



Article 12(C)

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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 } 28/02/2018

K.Piyasili
"Siri sili" Bavigamuwa,
Pothuhera

Complainant

Complaint Number: HRC/2802/14

vs.

1. Inspector General of Police
Police Headquarters,
Colombo 01
2. Director (Discipline and Conduct
Division)
Police headquarters,
Colombo 01
3. Director (legal)
Police Legal Department,
Police Headquarters
4. Director General,
Department of Pensions,
Colombo 10

Respondents

A. THE COMPLAINT

1. The Complainant is the wife of a deceased police officer who was accused of murder for an incident that occurred in 1984. The Complainants husband, Thilak Piyasiri, was interdicted immediately without pay following the incident.

ප්‍රධාන කාර්යාලය பிரதான அலுவலகம் Head Office	14, අර්. ඒ. ඩෙල් මාවත, කොළඹ - 04. 14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04. 14, R. A. De Mel Mawatha, Colombo - 04.	සභාපති தவிசாளர் Chairperson	011-2505451	ෆැක්ස් தொலைநகல் Fax	011-2505541/74	විද්‍යුත් තැපෑල மின்னஞ்சல் e-mail	sechrc@sltnet.lk
දුරකථන தொலைபேசி Telephone	94 -11- 2505580/81/82	ලේකම් செயலாளர் Secretary	011-2505521	කණිෂ්ඨ தூரத் அழைப்பு Hotline	011-2505575 1996	වෙබ් இணையம் Web	1 www.hrcsl.lk

2. Due to the Court record relating to the incident being destroyed, the Respondents have failed to conclusively come to a decision as to the legal status of Thilak Piyasiri following his interdiction.
3. Thilak Piyasiri passed away on 29.03.2001 whilst still being interdicted. After the demise of her husband, the Complainant has written to the Respondents and several authorities to obtain her husband's pension.
4. The Complainant receives the Widows' and Orphans' pension but does not receive her husband's pension. The Complainant is claiming for pension benefits her husband should have been entitled to after serving the Police for 26 years.

B. RELEVANT FACTS

5. Thilak Piyasiri who was seconded to the Kurunegala division was serving in Muthur for special duty in 1984. On 13.11.1984 Tilak Piyasiri allegedly shot at another police officer mistaking him to be an LTTE combatant. Thereafter, he was immediately interdicted without pay.
6. Thilak Piyasisri was charged for murder and the case was pending before the Muthur Magistrate Court (Case No.13863). Due to the volatile situation in Muthur area, as a result of terrorist attacks, the Court case was postponed several times. The last time the case was called on 15.12.1990. When the Trincomalee Police Division had inquired from the Muthur Court Registrar on the status of the pending case, it was disclosed that all Court documents were destroyed when the Indian army had taken over the Court complex during the war.
7. The Kurunegala Police have visited the Complainant in 2007 and had instructed her to submit an appeal to the National Police Commission. Accordingly, the Complainant has appealed to the National Police Commission on 10.05.2007 to receive her husband's pension.
8. The Trincomalee Police Division has issued a letter on 11.07.2007 stating that as 23 years have lapsed since Thilak Piyasiri's interdiction, they cannot locate whether a disciplinary inquiry was conducted in this regard. Furthermore, office of the Deputy Inspector General of Police of Kurunegala has issued a letter to the 2nd Respondent on 22.08.2008 confirming that there was no disciplinary inquiry conducted against Thilak Piyasiri.
9. The Attorney General's Department issued a letter on 14.12.2007 stating that as the Court has not decided whether Thilak Piyasisri is guilty or not, it is not possible to come to a decision in this regard. Accordingly, the Attorney General's Department has instructed the 3rd Respondent to refer this matter to the Public Service Commission to make a decision on Thilak Piyasiri's pension status. The letter of the Deputy Inspector General of Police of Kurunegala states that on the instructions of the Attorney General's Department, this matter should have been referred to the Public Service Commission (now the National Police Commission). However, the question on whether Thilak Piyasiri should be nominally retired

was later referred to the Director of Welfare.

C. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION

10. Inquiries were held on 28.05.2015, 25.08.2015, 26.01.2016, 08.12.2017
11. At the inquiry held on 28.05.2015, the Respondents stated that the Complainant receives Widows and Orphans pension based on the last drawn salary of the deceased that is as at 13.11.1984. The Complainant states that she has appealed to the National Police Commission to receive her husband's pension; however, the Respondents stated that no decision has been made in this regard. The Respondents further state that the North Western Province Deputy Inspector General of Police has inquired whether there have been steps taken at a departmental level but the Respondents have not been successful in locating any documents in this regard.
12. At the inquiry held on 25.08.2015 the Respondents stated that they cannot give the pension of Thilak Piyasiri as he has not appealed to be reinstated while he was alive. The position of the Respondents was that it is the Complainant who is seeking the pension of deceased while Thilak Piyasiri did not taken any action to be reinstated. The 4th Respondent stated that as Thilak Piyasiri has not nominally retired, they cannot take action in this regard.
13. At the inquiry held on 08.12.2017 the Respondents stated that there was no disciplinary inquiry conducted against Thilak Piyasiri. The Complainant stated that even though she was questioned by the Kurunegala Office whether her husband was issued a letter of interdiction, they have not been successful in locating any document relating to Thilak Piyasiri. However, the Respondents later submitted to the Commission the letter of interdiction that was issued.
14. On the instructions of the Respondent present at the inquiry on 08.12.2017, the Complainant submitted another appeal to the National Police Commission on 13.12.2017 to nominally claim that Thilak Piyasiri is entitled to pension.

D. APPLICABLE EVIDENCE

15. The Complainant produced a copy of a handwritten letter of Tilak Piyasiri dated 14.12.1987 to have his case transferred to another Court. The letter requests the 1st Respondent to transfer the case that is pending in the Muthur Court which was constantly postponed. Thilak Piyasiri has stated that the case was delayed as witnesses to this incident were not appearing in Court and had requested that the case be transferred to any other Court rather than Trincomalee and Muthur.
16. The 1st Respondent has issued letter on 16.08.1990 titled "Transferring case to another Court" requesting the Kurunegala Office to produce a report on the current status of the Muthur Case No.13863 in order to entertain the request to transfer this matter to another Court.

17. Furthermore, Thilak Piyasiri has sent a letter to the Kurunegala office on 04.09.1994 stating that the Muthur case was not taken up due to the terrorist activities in that area. He further stated that he has appealed to the North Western Province Deputy Inspector General of Police but has not received a response as yet.

E. APPLICABLE LAW AND OBSERVATIONS

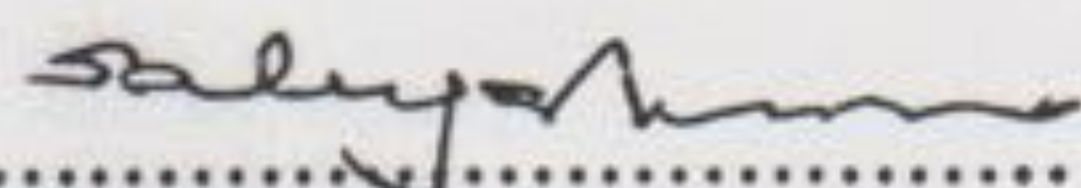
18. The Respondents state that they have not conducted a disciplinary inquiry in this regard. Furthermore, the Respondents have not issued a charge sheet to the Complainant's husband.
19. The accused was never subject to an internal police disciplinary inquiry by the Respondents. 1st-3rd Respondents have not taken action in terms of Section 27:11 of Chapter XLVII of the Establishment code to conduct a disciplinary inquiry even though there was a Court case pending.
20. The 1st-3rd Respondents have failed to determine the status of the Complainant's husband. The 1st-3rd Respondents have merely relied on the fact that the Muthur Court documents being destroyed to avoid deciding the status of Thilak Piyasiri. The 4th Respondent cannot grant pension to the Complainant as the Thilak Piyasiri's pension status is not nominally granted as yet.
21. Furthermore, the 1st-3rd Respondents cannot hold the position that Thilak Piyasiri has not appealed to be reinstated as he had in fact appealed in 1990. In any event, the 1st-3rd Respondents have the primary responsibility to ensure that a disciplinary inquiry takes place and is concluded in terms of the Establishment Code, in respect of an officer under interdiction.
22. Therefore, it can be concluded that the 1st-3rd Respondents **have violated** the Fundamental Rights guaranteed by Article 12(1) of the Constitution, to the Complainant.

D. RECOMMENDATIONS

23. On the finding of a violation of Article 12 (1) of the Constitution, the Commission makes the following recommendations:
- A) In terms of Section 15(3) (c) of the HRC Act, the Commission hereby recommends the 1st-3rd Respondents to take immediate measures to submit this matter and coordinate with the National Police Commission to nominally retire the Complainant's husband.
 - B) It is recommended to the National Police Commission to nominally retire Thilak Piyasiri, the deceased husband of the Complainant, from an appropriate date.
 - C) The commission further recommends the 4th Respondent to take appropriate action thereupon to provide the Complainant with her husband's pension, which she had been

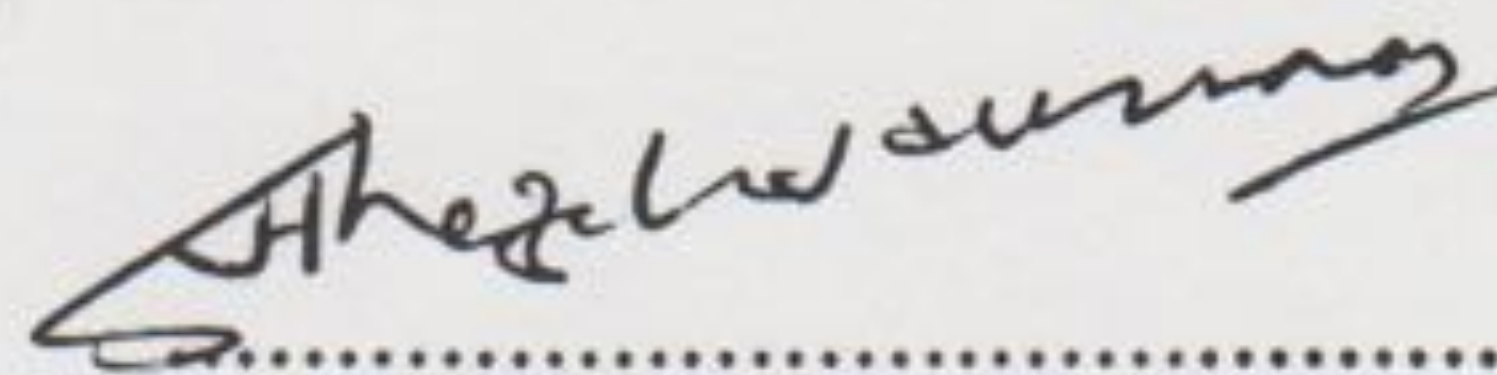
entitled to in terms of the law.

- D) In terms of the provisions in section 11 (g) of the HRC Act, the Commission recommends the Sri Lanka Police pay the Complainant a sum of Rs. 70,000 as compensation.
- E) In terms of Section 15(7) of the HRC Act, the Commission hereby recommends the Respondents to report to the Commission regarding the actions taken to implement the recommendation within 3 months from the date of this recommendation.



Saliya Pieris PC
Commissioner
Human Rights Commission of Sri Lanka

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



Ghazali Hussain
Commissioner
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