are expected to exercise under the concept of *policy* as outlined in Article 55(1). Accordingly, an analysis of the defining characteristics of a *policy* decision is warranted.

The Black's Law Dictionary¹¹ defines the term '*policy*' as *the general principles by which a government is guided in its management of public affairs*'. In the 11th edition of Black's Law Dictionary, the same term has been defined as *"A standard cause of action that has been officially established by an organization, business, political party etc."*

It is also pertinent to examine the judicial precedents from both local and foreign jurisdictions, on the subject matter.

In *R(A)v Secretary of State for the Home Department*¹² Lord Sales JSC and Lord Burnett of Maldon CJ set out as follows:

"a policy, may provide them with guidance so that they apply the powers in similar ways and the risk of arbitrary or capricious differences of outcome is reduced. If placed in the public domain, policies can help individuals to understand how discretionary powers are likely to be exercised in their situations and can provide standards against which public authorities can be held to account. In all these ways, policies can be an important tool in promoting good administration."

Apart from the above case, in *R (Friends of the Earth Ltd) v. Secretary of State for Transport*¹³, the following observations were perceived by Lord Hodge DPSC and Lord Sales JSC of the Supreme Court of the United Kingdom,

*"..... the epitome of 'Government Policy' is a formal written statement of established policy. One reason for this is that civil servants and others must be able to identify the policy which is said to be legally enforceable quickly and conveniently. It is important in this context that **there should be legal certainty..... A statement qualifies as a policy only if it is clear, unambiguous and devoid of relevant qualification.**"* (Emphasis added)

11 Black's Law Dictionary, 11th Edition, Bryan A. Garner

12 [2021] UKSC 37; [2021] 1WLR 3931

13 [2020] UKSC 52; [2021] PTSR 190

In *Delhi Development Authority v Joint Action Committee, Allottee of SFS Flats*¹⁴ it was held that, “an executive order termed as a policy decision is not beyond the pale of judicial review. Whereas the superior courts may not interfere with the nitty-gritty of the policy, or substitute one by the other but it will not be correct to contend that court shall lay its judicial hands off, when a plea is raised that the impugned decision is policy decision.”

Pronouncements of this Court regarding the concept of “policy”

In *Saman Ratnayake and Four others v. National Police Commission and Eighteen Others*¹⁵, Justice Padman Surasena, in his judgment, cited the following observations made by Justice Shirani A. Bandaranayake in *Poojya Mawanane Sominda Thero and Thirteen Others v. V. K. Nanayakkara and Eleven Others*¹⁶, after examining a policy matter within the scope of Article 55(4), introduced by the 17th Amendment to the Constitution, as follows:

“The Concise Oxford Dictionary refers to a matter of policy as the ‘course or general plan of action to be adopted by government, party or a person’. Professor Galligan, on the other hand, defines a decision of policy in the following words (Due Process and Fair Procedures, Clarendon Press, Oxford, 1996, pg. 454),

‘A decision of policy is one where the authority has to draw on general considerations of a social, economic or ethical kind in deciding an issue, where the decision is likely to affect a range of groups and interests.’

“Accordingly, the general norm in the definition of ‘a policy matter’ would be for the action taken to be for the common good. As pointed out by Professor Galligan (supra) while interests and claims of individuals and groups are ingredients to be added to the cauldron of policy- making the final decision should reach beyond particular concerns to a broader sense of the interests of all”. The necessity for the generalization therefore would be the essential ingredient in defining ‘policy’ and this is clear as one examines the meaning given to the said word in the Oxford Companion to Law, where it reads thus:

14 (2008) 2SCC 672

15 SC(FR) 350/2016

16 SC. (FR) 146/2003, Supreme Court minutes dated 15.07.2004

‘The general consideration which a governing body has in mind in legislating, deciding on a course of action or otherwise acting (David Walker; Clarendon Press Oxford, 1980. pg.965).’

Therefore, a policy decision necessarily will have to be applicable in general and cannot be interpreted to include specified persons.

*The Cabinet Memorandum dated 03.09.2001 (1 R3) basically deals with 3 main items. The first item is with regard to the creation of a post designated as Assistant/Deputy Director (Pirivena) for each Provincial Department of Education. The second item refers to the absorption of 8 priests who were holding the positions as Pirivena Coordinators in different provinces. The third item is the upgrading of the ten Lecturers presently attached to the Sudharmarama Pirivena at Avissawella. An examination of the said items would clearly indicate that item 1.1 of the Memorandum clearly deals with a policy matter as it relates in general to the creation of a specific post. **The second limb of this item, viz., item 1.2 however refers to the appointment of 8 selected persons and thereby is not in a category which deals with policy matters.** This could have been avoided, if there was no special reference to the appointment of 8 persons who were holding positions as Pirivena Co-ordinators. The next item in the Memorandum is not dealing with a policy matter as it clearly refers to the absorption of 10 lecturers who had been serving for a period of over 10 years at the Sudharmarama Pirivena at Avissawella.*

In the circumstances, it is apparent that the first item which deals with the creation of a post designated as Assistant/Deputy Director (Pirivena) for each Provincial Department of Education deals with a policy matter and the other two items do not come within the category of policy.” (Emphasis added)

In the aforementioned *Saman Rathnayake* case (*supra*), Justice Padman Surasena addressing a similar issue, in which a Cabinet decision was made on the recommendations of the Committee titled “To provide relief to those who were victimized for political reasons” observed that,

“.....a policy decision must be applicable in general as opposed to specific individuals. If a particular policy decision focuses on specific individuals and fails to

be applicable in a general context, it will not fall within the ambit of a policy decision”

“.....the Petitioners cannot rely on the relevant Cabinet Decision to get relief on the basis that their names are included in a report of political victimization committee as such a decision cannot be considered as a decision pertaining to a matter of policy for the aforementioned reasons.”

“.....This Court cannot directly or indirectly enforce recommendations made solely on political reasons, by implementing recommendations made by a Political Victimization Committee.”

Furthermore, in the same judgment Justice Padman Surasena, emphasised that *“....It is important to bear in mind that the policies the Cabinet of Ministers are empowered to make must be only to lay down mere schemes of promotions in the nature of general rules and regulation and not decisions to promote any individual public or Police officer. On the other hand, any recommendation made by the Cabinet of Ministers to promote individuals cannot be categorized as policy decisions falling under Article 55(1) or 155 G 3(a) of the Constitution.”*

If a system or set of guidelines was introduced to address political victimization, it could have been classified as a *policy*. However, an *ad-hoc* decision to grant relief to certain individuals claiming political victimization cannot be regarded as a *policy*. Therefore, it is evident that the 48th Respondent in this case is not entitled to obtain relief based on the Cabinet decision dated June 28, 2021, on the grounds of alleged political victimization.

The Petitioners assert that they served as Chief Inspectors of Police under similar circumstances as the 48th Respondent, who was promoted to that rank on February 8, 2020, alongside the Petitioners. Therefore, they had a legitimate expectation that individuals in comparable situations would be treated equally.

Furthermore, the subsequent arbitrary and irrational decision of the 1st to 46th Respondents, and/or any of them based on the purported Cabinet decision, to retroactively date the 48th Respondent's appointment as Chief Inspector to January 1, 2014, resulted in the 48th Respondent being placed higher on the seniority list. This gave the 48th Respondent an advantageous position for selection to the post of Assistant Superintendent of Police, which is the Petitioner's next potential promotion, thereby creating an inequitable situation and significantly prejudicing the Petitioner's promotional prospects.

Therefore, I regret my inability to accept that 5th to 31st Respondents had acted within their powers under Article 55 (1) of the Constitution when backdating the promotion of the 48th Respondent to the rank of Chief Inspector of Police to January 1, 2014. Consequently, the unlawful backdating of the 48th Respondent's promotion has infringed upon the fundamental rights guaranteed to the Petitioners under Article 12(1) of the Constitution. Because, as per Article 12(1), all persons are equal before the law and are entitled to the equal protection of law. In order to clarify the above conclusion in detail, I will now scrutinize few judicial precedents that were held by foreign and local superior courts.

Violation of Article 12(1) of the Constitution

The principle of equality serves as a golden thread running through the entire legal system. The International Inter-American Court of Human Rights opined in the Advisory Opinion on "Juridical Condition and Rights of Undocumented Migrants" that **equality** and **non-discrimination** had become *jus cogens, peremptory norm of international law*. Because, the whole legal structure of national and international public order has based on the said principle.¹⁷ In the preamble of the 1978 Constitution also, it has specifically guaranteed the principle of "**equality**" of all Peoples and succeeding generations of the people. Because, as Justice Bhagawathi has emphasised in the case of *Royappa v State of Tamil Nadu*¹⁸,

¹⁷ Fundamental Rights in Sri Lanka, 3rd Edition, Jayampathy Wickramaratne

¹⁸ Royappa v State of Tamil Nadu [1974] SCR (2) 348

“Equality is a dynamic concept with many aspects and dimensions and it cannot be ‘cribbed, cabined and confined’ within traditional and doctrinaire limits.”
(Emphasis added)

In that sense, the principle of equality can be considered as the ‘jewel in the crown’ of the fundamental rights chapter. Because, it is an inalienable universal principle embedded into our Constitution; the main legal source in the country, from which the legitimacy is derived to all the other legal instruments. In the instant case, the Petitioners mainly challenge the legitimacy of the promotion granted to a Respondent based on the Article 12(1) and 14(1)(g). Unfortunately, in the Sri Lankan context, there is no such direct fundamental right as a “right to promotion” nor does it extend to seniority. But, the ‘legal right of the public officers to be considered for promotion subject to the doctrine of equality’ has been emphasized by this Court several times.

In *W.P.S. Wijerathna v. Sri Lanka Ports Authority*¹⁹ Justice Yasantha Kodagoda P.C. has evaluated the nexus between Article 12(1) and the appointments and promotions in the public service. Accordingly, Justice Kodagoda has pointed out the following observations.

*“It would thus be seen that arbitrariness and unreasonableness in decision-making in selections, appointments and **promotions** particularly in public sector institutions is inconsistent with the concept of equality. In fact, as pointed out repeatedly by numerous erudite judges, ‘arbitrariness is the anathema of equality’. In India’s former Chief Justice Bhagwati’s words, ‘equality and arbitrariness are sworn enemies.*

*In my view, principally, schemes for the selection, appointment and **promotion** of persons for employment positions should contain mechanisms enabling the selection of the most suitable person for the relevant position, whilst embodying the principle of equality. The objective sought to be achieved by doing so, is the imposition of compulsion on persons in authority who are empowered to take decisions relating to selections, appointments, recruitment and **promotions**, to arrive at objective and*

¹⁹ SC (FR) Application No. 256/2017 SC minutes 11th December 2020.

reasonable decisions, and thereby securing protection against arbitrary decision-making.

The above pronouncement made by Justice Kodagoda P.C. clearly demonstrates that the policy-decisions of the authorities in terms of the *appointments* and *promotions* of public officers should be always done subject to the doctrine of equality while suppressing arbitrariness and unreasonableness which might otherwise inherently prevent the selection of the most eligible person for a particular designation.

Apart from that, in the same judgment, it was held that “*Once such schemes are promulgated, it is equally important and necessary to ensure that, they are enforced correctly, comprehensively, uniformly, consistently and objectively*”.

Most significantly, it must be reiterated that, as proclaimed by Justice Padman Surasena, in *Saman Rathnayake* (Supra) case, “*This Court cannot ignore the seniority of the serving police officers and give directions to promote officers who are less senior merely because the political victimization committee had recommended to do so. The Supreme Court cannot be, and should not become, a mere rubber stamp to endorse any such recommendation of a political victimization committee.*”

In light of the foregoing reasons, I see no legitimate basis for the Respondents to backdate the promotion of the 48th Respondent to January 1, 2014, from February 8, 2020 the date on which he was initially promoted to the rank of Chief Inspector of Police alongside the Petitioners. Moreover, the Respondents have not provided any justification for their action. Consequently, the 48th Respondent who was in par with Petitioners should not be allowed to be promoted over the Petitioners in the aforementioned manner.

Hence, it is my considered view that the arbitrary and unwarranted alteration has directly infringed upon the Petitioner’s Fundamental Rights guaranteed under Article 12(1) of the Constitution.

Violation of Article 14(1)(g) of the Constitution.

Article 14(1)(g) of the 1978 Constitution guarantees every citizen the general right to engage in a profession, trade, or employment of their choice. However, this provision does not extend to grant an individual the right to a specific job or appointment to a particular position of their choice. For clarity, the text of Article 14(1)(g) of the Constitution is reproduced below:

Article 14 (1)(g) - *“Every citizen is entitled to the freedom to engage by himself or in association with others in any lawful occupation, profession, trade, business or enterprise;”*

It is a well-established principle that the right to "profession" inherently encompasses the opportunity for **“legitimate promotions”**. Especially, when it is enacted that *“every citizen is entitled (...) to engage (...) in association with others in any lawful (...) profession,”* this includes the right to be considered for promotion alongside contemporaries in similar circumstances.

For a comprehensive and comparative analysis, it is pertinent to examine the Constitution of India²⁰, which enshrines provisions that ensure equal opportunity for all citizens in matters related to employment or appointment to any office under the State. Specifically, Article 16(1) of the Indian Constitution, which is the corresponding provision of Article 14(1)(g) of the Sri Lankan Constitution upholds this right, providing as follows:

Article 16(1) - *“There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”*

The above Article has been judicially interpreted by the Indian Supreme Court in several occasions. One of them would be in the case of *Ajit Singh and others v. State*

²⁰ The Constitution of India, 1950

of Punjab and others.²¹ This particular case defined the word "employment" to include "promotions" within its ambit as follows:

"Article 16(1) provides to every employee otherwise eligible for promotion or who comes within the zone of consideration, a fundamental right to be "considered" for promotion. Equal opportunity here means the right to be "considered" for promotion. If a person satisfies the eligibility and zone criteria but is not considered for promotion, then there will be a clear infraction of his fundamental right to be "considered" for promotion, which is his personal right. "Promotion" based on equal opportunity and 'seniority' attached to such promotion are facets of fundamental right under Article 16(1)."

In the Sri Lankan constitution, unlike in the Indian context, the right to equality and the right to engage in profession have been laid down in two different Articles, respectively in Article 12 (1) and Article 14(1)(g). Therefore, when determining the legitimacy of a promotion granted to a public officer, the Court should read Article 14(1)(g) in concurrence with Article 12(1) of the Constitution in order to give effect to the meaningful interpretation of the Article 14(1)(g). Because, both these Articles are intrinsically interconnected. Therefore, a violation of Article 12(1) due to the denial of rightful promotions, as in the present case, would inevitably result in a breach of Article 14(1)(g) as well. Therefore, based on the arguments and materials presented above, I am convinced that the Petitioners have established a violation of their Fundamental Rights under Article 14(1)(g).

Conclusion

For the foregoing reasons, the Petitioners are entitled to succeed their application and entitled to the following reliefs.

²¹ Ajit Singh and Others v. State of Punjab and Others 1999 (7) SCC 209

1. A declaration that the Petitioner's fundamental rights enshrined in Article 12 (1) of the Constitution, have been infringed and/or are subject to continuously infringed by the 1st to 46th Respondents and/or any one of them.
2. A declaration that the Petitioner's fundamental rights enshrined in Article 14 (1)(g) of the Constitution, have been infringed and/or are subject to continuously infringed by the 1st to 46th Respondents and/or any one of them.
3. A declaration nullifying the directives RT-761 CRTM-389 issued by the 46th Respondent marked ('X13', RTM-199 (CRTM-114) 07.04.2021 issued by the 46th Respondent ('X16') and RTM-128 (CRTM-53) dated 04.09.2021 ('X17').
4. A declaration that the purported recommendations and/or decisions by one or more of the Respondents and/or anyone or more of them and/or their servants and agents to backdate the appointment of the 48th Respondent to the rank of '*Chief Inspector of Police*' effective from 01.01.2014 is illegal and of no force or effect in the law.
5. A declaration that the 48th Respondent, at the relevant time, was ineligible to be appointed to the rank of '*Assistant Superintendent of Police*'.

JUDGE OF THE SUPREME COURT

P. Padman Surasena, J.

JUDGE OF THE SUPREME COURT

Achala Wengappuli, J.

JUDGE OF THE SUPREME COURT