Article 12(1)

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இலங்கை மனித உரிமைகள் ஆணைக்குழு
HUMAN RIGHTS COMMISSION OF SRI LANKA

මගේ අංකය / எனது இல. / My No. :

ඔබේ අංකය / உமது இல. / Your No. :

දිනය / திகதி / Date : 26-02-2015

B.M.V.B. Attanayake,
No.27, Wathura Kumbura,
Muruthalawa

Complainant

Complaint Number: **HRC/2734/13**

vs.

Inspector General of Police,
Police Headquarters,
Colombo 01

Respondent

A. THE COMPLAINT

1. The Complainant failed to report to work on the 13th and 14th of April 2005 due to a personal emergency. The Complainant and several others were suspected without pay for not reporting to work during this period. Subsequently his name was removed from the relevant register (හට ලේඛනය) and demobilized.

2. However, all other officers except the Complainant who was interdicted have now being reinstated. The Complainant and his wife have submitted numerous appeals to several authorities pleading for the Complainant to be reinstated.

B. RELEVANT FACTS

3. The Complainant joined the police in 1992 and was serving the Kandy Police division at the time he was interdicted.

4. The Kandy SSP has recommended his reinstatement and had submitted it to the Police Headquarters in Colombo. Similarly, the Governor of the Central Province and the Coordinating Secretary of the Ministry of Defence have recommended the Complainant's reinstatement. However, the recommendations for reinstatement have not been confirmed by the Respondent.

5. The Complainant could not report to work on the 13th and 14th of April as he had fever and at

ප්‍රධාන කාර්යාලය / பிரதான அலுவலகம் / Head Office: 14, ආර්. ඒ. ද මෙල් මාවත, කොළඹ - 04. / 14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04. / 14, R. A. De Mel Mawatha, Colombo - 04.
දුරකථන / தொலைபேசி / Telephone: 94 -11- 2505580/81/82
සභාපති / தவிசாளர் / Chairperson: 011-2505451
ලේකම් / செயலாளர் / Secretary: 011-2505521
ෆැක්ස් / தொலைநகல் / Fax: 011-2505541/74
ඝණික / துரித அழைப்பு / Hotline: 011-2505575 1996
විද්‍යුත් / மின்னஞ்சல் / e-mail: sechrc@sltnet.lk
වෙබ් / இணையம் / Web: www.hrcsl.lk

the same time, his mother-in-law who had cancer was in a critical condition. The Complainant's mother-in–law died on the 16th of April 2005. The Complainant had submitted hospital cards and his mother-in-law's death certificate along with his appeals for reinstatement to the Colombo Headquarters. However, the Respondent has not entertained his appeals.

C. POSITION OF THE RESPONDENT

6. The Respondent states that the Complainant failed to follow up on his appeals and has not been proactive in taking measures to be reinstated.

7. The Respondent further states that the Kandy DIG has issued a report stating that the Complainant had frequently engaged in indisciplined conduct, infrequently attended work and did not have an overall satisfactory performance. For the aforementioned reasons, the Respondent was of the view that the Complainant would fail to perform satisfactorily and there would be no purpose in reinstating him.

D. OBSERVATIONS

8. The Complainant and his wife have submitted several appeals for the last 10 years for the Complainant to be reinstated. Therefore, the Respondent cannot hold the position that the Complainant has failed in taking measures to be reinstated.

9. Even though the Respondent states that the Complainant has a record of unsatisfactory service. However, the Peradeniya Police have conducted a background report on the Complainant and has concluded that he does not have any complaints against him.

10. The Respondent failed to provide reasons as to why the other officers who were interdicted at the same time as the Complainant were reinstated while he was not. Furthermore, while there were several recommendations for reinstatement the Respondent has failed to provide reasons as to why the recommendations cannot be adopted. The explanation given for his absence on the 13th and 14th April 2005 is reasonable and there is good reason to accept the same.

11. For the aforementioned reasons it can be concluded that the Respondent has **violated** the **Fundamental Rights** of the Complainant guaranteed by **Article 12(1)** of the Constitution.

E. RECOMMENDATIONS

On a finding of violation of Article 12(1) of the Constitution, the Commission recommends as follow:

a) In terms of the provisions in Section 15 (4) of the HRC Act, the Commission recommends the Respondent to Reinstate the Complainant with immediate effect

backdating to the date of reinstatement of the other Officers who were interdicted, in similar circumstances in April 2005.

b) In the event that the Respondent is unable to reinstate the Complainant, the Commission hereby directs that the Complainant be paid compensation and costs in the sum of Rs. 500,000.

c) In terms of the provisions in Section 15(7) of the HRC Àct, the Commission hereby require the respondent to report to the Commission the action taken to implement the recommendation on or before ....01-04-2018.....

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Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka

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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.

Commissioner
Human Rights Commission of Sri Lanka
No. 14, R.A. De Mel Mawatha,
Colombo 04.