

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

*In the matter of an Application and in terms of  
Article 17 and 126 of the Constitution of the  
Democratic Socialist Republic of Sri Lanka*

D. K. Surangika Nalani  
1/3, Vavulugala Baddegama.

**PETITIONER**

**SC/FR/Application No. 359/2016**

Vs.

1. Piyasiri Manawadu  
Acting Officer in Charge  
Terrorism Investigation Division  
Boosa Unit  
Boosa.
2. Nalaka De Silva  
Deputy Inspector General  
Terrorism Investigation Division  
New Secretariat Building  
Colombo 01.
3. Jagath Vishantha  
Assistant Superintendent of Police  
Acting Director  
Terrorism Investigation Division  
New Secretariat Building  
Colombo 01.
4. K. N. O. Perera  
Chief Inspector, Officer in Charge  
Terrorism Investigation Division  
New Secretariat Building  
Colombo 01.
5. Pujitha Jayasundara  
Inspector General of Police  
Police Headquarters

Colombo 01.

5(A) C. D. Wickramaratne  
Inspector General of Police  
(ceased to hold office).

5(B) Deshabandu Tennakoon  
Inspector General of Police  
(ceased to hold office).

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

**RESPONDENTS**

**Before:** A. L. Shiran Gooneratne, J.

Sobhitha Rajakaruna, J.

Menaka Wijesundera, J.

**Counsel:** S. N. Vijithsingh for the Petitioner

Varunika Hettige, ASG for the Respondents.

**Written Submissions:** Petitioner - 04.03.2021

Respondents - 22.03.2021

**Argued on:** 12.03.2025

**Decided on:** 16.10.2025

**Sobhitha Rajakaruna J.**

The Petitioner was a lady Sub-Inspector of the Sri Lanka Police and residing in *Baddegama* during the time she filed the instant Application. She alleges that while working at the Boosa Detention Unit of the Terrorist Investigation Department (TID), the 1<sup>st</sup> Respondent repeatedly made inappropriate advances and indecent suggestions toward her in person,

which she rejected. The Petitioner further claims that the 1<sup>st</sup> Respondent made lewd remarks over the phone, explicitly expressing a desire for sexual relations with her and intimidating her by warning her against reporting these incidents to superior officers. Anyhow, she reported the 1<sup>st</sup> Respondent's alleged behaviour to the 2<sup>nd</sup> Respondent, who dismissed her complaint. The other segment of the Petitioner's complaint is the delay in accommodating her request for a transfer due to her pregnancy. She states that she had to commute over 100 km daily, spending more than eight hours travelling, which led to a miscarriage of her four-and-a-half-month-old foetus. As a result, she claims that she suffered severe mental trauma and distress.

The Petitioner asserts that the Respondents violated her fundamental rights under Article 12(1) of the Constitution by failing to investigate the 1<sup>st</sup> Respondent for sexual harassment, despite her rejection of his advances. Instead, they initiated an inquiry against her based on a complaint by the 1<sup>st</sup> Respondent, resulting in a punitive black mark on her record. Furthermore, the Petitioner to justify her alleged infringement of fundamental rights asserts that the Respondents arbitrarily delayed her transfer; failed to release her from the TID to a suitable division to accommodate her pregnancy; and only transferred her as requested after she suffered a miscarriage, thereby infringing her fundamental rights.

Regardless of the multiple claims raised by the Petitioner in the instant Application, this Court granted Leave to Proceed on 10.01.2017 for the alleged violations of the Petitioner's fundamental rights under Articles 12(1) and 14(1)(g), in respect of the Petitioner's transfer.

### ***Summary of the Facts Narrated by the Petitioner***

In the Petition filed on 13.10.2016, the Petitioner alleges that while working at the Boosa Detention Unit of the TID, the 1<sup>st</sup> Respondent repeatedly made inappropriate suggestions and advances toward her. According to the Petitioner, when she rebuffed his persistent advances by mentioning her marital status, he grew angry, threatened her with the words, "*I will see about you,*" and cautioned that complaining to senior officers would be futile as they would not believe her. The Petitioner further complains of an incident on 06.06.2016, after which the 1<sup>st</sup> Respondent falsely recorded in the administration unit that she had scolded him and insulted his rank. Consequently, the Petitioner also lodged a complaint in the Information Book.

The Petitioner reported these incidents and the conduct of the 1<sup>st</sup> Respondent to the former Officer in Charge of Boosa Unit of TID, the 2<sup>nd</sup> Respondent, and the 3<sup>rd</sup> Respondent. She asserts that the 2<sup>nd</sup> Respondent did not entertain her complaint. Subsequently, she was transferred to Vavuniya, but following an appeal to the Department of Grievances, this transfer was revoked. As a result, the Petitioner reported to TID Headquarters, Colombo on 30.06.2016. She states that after her posting to Colombo, the lack of suitable barracks for pregnant women required her to travel over 100 km daily, spending more than eight hours commuting. She states that she was also assigned physically strenuous tasks, such as climbing multiple flights of stairs when the elevator was out of service. Consequently, on 01.07.2016 the Petitioner requested a transfer to Galle or Elpitiya, but by letter dated 05.07.2016 the DIG refused her request, citing a pending inquiry against her.

It seems that the inquiry against the Petitioner concerns a verbal altercation between her and the 1<sup>st</sup> Respondent. An inquiry was conducted based on the Charge Sheet issued against the Petitioner, and a portion of the proceedings of such inquiry is marked as 'X11' and 'X12'. The Petitioner argues that the Respondents acted arbitrarily and capriciously by neglecting to investigate the 1<sup>st</sup> Respondent's alleged sexual harassment and by hindering her transfer through their failure to reassign her from the TID to an appropriate division.

The Petitioner states that she preferred an appeal to the Director of TID and the 2<sup>nd</sup> Respondent on 01.07.2016, along with a completed 51A form, requesting a transfer from the TID to a Police station in Galle or Elpitiya. She explains that the journey by bus and train was extremely taxing, yet she persisted to avoid jeopardising her job. According to the Petitioner, she had a miscarriage and lost her four-and-a-half-month-old foetus on 13.09.2016. The Petitioner states that owing to the aforesaid loss, her mental trauma and agony were aggravated, and she suffers from the same to the present day. The contention of the Petitioner is that the Respondents' inaction, along with their actions against her, including her subsequent transfers, were motivated by improper intentions related to her rejection of the 1<sup>st</sup> Respondent's sexual advances.

The Petitioner asserts that the actions of the Respondents outlined in her Petition were directed against her solely because she is a female police officer, thereby violating her rights under Article 12(2) of the Constitution. She further contends that the Police Department lacks specific provisions, whether through law, subordinate legislation, or executive

action, to promote the advancement of women, as provided for under Article 12(4). Additionally, she claims that her fundamental rights under Article 14(1)(g), which ensure her freedom to engage in any lawful occupation, profession, trade, business, or enterprise without obstruction, have been infringed.

### ***Statements of Objection of the Respondents***

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have submitted separate affidavits. The 1<sup>st</sup> Respondent, denying the Petitioner's allegations, states that she was transferred to the TID on 14.07.2010, then to the Boosa unit of TID on 10.01.2011, and later to Colombo on 01.07.2016. He notes that he was appointed as Acting Officer in Charge of the Boosa TID unit on 01.01.2016, and had been serving there for approximately six months. In his affidavit, the 1<sup>st</sup> Respondent affirms that on 06.06.2016, the Petitioner spoke to him disrespectfully in the presence of two junior officers in the same unit, as recorded in the routine information book entry marked 1R1. The said incident prompted him to file a complaint against the Petitioner with the 3<sup>rd</sup> Respondent. He maintains that he did not violate the Petitioner's fundamental rights and performed his duties lawfully and justly throughout the relevant period.

In his affidavit, the 2<sup>nd</sup> Respondent states that the Petitioner was transferred to the Vavuniya Unit of the TID, the only other TID unit with female officers, making it the most appropriate assignment during the preliminary inquiry conducted by the Colombo TID Headquarters. The Petitioner reportedly failed to report for duty at the TID unit in Vavuniya. Instead, she worked at the Colombo TID Headquarters from 01.07.2016 to 04.07.2016, before taking multiple days of leave. The 2<sup>nd</sup> Respondent notes that several pregnant female officers travel from various parts of the country to work at the Colombo TID Headquarters, a six-story building equipped with two 24-hour elevators. He also points out that, despite the Petitioner's complaints about travelling over 100 km daily, she attended lectures at the Negombo/Katana Police Academy every Saturday from 8:00 AM to 5:15 PM, during the relevant period. The 2<sup>nd</sup> Respondent claims that the Petitioner did not report any harassment by the 1<sup>st</sup> Respondent to him at the time of the transfer. Additionally, he mentions that pregnant female officers are allowed to report to work one hour early and leave one hour late, and they are transferred to a police station closer to their residence two months before giving birth, remaining there for one year afterwards.

The learned Additional Solicitor General ('ASG') submitted that the preliminary inquiry, concluded on 15.08.2016, recommended that the Petitioner be served with a charge sheet. However, the 2<sup>nd</sup> Respondent, acting on sympathetic grounds, issued only a 'black mark' against her, which could be expunged based on future satisfactory conduct. The ASG argued that the Petitioner's transfer from the TID was not due to any fault of the Respondents and that she was consistently protected under Article 12(1) of the Constitution, meaning her fundamental rights were not violated by the Respondents' actions concerning the transfer.

***Alleged Violation of Articles 12(1) and 14(1)(g) of the Constitution***

I am mindful that this Court needs to examine the alleged violations of the Petitioner's fundamental rights under Articles 12(1) and 14(1)(g) upon which Leave to Proceed was granted, specifically concerning the Petitioner's transfer. Even to consider whether the alleged lewd remarks made by the 1<sup>st</sup> Respondent have a direct or implied link to the actions taken by the authorities in reference to the transfer of the Petitioner, such remarks or allegations must be substantiated against the 1<sup>st</sup> Respondent with sufficient evidence.

The Petitioner places reliance on the judgment of ***P. S. Manohari Pelaketiya v H. M. Gunasekera and Others*** (SC FR 76/2012, SC Minutes of 28.09.2016) in which the Supreme Court has decided that sexual harassment or workplace stress and strain occasioned by oppressive and burdensome conduct under colour of executive office would be an infringement of the fundamental rights of the petitioner of the said case. The learned ASG distinguishes the facts of the above case and submits that the Petitioner in the said ***Pelaketiya v Gunasekera*** case has successfully proved the sexual harassment suffered by her, whereas the Petitioner of the instant case has failed to establish such allegations. Nevertheless, given the unique circumstances of this case and the way it has been presented before this Court, I take the view that I am not mandated to examine any infringement of fundamental rights of the Petitioner considering the alleged grounds of not holding an inquiry against the 1<sup>st</sup> Respondent, upon the lewd remarks allegedly made by him.

Public officers often approach the Court through fundamental rights applications, claiming that their transfers were arbitrary, unreasonable, or driven by political motives. The Supreme Court has consistently stepped in when such transfers are deemed an abuse

of authority or a form of punishment. In terms of the Departmental Order No. A.11 ('2R3') of Sri Lanka Police, the officers are not entitled to transfer as a matter of right. The said document '2R3' stipulates 'privilege transfers' and 'transfers on health grounds'. In terms of Part IV(1) of the said '2R3', an officer wanting a transfer of health grounds may apply on Police Form 51, attaching a medical certificate from a medical officer. Such medical certificates should indicate reasons for recommending the transfer, specifically stating climate, etc.

It should be noted that the authorities eventually approved the Petitioner's requested transfer on 01.07.2016, allowing her to serve at the Baddegama Police Station in the Elpitiya Division. As previously stated, the Petitioner had applied for this transfer using Form 51A, which is based on health grounds and not on any other reasons adduced in the Petition and the affidavit of the Petitioner. The letter dated 04.07.2016 from the Acting Director of the TID to the Deputy Inspector General of Police TID (marked 'X5') recommended the Petitioner's transfer. However, the Transfer Order was issued only on 06.09.2016 (marked 'X16'), which was within 2 months and 6 days from the request of the Petitioner. The Respondents attributed the delay to the provisions in Part I(8) of the said Departmental Order, which prohibits transferring a police officer between Provinces/Divisions while serious charges are pending. The Acting Deputy Inspector General of Police of TID recorded an entry to this effect (marked 'X6'). The reason asserted by the Respondents as an excuse for the delay in concluding the disciplinary inquiry against the Petitioner, was the Petitioner's extended absence from work on leave, as they were unable to record her statement until 08.08.2016.

I must now focus on a letter dated 28.09.2016, signed by the Petitioner (found on pages 46 to 54, starting from page 54, of the appeal brief). In this letter, on page 7, the Petitioner explicitly states that she first learned of her pregnancy on 27.06.2016. She provided copies of two letters from a specialist Obstetrician and Gynaecologist, marked 'X2' (dated 26.06.2016 and 10.07.2016), which advise her to avoid long-distance travel and strenuous activities. These letters, issued under the heading "To whom it may concern," contain largely similar content and they are not accompanied with a diagnosis card. However, the said Gynaecologist did not provide specific reasons for these recommendations. Based on extensive reading, I have noted that a Gynaecologist should be able to identify causes of imminent miscarriage through proper examination, however, the letters marked 'X2' and

‘X17’, issued by the same Gynaecologist, provide no substantive reasons or clinical findings. Moreover, the Petitioner’s final medical document (‘X13’) has not been issued by the said Gynaecologist, but by the Teaching Hospital, Galle. Therefore, a reasonable doubt arises whether such documents were prepared solely to favour her.

Thus, I am not convinced by the arguments raised by the Petitioner that revolve around the letters of the said Gynaecologist. Likewise, I am unable to draw a substantial connection between the alleged delay in approving the Petitioner’s requested transfer and her pregnancy, which she learned about on 27.06.2016.

Based on the above, I find that the Petitioner has not provided sufficient evidence to meet the burden of proof required to establish a violation of fundamental rights under Article 12(1) and Article 14(1)(g) of the Constitution concerning her requested transfer. Additionally, the Petitioner has not presented convincing evidence to show that the purported delay (from 01.07.2016 to 06.09.2016) in issuing the Transfer Order was arbitrary, capricious, or unreasonable. Therefore, I am not persuaded that the Respondents' actions in respect of the request for a transfer by the Petitioner infringed her fundamental rights under Article 12(1) and Article 14(1)(g). Hence, I dismiss the instant Application without costs.

**Judge of the Supreme Court**

**A. L. Shiran Gooneratne J.**

I agree.

**Judge of the Supreme Court**

**Menaka Wijesundera J.**

I agree.

**Judge of the Supreme Court**