

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

In the matter of an application under and in terms of Articles 17 and 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

SC / FR / 348 / 2013

1. M.P.A.C. Pieris
No. 3 /4, New Police Flats,
Maligawatta,
Colombo 10

And 27 others

PETITIONERS

-Vs-

1. N.K. Illangakoon
The Inspector General of Police,
Police Headquarters,
Colombo 01.

1A. Mr. Pujith Jayasundara,
Inspector General of Police,
Police Head Quarters,
Colombo 01.

1B. C. D. Wickramaratne

Acting Inspector General of Police,
Police Head Quarters,
Colombo 01.
And 21 others

RESPONDENTS

AND

1. M.P.A.C. Pieris
No. 3 /4, New Police Flats,
Maligawatta,
Colombo 10.
2. C.M.D.J.B. Palihena
25/2/A, Angammana Road,
Ratnapura.
3. A.H.A.S. Somasiri
No. 67/2B,
Vivekarama Temple Road,
Webadagalla, Nittambuwa.
4. T.M. Ratnayake
13/1, Dharmapala Mawatha,
Bandarawela.
5. R.M.G. Rathnayake
No. H 315, Anderson Flats,
Narahenpita, Colombo 05.

6. K.L. Liyanage
No. 131/4, Silva Road,
Borella.
7. N.D.S.D. Niwunhella
185, Walpitamulla, Dewalapola.
8. A.N. Weerakoone
406/2, Ihala Karagahamuna,
Kadawata.
9. P.K.W.R.M.I.B. Pilapitiya
No. 85, Rajajgiriya Road, Rajagiriya.
10. D.M.S. Dissanayake
C/04, Police Flats, Maradana.
11. K.H.N.D. Kaangara
No. 11/55, Ratmalkaduwa Road,
Singhapitiya, Gampola.
12. W.K.H.C.B. Welagedara
No. 36, Jayamalapura, Gampola.
13. D.D. Wickramasinghe
No. 270, Rajasinghe Mawatha,
Hewagama, Kaduwela.
14. D.I.M. Nadeshalingam
C/7, Police Flats, Maradana.

15. R.A.S. Karunarathne
No. 41/3/S 7/A,
Kalumuthuketiyawatta,
Old Road, Watareka,
Weegoda.
16. S. Kasthuriarachchi
26/31, Alubohalandawatta Road,
Mawinthara, Piliyandala.
17. S. Krishanthan
No. 79/1, Deiyyannewela, Kandy.
18. C.W.P. Fernando
Visenthi, Medakoswadiya,
Mahawewa.
19. R.N.A.M.P. Weerakoone Banda
No. 23, D.S. Senanayake Mawatha,
Anuradhapura.
20. W.M. Don Kamal Abeysiri
No. 09, Welikanna waga.
21. G. Saman Ranasinghe
F 189/1, Saman, Randeewala,
Mawanella.
22. Deshabandu Senarathne
Dickson sahari, Kurugoda,

Kesawagaramaya.

23. K.P. Wijemanne

“Wijayanthi” Medagoda,
Amthirigala.

24. E.M.P.K. Ekanayake

“Sethsiri” Diwulwewa, Hettipola.

25. U.M.J.W.K. Amarasinghe

114/25/1/1, Asgiriya, Kandy.

26. M.M.J. Ariyawansa

97/C/1, Tangalle Road, Weeraketiya.

27. S.K. De Silva

Mahaduwa watta, Unanpitiya,
Beddegama.

28. E.W.D.K. Wimala Gunasekera

P24/3, Police Quarters,
Anuradhapura Road, Puttalam.

PETITIONERS

-Vs-

1. N.K. Illangakoon

The Inspector General of Police,
Police Headquarters,

Colombo 01.

1A. Mr. Pujith Jayasundara

Inspector General of Police,
Police Head Quarters,
Colombo 01.

2. Nanda Mallawarachchi

Secretary,
Ministry of Law and Order,
Renuka Building,
6th Floor, Chatham Street,
Colombo 01.

2A. Jagath P Wijeweera

Secretary,
Ministry of Law and Order and
Southern Development,
Floor-13, 'Sethsiripaya (Stage-II),
Battaramulla.

2B. Padmasiri Jayamanne

Secretary,
Ministry of Law and Order and
Southern Development,
Floor-13, 'Sethsiripaya (Stage-II),
Battaramulla.

2C. Hemasiri Fernando

Secretary,

Ministry of Defence,
15/5, Baladaksha Mawatha,
Colombo 03.

**(PARTY SOUGHT TO BE ADDED
IN THE PLACE OF 2B
RESPONDENT ABOVENAMED)**

3. K.E.L. Perera
Deputy Inspector General of Police,
Personnel Division,
Police Headquarters,
Colombo 01.

3A. Gamini Mathurata
Deputy Inspector General of Police,
Personnel Division,
Police Headquarters,
Colombo 01.

4. Dr. Dayasiri Fernando,
Chairman

4A. Darmasena Dissanayaka
Chairman.

5. Palitha Kumarasinghe PC
Member

5A. A.W.A Salam
Member

6. Sirimavo A. Wijeratne
Member

6A. Dr. Prathap Ramanujam
Member

7. S.C. Mannapperuma
Member

7A. V. Jegarasingam
Member

8. Ananda Seneviratne
Member

8A. Santi Nihal Seneviratne
Member

9. N. Pathirana
Member

9A. S. Ranugge
Member

10. Thillairajah
Member

10A. D.L. Mendis
Member

11. M.D.W. Ariyawansa
Member

11A. Sarath Jayathilaka
Member

12. A. Mohamed Nahiya
Member

12A. Shantha Wijethilaka
Member

13. Chandrani Seneviratne
Secretary

13A. H.M.G. Seneviratne
Secretary

The 4th Respondent is the Chairman,
the 5th-12th Respondents are Members
and the 13th Respondent is the
Secretary
respectively of the Public Service
Commission
No. 177, Nawala Road,
Colombo 05.

14. Hon Attorney General
Attorney General's Department
Colombo 12.

15A. Prof. Siri Hettige
Chairman

16A. Mr. P.H. Manatunga
Member

17A. Mrs. Savithree Wijesekara
Member

18A. Mr. Y.L.M. Zawahir
Member

19A. Mr. Anton Jeyanadan
Member

20A. Mr. Tilak Collure
Member

21A. Mr. Frande Silva
Member

22A. Mr. N. Ariyadasa Cooray
Secretary

22B. Saman Dissanayake
Acting Secretary

The 15th Respondent is the Chairman,
the 16th-21st Respondents are Members
and the 22B Respondent is the Acting
Secretary respectively of the National

Police Commission of

Block No. 9,
B.M.I.C.H. Premises,
Bauddhaloka Mawatha,
Colombo 07.

RESPONDENTS

Before : Jayantha Jayasuriya, PC, CJ.
Murdu N.B. Fernando, PC, J.
A.H.M.D. Nawaz, J.

Counsel : Faisz Musthapha, PC. with Mrs. Faisza Markar, PC.
and Ms.Thushani Machado instructed by
Ms. Tharmarajah Tharmaja for the Petitioners.

Ms. Sureka Ahmed, SSC. for the Hon. Attorney
General.

Argued on : 01.07.2024

Decided on : 29.11.2024

A.H.M.D. Nawaz, J

1. The Petitioners, comprising both former and current members of the Regular Service of the Police Department of Sri Lanka, were recruited as Sub Inspectors (“SIs”) in the years 1990 and 1992. As at the time of filing

their Petition, the Petitioners collectively possessed over two decades of distinguished service, characterized by unblemished conduct and dedication to duty.

2. Notwithstanding their extensive tenure, the Petitioners allege that their career progression has been unjustly constrained, having received only two promotions during their service periods: the first, to the rank of Inspector of Police (“IP”), effective from January 1, 2006, and the second, for certain Petitioners, to the rank of Chief Inspector (“CI”) on subsequent occasions.
3. The pith and substance of the Petitioners' complaint arises from the alleged delay and misapplication of the promotional framework governing their advancement. In particular, the Petitioners contend that their promotions to the rank of IP ought to have been backdated to January 1, 2003, in accordance with Circular No. 1737/2003, which introduced a “Special Scheme of Promotion.” The Petitioners further argue that this purported delay has adversely impacted their eligibility for subsequent promotions, including to the rank of CI, thereby causing significant prejudice to their career trajectories. They now seek equitable relief from this Court to rectify these grievances.

Factual matrix:

4. In July 2002, a qualifying examination for promotion to the rank of IP was conducted. While approximately 315 candidates successfully passed the examination, the Petitioners did not succeed the examination. Subsequently, Circular No. 1737/2003, issued on September 26, 2003, introduced a “Special Scheme of Promotion” to address cadre vacancies, which included 629 vacancies in the rank of IP.

5. A further RTM to the Circular, bearing No. RTM 208 dated October 6, 2003 stipulated eligibility based on a minimum of five years of service as a SI. As at that date, these Petitioners, who had already served as SIs for over a decade, met the requisite eligibility criteria but as is borne out, only those SIs with 12 years of service were promoted under Circular bearing No. 1737/2003.
6. At the time of issuance of Circular No. 1737/2003, 172 SIs who had already completed over 12 years of service in the rank of SI were selected for promotion to the rank of IP pursuant to the qualifying examination held in 2002 and began undergoing training in preparation for their appointment.
7. However, these promotions contemplated under Circular No. 1737/2003 were delayed due to the pendency of legal proceedings in CA Writ No. 1560/03, resulting in a stay order that halted the promotion process. Upon the conclusion of the writ application in March 2005, 299 SIs were promoted to the rank of IP, retrospectively, with effect from January 1, 2003.
8. Thus, it could be seen while 172 SIs were promoted as IPs based on seniority and merit, 299 SIs were promoted as IPs on merit. The appointment of these two categories of officers were made effect from January 1, 2003. It has to be noted the Petitioners who has neither passed the exam nor had 12 years of service were however, below these categories of SIs who became IPs with effect from 2003.
9. While the position of these Petitioners stood as above another development took place as regards Police officers in the Reserve Service of the Police Department. The Cabinet took a decision on February 1, 2006, to absorb the reserve police officers into the regular service of the Police Force. This Cabinet decision also provided that these reserve force officers thus

absorbed were to be placed immediately below the regular cadre officers of the same rank on the seniority list. Despite this placement, the reservists gained an advantage over the Petitioners in being considered for CI promotions, owing *inter alia* to the Petitioners' promotions not being backdated to January 1, 2003.

10. This Cabinet decision entailed the consequence of the reservists gaining an advantage over the Petitioners in being considered for CI promotions at a subsequent stage. It would however appear that there were 158 vacancies yet remaining in the cadre of IPs. It could be gleaned from the pleadings and the arguments that these Petitioners before this Court entertained the legitimate expectation of filling these vacancies.
11. When this Cabinet decision took place to convert the reservists into regulars, the Petitioners remained as SIs with no ante-dating of their promotions as IPs with effect from January 1, 2003. In other words, the principal complaint of these Petitioners is that had they been promoted as IPs in 2006 with their promotions to be effective from January 1, 2003, they would not have suffered this detriment of remaining as SIs.
12. Subsequently, a further Circular (RTM 129) was indeed issued in February 2006, granting these Petitioners promotions to the rank of IPs, but only with effect from January 1, 2006. They contend that this created a significant three-year delay in their promotions, marking a glaring discrepancy in their career progression compared to their peers.
13. Whilst this application was pending before this Court, the Inspector General of Police (“IGP”) at the time issued RTM 855 dated September 27, 2018, ordering the promotion of 14 IPs to the rank of CI with effect from October 2, 2017. Notably, these 14 officers, who were promoted in terms of

RTM 855, were those that had been absorbed into the regular service from the reserve service under the 2006 Cabinet Decision and had been placed below the Petitioners in the order of seniority in the rank of SIs.

14. It could be seen that the delayed promotions set in motion a cascade of negative effects for the Petitioners. By the time they were promoted to the rank of IPs, the eligibility window for promotions to the rank of CIs under RTM 141 of 2006 had already closed, thereby rendering them ineligible for further advancement during the subsequent promotional cycles. This compounded the inequity, leaving the Petitioners at a distinct disadvantage, both professionally and financially.

Petitioners' Case:

15. The Petitioners assert that the delay in their promotions to the rank of IPs and the subsequent misalignment in their career trajectory could be said to have stemmed from the protracted legal proceedings in *CA Writ No. 1560/03*—circumstances beyond their control. They argue that their promotions should have been backdated to January 1, 2003, in line with the provisions of Circular No. 1737/2003, which would have ensured their rightful seniority.
16. The Petitioners contend that had their promotions been timeously and correctly backdated, they would have gained seniority comparable to their contemporaries, and, as a result, would have been eligible for promotions to the rank of CIs during the subsequent cycles. The cascading effect of the Respondents' failure to rectify this situation not only derailed their career advancement but caused substantial financial and professional prejudice.

17. In an effort to resolve this issue, the Petitioners lodged multiple appeals and representations with the IGP and the National Police Commission.

The Committee appointed by the IGP and its report

18. In response, the IGP appointed a committee comprising senior officers to investigate the matter. In 2010, the committee issued a report confirming the Petitioners' eligibility for retrospective promotions to January 1, 2003, and attributed the delay solely to the pendency of the writ proceedings. Despite the committee's recommendations, the Petitioners aver that the Respondents failed to take corrective action, leaving them in a position of inequity.
19. The Petitioners further contend that this failure on the part of the Respondents created an untenable situation wherein officers absorbed from the reserve police service and those promoted retroactively gained undue seniority over them. This anomaly has had a lasting impact on their professional standing within the Police Department and has inflicted considerable prejudice upon them.
20. The Petitioners lodged complaints with the Human Rights Commission of Sri Lanka ("HRC") under case numbers HRC 4213/06 and HRC 5324/07. While the HRC acknowledged the delay in promotions, it has yet to issue a final determination, leaving the Petitioners without any effective recourse.
21. Thus, the Petitioners invoke the jurisdiction of this Court seeking as substantive relief *inter alia*:
 1. to declare that the Petitioners are eligible to apply to be selected for the post of "Chief Inspector of Police" and

2. to direct the [1st to 13th] Respondents and/or any one or more of them to backdate the promotions of the Petitioners to the rank of IP with effect from 01.01.2003.

Respondents' Case:

22. The Respondents have provided detailed justifications addressing two central issues raised by the Petitioners, which are as follows:

1. Eligibility of Officers Absorbed from the Reserve Force

23. Firstly, the Respondents address the Petitioners' contention that the officers who were absorbed from the Reserve Police Force into the regular force in 2006 and promoted to the rank of IPs did not have eight years of service in the regular force as of October 1, 2013. Despite this, these officers were promoted to the rank of CIs, taking into account their service in the reserve police force. In the view of the Petitioners this was improper, as they argue that the promotion of officers from the reserve force should not have superseded their own eligibility for promotion, given their longer service in the regular force.

24. However, the Respondents assert that the integration of these officers was based on specific administrative and operational needs, and thus, their promotion to CI was not unjustified.

25. The Respondents argue that this was done in accordance with the applicable rules and policies governing promotions, specifically to address vacancies and operational needs within the Police Department. In this context, the Respondents maintain that the promotion of these officers, although they did not meet the standard requirement of service in the regular force, was valid as their prior service in the Reserve force was

recognized and factored into their overall service record. Therefore, the Respondents assert that this promotion was not irregular but a necessary administrative step to ensure effective policing.

2. Backdating of the Petitioners' Promotion to January 1, 2003

26. Secondly, the Petitioners assert that their promotion to the rank of IPs should be backdated to January 1, 2003, which is the date on which other officers who sat for the promotion examination in 2002 were promoted. The Petitioners further argue that this backdating would then make them eligible to apply for promotion to the rank of CIs in 2013.
27. The Respondents, in response, contend that the delay in granting the Petitioners' promotions was due to circumstances beyond the control of the Respondents, primarily legal proceedings which had resulted in a stay on the promotions. The Respondents maintain that once the legal and administrative hurdles were cleared, promotions were granted in accordance with the existing circular, but the effective date of January 1, 2006, was deemed appropriate based on the available vacancies and the legal framework in place at the time.
28. The Respondents argue that the Petitioners' primary intention in seeking to backdate their promotion to 2003 is to claim retrospective adjustments to all subsequent promotions, potentially leading to their early promotion to the rank of Assistant Superintendent of Police ("ASP"). Such retrospective adjustments would create administrative confusion within the police force.
29. Furthermore, the Respondents point out that the Petitioners accepted their 2006 promotions without protest and did not challenge their promotion dates until several years later, only raising their grievances after failing to

qualify for promotions in 2013. If the Petitioners genuinely believed they were entitled to backdated promotions, they should have raised their objections at the time of their promotion in 2006 or, at the very least, when the recommendations to fill the 158 vacancies were made.

30. The Respondents conclude that the Petitioners' allegations are baseless, untimely, and lack merit. They submit that the fundamental rights of the Petitioners have not been violated and move the Court to dismiss the application with costs.
31. At the outset, it becomes imperative to address the Respondents' objection to the maintainability of this application, asserting that it is belated. They contend that the Petitioners accepted their promotions in 2006 without protest and failed to challenge the effective dates of such promotions until several years later, only raising grievances following their inability to qualify for promotions in 2013. According to the Respondents, if the Petitioners genuinely believed they were entitled to backdated promotions, they ought to have raised objections in 2006 or, at the time recommendations were made to fill the 158 vacancies for CI promotions.
32. This Court, however, does not find merit in the Respondents' argument of delay. Fundamental rights violations, by their very nature, constitute ongoing infractions, particularly where their adverse effects persist *in perpetuum*. It is evident that the Petitioners did not acquiesce in the validity of their 2006 promotions, as is apparent from their lodging a complaint with the HRC under Reference No. HRC 4213/06, dated July 27, 2006, promptly seeking redress for their grievances.
33. Moreover, subsequent developments have highlighted the ongoing nature of the alleged violation. These include the Petitioners' continued

ineligibility under RTM 141, dated September 4, 2013, for promotion to the rank of CIs; the advantage gained by those absorbed into the Regular Service under the Cabinet Decision dated February 1, 2006, which allowed them to be considered for CI promotions ahead of the Petitioners; and the issuance of RTM 855 on September 27, 2018 by the IGP, which ordered the promotion of 14 IPs to the rank of CIs, despite their prior placement below the Petitioners in the seniority list. These actions, combined with the Respondents' continued insistence on the 2006 promotions for the Petitioners as valid, have perpetuated a situation in which the Petitioners' constitutional rights remain infringed *de die in diem*.

34. The doctrine of continuing violation is particularly apposite in the present matter, as the alleged infringement of the Petitioners' fundamental rights is not confined to a singular, isolated act in 2006 but rather constitutes a cascading series of acts and omissions that have had enduring repercussions on the Petitioners' careers and professional standing. A continuing violation takes place when specific acts or omissions are so interconnected as to constitute a cascading series of acts or omissions which result in a domino effect such as loss of seniority and supersession by those placed below the Petitioners. Thus, the Petitioners retain the right to challenge the validity or tenability of the 2006 promotion and its consequent implications, even at this juncture, as it represents both direct and collateral attack on a continuing violation of their fundamental rights.

35. This Court has already observed that, after the promotion of 471 SIs, 158 vacancies remained in the rank of IPs. Notably, the 471 SIs promoted to IPs with effect from 01.01.2003 comprised two categories: 172 SIs who had been promoted on seniority and merit because of a previous examination (seniority and merit) and 299 SIs who passed a subsequently held qualifying examination. It must also be pointed out that the Petitioners

were SIs, immediately below the 299 SIs, thus appointed as IPs with effect from 01.01.2003.

36. It is a well-known fact among the parties that the promotions of 172 SIs who had passed the subsequently held qualifying examination to the rank of IPs, could not be effected due to a pending application before the Court of Appeal in Case No. *CA Writ/1560/03*. The Court of Appeal had issued an interim order restraining promotions to the rank of IPs until the final hearing and determination of the said application.
37. Only after the termination of the said writ application in March 2005 were the 299 SIs promoted to the rank of IPs, with effect from 01.01.2003.
38. By March 2005 both the categories of SIs had been promoted as IPs with effect from 01.01.2003. Contrary to the arguments presented by the Respondents, the Petitioners did not remain inactive. The material before this Court demonstrates that they addressed a letter dated 05.05.2005 to the then Secretary of the National Police Commission, requesting that their long service be recognized and that they be promoted without delay. However, it appears that no response was received to this letter even at the time of filing this application before this Court.
39. Additionally, other surrounding circumstances clearly indicate that the Petitioners had been actively agitating for their promotion to the rank of IPs, insisting that the promotion be made effective from 01.01.2003.
40. As facts which would be recited presently demonstrate, the Petitioners acted promptly, and the alleged violation stemming from an inaction they claim, appears to have persisted continuously.

Circular No. 1737/2003 dated 26.09.2003

41. With these findings in place, the Court now turns to an analysis of the relevant directives and administrative decisions—commencing with circular No. 1737/2003 dated 26.09.2003 and culminating in the subsequent policy instruments, including RTM 141 of 2006 and RTM 855 of 2018.
42. This examination underscores a discernible evolution in the regulatory landscape governing police promotions, vis-à-vis seniority adjustments, eligibility criteria, and the implications of cadre restructuring initiatives.
43. It is evident from the material placed before this Court that as of January 1, 2003, a total of 629 vacancies existed in the rank of IPs. In an effort to address this, a structured promotional scheme was announced by the Respondents, operating along two distinct pathways: *promotions based on seniority and promotions based on merit*. Officers who had completed twelve years of service as SIs were deemed eligible under the seniority pathway, which resulted in the promotion of the aforesaid 172 SIs to the rank of IPs with effect from January 1, 2003.¹
44. In parallel, an IP qualifying examination was held on September 1, 2002, to facilitate promotions under the merit category. However, those officers namely, those who had clocked in 12 or more years of service as SIs and those who successfully passed this examination were initially precluded from receiving promotions due to the writ application referred to above.²
45. Following a settlement in the said writ application, 299 SIs who had passed the aforesaid qualifying examination were promoted to the rank of IPs with retrospective effect from January 1, 2003. These officers were subsequently

¹ Please see para 35 of this judgement.

² Please see para 36 of this judgement.

ranked immediately below the 172 officers who had been promoted on the basis of seniority and pursuant to a previous examination. As a result of these promotions, a total of 471 SIs were elevated to the rank of IPs, leaving 158 vacancies in the said cadre unfilled.

46. The Petitioners, who were also SIs at the material time, had completed over eleven years of service in that rank by 2003. As per the RTM bearing No. 208 dated October 6, 2003, the criterion for promotion to the rank of IP was a minimum of five years of service as an SI. Thus, the Petitioners were indisputably qualified for promotion by the time the Respondents undertook the process of filling the said vacancies.
47. However, despite being similarly or better situated than officers who were promoted retrospectively to January 1, 2003, the Petitioners were excluded from the process.
48. If a period of five years had been the requirement for promotion from the post of SI to IP as far back as October 2003, a substantive legitimate expectation was created by both the RTM of 208 of 06.10.2003 and upon the corresponding circular issued to this effect namely, circular No. 1737/2003 dated 26.09.2003 which also, predicated that the vacancies in the position of IPs would be filled with effect from 01.01.2003.
49. Despite the creation of a substantive legitimate expectation to promote the Petitioners with effect from 01.01.2003, the Petitioners were not afforded this benefit even after the writ application in the Court of Appeal terminated and 299 SIs were subsequently promoted with effect from 01.01.2003. It is appropriate to recall that these Petitioners were just immediately below the aforesaid 299 SIs who were promoted and there remained in the cadre of IPs 158 vacancies.

50. Further evidence presented before this Court reveals that the exclusion of the Petitioners from consideration for promotion with effect from 01.01.2003 appears to conflict with the recommendations of the relevant authorities, as outlined below.
51. In a letter dated August 29, 2005, the then IGP addressed the National Police Commission, confirming that as of January 1, 2003, there had been 629 cadre vacancies in the rank of IPs. Of these, 172 promotions had been granted based on seniority and merit, 299 on merit after the termination of the Court of Appeal writ application, leaving 158 vacancies unfilled. The letter explicitly acknowledged the possibility of addressing these remaining vacancies through a special promotion scheme for officers with long-standing service in the rank of SIs, as outlined in Circular No. 1737/2003. This scheme expressly required only five years of service, making these Petitioners eligible, as they had over 11 years of service in the rank of SIs. The communication carried the implication that the Petitioners should be the potential beneficiaries of this scheme, with promotions being backdated to 01.01.2003.
52. Furthermore, a committee appointed by the then IGP under Circular CRTM 724, chaired by Senior DIG Administration Mr. B.K.G. Nawaratne and comprising DIG (Rtd.) D.S.R. Wanaguru and SSP (Rtd.) D.D. Ranasinghe, conducted a comprehensive inquiry into the grievances of officers, including the Petitioners. In its report dated October 26, 2010, the Committee unequivocally recommended that the Petitioners' promotions to the rank of IP be backdated to January 1, 2003, aligning with the promotions granted to other officers in similar circumstances.
53. The sequence of events and the recommendations placed before this Court thus raise a pertinent question as to why the Petitioners, who satisfied the

requisite eligibility criteria and were entitled to be considered for the remaining 158 vacancies, were denied the benefit of retrospective promotion. The administrative and procedural inconsistencies in the Respondents' actions have resulted in the Petitioners being placed at a manifest disadvantage, despite being eligible for the same treatment as their peers promoted with effect from 2003. The inequities faced by the Petitioners are further underscored by the fact that both the IGP and the appointed Committee recognized the merit of their claims and sought to remedy the same by recommending backdated promotions.

54. Thus, the letter of the then IGP dated August 29, 2005 and the Nawaratne Committee Report of 2010 reinforced the substantive legitimate expectation accruing to the Petitioners.
55. It would appear that this recommendation in the report that their promotion to the post of IP be backdated 01.01.2003 was not implemented by the 1st Respondent namely, the Inspector General of Police and other Respondents.
56. It is worth recalling that long before the Nawaratne Committee issued its recommendation and report in 2010, the Petitioners had been promoted as IPs with effect from 01.01.2006 and not from 01.01.2003. The issue of ante-dating their promotion with effect from 01.01.2003 had been quite live and continued on account of the agitation and challenges mounted by the Petitioners and it is on account of this challenge that the Nawaratne Committee strongly recommended their promotions to be backdated with effect from 01.01.2003.

57. I must also hark back to the 1st complaint made by the Petitioners to the Human Rights Commission by a letter dated 27.07.2006 to the effect that their promotions were not being backdated with effect from 01.01.2003 and this complaint has been acknowledged by the HRC by its letter dated 28.07.2006. This letter has been appended to the Petition evidencing the fact that the matter has been pending before the HRC with no decision thereon.
58. Since the 1st Respondent had failed to give effect to the recommendation contained in the said report, there is evidence before this Court that the Petitioners addressed a further complaint to the Human Rights Commission complaining of the non-implementation of the said recommendation to backdate the said promotions to the rank of IP to 01.01.2003.
59. Whilst matters remained as such, the then IGP by RTM dated 04.09.2013 called for application from eligible persons holding the rank of IPs for promotion to the rank of CIs. The eligibility criteria stated therein was *inter alia* 8 years of active service in the rank of IP as at 25.09.2013. Thereafter by RTM 744 dated 20.09.2013, the closing date of the application under the said RTM 141 was extended to 01.10.2013.
60. The Petitioners were not eligible to apply in terms of the said RTM 141 on account of their effective date of promotion to the rank of IP being 01.01.2006 and not 01.01.2003, as was their entitlement and as recommended by the aforesaid Nawaratne Committee. The Petitioners had not served 8 years in the rank of IP as at 25.09.2013. Had their IP

promotions been backdated to 01.01.2003, as they were rightfully entitled to, they would have been eligible to apply for the same.

61. Even the IGP's message dated 04.09.2013 calling for applications from eligible persons to be promoted as CIs shuts out the Petitioners from making any application, as their promotions to the position of IPs, as promised to them to begin from 01.01.2003, remain unfulfilled. The jurisdiction of this Court has been invoked on 02.10.2013 with the principal declaration being sought for their promotions as IPs to be backdated to 01.01.2003.
62. Whilst this Application was pending before this Court, the IGP at the time, issued RTM 855 dated 27.09.2018 ordering the promotion of 14 Inspectors of Police to the rank of Chief Inspector of Police with effect from 02.10.2017. The said officers who were promoted in terms of the said RTM 855 were those who had been absorbed to the regular service and placed below the Petitioners in the order of seniority in the rank of SIs in the seniority list.
63. The said order of the then IGP communicated through the said RTM 855 dated 27.09.2018 has to be classified as completely arbitrary, capricious, unreasonable and violative of the Petitioners' Fundamental Rights.
64. It has to be accepted that despite addressing several further appeals in this regard, the Petitioners were not granted any administrative relief nor their grievance in any way addressed.
65. By a motion dated 01.11.2019, the Petitioners produced before this Court the letter dated 29.08.2005 of the then IGP, addressed to the National

Police Commission, and the content of which has been reproduced in paragraph 20 of the petition to this Court.

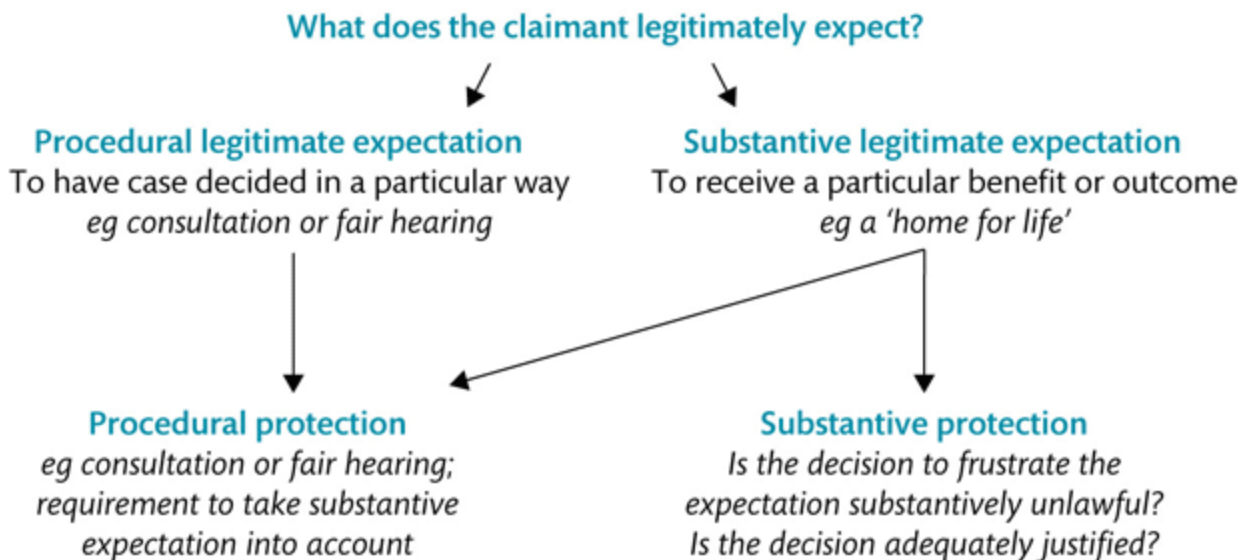
66. As pleaded in the said paragraph 20 of the petition, the said letter marked "Z" states that:

- In terms of circular bearing number 1737/03 - 629 cadre vacancies had existed in relation to the rank of IP
- From and out of the said 629 vacancies, 172 SIs have been promoted on the basis of long service and
- 299 vacancies were allocated to officers who were successful at the relevant qualifying examination and undergoing training and as such, 158 vacancies remained in the said rank of SIs
- In terms of the special scheme of promotions on a one-off basis promotion could be effected in respect of officers who had served a long period in the post of SIs.

67. The said document marked "Z" and three other similar recommendations / communications by former IGPs for the backdating of the appointments to the rank of IPs as sought by the Petitioners were filed of record by the State during the course of the proceedings in this application, and the State conceded that whilst all these recommendations are in existence, no instructions have been received as to what steps have been taken on the strength of the said recommendations. [vide journal entries in this Application dated 04.10.2023 and 17.01.2024]

68. In the circumstances, the origin of the entitlement of the Petitioners to have their IP promotions backdated to 01.01.2003 stems from the promise contained in circular No. 1737/2003 dated 26.09.2003.

69. By virtue of the above letter marked “Z” by the Petitioners as well as several other recommendations / communications by past IGPs to have these promotions to IPs backdated, it is confirmed without any iota of doubt that the said entitlement has been unequivocally recognized by successive heads of department of the police force.
70. The said entitlement to promotion with effect from 01.01.2003 has also been recognized and recommended by the Committee appointed by the then IGP.
71. As pointed out by me, the said Committee's report dated 26.10.2010 had recommended *inter alia* that the said promotions to the rank of IPs be backdated to 01.01.2003. This fact has not been controverted by the Respondents.
72. If a claimant establishes that he had a legitimate expectation that has been frustrated by a public body, the options open to a reviewing Court, as Figure below depicts, depend, in the first place, on the *content* of the expectation.



73. One possibility is that the claimant may be entitled to expect that his case will be considered in a particular way—for example, that he will be consulted or be given a fair hearing. Here, the claimant has a *procedural legitimate expectation*, and the most that the court can do is to require the public body to accord to the claimant whatever procedural niceties it led him to expect. The effect of a legitimate expectation may therefore entitle a person to fair treatment in circumstances in which no such entitlement would otherwise arise. Or a legitimate expectation might entitle someone to a higher standard of fair treatment than they would otherwise be entitled to.
74. The other possibility is that the claimant may have a *substantive legitimate expectation*—that is, he may legitimately expect a particular outcome to the decision-making process. The ‘home for life’ promise in *Coughlan*³ gave rise to precisely such an expectation. The court may decide that although the expectation itself relates to a matter of substance, it should be offered only a procedural form of protection.
75. For example, in *R (Bibi) v Newham London Borough Council*⁴ it was held that a local authority’s promise to provide the claimant with permanent accommodation gave rise to a substantive legitimate expectation that such accommodation would indeed be provided. Yet when it came to protecting the expectation, the court merely required the local authority—which, in deciding that the claimant should *not* be offered permanent accommodation, had ignored its earlier promise—to reconsider

³ *R v. North and East Devon Health Authority, Ex p Coughlan* (201 QB 213 at para 83)

⁴ 2001 EWCA CIV 607

the matter, taking due account of the legitimate expectation that it had engendered.

76. However, the court may go further than this, as it did in *Coughlan* itself, by asking whether frustrating the expectation would be *‘so unfair as to be a misuse of the authority’s power’*.⁵

77. By dashing the substantive legitimate expectation entertained by the Petitioners, I take the view that failure to ante-date the promotions to 01.01.2003 is so unfair as to amount to a misuse of the power of the relevant authorities and in the totality of the foregoing circumstances, this Court directs that the appointments of the Petitioners as IPs should be backdated with effect from 01.01.2003.

78. Thus, this Court reiterates that schemes of promotion in the public service must accord with reasonableness and rationality and with this view in mind, the public service must be conducted with a view to ensuring fair play, fairness and maintenance of the rule of law. On several occasions this Court has categorically declared this principle in no uncertain terms.⁶

⁵ See fn 3

⁶ See Perera v. Cyril Ranatunga, Secretary Defence (1993) 1 Sri. L.R. 39; Perera v. Monetary Board of the Central Bank of Sri Lanka (1994) 1 Sri. L.R. 152; Wijesuriya v. National Savings Bank (1997) 1 Sri.L.R. 185; Piyasena v. People's Bank (1994) 1 Sri.L.R. 65; Abeysinghe v. Central Engineering Consultancy Bureau (1996) 2 Sri.L.R. 36; Narangoda v. Kodituwakku, Inspector General of Police (2002) 1 Sri.L.R. 247].

79. In a nutshell based on the promises and entitlements emanating from the Circular, the Nawaratne Committee Report, the IGP's letter which affirms it, and other recommendations as enumerated above, this Court holds that the substantive legitimate expectation of the Petitioners has to be fulfilled and the reliefs ordered by this Court must be implemented by the Respondents.

80. Based on the foregoing reasons, I declare that the Respondents have infringed the Fundamental Rights of the Petitioners under Article 12 (1) by not giving effect to the promises made to promote the Petitioners with effect from 01.01.2003. The reliefs awarded to the Petitioners would satisfy the ends of justice.

Judge of the Supreme Court

Jayantha Jayasuriya, PC, CJ

I agree

Chief Justice

Murdu. N. B. Fernando, PC, J

I agree

Judge of the Supreme Court