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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
HUMAN RIGHTS COMMISSION OF SRI LANKA

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திகதி } 06-01-2018  
Date }

P.Sunil,  
31, Kongahawatta  
Angoda.

**Complainant**

Complaint Number: **HRC/2242/13/L-13** vs.

Kotikawatte-Mulleriyawa Pradeshiya  
Sabhawa,  
Gothatuwa New Town.

**A. THE COMPLAINT**

1. The Complainant is an employee of the Kotikawatte-Mulleriyawa Pradeshiya Sabhawa. The Complainant states that he was beaten for political reasons and interdicted without pay on 21.04.2013. The Complainant was the Respondent's employee for 19 years at the time he was interdicted.
2. The Respondent states that due to the Complainant's unruly behaviour, disciplinary action was instituted against him.
3. The Complainant was reinstated on 02.05.2016 and is currently claiming salary arrears.

**B. PROCEEDINGS BEFORE THE HUMAN RIGHTS COMMISSION**

4. At the inquiry held on 17.02.2014 the Respondent stated that the Complainant has been interdicted and a disciplinary inquiry is to take place. Subsequently the Complainant informed the Commission that he was continued to be interdicted without an inquiry instituted.
5. The Respondent's submissions show that due to several prior incidents relating to the Complainant he was internally transferred and given warnings.

**C. APPLICABLE LAW AND OBSERVATIONS**

6. Chapter XLVII, Section 13:2 of the Establishment Code II states that preliminary investigations should be carried out and completed 'with the least possible delay.' The Complainant was not issued a charge sheet under Section 14 of the Establishment Code

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7. The Respondent did not institute a disciplinary inquiry but has given vague undertaking before the Human Rights Commission that a disciplinary inquiry will take place.
8. The Complainant was interdicted with a denial of total emolument and no reasons were given as to why he should not be paid emoluments. It is submitted that a prolonged interdiction without pay has adverse socio-economic consequences.
9. The Respondent *has not provided* reasons as to why there was an inordinate delay of 3 years from the interdiction to the final decision to reinstate the Complainant. The disciplinary inquiry should have been instituted and completed within a reasonable period.
10. It is therefore concluded that the Respondent acted in an arbitrary manner and failed to abide by the procedure set forth in the Establishment Code with respect to disciplinary action.
11. On the grounds of interdicting the Complainant without pay for a prolonged period time, the Respondent has violated the Fundamental Rights of the Complainant guaranteed by Article 12 (1) of the Constitution.

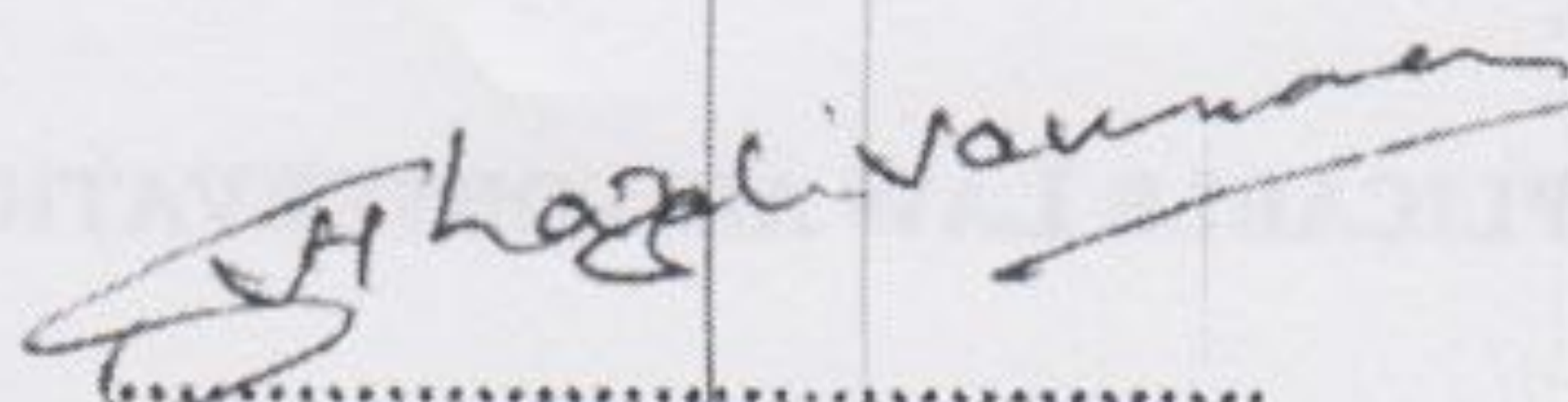
#### D. RECOMMENDATIONS

On the finding of a violation of Article 12 (1) of the Constitution, we make the following recommendations:

1. In terms of the provisions in Section 15 (3) (c) of the HRC Act, the Commission hereby recommends the Respondent to pay the salary arrears of the Complainant for the interdicted period from 21.04.2013 to 02.05.2016.
2. In terms of the provisions in Section 11 (g) of the HRC Act, the Commission recommends that the Respondents pay the Complainants a suitable sum as costs incurred by them for the complaint made.
3. In terms of the provisions in Section 15(7) of the HRC Act, the Commission hereby require the respondent to report to the Commission the action taken to implement the recommendation on or before 28<sup>th</sup> February 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