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இலங்கை மனித உரிமைகள் ஆணைக்குழு  
**HUMAN RIGHTS COMMISSION OF SRI LANKA**

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திகதி } 22<sup>nd</sup> July 2021  
Date }

Mr. P.A.M. Wijsekara  
No. 166, Janasawigama,  
Gamudawa,  
Pallekale

**Complainant/s**

Application No: HRC/618/21

Vs.

01. Commander  
Sri Lanka Air Force  
Headquarters,  
Colombo.
02. Director (Health Services)  
Sri Lanka Air Force  
Headquarters,  
Colombo.
03. Ms. Sureka Dias,  
Air Commodore,  
Director (Legal)  
Sri Lanka Air Force,  
Headquarters,  
Colombo.

**Respondent/s**

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பிரதான அலுவலகம் }  
Head Office }

14, අර්. ඒ. ද මෙල් මාවත, කොළඹ - 04.  
14, ஆர்.ஏ.த. மெல் மாவத்தை, கொழும்பு - 04.  
14, R. A. De Mel Mawatha, Colombo - 04.

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Chairperson }

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Secretary }

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## **The Complaint**

According to the complaint preferred by namely P.A.M. Wijesekara, a flight lieutenant attached to the Sri Lanka Air Force had signed a bond on the 12.06.2010 with the then Chairman of the Board of Management of the Sir John Kotelawala Defence University at the time of starting the degree of MBBS. The Complainant had completed the degree on 25.10.2015.

Complainant had decided to marry Dr. Bowala who is also a doctor. Dr. Bowala, presently the complainant's wife had secured employment as a Medical Officer at the Emergency Department at the Campbelltown Hospital, New South Wales, Australia and had to assume duties on the 12.11.2020 and as such the complainant had decided to marry Dr. Bowala, prior to the departure to Australia.

The complainant had addressed a letter to Chief of Staff of the Sri Lanka Air Force dated 23.08.2020 wherein he had requested permission to marry Dr. Bowala where he has mentioned regarding Dr. Bowala's job opportunity in Australia.

In response to the said letter dated 09.09.2020 he received from the Director of Administration Air Force Head Quarters requesting the Complainant to submit a declaration to the effect that he would not consider the marriage as leverage to apply for resignation before the completion of the bonded period which is due to expire on 20.10.2027.

The complainant also submitted in the written submission, that the Complainant had met with the Director (Health Services) on the 10.09.2020 and brought to his notice that he had referred a request on the 23.08.2020 to grant permission to marry his spouse on the 11.08.2020 also further explained the reason as to why he needed to resign and communicated to him that he was willing to pay the amount due in terms of Clause 12(a) of the Bond in order to be released from his service as to join his spouse in Australia. The response of the Director (Health Services) was that he would not release the Complainant from service even upon the expiration of the Bond period.

It was also further stated in the written submission of the complainant that, in response to the letter dated 09.09.2020 sent by the Complainant, the Complainant sent a letter dated **10.09.2020** to Director (Administration) of Sri Lanka Air Force explaining the reasons for

the resignation. The complainant had legally married Dr. Bowala on the 11<sup>th</sup> of September 2020.

The complainant had sent a letter dated 21.09.2020 to the Commander of the Sri Lanka Air Force explaining that how essential it is for him to leave with his wife to Australia and start their family life and requesting that he be permitted to resign from service

The complainant had received a letter dated 07.10.2020 from the Director (Administration) of Air Force Head Quarters refusing to release the complainant from service for the reason that he got married.

Then the complainant had also received a letters dated 08.10.2020 and 29.10.2020 from the Director (Administration) of Air Force Head Quarters stating that the Complainant had violated orders and acted in an irresponsible manner and that the Commander of the Air Force had directed to administer a 'Letter of Displeasure'.

The complainant had addressed a letter dated 04.12.2020 to the Director (Administration) that he married on the 11.09.2020 owing to the undue delay of the response by that was sent on the 9<sup>th</sup> of September after applying for permission on the 23<sup>rd</sup> of August. Cancellation or postponing of such important stage of life on such short notice would have resulted in a grave financial loss and disgrace to himself, his spouse and his families.

The complainant had further submitted in the written submission that on 25.01.2021, the Complainant had recorded a statement for his failure to obtain prior approval of the Sri Lanka Air Force prior to his marriage.

The Complainant received a letter dated 29.01.2021 from the Director of Administration stating that his request has not been approved by the Air Force Head Quarters but had failed to provide any reasons for such refusal.

The complainant sought to exercise the option in terms of the clause 12(a) of the said bond that he be permitted to resign from service. The complainant is well aware that he shall refund and repay to the Republic the sum of Rupees Three Million One Hundred Thousand (Rs. 3,100,000 /-) lawful money of Sri Lanka and the full amount of expenses incurred by the Republic on account of his further Service training as the case may be up to the date of such termination on such decision to resign from service under the clause of 12(a) of the bond agreement. The said clause 12 (a) of the bond reads as follow:

“that if an Officer fails to complete his training at the University or if having successfully completed his training at the University, the Officer Cadet/ Officer fails to accept a commission as an Officer in the Regular Force of the Armed Service into which he is commissioned as an Officer or if having accepted such commission as an Officer, the Officer Cadet/ Officer fails to undergo further Service training or if having undergone such further service training the Officer Cadet/ Officer fails to successfully complete the same or if having successfully completed such further service training, the Officer Cadet/ officer fails to assume duties in the Armed Service into which he has been Commissioned as an Officer or if having assumed duties in such Armed Service, the Officer Cadet/ Officer fails to serve in such Armed Service for a period of at least (12) Twelve Years from the date on which he was Graduated in the respective Degree Programme inclusive of the period his further training as aforesaid or if after assuming his duties as aforesaid , the Officer Cadet/ Officer shall resign his commission in such Armed Service before the expiry of the said period of (12) Twelve Years or if the Officer Cadet/ Officer shall be dismissed or removed from office before the expiry of the said period of (12) Twelve Years on the ground of inefficiency or on any other ground or if before the expiry of the said period of (12) Twelve Years, the Officer Cadet. Officer opts to retire or if the Officer Cadet/ Officer fails to comply with any of the terms and conditions of this Agreement, **the Officer Cadet/ Officer shall forthwith refund and repay to the Republic the sum of Rupees Three Million One Hundred Thousand (Rs. 3,100,000 /-) lawful money of Sri Lanka and the full amount of expenses incurred by the Republic on account of his further Service training as the case may be up to the date of such termination.**”

The complainant also states that, having a legal basis as such, the Air Force of Sri Lanka is not permitting him to resign from service and it violates the complainant’s fundamental rights.

### **Representations made by the Respondents**

The officials namely, H O K P T Dahanayake, the legal officer of the Sri Lanka Air Force and A.H.P.P Kariyapperuma, Senior staff Officer of the Sri Lanka Air Force made oral submissions on behalf of the respondents on 30<sup>th</sup> of June 2021. They submitted that there was no legal basis to permit the complainant to resign from the sri Lanka Air Force in terms of the bond. They further submitted that the bond had been signed between the complainant

and the then Defence secretary and that any person is compelled to serve his/her full term of 12 years from the date on which he/she graduated from any degree programme conducted by the KDU. The said officials also submitted that there was a dearth of doctors serving in the Air Force and as such they could not accede to the request made by the complainant.

### **Observations**

On the date of the inquiry namely 21.06.2021 both parties were directed to file written submission by the inquiring officer on or before the 30.06.2021. the complainant had filed their written submissions on 30.06.2021. The respondent had not filled their written submission and a notice was dispatched by letter dated 05.07.2021 to file written submissions but have not filed their written submissions to date.

The respondents claim that the then defence secretary had signed the bond and as such any officer is bound to complete the full term of 12 years from the date on which he/she had graduated. It is observed that in terms of the agreement contained in the bond signed on 12.06.2010, the parties that are privy to the said contract are the complainant and the then Chairman of the Board of Management of the Sir John Kotelawela Defence University. It is pertinent to note that the Chairman being the Secretary of Defence of the Democratic Socialist Republic of Sri Lanka has signed in the capacity of Chairman and as such the Air Force of Sri Lanka is not a party to this contract.

It is observed that the complainant was selected as an office cadet and enlisted on the 12.06.2020. It is further observed that in terms of the Claus 12(a) of the bond permits the early release of the complainant on the condition that he pays the stipulated sum in terms of the bond. The said amount is stipulated in the clause 12(a) of the bond as follows,

**“...the Officer Cadet/ Officer shall forthwith refund and repay to the Republic the sum of Rupees Three Million One Hundred Thousand (Rs. 3,100,000 /-) lawful money of Sri Lanka and the full amount of expenses incurred by the Republic on account of his further Service training as the case may be up to the date of such termination”**

(the full clause 12(a) of the bond is mentioned above in the complaint section)

The duration of the bond includes the period of 12 years up to graduation. it is observed the complainant has served a period of five years. The counsel for the complainant further

submitted that at the time complainant signed the bond he had intended to serve the Air Force for the full term of the bond. The circumstances changed consequent to him meeting his fiancé (presently his wife) Dr. Bowala.

It is observed that in terms of Clause 12 (a) the complainant is entitled to exercise his option to resign from service upon paying the sum due in terms of the bond.

We have observed that medical officers who were similarly circumstanced permitted to resign prior to completing of the period they were bonded. It is also observed that the said officers namely, Y.S.H.J.T. Silva, B.A.A.S. Sirimanne and R.T. Siriwardane are not graduated by the Sir John Kotelawala Defence University but served under the category of regular officers where the complainant also belong to. This is evidenced by the documents that have been annexed to the written submission of the complainant.

It is further observed that the refusal to permit him to resign from service and join his spouse in Australia in order to begin his family life restricts the right of the complainant and his spouse to enjoy a family life which is in contravention to Article 10 of the International Covenant on Economic, Social and Cultural Rights to which contrary is violative of article 12(1) of the constitution.

Considering the facts before the commission, the commission observed that the decision to the refusal of the complainant resigning from service contained in the letter dated 29.01.2021 is violative of the complainant's fundamental rights to equality and equal protection of the law guaranteed to him in terms of Article 12(1) of the constitution.

### **Legitimate Expectation of the Complaint**

The complainant has a legitimate expectation that he would be permitted to exercise the option to resign in terms of the conditions stipulated in 12(a) of the said bond.

### **Power of the Human Rights Commission to Grant Relief**

In *Dayaratne v Minister of Health and Indigenous Medicine* (1999) 1 SLR 393, Amarasinge J. held that "destroying of a legitimate expectation is a ground for judicial review which amounted to a violation of equal protection guaranteed by Article 12 of the Constitution"




## Conclusion

It is hereby concluded that the Respondents act **have infringed** the Fundamental Rights of the Complainant guaranteed under Article 12(1) of the Constitution.

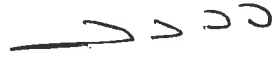
## Recommendation

The commission recommends the Respondents to permit the complainant to resign from service upon refunding and repaying to the Republic, the sum of Rupees Three Million One Hundred Thousand (Rs. 3,100,000 /-) lawful money of Sri Lanka and the full amount of expenses incurred by the Republic on account of his further Service training as the case may be up to the date of such termination in terms of clause 12(a) of the bond.

As per Section 15(7) of the HRCSL Act, the respondent should report to the HRCSL on the action taken to implement Recommendation within 30 days of the date of this Recommendation.



Anusuya Shanmuganathan  
Commissioner  
Human Rights Commission of Sri Lanka



Dr. M.H. Nimal Karunasiri  
Commissioner  
Human Rights Commission of Sri Lanka

Ms. Anusuya Shanmuganathan  
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