



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 } 2019-11-28
Date }

1. W. P. Sarath,
No. 487/A,
Susilarama Road,
Malabe.

HRCSL Application Case No:
HRC/4499/14

Complainant/s

Vs.

1. Director-General,
Central Cultural Fund,
No. 212/1,
Boudaloka Mawatha,
Colombo 07.
2. Chief Administrative Officer,
Central Cultural Fund,
No. 212/1,
Boudaloka Mawatha,
Colombo 07.
3. Secretary,
Ministry of Housing, Construction and
Cultural Affairs,
2nd Floor, "Sethsripaya,
Sri Jayawardanepura Kotte.

Respondent/s

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பிரதான அலுவலகம் } 14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.
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Secretary }

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Respondents Position

7. The Complainant was suspended from the CCF on the 25.05.2016. Subsequently, the Complainant had filed a petition at the Supreme Court under SCFR 215/16, to which leave to proceed was not granted.
8. Further, at the time the Complainant was the Acting Director (Finance) Fundamental Rights jurisdiction was invoked under SCFR 10/2012 by D. P. J. Holdings, making the Complainant the 3rd Respondent to that suit, for the reason of not awarding the tender to the lowest bidder but awarding it to the highest bidder and the said case was pending (at the time of this letter).
9. At the time of this letter there are two Disciplinary Inquiries being conducted against the Complainant and from the information received from the Administration Department of the CCF, it is evident that the Complainant has been avoiding attending the Inquiries by giving various excuses.

Relevant Law and Observations

10. In Public Administration Circular No. 06/2004 (dated 15.12.2004) section 22:1:1 of Chapter XLVIII of the Establishment Code was amended to read;
"The Disciplinary Authority should take necessary steps to conclude the relevant inquiry and to issue the disciplinary order within a period of one year from the date of serving of a charge sheet against an accused officer"
11. Further, the same Regulation provides that in the event there is a **delay in the delivery of the disciplinary order** *"...for more than one year due to lapse of the part of the accused officer, he should, if under interdiction, be re-instated in service and paid his salary from that date, on the discretion of the disciplinary authority, subject to the facts mentioned in the disciplinary inquiry."*
12. Similarly, the CCF is regulated by its own Disciplinary Procedure which governs the process of Disciplinary action taken against employees of the CCF. **Section 17:5 (III) of the Disciplinary Procedure** provides that in the event that disciplinary action taken against an employee **continues for more than three months**, the Chief Administrative Officer/ Director-General has the power to resume payment of no more than half of the salary of the suspended employee for the rest of the duration of the Inquiry.
13. In the case of *Jayasinghe vs Attorney General and Others (1994) 2 SLR 74* the petitioner was a storekeeper employed by the 2nd respondent (Colombo South Co-operative Society). He was interdicted by letter without a stated reason and without pay. It was known that he was alleged to have been responsible for shortages at four places where he had worked. No charge sheet was

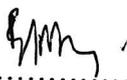
This is contrary to rules laid down in both the Disciplinary Procedure of the CCF and the Establishment Code (as per P.A. Circular No. 06/2004).

Conclusion

20. As per the observations and the applicability of the relevant laws above, it is hereby concluded that the Respondent **has violated** the fundamental rights of the Complainants guaranteed by Article 12 (1) of the Constitution.

Recommendation

21. In terms of the provisions in section 15 (3) (c) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the 1st and 2nd Respondents are directed to;
- Conduct and conclude the pending Disciplinary Inquiry against the Complainant, within three months of the date of this Recommendation.
 - In the event the Complainant is found to be not guilty of the charges levelled against him, to reinstate the Complainant to his original post of Internal Auditor, backdating his restatement to the date of his suspension and for his salary to be paid in accordance with the rules laid down in both the Disciplinary Procedure of the CCF and the Establishment Code (as per P.A. Circular No. 06/2004).
 - In the event the Complainant is found to be guilty of the charges levelled against him, to pay the Complainant for the duration of delay of the Disciplinary Inquiry in accordance with the rules laid down in both the Disciplinary Procedure of the CCF and the Establishment Code (as per P.A. Circular No. 06/2004).
22. In terms of the provisions in section 15 (3) (a) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the 3rd Respondent is directed to oversee that the abovementioned recommendations are implemented by the 1st and 2nd Respondents.
23. In terms of the provisions in section 15 (7) of the Human Rights Commission of Sri Lanka Act No. 21 of 1996, the 1st and 3rd Respondent is directed to report the outcome of the Disciplinary Inquiry to the Human Rights Commission of Sri Lanka.

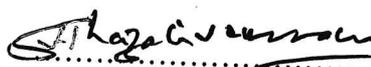


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Ramani Muttettuwagama
Commissioner
Human Rights Commission of Sri Lanka

Commissioner

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

Copy- 1. Hon. Minister of Housing, Construction & Culture Affairs,
2nd Floor, Sethsiripaya, Battaramulla.



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Ghazali Hussain
Commissioner
Human Rights Commission of Sri Lanka

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