

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

In the matter of an Application under Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka for issue of a Mandate in the nature of a Writ of Mandamus.

**CA (Writ) Application No. 114/2013**

1. Sri Parakramage Wasantha Kumara,  
C69, Technical Place, Ampara.

And 151 others.

**PETITIONERS**

1. Inspector General of Police,  
Police Headquarters, Colombo 1.
2. Secretary,  
Ministry of Defence,  
15/5, Baladaksha Mawatha, Colombo 3.
3. Vidyajothi Dr. Dayasiri Fernando,  
Chairman, Public Service Commission.
4. Mr. Palitha Kumarasinghe P.C.
5. Mrs. Sirimavo Attigalla Wijerathne.
6. Mr. S.C. Manapperuma.
7. Mr. Ananda Senavirathna.
8. Mr. N.H. Pathirana.
9. Mr. S. Selva Nadaraja.

10. Mr. A. Mohamed Nahaiya.
11. Mr. N.D.H. Ariyawansa.
12. Ms. T.M.L.C. Senaratne,  
Secretary, Public Service.
13. The Secretary,  
Ministry of Law and Order  
Hospital Lane, Colombo 1.
14. Hon. Attorney General.
15. Justice Sathya Hettige, P.C  
Chairman, Public Service Commission.
16. S.C.Mannapperuma.
17. Ananda Seneviratne.
18. N.H.Pathirana.
19. S.T.Nadarajah.
20. Mohammed Nahiar.
21. Kanthi Wijetunga.
22. Sunil S. Sirisena.
23. Dr. I.M.De Soyza Gunasekara.
24. Dharmasena Dissanayake  
Chairman, Public Service Commission.
25. Justice A. W. A. Salam.
26. Dharani S. Wijayatilake.
27. Dr. Prathap Ramanujam.

28. V. Jegarajasingam.
29. Shanthi Nihal Seneviratne.
30. S. Rannuge.
31. D.L.Mendis.
32. Sarath Jayatillake.

3<sup>rd</sup> – 11<sup>th</sup>, 16<sup>th</sup> – 23<sup>rd</sup> and the 24<sup>th</sup> – 32<sup>nd</sup>  
Respondents are members of the  
Public Service Commission.

3<sup>rd</sup> to 12<sup>th</sup> and the 15<sup>th</sup> – 32<sup>nd</sup>  
Respondents are at  
No. 177, Nawala Road, Narahenpita,  
Colombo 5.

33. Prof. Siri Hettige.  
Chairman, National Police Commission.
34. Mrs. Savithree Wijsekera.
35. Mr. Y.L.M. Zawhir.
36. Mr. Anton Jeyanadan.
37. Mr. P.H. Manatunga.

33<sup>rd</sup> – 37<sup>th</sup> Respondents are Members  
of the National Police Commission

33<sup>rd</sup> to the 37<sup>th</sup> Respondents are at  
BMICH Building,  
No. 9, Bauddaloka Mawatha, Colombo 7.

## RESPONDENTS

**Before:** Arjuna Obeyesekere, J

**Counsel:** Ghazzali Hussain for the Petitioners

Manohara Jayasinghe, Senior State Counsel for the 1<sup>st</sup>  
- 14<sup>th</sup> Respondents

**Written Submissions:** Tendered on behalf of the Petitioner on 27<sup>th</sup> March  
2019

Tendered on behalf of the 1<sup>st</sup> – 14<sup>th</sup> Respondents on  
21<sup>st</sup> January 2019

**Decided on:** 17<sup>th</sup> May 2019

**Arjuna Obeyesekere, J**

When this matter was taken up for argument on 17<sup>th</sup> October 2018, the learned Counsel for the parties moved that this Court pronounce its judgment on the written submissions that would be tendered by the parties.

The Petitioners were serving as Sergeants attached to the Sri Lanka Police Department at the time this application was filed, seeking *inter alia* a Writ of Mandamus directing the 3<sup>rd</sup> – 11<sup>th</sup> Respondents, the then Chairman and members of the Public Service Commission to appoint the Petitioners to the rank of Sub Inspector of Police with effect from 11<sup>th</sup> July 2007. Those who succeeded the 3<sup>rd</sup> and the 4<sup>th</sup> – 11<sup>th</sup> Respondents as Chairman and as members of the Public Service Commission respectively were subsequently added as the 15<sup>th</sup> – 32<sup>nd</sup> Respondents, together with the Chairman and members of the National Police Commission who were named as the 33<sup>rd</sup> – 37<sup>th</sup> Respondents.

In the written submissions filed by the learned Counsel for the Petitioners, it has been brought to the attention of this Court that other than for 61 Petitioners, the rest of the Petitioners have subsequently been appointed as Sub Inspectors of Police.

The Petitioners state that the 1<sup>st</sup> Respondent, Inspector General of Police, by telephone message No. RTM 502 annexed to the petition marked 'P2' called for applications for the promotion of serving Police Sergeants to the rank of Sub Inspector of Police.

According to 'P2', the following qualifications were required of each applicant:

1. පොලිස් සැරයන් තනතුරේ ස්ථිරව තිබීම.
2. පොලිස් සැරයන් තනතුරේ (සාමාන්‍ය රාජකාරි සඳහා බඳවාගන්නා ලද 2007.07.10 දිනට අවුරුදු 06 ක සක්‍රීය සේවා කාලයක් සම්පූර්ණකර තිබීම (සැරයන් තනතුරේදී ලබා ඇති වැටුප් රහිත නිවාඩු වම සේවා කාලයෙන් අඩුකරනු ලැබේ).
3. අයදුම්පත් භාරගන්නා අවසන් දිනට පෙර වූ වසර 05 ක කාලය තුළ නොකැලැල් සේවයක් තිබීම.  
(ආයතන සංග්‍රහයේ II ඛණ්ඩයේ XI.VIII පරිච්ඡේදයේ වගන්ති 24:2 හා 24:3 ට අනුව දැඩුවම ලබා නොතිබීම)
4. ප්‍රථමාධාර පරීක්ෂණය සමත්වී තිබීම.

It is not in dispute that at the time the Petitioners submitted their applications, they possessed the above qualifications, and that the Petitioners faced the interview that was held in July 2007. The Petitioners have annexed to the petition marked 'P1' a table setting out the marks that each of them obtained at the interview. This Court has examined 'P1' and find that the Petitioners have obtained between 47 and 61 marks.

The Petitioners state that those candidates who had obtained 62 marks and above at the interview had been appointed by the 1<sup>st</sup> Respondent to the rank of Sub Inspector. As each of the Petitioners had obtained less than the cut off mark of 62, they were not eligible to be promoted to the rank of Sub Inspector.

Some other candidates who were aggrieved by the above promotions had invoked the fundamental rights jurisdiction of the Supreme Court and the Writ jurisdiction of this Court in 2007 and 2008 challenging the said promotions. Pursuant to a settlement reached outside of Court, the petitioners in the said cases were promoted to the rank of Sub Inspector with effect from 25<sup>th</sup> September 2007, as borne out by telephone message No. RTM 228 dated 9<sup>th</sup> February 2010, annexed to the petition marked 'P3'.

It appears that some other candidates who were dissatisfied with the promotions effected by 'P3' had challenged the said promotions by way of several fundamental rights applications filed in the Supreme Court, soon after 'P3' was issued. Having considered the submissions of the State, the Supreme Court by its judgment delivered in SC (FR) Application No. 145/2010 on 19<sup>th</sup> January 2012<sup>1</sup> had directed that all those petitioners who had obtained 47 marks and above at the interview be promoted to the rank of Sub Inspector. With regard to Women Police Sergeants, the Supreme Court had observed in SC (FR) Application No. 191/2010 that those with 59 marks had been promoted by 'P3' and therefore, that all Women Police Sergeants who had obtained 59

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<sup>1</sup> Similar judgments have been delivered in SC (FR) Application No. 147/2010; SC (FR) Application No. 151/2010, and SC (FR) Application No. 191/2010.

marks or above at the interview should be promoted to the rank of Sub Inspector of Police (Women).

The Petitioners filed this application on 2<sup>nd</sup> April 2013 claiming that they are entitled to be promoted to the rank of Sub Inspector of Police, as each of them have obtained 47 marks and above at the interview, which is the 'cut off' mark for promotion. In the case of Women Police Sergeants, this mark was 59. This appears to be the basis of the Petitioners' case.

It would therefore be appropriate to consider the aforementioned judgments of the Supreme Court relied upon by the Petitioners, which have been produced by the Respondents marked 'R2' – 'R5'. In SC (FR) Application No. 145/2010, the learned Deputy Solicitor General had informed Court that 'out of the Officers who were promoted in terms of RTM 228 dated 9<sup>th</sup> February 2010, some officers had obtained only 47 marks and therefore the cut off mark for the said set of promotions had been 47'. The Supreme Court had therefore observed that, "accordingly, it was clearly shown that promotions to the rank of Sub Inspector of Police had been given to Officers who had obtained over and above 47 marks at the interviews held in July 2007."

The Supreme Court had thereafter held that the petitioners in the said case and those who were promoted pursuant to 'P3' "are of the same class and therefore there cannot be any differentiation between these two groups". Accordingly, the Supreme Court had held that the petitioners in the said case should be promoted to the rank of Sub Inspector of Police from the same date as those promoted by 'P3'.

This Court observes that in view of the submission of the State that in addition to the petitioners in those cases, there may be other officers who would have obtained over and above 47 marks at the interview held in July 2007, the Supreme Court had held that the said judgment would only apply to those petitioners who had come before the Supreme Court within one month of 'P3', as required by Article 126(2) of the Constitution.

It is not in dispute that the Petitioners in this application have not invoked the fundamental rights jurisdiction of the Supreme Court and that even this application had been filed after a period of more than one year and two months from the date of the said judgment of the Supreme Court, and a period of over 3 years after 'P3' had been issued. It has been consistently held by the Supreme Court as well as by this Court that the discretion of this Court will not be exercised where there has been a long delay and where that delay has not been explained to the satisfaction of this Court.

In Seneviratne v. Tissa Dias Bandaranayake and another<sup>2</sup>, the Supreme Court, advertent to the question of long delay, held as follows:

"If a person were negligent for a long and unreasonable time, the law refused afterwards to lend him any assistance to enforce his rights; the law both to punish his neglect, *nam leges vigilantibus, non dormientibus subveniunt*,<sup>3</sup> and for other reasons refuses to assist those who sleep over their rights and are not vigilant."

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<sup>2</sup> 1999 (2) Sri LR 341 at 351.

<sup>3</sup> For the laws assist the watchful, (but) not the slothful.



This Court observes that if the Petitioners were aggrieved by 'P3', they ought to have sought a legal remedy soon after 'P3' was issued. It is further observed, that the Petitioners have not explained their delay in invoking the jurisdiction of this Court and therefore, the Petitioners must bear full responsibility for the delay and the consequences thereof.

The granting of a Writ of Mandamus is a matter for the discretion of Court. It is not a Writ of right and is not issued as a matter of course. In Jayaweera v. Assistant Commissioner of Agrarian Services Ratnapura and Another<sup>4</sup> this Court held as follows:

"the Petitioner who is seeking relief in an application for the issue of a writ of certiorari is not entitled to relief as a matter of course, as a matter of right or as a matter of routine. Even if he is entitled to relief, still the court has a discretion to deny him relief having regard to his conduct; delay, laches, waiver, submission to jurisdiction are all valid impediments which stand against the grant of relief."

In view of the inordinate delay in filing this application, this Court is of the view that the Petitioners are not entitled to the discretionary remedy of Mandamus, and for that reason, the necessity for this Court to consider if the Petitioners have made out a case for the issuance of the Writ of Mandamus will not arise, suffice to say that had the Petitioners fulfilled the requirements for promotion, yet it must be effected according to the procedure laid down in the Scheme of Recruitment.<sup>5</sup>

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<sup>4</sup> 1996 (2) Sri LR 70 and page 73.

<sup>5</sup> See Anandasiri vs Premasiri, General Manager, Sri Lanka Railways [CA (Writ) Application No. 193/2007; CA Minutes of 20<sup>th</sup> January 2012] where it was held as follows: "Even if the Petitioners have fulfilled the basic

This Court must note that even if the Petitioners are entitled to a Writ of Mandamus, this Court will not exercise its discretion in favour of the Petitioners due to the administrative inconvenience that would be caused by granting promotions to those who have so far not been promoted, 12 years after the interviews were held and, the consequences of granting a Writ in such circumstances.<sup>6</sup> This would include issues relating to seniority, consequential promotions, payment of back wages, adjustment of pensions in the case of those who may have retired, others who may be similarly placed as these Petitioners, etc. This Court is also mindful that there may be disciplinary proceedings against some of the Petitioners, which this Court is not aware of, especially since 6 years have lapsed since the filing of this application.

A similar view with regard to the inconvenience that could be caused by issuing a Writ of Mandamus has been expressed by the Supreme Court in **Wannigama vs Incorporated Council of Legal Education**<sup>7</sup> where the Supreme Court held as follows:

“Learned Deputy Solicitor General for the 1<sup>st</sup> and 3<sup>rd</sup> respondents contended that any order, which directs the Sri Lanka Law College to admit the appellant would lead to several administrative difficulties as there are a large number of other applicants, who have obtained higher

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requirements for promotion it has to be effected according to the procedure laid down in the Scheme of Recruitment. The promotion depends on the cadre vacancies. A promotion cannot be claimed as of right; a mandamus is issued only if the Petitioners have a statutory right to promotion and the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have a public legal duty to enforce that right.”

<sup>6</sup> See Venerable Dr. Paragoda Wimalawansa Thero Vs. 1. B. Wijerathna, Commissioner of Motor Traffic [CA (Writ) Application No. 1978/2004; CA Minutes of 31<sup>st</sup> March 2014] which followed the decision of the Supreme Court in *Innasitamby vs Government Agent, Northern Province* [34 NLR 33] where it was held that before issuing a writ of mandamus, the Court is entitled to take into consideration the consequences which the issue of the writ will entail.

<sup>7</sup> 2007 (2) Sri LR 281 at 292.

marks than the appellant. Learned Deputy Solicitor General submitted that if an order is given to admit the appellant considering fair procedure, all those applicants, who would exceed one thousand in number, will have to be admitted. He further contended that, the Sri Lanka Law College is not equipped to accommodate over one thousand students in a given batch. Accordingly, relying on the decision of Soertsz, J. in Maha Nayake Thero, Malwatte Vihare v Registrar General,<sup>8</sup> it was contended that the harm to the appellant, who did not qualify for admission to the Sri Lanka Law College is not sufficiently significant to outweigh the administrative inconvenience that would undoubtedly follow in the event a decision is taken to admit the appellant to the Sri Lanka Law College. In Maha Nayake Thero, Malwatte Vihare, Soertsz, J. had stated that, "... the writ may be refused not only upon the merits, but also by reason of the special circumstances of the case. The court will take a liberal view in determining whether or not the writ will issue."

Having said that, if the marks obtained at the interview is the determining factor for promotion, the action of the 1<sup>st</sup> Respondent in appointing persons who have obtained less or equal marks than the Petitioners is unreasonable, and can result in an injustice being caused to the Petitioners. Neither the Petitioners nor the Respondents have explained if there were any special considerations that prompted the Ministry of Defence, Public Security, Law and Order to have promoted those who obtained 47 marks at the interview when the cut off mark for promotion was 62. In the absence of any explanation, this Court is of the view that the 1<sup>st</sup> Respondent and the National Police Commission must consider why the Petitioners who had obtained either

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<sup>8</sup>39 NLR 186; quoting Halsbury's Laws of England.

equal or higher marks at the interview than those who were appointed in terms of 'P3' are being treated differently and why the Petitioners who have obtained the same or higher mark as those who were promoted should also not be promoted, if the sole criterion for promotion was the marks obtained at the interview, and take remedial measures.

In this background, this Court directs the 1<sup>st</sup> Respondent, the Inspector General of Police and the National Police Commission to consider carefully the circumstances under which those who obtained lesser or equal marks than the Petitioners at the interview held in 2007 have been appointed as Sub Inspectors of Police, and whether the Petitioners are eligible to be promoted to the rank of Sub Inspector of Police on the basis of the marks obtained by them at the said interview. If the National Police Commission is satisfied that those Petitioners who have not been promoted already are eligible to be so promoted to the rank of Sub Inspector, it may consider their promotion to the rank of Sub Inspector of Police, on a supernumerary basis in the event there aren't sufficient vacancies in the cadre, with effect from a date and subject to any other conditions to be determined by the National Police Commission.

Subject to the above, this application is dismissed. This Court makes no order with regard to costs.

**Judge of the Court of Appeal**