

**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) Application No:
168/2020

1. R.M.S. Jayatissa
No.1, S.T.F. Headquarters,
Gonahena, Kadawatha.

2. P.J.S. Wijesinghe
No. 132/15, Hiripitiya,
Pannipitiya.

3. D.G.S. De Silva
No. 82, George R.D. Silva Mawatha,
Kotahena, Colombo 13.

4. T.F. Hadgie
No. 85/2/B, Pamunuwa Road,
Maharagama.

5. A.G.D.P. Amarasinghe
No. 38, Mahasen Mawatha,
Pallewela, Udubaddawa.

6. V.G.D.S. Samaranayake
No. 05/A, Vihara Mawatha,
Devala Road, Pamunuwa,
Maharagama.

7. H.M.D. Herath
No. 824/2/1/A, 4th Lane,
Jayamala Pura, Gampola.

8. H.K.R.A. Henepola
No. A/3, S.T.F. Headquarters,
Biyanwala, Kadawatha.

9. W.M.I.D.B. Wijekoon
No. C/D, 9/20, Ranpokunugama,
Nittambuwa.

10. R.A. Sisira Kumara
No. A/04, S.T.F. Nagoda,
Kalutara.

11. E.S.R.S. Wickramasinghe
No. 90/2, Bodhirukkarama Road,
Nalluruwa, Panadura.

12. M. Rupasinghe
Diyakolayaya, Badulla Gammana,
Bibile.

13. R.M. Karunaratne
Kongolla, Nannapurawa,
Bibile.

14. N.A.K.K. Perera
No.1, Police Quarters,
Wadduwa.

15. N.W.A. Nihal Nanayakkara
No. 48, Station Road,
Balapitiya.

16. W.D.R. Priyantha,
No. 32/A, Karunapaya Neraluwa,
Diyalape, Akuressa.

17. D.D.D.K. Hettiarachchi
No. 292/6/A, Makola North,
Makola.

18. K.A.S. Karunaratne
No. 503/6, Koswatta,
Radhawana.

19. H.M.K. Wijesinghe
No. 60, Lenadora.

20. K.W.G. Thusharasena
No. 271/15/D3, Jaya Mawatha,
Meegahawatta.

PETITIONERS

Vs.

1. C. D. Wickramaratne,
Inspector General of Police (Actg),
Police Headquarters, Colombo 01.

1A. Deshabandu Tennakoon,
Inspector General of Police,
Police Headquarters, Colombo 01.

1B. W. L. A. S. Priyantha,
Inspector General of Police (Actg),
Police Headquarters, Colombo 01.

2. K.W.E. Karalliyadda, Chairman,
2A. S.C.S. Fernando, Chairman,
2B. E.W.M. Lalith Ekanayake,
Chairman,

3. Savithri D. Wijesekera, Member,
3A. S. Liyanagama, Member,
3B. D.K. Renuka Ekanayake,
Member,

4. Y. L. M. Zawahir, Member,
4A. A.S.P.S.P. Sanjeeva, Member,
4B. K. Karunaharan, Member,

5. Tilak Collure, Member,
5A. N.S.M. Samsudeen, Member,
5B. P.G.S. Gamini De Silva, Member,

6. Gamini Nawarathne, Member,
6A. M.P.P. Perera, Member,
6B. D. Kapila Jayasuriya, Member,

7. Ashoka Wijethilaka, Member,
7A. G. Wickramage, Member,

8. G. Jeyakumar, Member,
8A. T.P. Paramaswaran, Member,

9. Nishantha A. Weerasinghe,
Secretary,
9A. Samanthi Mihindukula,
Secretary,
9B. Thamara D. Perera, Secretary,

2nd to 9th all of National Police Commission, Block No. 3, BMICH Premises, Bauddhaloka Mawatha, Colombo 07.

10. R. L. Kodithuwakku,
Deputy Inspector General of Police (Welfare), Mukthar Plaza, Grandpass Road, Colombo 14.

10A. Bimshani Jasinarachchi,
Deputy Inspector General of Police (Welfare), Mukthar Plaza, Grandpass road, Colombo 14.

10B. Rohan Fernando, Senior Inspector General, Mukthar Plaza, Grandpass road, Colombo 14.

10C. Padmini Weerasooriya,
W/Deputy Inspector General of Police (Welfare), Mukthar Plaza, Grandpass road, Colombo 14.

11. C.D. Wickramaratne, Senior Deputy Inspector General (Administration), Police Headquarters, Colombo 01.

11A. Jagath Abeysiri Jayawardena, Senior Deputy Inspector General (Administration),

Police Headquarters, Colombo 01.

11B. D.G.N. Jayawardena, Senior Deputy Inspector General (Administration),

Police Headquarters, Colombo 01.

11C. L. S. Pathinayake, Senior Deputy Inspector General (Administration),

Police Headquarters, Colombo 01.

12. W.S.P. Jayasundara, Deputy Inspector General, Commandant of the Special Task Force, S.T.F. Headquarters, No. 223, Bauddhaloka Mawatha, Colombo 07.

13. Kamal Gunaratne WWV RWP RSP USP ndcpsc, Major General (Retd), Secretary to the Ministry of Defence, Ministry of Defence, No. 15/5, Baladaksha Mawatha, Colombo 03.

13A. Kamal Gunaratne WWV RWP
RSP USP ndcpsc, Major General
(Retd), Secretary to State Ministry of
Internal Security, Home Affairs and
Disaster Management, State Ministry
of Internal Security, Home Affairs
and Disaster Management,
“NilaMedura”, Elvitigala Mawatha,
Narahenpita, Colombo 05.

13B. Major General Jagath Alwis
(Retd), Secretary, Ministry of Public
Security, 14th Floor, “Suhurupaya”,
Battaramulla.

13C. Mr. P. Viyani Gunathilaka,
Secretary, Ministry of Public
Security, 14th Floor, “Suhurupaya”,
Battaramulla.

13D. Mr. Ravi Seneviratne, Secretary,
Ministry of Public Security, 14th
Floor, “Suhurupaya”, Battaramulla.

14. Malika Suriyapperuma, Senior
Assistant Secretary to the Ministry of
Law and Order, Ministry of Law and
Order, “Suhurupaya”, Battaramulla.

15. S. Ranugge, Chairman, National
Salaries and Cadre Commission,
Room No. 2-116, B.M.I.C.H, Colombo
07.

15A. Upali Wijayaweera, Chairman, National Pay Commission, Room No. 2-116, B.M.I.C.H, Colombo 07.

15B. W.J.L.U. Jayaweera, Chairman, National Pay Commission, Room No. 2-116, B.M.I.C.H, Colombo 07.

16. Hon. Attorney General, Attorney General's Department, Hulftsdorp, Colombo 12.

17. Hon. Justice Jagath Balapatabendi, Chairman,

17A. Sanath J. Ediriweera, Chairman,

18. Indrani Sugathadasa, Member,
18A. S. M. Mohamed, Member,

19. V. Shivagnanasothy, Member,

19A. N. H. M. Chithrananda, Member,

20. T.R.C. Ruberu, Member,

20A. Prof. N. Selvakkumaran, Member,

21. Ahamod Lebbe Mohamed Saleem, Member,

21A. M. B. R. Pushpakumara, Member,

22. Leelasena Liyanagama, Member,
22A. Dr. A. D. N. De Zoysa, Member,

23. Dian Gomes, Member,
23A. R. Nadarajapillai, Member,

24. Dilith Jayaweera, Member,
24A. C. Pallegama, Member,

25. W.H. Piyadasa, Member,
25A. G.S.A. De Silva P.C., Member,

The 17th to 25th Added-Respondents
all of:

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

RESPONDENTS

Before : Janak De Silva, J.

: K. Priyantha Fernando, J.

: Sampath B. Abayakoon, J.

Counsel : Viran Corea P.C. with Thilini Vidanagamage
instructed by Sanjeewa Kaluarachchi for the
Petitioners.

: Ganga Wakishta Arachchi, D.S.G., instructed by
Rizni Firdous, S.S.A., only for the 2B, 3B, 4B, 7A, 8A,
9A, 10C, 11B, 14th, 15B and 16th Respondents.

Argued on : 20-03-2025

Written Submissions : 11-07-2023 (By the Petitioners)

: 04-04-2025 (By the Respondents)

Decided on : 31-07-2025

Sampath B. Abayakoon, J.

This is an application filed by the petitioners on 16-06-2020, alleging that the fundamental rights guaranteed to them in terms of Article 12(1) and/or Article 14(1)(g) of the Constitution have been infringed and/or continued to be infringed by the actions or inactions of any one or more of the respondents named, and seeking redress as sought for in the petition.

When this matter was supported for Leave to Proceed on 23-02-2022, this Court, having considered the relevant facts and the circumstances, as well as the relevant law, decided to grant Leave to Proceed on the alleged infringement of Article 12(1) of the Constitution.

The said Article of the Constitution which defines the right to equality reads as follows;

12(1). All persons are equal before the law and are entitled to the equal protection of the law.

At the hearing of this application, this Court heard the submissions of the learned President's Counsel for the petitioners, and that of the learned Deputy Solicitor General (DSG) for the respondents. This Court also had the benefit of considering the written submissions tendered in determining this application.

The facts that led to this application can be summarized in the following manner.

At the time this application was filed before this Court, all the petitioners were serving police officers of the Sri Lanka police who held different ranks, although some may have retired from the service by now.

The petitioners belong to a group of police officers who had been injured resulting from terrorist activities on different occasions, while being engaged in their official duties, and continued to be in police service after their recovery. These are police officers who had earned at least one promotion after they sustained the said injuries.

Having considered the necessity to grant special relief to those police officers who had received injuries due to terrorist activities, the then relevant Cabinet Minister has presented the Cabinet Memorandum No. 10/2015 dated 26-03-2015 to the Cabinet of Ministers proposing granting of relief. While classifying them under three categories, [document marked P5(a)] the Minister had sought Cabinet approval for the implementation of the said proposal.

For the better understanding of the scheme of relief, I will now reproduce the said recommendations in its full, which reads as follows.

නිරදේශය

1. එල්.වී.වී.ර්. තුස්තවාදී ක්‍රියා හේතුවෙන් වෙබා හේතුන් මත 2014.05.18 දිනට පෙර විශාම ගන්වනලද සහ අනතුරටපත්වූ දින සිට 2014.05.18 දින දක්වා උසස්වීම් නොලද නිලධාරීන්/නිලධාරිනියන් සඳහා රේඛා තනතුරට උසස් කිරීමටත්,
2. මෙම කාලය තුළ අනතුරට පසු උසස්වීමක් ලබා ඇති නිලධාරීන්/නිලධාරිනියන් සඳහා එම උසස්වීම අනතුරට පත්වූ දිනට පෙරදාතම කිරීමටත්,
3. වෙබා නිරදේශ මත සැහැල්ලු රාජකාරිවල යොදවා ඇති අනතුරට පත්වූ දින සිට මේ දක්වා කිසිදු උසස්වීමක් ලැබේ නොමැති නිලධාරීන් හා නිලධාරිනියන්ට විශේෂ වැටුප් වර්ධක දෙකක් ලබාදීමටත්

ඉහත (1,2,3) කරුණුවලට අදාළව උසස්වීම හා වැටුප් වර්ධක ලබාදීමේදී එම නිලධාරීන් හා නිලධාරිනියන්ට වැටුප්/විශාම වැටුප් ගෙවීමට පහත පරිදි වාර්ෂිකව (දළ ඇස්තමේන්තුව) රුපියල් මිලයන 348 ක් වැය වේ. (...)

4. මෙම උසස්වීම්වලට අදාළ හිහ වැවුප් 2009.05.18 දින සිට පමණක් ගෙවීමටත්,
5. වැවුප් වර්ධක ලබාදීමේදී 2009.05.18 දින සිට ඇති හිහවැවුප් වර්ධක මුදල් පමණක් ගෙවීමටත්,

අමාත්‍ය මණ්ඩල අනුමැතිය අප්ක්හා කරමි.

The petitioners' position is that they fall into to the 2nd group of police officers as detailed in the petition.

The document marked P5(b), which is the relevant Cabinet Decision in relation to the above-mentioned Cabinet Memorandum, shows that the Cabinet of Ministers have decided on 23-05-2017 to approve the said Cabinet Memorandum, and the Secretary to the Cabinet has written to the relevant authorities who are vested with the responsibility of implementing the said Cabinet Decision, requiring them to implement the same.

The relevant part of the said directive reads as follows;

- (i) එවකට මහජන සාමය සහ ත්‍රිස්තියානි ආගමික කටයුතු ඇමති තුමා ඉදිරිපත් කළ 2015-03-26 දිනැති සංදේශයේ සඳහන් නිරදේශ (1), (2), (3), (4), සහ (5) සඳහා අනුමැතිය ලබා දීම;
සහ
- (ii) ජාතික පොලීස් කොමිෂන් සභාව විමසමින් ඉහත (i) හි සඳහන් නිරණය කියාත්මක කිරීම පිණිස අවශ්‍ය පියවර ගන්න ලෙස නීතිය හා සාමය සහ දක්ෂීණ සංවර්ධන අමාත්‍යාගයේ ලේකම ට උපදෙස් දීම.

The petitioners have marked and produced as P6, P6(a), P7, P8, P9, several communications that took place between the respondents named in the petition in relation to the implementation of the said Cabinet Decision.

According to the averments of paragraph 15 of the petition, the petitioners have come to know that, at least one senior police officer who belong to the same category of officers as the petitioners, and who was also entitled to relief, had been granted relief in accordance with the Cabinet Decision, and the promotion he earned subsequent to his injuries had been backdated to the date of his

injury, namely to 27-05-2000. A copy of the letter written by the Secretary of National Police Commission to the Secretary of the Public Administration, Management, and Law and Order Ministry in that regard has been submitted marked as P10(b) to establish that fact.

The petitioners have also written several letters and have made several representations to the relevant authorities requesting them to grant the reliefs approved by the Cabinet.

It has been submitted further that, by Common Order No. 42/2019 dated 22-01-2019, 340 police officers have also been granted relief in accordance with the said Cabinet Decision (document marked P18). By RTM 561 dated 18-03-2019, further 106 police officers have been granted relief (document marked P19), and by RTM 562 dated 18-03-2019, 438 police officers have been granted relief (document marked P20).

Despite reliefs being granted to number of other police officers who fall within the other categories of officers referred in the Cabinet Decision, as well as to at least one senior police officer who was eligible under the same category of police officers as the petitioners, it has been their contention that they have not been granted their entitlement as to the said Cabinet Decision thus far, which amounts to a violation of their fundamental rights enshrined in the Constitution.

When this matter was considered for granting of leave, the 1st respondent originally mentioned in the petition, namely, the then Inspector General of Police, filing limited objections to the granting of leave, has not disputed the fact that the petitioners were police officers who received injuries during the separatist conflict while being engaged in their official duties, and were serving police officers at the time of filing this application. The fact that they have earned and received promotions as mentioned in their petition had also not been disputed. The 1st respondent has not disputed the Cabinet Memorandum marked P5(a), and the Cabinet Decision in that regard marked P5(b). However, he had taken

up the position that the police officers qualified under the said Cabinet Decision have already been granted benefits thereon.

Apart from the other documents marked along with these objections, the 1st respondent has marked another Cabinet Decision apparently taken on 26-01-2021, which was after the institution of this action, and has stated that steps have been taken to grant relief as per the said new Cabinet Decision, and if the petitioners are qualified under the same, they will receive their benefits as claimed.

On the basis that the petitioners' application is misconceived in law, vexatious and futile, and the petitioners have failed to establish that their fundamental rights have been violated, it has been prayed that the application should stand dismissed. It has also been claimed that the petitioners' application is of out of time, and that the petitioners have failed to name the relevant parties as respondents of the application.

At the hearing of this application, the learned President's Counsel, for the petitioners was of the view that the legal objections taken up by the learned DSG as to the maintainability of the application before the Court cannot be sustained. He pointed out that the petitioners have come before the Court not to challenge the decision of the Cabinet of Ministers, but to challenge the continuing failure by the relevant authorities to grant relief as per the said Cabinet Decision, which amounts to clear discrimination, denying them the right to equality and equal protection of the law. Hence, it was his position that making the Cabinet of Ministers a party to this application would not arise. It was submitted that the petitioners have come before the Court well within the time limit permitted by law on the basis of continuing violation of their fundamental rights.

Submitting as to the facts, it was the position of the learned President's Counsel, that the petitioners have clearly demonstrated before the Court that they are entitled to receive benefits in terms of the 2nd recommendation in the relevant Cabinet Decision, and at least one senior officer of the police department who

fell within the same category has been given relief, which amounts to treating the petitioners differently. He also pointed out that the other officers who became entitled to relief under the other categories mentioned in the said Cabinet Paper have also been granted relief as admitted by the respondents, and leaving the petitioners out from granting relief amounts to a clear discrimination.

The learned DSG who represented the Hon. Attorney General and the other respondents, submitted two legal arguments on the basis that the petitioners have no *locus standi* to maintain this application. It was submitted that the petition has been filed beyond the one-month period of the alleged infringement, and the Cabinet of Ministers should have been made parties to the action as it was the decision of the Cabinet that had been challenged. Making submissions as to the facts, it was her stand that the recommendation 1 and 2 of the contentious Cabinet Decision could only be applicable to those officers who retired prior to 18-05-2014 and not to the petitioners who were serving police officers. It was contended that the petitioners, if at all, stand entitle to receive benefits only in terms of the 3rd category of officers mentioned in the Cabinet Decision, which makes them entitled to two special salary increments only.

It was stated that all the petitioners have already been granted two salary increments pursuant to P5(a) and P5(b), and therefore, they are attempting to misinterpret the said Cabinet Decision though they have already received their entitlement.

Having scrutinized the petition before the Court, the relevant supporting documents filed, the objections raised as to the maintainability of this application, and the oral and written submissions, I will now proceed to consider whether petitioners are entitled to the reliefs as sought, or whether the fundamental rights application should stand dismissed as contented on behalf of the respondents.

I find that what the learned DSG had submitted in her written submissions, that the contention of the petitioners in relation to this petition had been that they also qualify to receive a further promotion, and to have it backdated as stipulated under the 2nd recommendation of the Cabinet Decision, was not correct, whereas, their contention had been to the effect that they are entitled to have the promotions they have already earned after sustaining respective injuries and while being in service backdated to the date of the injury they sustained while being engaged in their official duty.

Having observed as such, I will now consider the legal objections raised to the effect that the relevant parties have not been named in the petition and that the application was out of time, before moving on to the facts of the matter, if necessary.

It is abundantly clear that the petitioners have come before the Court not to challenge the Cabinet Memorandum dated 26-03-2015 or the Cabinet Decision taken in that regard on 23-05-2017. They have come before this Court on the basis that the subsequent actions of the respondents, where they have been deprived of their entitlements, amounts to violation of their fundamental rights.

Therefore, it is my view that it was not necessary for the petitioners to name the Cabinet of Ministers as a party to this action.

A person who alleges that his fundamental rights or language rights have been infringed or is about to be infringed by executive or administrative action needs to come before the Supreme Court within one month thereof in terms of Article 126(2) of the Constitution.

As I have considered earlier, the petitioners have not come before the Court in order to challenge the Cabinet Decision taken on 23-05-2017. It is very much clear that with the directive by the Secretary to the Cabinet, to the relevant authorities to implement the Cabinet Decision, in fact, the relevant authorities which include the respondents mentioned have taken steps to implement the same, and had partly implemented the said decision in a phased-out manner.

This goes on to establish that the petitioners had clear legitimate expectations that they will also be granted relief in the similar manner. It was only after it became clear to the petitioners that they will not be granted the reliefs as approved by the Cabinet, but they will be considered on a different basis to that of the Cabinet Decision, they have come before the Court seeking relief. Hence, I am of the view that there exists no basis to consider that their application to Court was time barred in terms of the Article 126(2) of the Constitution. It is my considered view that the alleged infringement amounts to continuing violation of fundamental rights under that context.

In the case of **SC(FR) Application No. 542/2009 decided on 20-01-2021:**

Per Priyantha Jayawardena, PC, J.,

“Article 126(2) of the Constitution states that an application for infringement or imminent infringement of Fundamental Rights can be filed “within one month thereof” in the Supreme Court.

The word “within” used in the said Article requires the period of one month to be calculated from the date of the alleged infringement, imminent infringement, or from the date on which the petitioner became aware of the alleged infringement, if knowledge on the part of the petitioner is required to establish the alleged infringement.”

This question was also discussed in the case of **Gamaethige Vs. Siriwardena (1988] 1 Sri L.R. 385.**

Per Fernando, J.,

“Three principles are discernible in regard to the operation of the time limit prescribed by Article 126(2). Time begins to run when the infringement takes place; if knowledge on the part of the petitioner is required (e.g of other instances by comparison with which the treatment meted out to him becomes discriminatory), time begins to run only when both infringement and knowledge exist.”

For the reasons as considered above, I am of the view that the two legal objections taken up by the learned DSG as to the maintainability of this application lacks merit.

Moving on to the facts, since the Leave to Proceed was granted only on the alleged violation of the fundamental rights guaranteed in terms of Article 12(1) of the Constitution, I will limit my consideration to ascertain whether equality and the equal protection entitled to all persons before the law have been infringed.

In **Wijerathna Vs. Sri Lanka Ports Authority, SC/FR/256/17 SCM 11.12.2020, Kodagoda, J.** held:

“The concept of ‘equality’ was originally aimed at preventing discrimination based on or due to such immutable and acquired characteristics, which do not on their own make human being unequal. It is now well accepted that, the ‘right to equality’ covers a much wider area, aimed at preventing other ‘injustices’ too, that are recognized by law. Equality is now a right as opposed to a mere privileged or entitlement, and in the context of Sri Lanka a ‘Fundamental Right’, conferred on the people by the Constitution, for the purpose of curing not only injustices taking the manifestation of discrimination, but a host of maladies recognized by law. While all Fundamental Rights are of equal importance and value, the ‘right to equality’. The ability of human beings to live in contemporary societies (as opposed to merely existing), and develop and reap the fruits of social, scientific, economic and political developments, is based on their ability to exercise fully the ‘right to equality’. Similarly, for human civilizations may they be national or international to reap the full benefits of knowledge, skills, experience, talents and wisdom that people possess, people of such societies must enjoy the ‘right to equality’”.

In the case of **M. Ashroff Rumy and Another Vs. Hon. Thalatha Athukorale, Minister of Justice & Prison Reforms, Ministry of Justice, SC/FR/230/2018, Jayantha Jayasuriya, P.C., C.J.** held:

“All persons should be treated equally. Therefore, setting out different criteria based on the area of service per se could lead to unequal treatment unless such differentia is based on justifiable objective criteria on valid reasons and one such criteria could be the competency in a particular language depending on the area of service. The Supreme Court in fact had accepted that classifications are allowed if they are not arbitrary and founded upon intelligible differentia. Ananda Dharmadasa and Others v Ariyaratne Hewage and Others ([2008] 2 SLR 19, Tuan Ishan Raban and Others v Members of the Police Commission ([2007] 2 SLR 351. The objective of this requirement is to treat equals equally and not unequally”.

When it comes to the facts that led to this application, the respondents have not disputed at any time, the existence of the Cabinet Memorandum marked P5(a) and the subsequent Cabinet Decision dated 23-05-2017 marked P5(b). When reading the Cabinet Memorandum and the Cabinet Decision, it is clear that the Cabinet of Ministers have approved the Memorandum submitted by the Minister, to consider the police officers who come within the purview of the said recommendations under three categories. The letter issued by the Secretary to the Cabinet informing the relevant officials to implement the decision, which I have reproduced earlier, amply demonstrates that fact. I find that the said Cabinet Decision had never been rescinded by the Cabinet of Ministers at any time and very much in force. I find that all other Cabinet Decisions taken subsequently on the same subject have also been made based on the said original Cabinet Decision.

Under the circumstances, I find it necessary to consider whether the petitioners can be considered as police officers who fall within the 2nd group as determined by the Cabinet of Ministers, which has recommended that the police officers who received injuries due to L.T.T.E terrorist activities until 18-05-2014 and had received promotion of service thereafter, should have their promotions backdated to the date of injury they sustained.

The document marked P-1 produced by the petitioners establishes the fact that the petitioners hold different ranks in Sri Lanka police service and were serving police officers at the time they filed this petition before the Court and were attached to different police stations in the country. The documents marked and produced along with the petition marked P2A to P2T sets out their letters of appointment as police officers and the ranks they held before they received their injuries in the line of duty.

The documents marked P3A to P3T shows the medical assessments in relation to the petitioners after they sustained their respective injuries. The documents marked P4A to P4T establish the fact that subsequent to their injuries, that they have earned promotions within the service.

I find that the 1st respondent being the Inspector General of Police had admitted the above in the limited objections he filed before the Court.

The specific averment in the petition that a senior police officer who sustained injuries under similar circumstances earned a promotion thereafter, and had his promotion backdated to his date of injury had not been disputed either.

It is my considered view that the Cabinet of Ministers, when deciding to act under the Cabinet Memorandum of the Subject Minister dated 26-03-2015, have not intended to create a distinction between the officers who received a promotion while in service and retired before 18-05-2014, and those who were still in service at that time after receiving a promotion, when recommending the relief under the 2nd head of the Cabinet Memorandum.

It appears that the learned DSG had heavily relied on the Cabinet Memorandum dated 05-08-2019 and the subsequent Cabinet Decision dated 10-09-2019 (documents marked 1R4 and 1R5) to argue that the petitioners, since they are serving police officers, are only entitled to receive two salary increments according to the Cabinet Decision, and the said relief has been granted to them, and also that since there is a new Cabinet Decision in this regard, the said decision, namely, 1R5, should be the decision that would be now applicable to the petitioners.

It needs to be emphasized that what is considered here would be whether the fundamental rights guaranteed under the Constitution have been infringed due to the continuing non-implementation of the Cabinet decision dated 23-05-2017 and not the cabinet decisions reached thereafter.

It is very much clear to me even from the Cabinet Decision relied on by the learned DSG, that the Cabinet has never intended to rescind the previous Cabinet Decision under which the petitioners have sought relief from this Court. In fact, the intention and the decision of the Cabinet of Ministers had been to extend the reliefs granted by the Cabinet of Ministers on 23-05-2017 to a further group of police officers who have attained the retirement age or gone on retirement from 18-05-2014 up until 31-07-2019.

It appears that the subsequent Cabinet Memorandum has been presented in a manner to show that the previous Cabinet Decision relates to two groups of police officers only by including the 2nd group of police officers mentioned in the previous Cabinet Decision under the 1st group, to make it look like the previous Cabinet Decision relates to only two groups of police officers, although it has specifically referred to the previous Cabinet Decision.

The relevant part of the said subsequent Cabinet Memorandum reads as follows.

2017.05.23 දිනැති අංක අමප/15/0391/606/017 දරණ අමාත්‍ය මණ්ඩල තීරණය අනුව
අනුමත කරන ලද නිරද්‍යෙන් :-

2015.03.26 දිනැති අංක 10/2015 අමාත්‍ය මණ්ඩල සංදේශය අනුව ගෙන ඇති 2017.05.23 දිනැති අංක අමප/15/0391/606/017 අමාත්‍ය මණ්ඩල තීරණය මගින් එල්.වී.වී.රී. තුස්තවාදී ක්‍රියා හේතුවෙන් තුවාල ලබා වෙවා හේතුන් මත විශාම ගන්වා ඇති නිලධාරයන් සහ වෙවා නිරද්‍ය මත සැහැල්ලු රාජකාරීයේ යොදවා ඇති නිලධාරයන් සඳහා පහත පරිදි කටයුතු කිරීමට සුදුසු බවට අනුමත කර ඇත.

I. තුස්තවාදී ක්‍රියා හේතුවෙන් ආබාධිතව වෙවා හේතුන් මත 2014.05.18 දිනට පෙර
විශාම ගන්වා ඇති නිලධාරයන් වෙනුවෙන්,

අනතුරට පත්වූ දින සිට වෙවා හේතුන් මත විශාම ගැන්වූ දින දක්වා උසස්වීම් ලබාදී තොමැති නිලධාරයන් සඳහා අනතුරට ලක්වූ දින සිට රේඛ තනතුරට උසස්වීම් ලබාදීම. අනතුරට පත්වූ දින සිට වෙවා හේතුන් මත විශාම ගැන්වූ දින දක්වා කාලය තුළ උසස්වීමක් ලබා ඇත්තම, එම පළමු උසස්වීම අනතුරට පත්වූ දිනට පෙර පෙරදාතම කිරීම.

II. තුස්තවාදී ක්‍රියා හේතුවෙන් ආබාධිතව වෙවා නිරද්‍යෙන් මත සැහැල්ලු රාජකාරී වල
යොදවා ඇති නිලධාරයන් වෙනුවෙන්,

අනතුරට පත්වූ දින සිට මේ දක්වා කිසිදු උසස්වීමක් ලබා තොමැති නිලධාරයන් සඳහා අනතුරට පත්වූ දිනට විශේෂ වැටුප් වර්ධක දෙකක් ලබාදීමට. (එම අමාත්‍ය මණ්ඩල පත්‍රිකාවේ පිටපත් ඇමුණුම 01 ලෙස අමුණා ඇත)

However, the proposal submitted in the said Memorandum too clearly shows that the police officers who falls under the 2nd category of officers in terms of the original Cabinet Decision applicable to the petitioners, would get the benefits similar to the earlier Cabinet Decision if they had retired on or before 31-07-2019, by getting their promotions earned while in service backdated to the date where they sustained their injuries.

The said proposal which has later been approved by the Cabinet reads as follows.

යෝජනාව

2017.05.23 දිනැති අංක අමප/15/0391/606/017 දරණ අමාත්‍ය මණ්ඩල තීරණය මගින් අනුමත කරන ලද නිරදේශයන් ප්‍රකාරව වරුප්‍රසාද හිමි නොවූ නිලධාරයන්ගේ වර්ගීකරණය හා ඒ අනුව ඔවුන් වෙත ලබා දීමට යෝජිත සහන පහත පරිදි වේ.

I. එල්.වී.වී.රු. ත්‍රස්තවාදී ක්‍රියා හේතුවෙන් අබාධිතව වෛද්‍ය හේතුන් මත 2014.05.18 දින සිට 2019.07.31 දින දක්වා කාල සීමාව ඇතුළත විශාම ගන්වන ලද සහ අනතුරට පත්වූ දින සිට විශාම ගන්වන දිනය දක්වා උසස්වීම නොලද නිලධාරයන් සඳහා අනතුර සිදුවූ දිනට බලපැවැත්වෙන පරිදි ර්ලහ තනතුරට උසස්කිරීමෙන්, (this is very much similar to the 1st proposal in the Cabinet Decision dated 23-05-2017, the only difference being that the said relief has been extended to a period up to 31-07-2019)

II. එල්.වී.වී.රු. ත්‍රස්තවාදී ක්‍රියා හේතුවෙන් අබාධිතව වෛද්‍ය හේතුන් මත 2014.05.18 දින සිට 2019.07.31 දින දක්වා කාල සීමාව තුළ විශාම ගන්වන ලද සහ අනතුරට පත්වූ දිනෙන් පසු ජෝජිත්ත්වය සහ කුසලතාවය පදනම් කරගෙන සාමාන්‍ය පරිදි උසස්වීම ලබා ඇති නිලධාරයන් අනතුරට පත්වූ දිනෙන් පසු ලබා ඇති පලමු උසස්වීම අනතුරට පත්වූ දිනට පෙරදානම කිරීමෙන්,

In my view, this Cabinet Decision will again leave out some of the petitioners, some of them who may have retired by now, which amounts to treating them differently to those who benefitted by the Cabinet Decision dated 25-03-2017.

I do not find an acceptable basis for the argument advanced by the learned DSG that the petitioners should fall under the 3rd category of police officers mentioned in the Cabinet Decision dated 26-05-2015. In my view, the 3rd category of police officers are the police officers who have not received any promotion up until the date of the said Cabinet Decision and who have been assigned to perform light duties due to the level of injuries they have sustained, and not the petitioners who had received promotions but still in the active service.

I am of the view that the respondents cannot move away from their obligations by granting the petitioners only two salary increments, as that was not the

intention of the Cabinet of Ministers when they reached the relevant Cabinet Decision on 23-05-2017.

I find that the relevant Cabinet Decision applicable to the petitioners has been reached clearly on the consideration of the police officers under three categories, namely;

- (a) who were retired by that time without having earned a promotion;
- (b) the police officers who have earned a promotion after their injury irrespective of the fact whether they are still serving police officers or not;
- (c) and those police officers who were still serving at the time of the original Cabinet Decision but performing light duties, and have not earned any promotion since their date of the injury;

It needs to be noted further, in the correspondence the respondents have had within the Police Department and with other relevant authorities, copies of which had been marked along with the petition, it had never been suggested that the relevant Cabinet Decision has grouped the relevant police officers under two categories as argued during the hearing of this matter on behalf of the respondents, but under three categories as in the said Cabinet Decision.

It seems to me that arguing this matter based on a Cabinet Decision taken on 10-09-2019 would not have arisen if the relevant authorities had acted promptly by giving effect to the Cabinet Decision reached on 23-05-2017. If that had happened as it should have, the petitioners ought to have been granted the reliefs long before the Cabinet Decision relied on by the learned DSG, which makes considering the issue based on a subsequent decision irrelevant.

The fundamental rights jurisdiction has been well evolved in a manner that even if a single person belonging to one category of persons who falls within that category has been treated differently, such a treatment amounts to the violation of the fundamental rights of the other members of the same category of persons.

In the case of **Perera Vs. Jayawickrema (1985) 1 Sri L.R. 285, Sharvananda, C.J.** (with Ranasinghe J., Abdul Carder J., Atukorale J., Tambiah J, and De Alwis J. agreeing) delivered the majority opinion of the Court. The Chief Justice stated that a person claiming to be discriminated against must show that there was at least one other person similarly situated or equally circumstanced; that he had been treated differently from others and that there was no reasonable basis for such differential treatment, *'Discrimination can exist only where two persons or two subjects are treated in different ways. It arises only from two dissimilar treatments and not from similar treatments.'*

As per **C.W. Mackie and Co. Ltd Vs. Hugh Molagoda, Commissioner General of Inland Revenue and Others (1986) 1 Sri L.R. 301;**

"In order to sustain the plea of discrimination based upon Article 12(1) a party will have to satisfy the Court about two things, (1) that he has been treated differently from others, (2) that he has been differently treated from persons similarly circumstanced without any reasonable basis."

In the case of **Rienzie Perera and Another Vs. University Grants Commission (1978-79-80) 1 SLR 128;**

Per Sharvananda, J.,

"A person relying on a plea of unlawful discrimination must set out with sufficient particulars his plea showing how, between persons similarly circumstanced, discrimination has been made, which discrimination is founded on no intelligible differentia. If the petitioner establishes similarity between persons who are subjected to differential treatment, it is for the State to establish that the differentia is based on a rational object sought to be achieved by it. But where similarity is not shown, the plea as to infringement of Article 12 must fail."

"To make out a case of denial of the equal protection, a plea of differential treatment is by itself not sufficient. The petitioner, pleading that Article 14

*has been violated, must make out that not only had he been treated differently from others, but that he has been so treated from persons similarly circumstanced without any reasonable basis and such differential treatment is unjustifiable.”- **Probhudas Morarjee Vs. Union of India (1966) S.C. 1044.** (The Article 14 considered here is the corresponding Article to Article 12 of our Constitution)*

As mentioned previously, it is clear that one senior police officer, who belonged to the same category of police officers as the petitioners and was entitled to relief, had been granted the said relief, and his subsequent promotion has been backdated to the date of his injury, thereby treating the petitioners differently, although all of them were similarly circumstanced.

For the above reasons as considered, I am of the view that the fundamental rights of the petitioners guaranteed in terms of Article 12(1) had been infringed by treating them differently and in contrary to the relevant Cabinet Decision, which has resulted in their fundamental rights continued to be infringed.

Therefore, I hold that the petitioners are entitled for relief for the infringement of their fundamental rights.

Accordingly, I direct the 1B respondent or whoever the person holding the post of the Inspector General of Police, The National Police Commission, namely 2B, 3B, 4B, 5B, 6B, 7A, and 8A respondents, and also 13D respondent, the Secretary of Ministry of Public Security, to take immediate meaningful steps to backdate the 1st promotion earned by the petitioners while serving in the Police Department as police officers of various ranks after they received injuries due to the L.T.T.E. terrorist activities, to the date of them sustaining their respective injuries.

The respondents shall liaise with other relevant authorities and take necessary steps to grant the said relief within a period of four months from the date of this judgment.

Having considered the relevant facts, circumstances and the facts relating to the nature of the infringement of the petitioners' fundamental rights, I do not think that this is a proper instance where compensation should be ordered.

However, I direct the State shall pay a cost of Rs. 100,000/- to the petitioners as the costs of this application.

Judge of the Supreme Court

Janak De Silva, J.

I agree.

Judge of the Supreme Court

K. Priyantha Fernando, J.

I agree.

Judge of the Supreme Court